

Justice Requires Access to the Law

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WHY JUSTICE IS NECESSARY

The words justice and fairness are often used interchangeably. When people say they want justice for themselves—or others—the underlying desire is often for perceived fairness. They want the person who harmed a loved one, caused an accident, or cheated them in business to be dealt with in a way that feels fair. They want to believe that their life and well-being are as valuable as their neighbor's. They want to feel confident that they are not disadvantaged in a business negotiation or employment arrangement because of the other party's superior knowledge of the law governing the situation. Justice means equality before the law and people want and need to know that the law protects them. A game is not fair unless all the players know the rules, and similarly, life is not fair if only some of the participants know the laws that govern its conduct.

Many procedural safeguards have been built into our criminal justice system through statutes, court rules, and judicial interpretations of the Constitution. We are familiar with an accused person's right to be represented by an attorney, and the *Miranda*¹ warnings, which must be given to suspects before interrogation. Access to the courts in civil matters also has been protected. For example, the Federal Rules of Civil Procedure are to be construed "to secure the just, speedy, and inexpensive determination of every action."²

To ensure justice, it is necessary to do more than protect the right of all people to have access to and fair treatment before the courts. It is necessary to protect access to the language of the law itself. Our society

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1. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). The United States Supreme Court enunciated procedural safeguards to protect an individual's rights in a custodial interrogation setting. *Id.* The Court determined that law enforcement interrogators must inform a suspect of his "right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.*

2. FED. R. CIV. P. 1

cannot be considered truly just if some people are not able to find and utilize the laws that govern daily life and dealings in order to protect their interests. For example, an individual should be able to easily discover that a creditor may not call them after nine o'clock at night,³ that a utility cannot turn off gas or electricity to a residential consumer in Illinois if the temperature is predicted to fall below thirty-two degrees Fahrenheit during the following twenty-four hours,⁴ or that a landlord in the city of Chicago is required to return a security deposit within forty-five days after the tenant vacates the dwelling.⁵ People with ready access to a law library can search for that information in the books on the shelves. People with computer access can obtain legal information from government web sites. However, finding legal information is extremely difficult for people without access to a law library or computer.

Providing widely accessible legal information to the public is not an easy task. Libraries that collect paper copies of laws, regulations and cases may not be readily accessible because of a lack of public transportation or limited hours. Other factors are disparate reading levels and variations in facility with the English language within the population. Legal information that is available on the Internet adds the issue of access to a reasonably up-to-date computer and reliable access to the Internet. Once accessed, legal documents such as statutes, court cases, and the instructions included with basic legal forms are often written in language that is not easily understood by a person without legal training. The difficulty is compounded for a person who does not speak or read English, even though fluent in another language, or whose reading and comprehension skills are limited. Physical conditions which make it difficult to handle books, reach shelves, manipulate a computer mouse or use a keyboard are also potential limiting factors.

THE INTERNET: AN ANSWER?

We live in a world where more and more of us conduct business, find information, shop, chat with family and friends, file taxes, and share documents without ever leaving our chairs. From the comfort of our homes, we can buy a car, order groceries, find and get in touch with long lost friends, and search for the best deals on airfares and vacations.

3. See Fair Debt Collection Practices Act, 15 U.S.C. § 1692c(a)(1) (2000) (prohibiting creditors from communicating with debtors in connection with the collection of any debt at any unusual time or place, where calls to the debtor after 9:00 PM are considered presumptively unusual).

4. ILL. ADMIN. CODE tit. 83, § 280.130(i) (2004).

5. CHI., ILL., MUN. CODE § 5-12-080(d) (2004).

We take these conveniences for granted.

Several groups have taken action in recent years to simplify access to the justice system and to legal information. An example of a nationwide effort to provide such access is the website, www.lawhelp.org, which includes resources for attorneys who assist low-income clients as well as for clients themselves.⁶ LawHelp's website lists twenty-eight states that support statewide web sites on the LawHelp system.⁷ Each of these state-specific sites includes information on that state's laws on subjects such as housing, immigration, family law, civil rights and consumer issues. LawHelp also includes links to similar sites in other states that are not directly affiliated with their organization, such as IllinoisLawHelp, sponsored by the Illinois Technology Center for Law & the Public Interest and Chicago-Kent College of Law.⁸ IllinoisLawHelp contains summaries of legal information on frequently requested topics such as eviction, family law, domestic violence and consumer law. A very useful section describes the basic procedures involved in going to court and representing oneself in court. It also permits searching for attorneys and legal aid offices by zip code.

From 2000 to 2002, a group of students at the Institute of Design and Chicago-Kent College of Law, Illinois Institute of Technology conducted a project called *Access to Justice*.⁹ Teams of law and design students visited courthouses, observed courtroom proceedings, and interviewed judges, court administrators, court staff and *pro se*

6. LawHelp.org aims to provide both legal and lawyer referral information to people with low incomes as well as to provide support and information to attorneys and advocates serving them. The LawHelp site was developed by Pro Bono Net, a nonprofit organization which works in partnership with pro bono and legal services organizations to improve access to justice by using technology. See Pro Bono Net, at <http://www.probono.net> (last visited Jan. 5, 2005) (discussing the mission of Pro Bono Net to create a virtual community of public interest lawyers that bridges private legal services and academic sectors to provide low-income individuals quality legal aid).

7. See LawHelp.org, at <http://www.lawhelp.org/NationalAboutUs.cfm> (last visited Jan. 5, 2005) (listing twenty-eight participating states).

8. See Illinoislawhelp.org at Chicago-Kent College of Law, at <http://www.illinoislawhelp.org/index.cfm> (last visited Jan. 5, 2005) (providing legal information, court forms and instructions for Illinois residents).

9. CHARLES L. OWENS, ET AL., ACCESS TO JUSTICE: MEETING THE NEEDS OF SELF-REPRESENTED LITIGANTS 7-9 (2002) (describing the project's design, process, and results). The project is divided into three phases. *Id.* at 7. The first phase focuses on identifying the major barriers to access to justice facing self-represented litigants. *Id.* The second phase "employ[s] the latest system design methodology to redesign court processes, removing barriers and providing self-represented litigants with efficient and effective access to the justice system." *Id.* Lastly, the third phase revolves around making the new system design into an internet-based prototype for implementation by the courts. *Id.* Faculty directors of the project were Professor Charles L. Owen, Professor Ronald W. Staudt and Edward B. Pedwell, Manager, Justice Web Collaboratory. *Id.* at iv.

litigants.¹⁰ They collected samples of information made available to the public.¹¹ Their goal was to identify barriers to access, and to propose ways to overcome those barriers.¹² The project's report recommends a five part approach to making the civil justice system more accessible for all, but particularly for self-represented litigants.¹³ An important part of the recommendation is the recognition that technology alone will not solve all the problems, and that the system must provide a means of feedback for future changes.¹⁴

The state of Washington has adopted the Access to Justice Technology Bill of Rights ("ATJ-TboR").¹⁵ In early 2000, Jean Holcomb, King County Law Librarian, proposed a technology bill of rights out of concern that the increasing role of technology in the justice system could result in greater barriers to justice instead of lessening those barriers.¹⁶ The Access to Justice Technology Bill of Rights Committee of the Washington State ATJ Board adopted as its mission statement: "To create a body of enforceable fundamental principles to ensure that current and future technology both increases opportunities and eliminates barriers to access to and effective utilization of the justice system, thereby improving the quality of justice for all persons in Washington State."¹⁷ The Committee has recognized that the availability of a computer is not the only issue in effective use of technology.¹⁸ The elderly, people with mobility or vision limitations, non-English speakers, and people whose tradition is oral rather than written may have difficulty using electronic information.¹⁹

Federal, state and local governments have recognized the Internet as an efficient way to make information more widely available. It is fast

10. *Id.* at 8.

11. *Id.*

12. *Id.* at 9.

13. *Id.* at 207.

14. *Id.*

15. See Access to Justice Technology Bill of Rights, *History and Context*, available at <http://www.atjtechbillofrights.org/> (last visited on Jan. 5, 2005) (noting that the Washington State Supreme Court established the Access to Justice Board to "promote and facilitate equal access to justice, and, among other tasks, to develop and implement policies and initiatives that will enhance, improve and strengthen access to justice"); see also Donald J. Horowitz, *Technology, Values, and the Justice System: The Evolution of the Access to Justice Technology Bill of Rights*, 79 WASH. L. REV. 77, 80-82 (2004) (discussing the role of the Access to Justice Board in creating the Access to Justice Technology Bill of Rights initiative).

16. See Horowitz, *supra* note 15, at 77 (noting that "technology has the potential to provide increased pathways for access to justice, but that it can also do just the opposite: It can perpetuate and even worsen existing barriers, disparities, and exclusions, and in fact create significant new barriers, and exclusions").

17. *Id.* at 82.

18. *Id.* at 84.

19. *Id.* at 93.

and economical. The costs of printing and shipping are eliminated when access is only electronic. While much legal information has been available electronically for years through commercial providers such as LEXIS and Westlaw, many government bodies now post their publications on official web sites. Statutes, session laws, court dockets, and decisions and administrative regulations are available online, and access to these government sites is free. One of the most popular web sites is THOMAS,²⁰ the Library of Congress's official site for bills, laws, and other Congressional information. The General Assembly of the state of Illinois provides comparable official documents and information at its website.²¹

Courts have also recognized the efficiency and speed of posting opinions on the Internet: the United States Supreme Court now provides information on its official web site at <http://www.supremecourtus.gov/>. This web site contains opinions, dockets, rules, and a wealth of information about the Court. Likewise, the Illinois Supreme Court provides its decisions on its official web site at <http://www.state.il.us/court/>.

Several general web sites, as well as most academic law libraries, provide links to official sources of government information.²² Cornell University's Legal Information Institute,²³ Washburn University,²⁴ and Hieros Gamos²⁵ provide particularly comprehensive collections of links to online legal information, and include federal, state, and some local and foreign law; they also provide some information in languages other than English.

CONCLUSION

While access to electronic information means that many of us can find what we need without traveling to a library or courthouse, simply

20. See THOMAS: Legislative Information on the Internet, at <http://thomas.loc.gov/> (last visited Jan. 5, 2005) (providing links to legislation, congressional records and committee information).

21. See Illinois General Assembly, at <http://www.ilga.gov/> (last visited Jan. 5, 2005) (providing Illinois legislation and laws, Illinois Senate and House information, and legislative support services).

22. See Loyola University Chicago Law Library, at <http://www.luc.edu/law/library/> (last visited Jan. 5, 2005) (showing links to research resources such as CIS Exchange, state courts and state statutes).

23. See Legal Information Institute, at <http://www.law.cornell.edu/> (last visited Jan. 5, 2005) (offering an extensive, organized list of links to constitutions, codes, and court opinions).

24. See WashLaw Legal Research on the Web, at <http://www.washlaw.edu/> (last visited Jan. 5, 2005) (providing state, federal, and international law information).

25. See HierosGamos, at <http://www.hg.org/> (last visited Jan. 5, 2005) (supplying legal information in English, French, German, Italian, and Spanish).

making information available electronically does not solve the concern of access to the law for everyone. For people who do not own a computer,²⁶ cannot get to a public library during its hours of operation,²⁷ or whose public library cannot afford adequate computers or reliable Internet access,²⁸ legal information may still be nearly impossible to access.

As we think about and explore the possibilities available to us because of technology, we must be sure that advances which make the justice system more easily available for some do not make it less accessible to others. Projects such as ATJ-TBoR, IllinoisLawHelp, and LawHelp.org address many concerns about access to the law and the justice system. The shared concern, which prompted the founders of these projects, is that people without legal training and without an attorney face considerable obstacles in pursuing justice. It is clear that the success of these projects is due to the cooperation of concerned attorneys, government officials, bar associations, librarians and legal services groups. However, bringing these groups together and implementing a plan is both time-consuming and expensive. While it is wonderful that so many states are now participating in lawhelp.org or similar projects, such resources are still not available in approximately one third of the states. The law governing many common situations (contracts, leases, real estate, marriage and divorce) is set by the state, making access to the specific state's laws essential. Thus, because access to information is the linchpin for achieving legal justice, projects

26. ERIC C. NEWBURGER, U.S. BUREAU OF CENSUS, HOME COMPUTERS AND INTERNET USE IN THE UNITED STATES: AUGUST 2000 1 (2001), available at <http://www.census.gov/prod/2001pubs/p23-207.pdf> (last visited Jan. 5, 2005) (noting that, in August 2000, only 51% of households in the United States owned a computer, and only 41.5% of households had access to the Internet).

27. Newspapers and library periodicals contain frequent articles about public library systems that have cut hours or closed branches because of budget constraints. See Gordon Flagg, *Berkeley to Lay Off 16, Cut Hours and Budget*, AM. LIBR., Apr. 1, 2004, at 16 ("Faced with a \$1.2-million deficit, the board of the Berkeley (Calif.) Public Library approved a plan March 10 to lay off 16 employees, close the central library on Sundays, reduce other operating hours systemwide, and slash the materials budget by \$300,000—a 25% cut."); see also George Eberhart, *Regina PL to Close Three Branches, Art Gallery*, AM. LIBR., Jan. 1, 2004, at 24 ("Despite last-minute appeal by the mayor and boisterous public protests, the Regina, Saskatchewan, Public Library board refused to rescind its November 26 decision to permanently eliminate three branches, close its central library's art gallery, curtail hours and services at the Prairie History Room's collection, and lay off 27 employees"). These restrictions make it more difficult for patrons to gain access to print collections, and to the computers that would allow them access to electronic versions of legal materials. *Id.*

28. See Lynn Blumenstein, *State Libraries Get \$5.8M from Gates*, LIBR. J., Feb. 15, 2004, at 23 (stating there is a widespread need for libraries in urban areas with persistent poverty); *President's Budget Gives 11% Boost to LSTA*, AM. LIBR., Mar 1, 2004, at 10 (discussing the 2005 budget allocating \$220 million for the Library Services and Technology Act).

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such as the ones described in this paper are models that should be emulated and expanded in every jurisdiction in the country.