

May 2004

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Recommended Citation

Shetty, Sudha (2004) "Equal Justice Under the Law: Myth or Reality for Immigrants and Refugees?," *Seattle Journal for Social Justice*: Vol. 2: Iss. 2, Article 28.

Available at: <http://digitalcommons.law.seattleu.edu/sjsj/vol2/iss2/28>

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EQUAL JUSTICE UNDER THE LAW: Myth or Reality for Immigrants and Refugees?

Sudha Shetty¹

I grew up in a developing country where economics tilted the balance of justice. Bribes were used to suppress evidence, buy influence with attorneys and judges, and intimidate plaintiffs with threats and force. The outcome often left the poor feeling that the justice system was unfair and biased against them.

The justice system in this country is also tilted towards those with resources. While corruption plays a much less prominent role here, the poor in this country are extremely disadvantaged in the legal system by their lack of access to resources necessary to purchase effective legal representation. In his recent article in this journal, the Hon. Earl Johnson Jr. cites a speech by California's Chief Justice Ronald George, who states, "If the motto 'and justice for all' becomes 'and justice for those who can afford it,' we threaten the very underpinnings of our social contract."² I was amazed at how similar these sentiments were to those I heard in a recent interview I conducted with Alan Lai, a community services professional, who put it this way: "In other countries you pay under the table, but in this country you pay over the table."

Equal access to justice is a growing issue in this country. Quality legal representation is increasingly expensive. The legal profession is also increasingly specialized, leading to fewer general practitioners available to triage or be first responders for the legal needs of the general population. In addition, there are few lawyers from and practicing in those very communities most needing legal assistance.

This problem is particularly acute among immigrant and refugee populations. Equal access to legal representation is often hampered by a

lack of access to resources to pay for representation. This situation is further complicated by institutionalized racial and cultural biases. New immigrants face the additional burdens of language barriers that often lead to misunderstandings, a lack of knowledge of the American legal system and their rights in it, and experiences in their countries of origin where legal and governmental systems are corrupt and result in unfair outcomes.

What is to be done about this situation? Justice Johnson argued that U.S. courts should join the growing number of foreign courts and rule that genuine access to equal justice requires qualified representation not only in criminal cases but also in the civil courts where the issues facing litigants are equally complex. Continuing the discussion in this issue, Perluss argues convincingly that the Washington State constitution already supports the right to equal representation,³ and co-authors Brodoff, McClellan and Anderson argue that the case of mentally and physically disabled litigants is perhaps the clearest one in which such representation should be guaranteed.⁴

I want to build on the ideas of the referenced articles and argue that equal access to justice for immigrant and refugee populations requires more than simply providing adequate representation. Borrowing a term from the Americans with Disabilities Act cited by Brodoff et al., I will argue that the term “reasonable accommodations” is also relevant for the particular needs of immigrant and refugee populations. Equal accesses to justice also requires a reinvigorated effort by our nation’s law schools to reach out to interested students from these very communities and successfully train them to serve their communities from within the legal profession.

Reasonable accommodations of the needs of immigrant and refugee populations requires establishing a system of “first responders” in the legal profession who are able to triage the legal needs of potential clients. First responders in the medical field are trained to respond to both emergencies and to everyday medical needs of patients and then triage the patients to specialized care. In the same way, the legal profession must create a

continuum of responses to the needs of immigrant and refugee populations. First responders in the legal field should be trained to assess and triage potential clients in these underserved communities where language and cultural barriers act as major barriers to accessing equal justice.

At Seattle University Law School we have expanded our access to justice efforts through the development of the Access to Justice Institute's community justice centers in targeted low-income, immigrant and refugee communities. Through these centers we seek to provide free information about specific legal issues, legal assessments and pro bono legal advice for those unable to afford these services elsewhere.

Justice Johnson suggested that international standards provide equal access to justice, not just through free legal representation but also through alternative mechanisms for achieving equal access. For example, alternative dispute forums include mechanisms such as small claims courts. California small claims courts have established a network of advisers to help litigants prepare their cases. We have found in our community justice centers that our clients need this same kind of advice on how to approach alternative legal forums, because they often cannot understand the operation of even these alternative forums due to language barriers and differing cultural experiences.

Reasonable accommodations must also include greater efforts to overcome the language barriers faced by many immigrant and refugee populations. While the courts provide interpreters within the confines of their buildings, language barriers transcend those services currently provided. Language barriers prevent many people from being able to read a summons received in the mail or even directions within the courthouse so that they can find the correct courtroom for their hearing. Pro bono attorneys are often willing to provide representation but shy away from providing this service to refugee and immigrant clients because qualified legal interpreters may be very expensive. Individual communities have addressed this issue by providing volunteer interpreters for their own

members, but these interpreters may not be legally trained and therefore may be unable to understand the intricacies of legal terminology.

Through an innovative language bank, the Access to Justice Institute and the Seattle Pro Bono Coordinators have helped to make trained interpreters fully available to pro bono attorneys and their clients. Law student volunteers, speaking a total of twenty-four different languages, have been trained as interpreters and are available free of charge to pro bono attorneys in our community. The need for qualified legal interpretation is huge. We have a responsibility to maximize our existing resources and build partnerships to address the needs of immigrant and refugee populations. In a small way, this language bank has done so.

Equal access to justice will not fully occur until law schools recruit and train sufficient numbers of lawyers who represent these underserved communities. In a recent article, Kelly Ward calls for an engaged campus that is “newly committed to serving the communities and constituencies that surround and support it.”⁵ Law schools provide career opportunities for their students, but they need to go one step further and provide for students real life connections to these populations. Law schools need to provide their students with tools to become instruments for social change in these communities. At Seattle University we have tried to build new bridges to underserved communities that both surround the campus and support it. We have created new opportunities for law students to take part in real life connections to their communities in the form of supervised client contacts, interpreting, and taking leadership in developing new efforts to assist these communities in obtaining equal access to justice.

Current immigration policies make it increasingly difficult to enter this country legally. Legal or illegal entry to this country is very complex and extremely expensive. Immigrants and refugees who come here, leaving behind family and support systems, do so with dreams and hopes in their hearts to create better lives for themselves and their children. They often want to put behind them the horrors of war and religious or political

persecution, and they work very hard at jobs that others do not want. They pay taxes and become integral parts of the communities we live in. Yet when they are denied equal access to justice, as Justice Johnson states, they could “often unjustly lose their housing, their possessions, their livelihood, their children and nearly everything that makes life worth living.”⁶ It is time we make reasonable accommodations for immigrants and refugees seeking justice through our legal system—we cannot afford to do otherwise.

¹ The author wishes to thank Alan Lai and Ada Mak from the Chinese Information and Service Center for providing their perspectives on this topic; Dr. Jeffrey Edleson, Professor, School of Social Work, University of Minnesota for his editorial assistance; and the Seattle University Law School for providing a supportive environment in which to do this work.

² Earl Johnson, Jr., *Will Gideon’s Trumpet Sound a New Melody? The Globalization of Constitutional Values and Its Implications for a Right to Equal Justice in Civil Cases*, 2 SEATTLE J. SOC. JUST. 201 (2003).

³ Deborah Perluss, *Washington’s Constitutional Right to Counsel in Civil Cases: Access to Justice v. Fundamental Interest*, 2 SEATTLE J. SOC. JUST. 571 (2004).

⁴ Lisa Brodoff et al., *The ADA: One Avenue to Appointed Counsel Before a Full Civil Gideon*, 2 SEATTLE J. SOC. JUST. 609 (2004).

⁵ KELLY WARD, FACULTY SERVICE ROLES AND THE SCHOLARSHIP OF ENGAGEMENT 1 (ASHE-ERIC Higher Educ. Report, Vol. 29, No. 5) (2003).

⁶ Johnson, *supra* note 2, at 232.