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Advancing Equal Access to Justice: Barriers, Dilemmas, and Prospects

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Symposium
*Advancing Equal Access to Justice:
Barriers, Dilemmas, and Prospects*

Keynote Address:
University of California Hastings
College of the Law, November 12, 2015

HON. TANI G. CANTIL-SAKAUYE*

Thank you, Justice Grodin. What a pleasure it is to be here with all of you. I recognize so many leadership faces here, in our quest for equal access to justice for all. I've been given twenty minutes to speak, so if I named all of you, that would go my twenty minutes. But let me say how grateful I am for your work and for being here, and for advising me and the Council in moving forward.

And I'd be remiss if I didn't recognize just a few people. I do recognize my colleague, Justice Cuéllar, who's here, thank you for being here. And I also recognize my former principal attorney who advised me so much in those first five years, Beth Jay, who's here. I joke that those were dog years, so even though we were only together for five, it's really been more like thirty-five.

And I also want to say congratulations to Justice Grodin on celebrating this birthday,¹ and also for being the lion—the champion—that you are in how you have led the state . . . by example, as a justice, as a professor, as a mentor, as an advocate; how you change lives by leading yours; and how you've actively changed students' lives to become the

* Chief Justice, Supreme Court of California; Chair of the Judicial Council of California.

1. The Advancing Equal Access to Justice Conference also served as a Tribute to former California Supreme Court Associate Justice and UC Hastings Professor, Joseph Grodin. The Tribute honored Justice Grodin's eighty-fifth birthday year, his more than fifty-five years as a professor and scholar at UC Hastings, and the publication of the latest edition of his book, *The California State Constitution*. See JOSEPH GRODIN ET AL., *THE CALIFORNIA STATE CONSTITUTION* (2d ed. 2015).

leaders they are today, to carry on the message so badly needed about equal access to justice. So thank you, Justice Grodin, for your service.

I'd like to spend my moments with you to talk a little bit about the national and state picture, and what is happening at the judicial level in California. But I know, as many of you know, that this topic is in dire need of being addressed, and that is equal access to justice, civil legal aid for those most in need. As you know, nationally, by dint of our last survey, we know that approximately one-third of Americans in the United States qualify for legal aid. And we know that the single largest funder and provider of national legal aid—Legal Services Corporation²—is woefully underfunded. We know that their current funding is approximately \$375 million,³ and that's *lower* than what their funding was in the nineties. And we know that Legal Services Corporation funds approximately 134 organizations nationally,⁴ California among them, and that they have seen at those organizations [almost] two million people [for] services.⁵ And we also know that for every dollar spent on legal services funding—per a New York study—six dollars come back to the state, to the nation. So it makes sense that we fund, economically, civil legal aid for those qualified for it. But also, as humans, as those of us who care about fairness and care about what's right, it also makes social justice sense that we do that. And yet we know that at the national level, the needs far outstrip the resources, and it seems like it could be such a simple fix to shave off a little bit of every budget and provide it for legal aid, considering all the laws that are applied nationally and at the state level that are to the benefit of people but who somehow have no access to enforce it or protect themselves by it.

On the state level, as you know, California, being the largest state, has the largest—or if not the largest, one of the largest—poverty rates in the United States. Our calculation is that about seven million people or more qualify for legal aid in California.⁶ What we know about that seven million is that about one-third of them get some kind of service. But we also know that that one-third also does not get all of the service they . . . need to resolve their legal issues. In California, we know that those legal aid non-profits that are funded by IOLTA, the Interest on Lawyers Trust Accounts,⁷ which are at their lowest since their creation, have had to turn away over a million people. We also know that in California, the courts are such that the new normal is ninety percent unrepresented come to court in the most significant of cases—those

2. LEGAL SERVS. CORP., <http://www.lsc.gov/> (last visited May 29, 2016).

3. *LSC Funding*, LEGAL SERVS. CORP., <http://www.lsc.gov/lsc-funding> (last visited May 29, 2016).

4. LEGAL SERVS. CORP., 2014 LEGAL SERVICES CORPORATION BY THE NUMBERS: THE DATA UNDERLYING LEGAL AID PROGRAMS 2 (2014).

5. *Id.* at 1.

6. CAL. COMM'N ON ACCESS TO JUSTICE, LEGAL AID IN THE COMMUNITY 4 (2014).

7. IOLTA.ORG, <http://www.iolta.org/> (last visited May 29, 2016).

having to do with family law and housing law. So when people come to court to defend and protect their family, or to keep a roof over their heads, we know that ninety percent of them come unrepresented.

That can't be the case. All of us here went to law school for three years after four years of college and studied like the devil to pass an exam that took three days, only to start with low-level cases. And here it is, in this state of plenty, we permit people who are fighting for house, home, and family to go to court without legal representation. We know the numbers are of approximately 165,000 practicing attorneys, only one thousand are devoted to legal aid. You've heard the illustrative example that if you were to fill AT&T Park to capacity, there would be six lawyers—legal aid lawyers—dedicated to address *all* of those legal needs because the numbers show one attorney for every 6867 people needing legal aid.⁸

And so we know it makes sense economically, as I said previously, and also because of compassionate, humane social justice reasons, to provide legal aid. And so, notwithstanding the daunting numbers, all of us are here today, all of us reach people, all of us are here to combine our efforts, our dedication, and our talent to addressing this issue. And let's put aside for the moment of this discussion what government should be doing—government that passes laws to protect people—what kind of role they should play, frankly, in providing some baseline funding for essential legal services for those in need.

So the national picture and the state picture are somewhat parallel. But being from California and seeing the works of yourselves and your organizations and what is done nationally that is copied here locally, I remain optimistic about what we can do. And now more than ever, we must put our shoulders to the wheel to accomplish that. And in the next few minutes I would like to share with you some examples of leadership and partnership on a replicable model, where we can begin to address and raise the consciousness and awareness of the needs for civil legal aid for those most needy, and also to ensure that we make and build a conscience for the future.

As you know, the judicial branch faces many, many interesting issues, and there are many programs out there. So in my attempt to organize those programs for you and to describe them here today, I am going to speak about them in terms of what I call "Access 3-D." When I came on as chief justice in 2011, people asked me, "Well what's your vision?" And I thought, "How could the vision for justice be any different?" It's always access to justice; it's always equal access to justice, and if you think we are achieving that now, oh you are woefully wrong.

8. CAL. COMM'N ON ACCESS TO JUSTICE, *supra* note 6, at 4.

So I began to coin my phrase as “Access 3-D”: that access to justice for all be of three equal dimensions.

And so the first dimension I’ll talk about is physical access. We need in California—one of the largest and most populous states, one of the most geographically diverse states, from urban centers to rural centers—we need to have physical access to courts. That means they must be open—open when people use them. Staffed when people use them. They also need to be safe. They also need to be places of refuge, places that are free from seismic activity. If there is anyone here from Napa, you know what I’m talking about. We need to take that responsibility and provide it for those who care to go to court physically. And furthermore, once in a court physically, we have to have places where people who do not have attorneys can find their way.

So as you know, in California, in every courthouse, we have a self-help center, staffed by an attorney who supervises the work of the volunteers. Our self-help centers serve approximately 1.2 million people a year, and let me say that they come to court looking for direction and aid, and these self-help centers are a source of information for them. These self-help centers also use JusticeCorps⁹ volunteers, so graduates from places like Stanford provide the self-help centers with graduates who assist people who come to court in filling out the forms and pointing them in the direction of the courtrooms and courthouses they need to be in. These JusticeCorps volunteers are amazing. They have amongst them multiple bilingual services and talents; I believe they have served over 500,000 hours in the self-help centers; they have filed or have helped people file over 300,000 documents in California; and they have delivered their services in over 200 languages. And that is the strength and the promise of volunteers, and to this day I meet JusticeCorps volunteers in the capitol, and they’re working for people in the legislature, and they tell me what a valuable experience that was and how they’re coming up in leadership and policy with a strong, vibrant sense of justice having experienced it as a volunteer in college.

That’s physical access, and there are many, many aspects of physical “Access to Justice-3D.” But I want to turn now to remote access, and I know that I don’t have to tell this crowd, in California, about how we need remote access to the courts. How we must have it as a viable option, and frankly, how the courts are behind.

But I want to say that last year the Judicial Council adopted the Court Technology Governance and Strategic Plan.¹⁰ It is a roadmap of how we go forward with trial courts, courts of appeal, and the supreme court and the Judicial Council, in ensuring that we can give people the

9. See *JusticeCorps*, CAL. CTS., <http://www.courts.ca.gov/justicecorps.htm> (last visited May 29, 2016).

10. JUDICIAL COUNCIL OF CAL., JUDICIAL BRANCH ADMINISTRATION: COURT TECHNOLOGY GOVERNANCE AND STRATEGIC PLAN (Aug. 7, 2014).

choice of actually having justice online versus inline. And of course there will be the types of hearings and appearances that can never be conducted remotely, but we are embracing what we can to fulfill the expectations of our future users. They are in your classrooms. They are sitting next to you. Their work is done on a laptop, a device, a phone, or a watch, and that is the future of California as we move forward. And a very exciting aspect of our remote access is our “Self-Help 360.” This is a new self-help program in the sense that it attempts to take the services, and take them one step further by helping people fill out the forms online and also helping them file them online, and our online self-help centers serve over 4.5 million people a year. And the entire online self-help center in the judiciary is in Spanish, with some forms in other languages. So we know based on use alone that our self-help centers are a key outreach to the public, and we are doing everything we can to ensure that we embrace technology to reach those who could use it most, and who would prefer, frankly, to start access to justice by being online and figuring it out themselves before they move forward.

I also know that this area of technology and remote access is absolutely ripe for partnerships. Last week, I believe, there were headlines with Harvard partnering with Stanford graduates in the start-up Ravel,¹¹ which I understand is looking to digitize the entire collection of U.S. case law, and that California case law will soon also be online for anyone who wants it. So imagine what that does for the law firm of the future, for people who care to look and read things themselves online and have access without having to pay for it. Imagine what that means for the digital court and where we will certainly be in five to ten years, and a practice of relying more and more where possible without sacrificing due process on a technological advancement or an appearance. And so when you think about that, here in Silicon Valley, and I know Stanford is on the leading edge of legal technology, we are really at a brink where we can create partnerships for access in a way that may *cost very little* to us to be part of, but *reaches so many* people where the need is great.

I also now want to talk about equal access, which as you know is our North Star for the judicial branch, for all of us, for any of us, who have taken an oath to obey the Constitutions of the United States and of California. And our equal access truly is remarkable. Let me start from the beginning. Back in 2011, equal access for me at that time meant adequate judicial branch funding: keeping our doors open and fighting every day in the legislature to make sure it was understood that we were an equal branch and that our doors need to be open because the laws you

11. RAVEL, <https://www.ravellaw.com/> (last visited May 29, 2016).

pass are no good if the doors of the courthouse are not open. And so for me, the first and foremost was the adequate funding and stability.

Thereafter, as Justice Grodin mentioned, we recognized the inequity amongst the different fifty-eight counties because the trial funding allocation was back from the nineties and it was an arbitrary percentage. And we knew we needed to juggle and to balance the distribution of state money to the trial courts, so places like Trinity and Del Norte and Siskiyou could have enough money to function in the same way that a court like Marin or San Diego or Los Angeles could. It caused pain across the board, but its effort was to ensure equitable achievement of equal access in *every* county and not just some.

After we created the new funding methodology, as Justice Grodin indicated, in my view we are the most open judiciary in the United States. We have our Judicial Council meetings, which are open and live-streamed, especially now that you can actually see us starting in December. But we've also been online and always have been online. We've opened up our meetings to the public. We permit public comment. Our Judicial Council Advisory Committee meetings that deal with all issues of the discipline are open. And furthermore, we have now opened up our records. So across the board, apart from deliberative records, if you care to know anything about your judicial branch, you have no excuse for not knowing. It's out there. It is available to you.

Additionally, in terms of equal access to justice, I want to point out that we are looking forward, as Justice Grodin said, with the Commission being chaired by supreme court Justice Carol Corrigan, looking into how do we operate in the future? What should our branch look like with an organization and structure? How can we operate better and more efficiently with what we know are limited resources, in a way to provide equal access to all?

There are going to be, and are, four subcommittees, one of them is studying civil [needs]. And of the civil subcommittee's study they are looking at how do we implement the chief justice's resolution that says, "One hundred percent effective legal assistance for those in need with essential legal needs." One hundred percent. And in my view, California has a number of initiatives, and has been really trying to achieve that. And so I'd like to mention a few of those for you.

The first one that comes to mind is the Judicial Council Advisory Committee called Providing Access and Fairness.¹² It is co-chaired by people who have been long-term pro bono, pro se litigation advocates, Justice Laurie Zelon and Justice Kathleen O'Leary. And this committee, this advisory committee, works on reports and educating judges about

12. *Advisory Committee on Providing Access and Fairness*, CAL. CTS., <http://www.courts.ca.gov/accessfairnesscomm.htm> (last visited May 29, 2016).

how better to address and resolve cases where you have pro se litigation or where one side is represented by an attorney but the other is not, but you need to achieve balance and fairness in your courtroom. And frankly, judges need that kind of education, because many are not used to that dynamic in their courtroom, and how far they can go or should go in a dynamic set up in that way. Furthermore, this committee also provides rules and changes to rules that make what we do for the judicial branch more inclusive; a greater heightened awareness of everyone that uses our branch, not just lawyers, not just civil cases, and not just complex civil litigation.

Another commission... is the California Access to Justice Commission, supported by the state bar.¹³ Judicial Council leaders, court leaders are a part of this, many of you are. As you know, the Commission is responsible for getting the Equal Access Fund, which gets about \$16 million a year that is distributed to those organizations that need it most that help those who qualify for legal aid. The Commission does a number of wonderful things [including] reports—we work with them on implementing the recommendations of the report. But I want to mention something that is very exciting. Justice Goodwin Liu, my colleague on the California Supreme Court, chairs the Grant Review Committee for the Commission, and they selected four grants directed toward the new Modest Means Incubator Programs. And I believe that the Bay Area of Hastings graduates, the Bay Area incubator group will be getting this funding. The incubators are a model, a way to try to not only close the justice gap, but [also to] bring experience to young lawyers. But to me, more important than experience in closing that justice gap, is that we are hopefully convincing young lawyers of the need to continue in the work of providing pro bono, low-bono legal aid by starting in the Incubator Program, by seeing the need and seeing the difference they can make in individual lives.

I also know that, apart from the incubator group, the law schools—Hastings and Stanford—are providing truly, to me, wonderful clinics, fellowships, externships, in ways that are providing people in need greater hours and greater service. Again, teaching young people about the value and passion of providing work to those who need it, and really making come alive the oath we take and the Business and Professions Code's requirements that we refuse no case if it happens to be for personal gain. So much of what is being done in the law schools and the Commission are really moving forward on providing legal access in the future.

13. *California Commission on Access to Justice*, ST. BAR CAL., <http://cc.calbar.ca.gov/CommitteesCommissions/Special/AccessToJustice.aspx> (last visited May 29, 2016).

Let me also speak about equal access and say that one of our most, in my view, exciting things we are doing with the judicial branch is language access. As you know in California we are a diverse state. And perhaps in some ways, that complicates our ability to provide legal access to those in need. But language access, as all of us can agree, is critical because without understanding what's happening in court, it's meaningless to you. Two years ago, I had the pleasure of appointing a dynamic committee that came up with the California Language Access Plan.¹⁴ And just like an answer from the heavens, Justice Mariano-Florentino Cuéllar was appointed at about the time the Plan came to fruition. And he has skillfully chaired this implementation task force, inclusively, with an eye toward fiscal impact, with an eye toward moving us [forward].

And, of course, I would be remiss if I did not mention the Levin Center for Policy¹⁵ and the lab at Stanford that has helped Justice Cuéllar with the field research on language access. And one of the most compelling things I learned was that language access doesn't start in the court. It starts *way* out in the community for people to understand that there is a court and that it is a safe place to come, and this is what will happen if you come there, that there are services for you. So while many of us think that language access starts at the door of the courthouse, it really goes far, far beyond that. And we are beginning see how it is that we can effectuate change, and I look forward to what California may do in the future.

Further, I would like to mention the Beyond the Bench Conference we are having in December, which focuses on family law and juvenile law. It will be for 1200 participants; these are lawyers, judges, advocates, CASA¹⁶ volunteers who work with the people, frankly, who I just mentioned, who come to court without lawyers to try to improve their experience in court, and to make it more efficient so that we're able to understand the needs and answer them in a timely fashion so they can begin to rebuild their lives. We also had, last year, our first ever legal summit, and we brought together legal providers because all of us know in the judicial branch that our strength lies in being advised by the experts. We don't pretend to be the experts. We know who you are. We invite you to come share with us your expertise so we may build upon it, so we may leverage resources wherever possible. And I understand that, in January, . . . there will be a follow-up summit on legal aid, focusing this time on technology. So again, how do we leverage something to reach

14. *Language Access Plan*, CAL. CTS., <http://www.courts.ca.gov/24465.htm> (last visited May 29, 2016).

15. *John and Terry Levin Center for Public Service and Public Interest Law*, STAN. L. SCH., <https://law.stanford.edu/levin-center/> (last visited May 29, 2016).

16. CASA: CT. APPOINTED SPECIAL ADVOCES., <http://www.casaforchildren.org/> (last visited May 29, 2016).

more people who are more inclined to use a device before they come to court to prepare themselves?

Lastly, I'd like to mention civics education. In my first year as chief justice—I will not bore you with the stories—but it became pretty clear to me that people do not understand civics, the judicial branch, what lawyers do, or what judges do. The rule of law, for some, had no connection to the legislation that was being advocated for in Sacramento. And so I was grateful to join with Justice Judith McConnell who then led the charge on getting together people who were interested in civics education and teaching it to our future leaders and our adult leaders who are interested. And it resulted in a partnership—as you can see there are a lot partnerships and collaborations—with Superintendent of Public Instruction, Tom Torlakson, integrating civics into the core curriculum so that students begin to just know that there are three branches, that the judicial branch is there for a reason, and that you cannot have a functioning democracy unless you have a fully funded, impartial, and objective judicial branch, and that lawyers bring the important cases that can't be decided in the legislature to the branch for the rule of law. And we are getting great, great input across the board because civics has no ideology. Most people are interested in civics when it is explained to them how important it is to our functioning democracy.

And in closing, I want to say thank you to all the lawyers, thank you to all the professors, thank you to the students who have lent a voice to the judicial branch in our efforts in Sacramento and our efforts in the community. We know we have to safeguard the judicial branch for the next recession, for the next downturn, and I believe that when that happens—and because we're California it will happen—the next time that happens we won't be back on our heels, we won't be on the defensive. They will know us from our good work, from our continuing efforts because we are safeguarding the system for the next generation. That's why we fight. That's why we are here today. That's the vision we share. It is about equal access. It is about equal meaning to those, especially, least able to qualify for those services, but only through legal aid.

So I thank you for your focus. I think I went over my twenty minutes, but it is a passionate subject and I am grateful to be invited to speak on this. Thank you.
