
II. ACCESS TO JUSTICE

SOUTHWESTERN LAW SCHOOL COMMENCEMENT

Los Angeles, May 19, 2002

I am honored to be invited to speak at today's commencement exercises. I congratulate today's graduates and their families for all of their hard work and accomplishments.

Today, I want to share with you some thoughts about how important it is that we in the legal profession — and those who are about to enter the profession — take significant steps to ensure that access to justice is foremost in our minds.

It is my hope from these brief comments that you will have a greater sense of responsibility, obligation and commitment that comes with being a member of our legal profession.

Ours is a justice system that through the hundreds of years of its existence has given us a great measure of security and stability, while preserving and fostering the fundamental rights that are so essential to a freedom-loving democracy such as ours. It is a system founded on the bedrock of a marvelous Constitution and Bill of Rights and statutes that cover the scope and breadth of our complex society — laws that are well-intentioned and seek to provide fairness and justice to all in our form of democracy. But we know that ours is not a perfect system. We know that while our Constitution and statutes may exist on paper and provide significant rights for all Americans, unless those rights are enforced and exercised and given meaning in actual practice, for all intents and purposes they may as well cease to exist for many people in our society.

To illustrate this point, I want to tell you a story. It is a story about how difficult it can be to exercise one's rights in the context of obtaining a proper education and appropriate medical care in our society.

Our country, of course, has the greatest resources to deliver the best in health care services.

- The best training and education.
- The best equipment and facilities.
- The most advanced research and technology.
- And perhaps the most well-intentioned service providers.

But the existence of all of these wonderful resources means nothing unless one has *access* to these services. Access is the key to obtaining one's rights. You can have the best health care system in the world, as we do, but without access to these services, they may as well not exist.

Almost two years ago my wife and I took custody of her then-five-year-old niece, Heather. Heather had been diagnosed as autistic and severely developmentally delayed. This condition appeared to be the result of severe social neglect and deprivation as well as perhaps an organic malfunction of her brain. We took in Heather because the only other option was that the State of New Jersey institutionalize her perhaps for the rest of her life. We offered our help and our home to see if a new environment would allow Heather to thrive. Although Heather was then five years old, she could not speak a word, she had no language; instead she communicated by loud screams. She was rail thin (35 pounds) and had a severe eating disorder since she had never been weaned from consuming baby formula directly from a bottle, and thus all her food intake was by means of a nipple and baby bottle (that is to say, she didn't know how to chew). Her motor skills were so lacking that ordinary physical activities such as riding a tricycle or knowing how to play on swings or other playground equipment was simply beyond her limited capability. And at five years old, she was not potty trained. She was subject to temper tantrums which included pounding her head on the floor and walls, and emitting screams that sent shivers through your spine.

My wife and I appeared at a court hearing in New Jersey, offered our assistance and with only two days' notice, Heather was on a plane with us back to Los Angeles accompanied by a social worker and two nurses since no one knew what to expect on the flight back.

Neither my wife nor I had any prior experience, of any significant note, with the health care system, much less any experience in dealing with autistic children. We found that there was an immediate need for child care, medical care, major dental care, neurological exams, plastic surgery, genetic testing, hearing tests under sedation, in addition to finding a school for her and obtaining the right services for her.

More significantly, for many of you here today, we had to confront a virtual maze of state and federal regulations and statutes dealing with the rights of the disabled to both proper and appropriate medical and

educational care — and no single agency to help coordinate these services. Just as we have the greatest health care system in the world, we also have some of the most advanced laws that protect the rights of people with disabilities and require access to appropriate services . . . the Americans with Disabilities Act, Individuals with Disabilities Education Act, etc.

In attacking these issues, I recalled my experience as a business litigator and essentially assumed a litigation mode. I created individual files for every agency that I would have to deal with from the local school district, the local regional center, DPSS, social security, Medi-Cal and many others.

In retrospect, our overall experience with the numerous agencies was somewhat mixed, although at the time it seemed I was more often frustrated than satisfied with my contacts. Some agencies were, of course, more receptive and informative than others. By and large most were committed to providing mandated services. However, many who wanted to help were simply overwhelmed and one simply had to be placated by being placed on a waiting list or deal with the ubiquitous problem of voicemail. I learned to follow up phone calls with memos in writing to ensure accountability. I researched the applicable laws, and pointed them out when agencies were not following them. Of course, the fact that I was a federal judge at the time may have persuaded some to respond more quickly. But the thought occurred to me many times during the process of obtaining services for Heather that I probably was having a “relatively” easy time in obtaining these services, but not always.

But I also thought that if someone like me, who is obviously educated and has been appointed by then-three and now four executive authorities to high positions in the judicial system, if I was having difficulty in getting the system to work, what did people do who couldn't speak the language, who were not even familiar or aware of their rights, people who couldn't take time off from work, who didn't have access to word processing or fax machines, and indeed, people who simply did not seek any of these services because they were either mentally ill or were otherwise reluctant to deal with any public agency. How did they get access to these services? Because, believe me, it isn't easy.

I concluded from my short but intense, but also ongoing experience with the health care and educational systems, that we as a nation, and particularly lawyers, must make a concerted effort to effectuate a philosophical

sea change to make access to medical and legal services uppermost in our minds. That we should make these services more accessible and easier to obtain rather than more restrictive and more difficult to obtain. That our service industries, not only our medical service industry, but our legal service profession as well, should accommodate the user rather than the provider. I did not seek and do not seek now to be an advocate for any particular issue in the health care field, but I do think that I can and should be an advocate for improved or increased access to justice in our legal system.

Now I have no question that all of you here today are dedicated to the justice system and, I hope, will strive to make it more accessible and meaningful to those you intend to serve and to be rewarded for your efforts. Otherwise, I doubt that you would have chosen to go to law school and incur the tremendous expense of time and effort and money that law school entails. Because, fundamentally, ours is a helping profession; we seek to facilitate transactions, resolve disputes, create order and stability, rather than uncertainty.

But I want you to consider and reflect upon the fact that for many people in our community the fact that we have a marvelous Constitution and laws that purport to provide rights to all does not ensure that the majority of people, and especially those who need the services and protections afforded by these rights, will in fact benefit from these rights. For just as simply as having the best health care system does not ensure access, having the best legal system does not ensure justice. Because unless these rights are exercised and enforced, those rights may and will cease to exist.

Many of you here, like me, have been able to share in the many rights and privileges afforded by this great country. By virtue of your education, stamina, determination and sense of righteousness, you have come a long way. But I urge you to reflect upon the work that must still be done if we are to fully integrate all segments of our society into our justice system.

I want to challenge all of you to become advocates for greater access to justice, whether it be at your work, in your community, through bar association activities, serving on boards, or in the political forum. I also want to challenge you personally to do what you can to ensure access to justice for those who lack access. Something as simple as making sure that people are not excluded from participation in the justice system because of a barrier such as language, resources or technology can make a big difference.

I ask you to remember the words of the American author, Edward Everett Hale, who wrote:

I am only one,
But still I *am one*,
I cannot do everything,
But still I can do something,
And because I cannot do everything,
I will not refuse to do the something that I can do.

In conclusion, you can make a difference. You can make a *big* difference even though you are only one. You can make it easier for people to achieve justice because you now have the tools that so many out there are lacking.

Together, we may not always be successful, but we must keep trying to make sure the system works as it was intended to work. So that the wonderful opportunities and benefits offered by our great country to everyone are fulfilled.

As an update on my niece, Heather now is able to eat solid foods on her own (she likes pizza, pasta and cheese omelets) and weighs forty-nine pounds; she is able to communicate with a combination of voice and sign language, she is able to ride a scooter and swing on a swing, and she is potty trained. Her tantrums are almost gone, and it has been told to us, and we agree, that most of the time her behavior is better than your average six-year-old, in other words, better than most trial attorneys. Although no one can ever give you a prognosis as to one who has an autistic disorder, one can only remain optimistic. And just as I am optimistic about Heather's future, I, too, am optimistic about the future of today's graduates. I am confident that you will use your hard-earned skills and talents to serve the cause of justice — and promote access to justice — as you enter our great profession.

Thank you for giving me this opportunity to make these brief comments.