

FOUNDATION LUNCHEON SPEECH

6/21/2012

By Amelia Craig Cramer

I want to thank the Foundation's President, Honorable Roxanne Song Ong, and the Foundation's Executive Director, Dr. Kevin Ruegg, for the privilege of speaking to you today on behalf of the State Bar.

The Bar congratulates the honorees recognized today for your outstanding contributions to legal services and education.

In particular, we acknowledge Gary Restaino for all you have done, and continue to do, to support access to justice - including your important work chairing the Legal Services Committee of the State Bar.

The State Bar is proud to be a partner with the Foundation for Legal Services in fulfilling our joint mission of enhancing "access to justice."

Access to Justice....

Clarence Darrow once asserted that "there is no such thing as justice - in or out of court."

I disagree.... I believe there is such a thing as justice.

Moreover, I believe that endeavoring to enhance Access to Justice *for all* is a spiritual, constitutional, moral and ethical imperative.

~~~~~  
Those of us belonging to religious faiths are commanded to seek justice...

In the Torah for Jews - the Bible for Christians - in Deuteronomy, verse 16, line 20, we are commanded by God who told Moses: "Justice, justice shall you pursue."

The verse goes on to explain that the defenseless and poor - orphans, widows, aliens - these are the ones especially to whom we are to offer justice.

All the major religions – not just Judaism and Christianity, but Islam, Hinduism, Buddhism, and the Bah’ai faith, as well, all exhort us to value and to seek justice. All the prophets speak of justice. And justice is commanded in all the sacred texts.

~~~~~

Whether we have religious beliefs or not, for us Americans, our *secular* texts likewise recognize justice, and full and equal access to justice, as imperatives in our democratic society

The opening words of the United States Constitution proclaim that "We the people, in order to form a more perfect union, *Establish Justice*,"

...Establishing justice comes even before ensuring domestic tranquility and providing for a common defense as a primary goal of our Constitution.

As James Madison wrote in 1788, "Justice is the end [meaning the *goal*] of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit."

Never has our democracy viewed justice as the prerogative of just some:

Our Pledge of Allegiance concludes with a proclamation of this country’s commitment to liberty “and *Justice for All*.”

Carved into stone on the West Portico of our United States Supreme Court building in our national capitol is the motto, “*Equal Justice Under Law.*”

And on the East Portico is carved “*Justice the Guardian of Liberty.*”

~~~~~

The *moral* imperative of providing access to justice has been recognized by many great legal, social, and political thinkers:

Judge Learned Hand said, "If we are to keep democracy, there must be a commandment: thou shalt not ration justice."

Rev. Martin Luther King, Jr. rightly proclaimed, "Injustice anywhere is a threat to justice everywhere."

Soviet dissident Alexander Solzhenitsyn put it this way: "Justice is conscience, not a personal conscience, but a conscience of the whole of humanity."

We Arizonans remember Barry Goldwater saying, “Extremism in the defense of liberty is no vice... Moderation in the pursuit of *justice* is no virtue.”

Supreme Court Justice Lewis Powell wrote that "Equal justice under law is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists....it is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

My favorite contemporary comment is that articulated by Professor Cornell West who said, "Justice is what love looks like in public."

~~~~~

For us as lawyers in Arizona, our Supreme Court has made providing access to justice an ethical duty:

Ethical Rule 6.1 states that, "A lawyer should voluntarily render public interest legal service."

This Ethical Rule also states that "a lawyer is encouraged to provide financial support for organizations that provide legal services to persons of limited means or to the Arizona Bar Foundation for the direct delivery of legal services to the poor."

Of course, the terms of Ethical Rule 6.1 are merely aspirational, not mandatory.

Should they be mandatory? ...

Half a century ago, in the U.S. Supreme Court's watershed decision in *Gideon v. Wainwright*, Justice Hugo Black proclaimed that

"From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."

As a result of the *Gideon* decision, today we have public defenders and legal defenders and court-appointed counsel for indigent defendants in criminal cases. Our government is mandated to provide these lawyers. This is the means by which we ensure access to justice for the poor who are accused of crimes.

But, what about the poor who are involved in civil legal disputes? We have no civil *Gideon*.

Should we? ...

That is something to consider.

Nor do we have mandatory *pro bono*.

The New York Bar just instituted a pilot program requiring 50 hours of *pro bono* service as a prerequisite for membership.

That is also something to consider. ...

Last year, a delegation of lawyers and judges from Kazakhstan visited us here in Arizona. I had the pleasure of meeting with them at our State Bar's Southern Regional Office in Tucson to exchange information about our legal systems (with the assistance of a capable translator).

I was surprised to learn that civil legal services for the poor are provided free, by the government, to in the people of Kazakhstan.

The judges and lawyers from Kazakhstan were equally surprised to learn that such is not the case here.

So, how do poor people access civil legal services in Arizona?

This is the question they asked me.

It was a good question. ...

Who represents low-income Arizona residents - those women who are victims of domestic violence, seeking to move their children to safety away from abusive spouses? - families who are facing unfair eviction from their homes? - those forced to pay unreasonable interest on consumer debts? - immigrants seeking to establish legal residence under our laws?

Who represents all those who cannot afford to hire a lawyer to guide them, advocate for them, and give them a voice in our courts?

The answer is that, sometimes, there are legal aid lawyers who work for non-profit corporations. Our legal service providers at Southern Arizona Legal Aid, DNA People's Legal Services, Community Legal Services and the Florence Project do everything they can, with limited resources, to provide access to justice for the poor.

At the Pima County Attorney's Office where I work with County Attorney Barbara LaWall, we receive many calls from low-income people seeking legal assistance. We refer them to Southern Arizona Legal Aid (otherwise known as SALA).

SALA recently assisted a couple who had purchased their home but after more than a decade of timely payments had gotten behind on the mortgage payments during the recession, and the loan servicer refused to accept any more payments because the loan had been referred for foreclosure. Facing the loss of their home, the couple turned to Southern Arizona Legal Aid. A SALA staff attorney helped them apply for a loan modification, and it was approved fairly quickly. Not only did SALA's intervention help the couple keep their home, but the modification agreement also significantly lowered both their interest rate and the amount of their monthly payment.

The Foundation supports SALA and Arizona's other legal service agencies. But, these agencies cannot help everyone who needs their services because they lack sufficient resources.

Sometimes there are volunteer lawyers providing services pro bono. But, they do not provide sufficient services to meet the demand either.

Sometimes – indeed, perhaps as much as half the time – the poor in Arizona who need legal help to resolve a custody dispute or to confront an unfair landlord are turned away due to lack of resources. There is no one there to help them navigate the turbulent waters of the legal system. There is no legal aid lawyer for them. There is no *pro bono* lawyer for

them. They are left alone, rudderless and adrift in a vast sea of legal complexities.

SALA recently had to turn away a man whom I'll refer to as Jon, who needed help challenging a child custody order. Jon had separated from his wife in Oklahoma and moved to Arizona with the couple's minor children. Child Protection Services in Oklahoma had placed the children with Jon because their mother had abused them. After Jon's move, the mother filed for divorce in Arizona, seeking custody of the children, and served Jon by publication. Jon did not respond to the lawsuit, and the mother obtained a divorce decree giving her sole custody of the children. She then came to Arizona and took the children back to Oklahoma. Due to limited resources, SALA was unable to provide a lawyer to assist Jon in challenging the child custody order. Jon was denied access to justice.

In another case, justice has been delayed. SALA had to turn away a woman whom I'll call Jane. She was the victim of domestic violence, which she had reported. She sought help to obtain a divorce and legal custody of her children. Her husband had moved his new girlfriend into the family home in Nogales, and moved Jane and their children from Nogales into an apartment in Tucson. He then threatened to stop paying for the apartment – indeed, to stop paying any support for the children. Jane was unable to find employment in Tucson and wanted her husband to support his children. SALA had to advise Jane that it was not accepting new cases due to lack of resources so that she would have to wait to reapply for services later this year.

As we all know, justice delayed is justice denied.

We are failing to meet our obligation, our duty, to provide these people – and countless others like them - with access to justice. The need is immense. But so is our capability. We can, and we must, do better.

We all must do our part to provide *pro bono* legal services.

The Foundation supports our legal service providers with the resources it has. But, it does not have enough.
We have not given the Foundation enough.
We all can and must give more.

It is our spiritual, moral, and ethical obligation to do more. It is our obligation as Americans.

I hope each of you will join me in becoming a Next Generation Fellow of the Foundation.

One to whom much is given is the one from whom much is expected.
I am that one.
You are that one.

Let us together do what needs to be done to ensure equal access to justice ... for all.