2017

Presidential Address: "Access to Justice" at the Second Meeting of the AALS House of Representatives, 2017 Annual Meeting

Paul Marcus
William & Mary Law School, pxmarc@wm.edu

Repository Citation
https://scholarship.law.wm.edu/popular_media/432

Copyright © 2017 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
https://scholarship.law.wm.edu/popular_media
Presidential Address

"Access to Justice" at the Second Meeting of the AALS House of Representatives, 2017 Annual Meeting

By Paul Marcus, AALS President, January 6, 2017

Thank you for the kind introduction and warm welcome. It is my honor and privilege to serve as the President of the Association of American Law schools for 2017. I will be continuing in the footsteps of some remarkable individuals who have served our association with tremendous distinction in recent years: Reese Hansen, Michael Olivas, Lauren Robel, Leo Martinez, Dan Rodriguez, Blake Morant, and, of course, Kellye Testy. To you, and to those who served before you as Presidents and members of the Executive Committee, I applaud you.

I also need to emphasize what a terrific job our Executive Director, Judy Areen, has done over the past few years.

I want to thank some special people very close to me, people who have traveled far to be here today: Richard and Susan Fybel from Irvine, and Tina and Dick Morgan from Idaho. Rich and Dick were classmates, and our families have been close for more than 40 years. Also, the person closest to me, my wife Becca Nimmer Marcus. Thank you, my dear.

Before going forward, I'd like to pay a special tribute to a very special person. Just a few months ago we lost someone very close to many people here: [LSAC President] Dan Bernstein. He was my friend, my mentor, my advisor. What a wonderful person, terribly missed.

Continued on page 2
As I look around this room today, I see many friends who have been instrumental in moving our process of legal education forward over a long period of time. I also see quite a number of you who have more recently joined the academy. You are fortunate indeed. You may look forward to great rewards and challenges and you will have the opportunity to meet some of the best and brightest in our nation, people who will truly change the direction of our country for decades to come.

We have heard in addresses from recent AALS presidents of the great challenges and changes legal educators are facing. Over the last several days, we have heard from many other people discussing similar matters.

Today and over the course of the next year, while I will surely look to those matters, I wish to focus on something different. What I have in mind is the role of our schools and colleagues in providing access to justice for our fellow citizens.

Before looking to that role, let me offer some preliminary thoughts regarding existing problems.

I begin with the notion that law schools and legal educators are called upon to do many things. Of course, we must educate our students, the vast majority of whom will be practicing lawyers for many decades to come. We offer not only an education in the law, but an education in the responsibilities of those fortunate enough to become attorneys. At a number of schools, including my own, we dub this person “the citizen-lawyer:” an individual who is, to paraphrase a well-known university president, willing to work to leave the law better than he found it.

Using legal training and experience, this is a lawyer willing to work to improve the life of the entity that pays her salary and the lives of her community, state, nation, and even world. An admirable goal.

Continued on page 3
As law faculty, we also engage in scholarship both theoretical and practical, empirical and comparative. That we engage in scholarship is a given; its significance is not a given. An excellent and concise reason we engage in scholarship was expressed very well by one of our Executive Committee members, Erwin Chemerinsky, in writing the foreword to a University of Michigan symposium. He asked, “Why Write?”

He answered, “We write to add significant, original ideas to the analysis and understanding of the law; as people, we write to understand ourselves and the world in which we live.” Well said, Erwin.

We also serve as an extremely important resource for our communities. The law school is a place where others can hear lively debates, tap into our great libraries, and interact with faculty and students.

“This larger story of what we as legal educators can do ... to assure fairness in law for our less fortunate citizens is an exhilarating and uplifting story.”

Both historically and today, we also do one other extremely important thing: work to ensure that our fellow citizens can be guaranteed legal assistance, even if they are less fortunate than those of us who were able to attend law school and enter the profession.

Now I should say at the outset, we are not the only institutions engaged in such work.

Aside from the dedicated lawyers who work in legal aid and as public defenders, we see private attorneys and government lawyers at all levels engaged in pro bono activities.

The government itself has programs to provide assistance by public lawyers, and the American Bar Association has been actively involved in this endeavor for many years. Its 2016 report on the future of legal services is a must read, a document which is truly sobering in its look at the many difficulties we see in our nation as to providing adequate legal representation to all.

It is not just the ABA, but also state and local bar associations across the nation, operations such as the Alabama and Mississippi Volunteer Lawyer Projects, the San Francisco Justice and Diversity Center, and the Washington State Moderate Means Program.

Many U.S. law firms have outstanding programs designed to help provide such access and to assist law schools in this endeavor, such as:

- Hunton & Williams, which has partnered with the University of Virginia to establish an office by the law school and employ two recent law graduates who work out of the local legal aid program.
- Arent Fox and DLA Piper, which are collaborating with Georgetown to establish a law firm for recent graduates to represent people who can’t get free services but can’t afford to pay a lawyer.
- Morrison & Foerster, which has its lawyers working with law students to provide assistance to Iraqi refugees.
- Kilpatrick Townsend, which partners with community organizations in a range of programs such as domestic violence issues and deterring human trafficking.
- Covington & Burling, which engages with law students to support a New York restorative justice project for delinquent youth.
- Hogan Lovells, which has lawyers going into the community to provide aid to those seeking to establish business and enterprises in impoverished communities in the U.S. and abroad.

These and law firms across the nation provide millions of hours of pro bono assistance each year. Yet tremendous needs remain.

I have worked principally in the criminal justice area, so I will begin by explaining the somewhat shocking unmet needs for lawyers. Professor Cara Drinan at the Catholic University of America wrote recently, “Indigent defense systems across the nation operate with far too little money, resulting in a host of interrelated consequences. Public defenders carry excessive caseloads, they have inadequate, if any, access to investigative and expert assistance, and they cannot meet with and counsel their clients effectively and in a timely manner. Many indigent defendants make unintelligent waivers of their right to counsel, endure months in jail without hearing a status report from their lawyers, fail to secure pre-trial releases from jail, and either agree to plea bargains or go to trial without adequate discussion or preparation.”

The gaps on the civil side are just as troubling. For every client served by a legal aid group, one person who seeks help is turned down because of insufficient resources. Less than one in five of the legal problems experienced by low-income are addressed with the assistance of either a private attorney (pro bono or paid) or a legal aid lawyer. Nationally, on average, only one legal aid attorney is available for over 6,000 low-income people. By comparison, there is one private attorney providing personal legal services for every 400 people who are above the poverty threshold.
The efforts I described above unquestionably provide some help for both civil and criminal matters. That story is told repeatedly, and well. As legal educators, we have our own story to tell.

Ours is a story less well-publicized. This story is about dedicated students and faculty members across the United States who diligently pursue the goal of equal justice for all by providing sorely needed legal representation.

This is the story of legal clinics at all our member schools, clinics which focus on an enormously broad set of legal issues involving disabilities, Native American concerns, low income taxpayers, special education, social security, elder law, civil rights, domestic violence, criminal defense, and consumer issues among many other fields.

It is the story of the many schools which have established well-known incubator programs. One model is found at the City University of New York, where recent graduates get intensive training so that they will be able to provide basic business advice to those who cannot afford to hire lawyers. Some schools in the same region—Boston College, Boston University, and Northeastern University—have pooled their resources to create another vibrant incubator program.

It is the story of the numerous innocence projects at law schools from east to west and north to south. These projects provide assistance to indigent defendants who have been wronged by our criminal justice system.

There are many of our member schools who do us proud by having their faculty members and students work to ensure access to our legal system. They are schools of all sorts: large and small, in urban areas and college towns, private schools and public institutions.

They are schools such as the University of New Mexico, which mandates clinic experience so that students understand their obligation as citizen lawyers. Northwestern and Akron send their students into public schools to help young people understand our constitution and our legal system. North Carolina Central recently launched the Virtual Justice Project, a state-wide network of high definition conferencing technology that expands the reach of access to legal information, service, and education throughout the state of North Carolina.

My own school, the College of William & Mary, has a veterans benefits clinic which has brought in more than $20 million in benefits and back pay of about $1 million for veterans.

Fordham and Georgia State focus on access issues through teaching, service, and scholarship with their strong Access to Justice Centers. Western New England's graduating class last year provided 12,000 hours of service on behalf of hundreds of clients in nine clinics, and logged in over 2,000 hours of pro bono service at dozens of organizations. Seattle University established a project pairing faculty advisors and practicing attorneys with students to provide information to prisoners incarcerated in Washington State.

University of Virginia has given its LL.M students the opportunity to learn about the U.S. legal system while engaging in pro bono service. The University of Tennessee, UCLA, and Catholic University of America have effectively combined the efforts of law students and supervising law professors to gain clemency for inmates who were sentenced to decades in prison. The University of Wisconsin has developed its Will's for Heroes Program in which practicing lawyers and students go around the state to assist first responders and their spouses or domestic partners.

Harvard worked with their graduates and the Skadden Arps law firm to establish public service fellowships, enabling graduating students to provide legal services to the poor and the homeless. The University Richmond's Children's Defense Clinic allows students to help to provide legal assistance to indigent children who are before the court on delinquency matters.

Ours is the story of those being represented, but it is also the story of our students learning the joy of representing those truly in need. I am thinking of one student at the University of Colorado who worked in the Juvenile and Family Law Clinic who commented that "You represent the most vulnerable segments of the population during what may well be the worst moments of their lives...they have been through experiences that can be pretty hard to comprehend for most of us."

Or students at the SUNY Buffalo Domestic Violence and Women's Rights Clinic who speak of helping to "change the lives of victims, survivors, and others in need."

Or a student at the University of Wyoming who, with her professor, argued successfully in the Denver immigration court on behalf of their detained client from Eritrea. She commented, "My client will no longer wonder if he has somewhere to live..."
safely. Today, my client will for the first time know he can stay somewhere permanently without fearing torture. I am not happy because I won, I am happy because I helped save my client’s life.”

This larger story of what we as legal educators can do, and what we and our students are doing, to assure fairness in law for our less fortunate citizens is an exhilarating and uplifting story.

Two justices of the U.S. Supreme Court asserted forcefully the need for equal justice. Let me paraphrase Lewis Powell and Thurgood Marshall. Justice Powell wrote that “Equal justice under law is perhaps the most inspiring ideal of our society... it is fundamental that justice should be the same in substance and availability, without regard to economic status.” Justice Marshall’s message was even more succinct: “To promote justice is the foundation of all our American democracy.”

Our efforts as legal educators in attempting to attain this ideal is truly a story worth telling. Over the course of the coming year, I encourage all of us to promote this notion of equal justice. I intend to tell our story to our colleagues, our students, and to judges, lawyers, and the broader community. It is quite some story.