

# Access to Justice Conference Keynote Address

REMARKS BY CHIEF JUSTICE MAUREEN O'CONNOR

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Thank you very much Dean. I think I will have you do all of my introductions. That was really over the top, but I appreciate it. We have developed a wonderful working relationship.

Not many people know, but every year the Ohio Supreme Court and the Ohio State Bar Association put on a Bench-Bar Deans Conference, and the deans of the law schools in Ohio get together with leaders from the bar association and the Supreme Court, and we talk about topics of mutual interest. To many, it is one of the highlights of the many meetings that we attend on a yearly basis because it is another exciting arena of moving forward in development of things that we are working on.

So there are a lot of exciting things happening in Ohio in the legal arena, and the access to justice movement is at the top of the list. I realize we are a little bit behind the curve when you see all the other courts and states around the country that have already been established, but I look at it a little differently. I look at it as our opportunity to seek out the best and brightest and to pull in those resources and programs, that brilliance and make it our own. I think you are going to see that today with the panel members who are slated to present and lead this discussion. You will see they are folks who are committed and experienced and are going to be able to help Ohio improve access to justice.

As I look over the agenda, I am really excited. My role here is not just to welcome you – I am rolling up my sleeves and very much involved in this process. I can assure you that the Supreme Court is committed to continued engagement on this issue.

Before I go any further I would like to recognize our sponsors: the Ohio State Law Journal; the Ohio Legal Assistance Foundation; The Ohio State University Moritz College of Law's Public Interest Law Foundation; and the Moritz Pro Bono Research Group

In particular, I would like to recognize the efforts of Angela Lloyd who has just done a yeoman's job in this area as she does with everything. It is not surprising she has done a remarkable job – Angie, along with her staff, including Lisa Valentine, whom I have worked with for a long time. Putting together this type of event may look easy, but it is not. And bringing in our distinguished speakers, the coordinating is somewhat challenging, so it is a top-notch program that is going to be yours today.

It is particularly appropriate that we undertake this discussion considering this is the 50<sup>th</sup> anniversary of *Gideon v. Wainwright*, the landmark case that recognized the state courts' responsibility to provide legal representation to indigent defendants who were charged with criminal offenses. As novel as that

was 50 years ago, it is a totally accepted concept now. Of course, you are entitled to an attorney if your life or your liberty are at stake. Then when you shift to the access to justice question, it's not so obvious to a lot of people. The need is not as engrained in our culture as it is with the consequences of *Gideon v. Wainwright*. Quite frankly, we need to change that, and this forum is a step in that process. Hopefully it won't take 50 years for people to say yes, that it is the engrained part of our legal culture, we want to do it much more quickly, and I am confident that we will do it much more quickly.

Increasing access to justice should be an ever-present goal in any state's legal system. But the challenges to meet that goal have only increased during these times of financial stress.

I plan to share with you the progress we have made in Ohio so far, ongoing work to improve access, and the impact that establishing an Access to Justice Commission could have. I also want to assure you that Ohio intends to steal all the good ideas from other states and the already established commissions. I look at it as sharing. I don't look at it as stealing.

I am particularly interested in what Justice Hecht from Texas has to say about it – welcome, Justice. He is involved in the first panel discussion, and why that is so important is that Texas is regarded as a leader in this field and that explains his presence on the panel and his participation.

Improving access to justice is not a new idea in Ohio, even without a formal commission in place. The bench and the bar have been focused on it for years to one degree or another. I am not going to tell you it has been a universally accepted concept or one that has been worked on continuously. But before I became Chief Justice, the Ohio Supreme Court and the Ohio State Bar Association jointly created the Ohio Commission on Racial Fairness aimed at increasing minority representation in the legal profession and reducing, if not eliminating, perceptions and realities of racial bias in our justice system.

In 1999, a report detailed the work of the commission that included 45 recommendations to improve the system in the following areas: judge's and attorney's perceptions; employment and appointment practices in the courts; jury issues; criminal justice and sentencing; law schools; and interpreter services.

Ohio has not addressed or implemented changes in all 45 of those recommendations, but we have taken significant strides in improvement in some areas such as consistent encouragement and support from the late 1990s on for Ohio attorneys to meet their obligation to provide pro bono services and funding for the Ohio Legal Assistance Foundation.

The participation of Ohio law schools, as Dean Michaels referenced the Law and Leadership [Institute] program which began in 2008, I think it is a wonderful pipeline program to encourage students from at-risk communities that they can indeed graduate from high school, they can indeed go to college, and they can think about a professional degree. One of those professions we would strongly ask them to consider is a career in the law. It is really a very exciting and dynamic program. I participate in the summer with these students

by going to the various law schools to engage with them, which I find very uplifting and motivating.

Since 2007, the states' judges have been trained to recognize and eliminate bias in the courtroom as part of their new judge orientation education component.

Litigants with limited English proficiency have benefited by having 27 court forms translated into the five major languages in Ohio which are Arabic, Chinese, Russian, Somali, and Spanish. And one of the most significant recent developments in Ohio is the implementation this year of a rule that is requiring Ohio courts to use certified interpreters by the Supreme Court. Those interpreters have gone through our training program and have been certified by national standards, whenever possible. The downside to that is, at this point, we only have 52 interpreters for the use of the court. So there still is the need and the obligation to secure certified interpreters. Every year we certify more and more interpreters, and that too is a very exciting and uplifting program that I am very proud to be involved in, especially when it's the certification ceremony.

The Supreme Court has also been active in supporting access for self-represented litigants. That to me has an upside to it and a downside to it. They are coming into court and doing themselves more harm than good by being there unrepresented and yet they can't afford representation or they have no access to the representation. They don't qualify in some circumstances or limited resources can't be stretched in that direction. The court is making simple forms available and helping in whatever way it can, with limitations, and I want to assure you it is not a panacea. It is not something that will fix the problem, so much more is needed.

Last year the American Bar Association selected a Law Day theme of "No Courts. No Justice. No Freedom" to emphasize that maintaining access to the courts means upholding access to justice. Open and accessible courts are not a luxury. They are an absolute necessity in a free and civilized society. They are guaranteed in both the Ohio and the United States constitutions.

Access to justice goes beyond the barriers that are presented in the use of our legal system, our court system, such as litigants for whom English is not their primary language, or are hearing impaired, or juveniles who need representation to ensure their voice is heard, or civil litigants who cannot access legal representation through Legal Aid because of a lack of resources to meet their needs. There are also the basic needs of keeping the doors open and the lights on. And that is a challenge for our courts across this country. This is one of the areas we have been challenged to varying degrees.

Regardless of budgets, we have to keep the court doors open and we cannot curtail their hours nor restrict access. There are some courts in our state that have furloughed employees. There are some courts that have reduced their hours. I have been very out-spoken in the fact that we should not be doing that. We are a public service. The courts are in existence for no other reason than to serve the public and when you curtail the access of the public to the courts you are really in essence denying access to justice for some

individuals. We can't inconvenience the people who must use the courts to resolve their disputes or to fight their traffic tickets, or to finalize their adoptions, or to file their probate forms, or whatever an individual needs to do, is required to do, because they have to access the courts.

You can't set up the program and say you must to do this, that, and the other thing and the only place you can do it is in a court system and then you say, "Oh, by the way, we are not open for business." It makes no sense, and it is really totally unproductive. Closed doors and curtailed hours not only are an inconvenience, but they are hugely symbolic. What does it say when a funding authority's priority is not keeping the courtroom doors open? It says we don't value the service the court provides, that we are putting less significant, less constitutionally guaranteed services ahead of what we need to do to keep our courtroom doors open, the judiciary on the bench, and the records open and accessible to individuals.

It is imperative that the bench and the bar work together in these difficult financial times to maintain access to justice. It is also imperative that the challenges are met by not only addressing the funding but by also examining where some efficiencies lie. The flip side of this financial challenge that we have in access to justice is that you can use that as a way to look at the top down to the bottom up and identify areas we may be in a position of squandering some resources or we could more efficiently use the resources that we have as a court. Is there more regionalism that we could engage in? Is there more collaboration that we could take a look at and enhance? There was somebody who said no good crisis should be wasted or squandered, and I think that could be said about this budget crisis as well. This is a real opportunity for folks to dig deep and to look internally and to reflect on how they can do things differently and how they can form efficiencies, from the ground up. So it is an opportunity, and a lot of the courts are meeting those challenges, and I am very proud of how they are doing it.

Ohio is working on, as was mentioned, the Task Force on the Funding of Courts. That was formed about a year ago, and we still have much work to do. I don't know if I would surprise you by telling you that nobody can tell me how much money it takes to operate the courts in this State. There is no dollar amount. The State Auditor couldn't tell you that right now. Oftentimes your local auditor would be challenged to tell you exactly how many dollars are spent, what the funding sources are, how much revenue is generated by the courts through fines and other means, how many grants come to the courts. What is the total dollar amount we spend in Ohio to keep our courtrooms open? And that is one of the challenges. Trying to ascertain those facts and figures because we have to know where we are, where we have to go, and how we are going to get there. Funding is part of the data that is going to drive that measurement and drive that direction. So that is one of the things we are working on and it is not an easy task to figure out the funding issues for the courts, but that doesn't mean that we aren't doing it, that they will go unexamined because of course, and we will get it done. All of these various

facets underscore the need to create a task force to study the creation of an Access to Justice Commission in Ohio to focus on access to civil justice for the underserved and marginalized of our communities.

In a few minutes we will hear about some of the achievements of other states' Access to Justice Commissions in the first panel presentation today. Before that, however, I think it is helpful to review the basic purpose of Access to Justice Commissions, the commonalities of successful commissions, and how they are meeting challenges to this question. Through their creation, it is hoped that access commissions can bring together constituencies necessary to advance and then enhance access to justice for the low-income, the disadvantaged, and the marginalized members of our communities. Obviously, this broad definition includes people who cannot afford an attorney and are income-eligible for services of a civil legal aid organization, but it may also include low-income pro se litigants who are representing themselves due to economic necessity, and other people who encounter language barriers to redress legal problems. Clearly, we cannot leave these folks behind. We may be able to help them through a more concerted, concentrated effort on some of these hurdles to access.

Another challenge to ensuring access to this segment of the population is filling the hole left by cuts in federal funding to legal aid, which we will likely hear more about in the second panel presentation today on roadblocks to access.

The Center on Court Access to Justice for All published a brief in January on Access to Justice Commissions. It noted that successful commissions are characterized by several things: strong leadership from the state Supreme Court and a commitment to the role of the commission on the part of the Court. In addition, Access to Justice Commissions typically assess the civil needs throughout the state, create a range of strategies to meet these needs, and then evaluate the progress. They do focus on the Supreme Court, but I can tell you right now it's not going to be just the Supreme Court working on this. We don't have all of the expertise, the time, or the talent to do it. But the folks in this room do and it will be a collaborative effort when we put together this task force to study what would fit best for the State of Ohio. It may be considered Court-driven in some ways, and the imprimatur of the court when we get to that point, but it will truly be a collaborative effort. And I can say as Chief Justice, that I will be relying on the people in this room to help us with the direction, with the creation, what it will look like, what fits best for Ohio. I have some ideas now because this is not the first time I've taken a look at it, but it's going to be very interesting and I think a very worthwhile endeavor as we go down this road.

Activities might include surveys or retention of experts to evaluate the extent to which the statewide justice system does or does not resolve civil legal needs of low-income residents. And that always goes to the base. Where are we and where do we need to go? Sometimes it's difficult to figure out where we are but we need to do that. We are looking to pursue the evaluation, recommendation, and implementation of strategies to increase funding for civil

legal services to low-income or disadvantaged populations, for example, legislative enactments or private bar fundraising campaigns. And there is a host of other things to consider.

One of the changes that was just introduced by the Supreme Court is credit for pro bono work. Attorneys in Ohio now can get one hour of CLE credit for every six hours of pro bono work they do to a maximum of six of those credits for those that are attorneys in the room. Attorneys have to do 24 CLE credits every two years and six of those CLE credits can be gotten through their pro bono efforts, and I think it is a tremendous incentive and one that I hope will boost the level of services that are provided outside even the Commission on Access to Justice.

I think it's important to recognize that the access to justice commissions cannot be viewed as a panacea. Before the creation of access to justice commissions, low-income people with civil legal problems did what they do now. They try to navigate the court system without an attorney. They contact the legal aid or bar association for help, or are referred to a legal aid society or bar association by a governmental agency or social service provider. Access to justice commissions do not provide civil legal services and do not replace civil legal service providers. Instead, they focus on planning, resource development, coordination, and oversight. That goes back to that coordination and collaboration of our resources.

As for Ohio, upon recommendations from the task force that will be charged with studying the creation of a commission, we envision the potential for a commission that will be staffed by an Access and Fairness attorney employed by the Supreme Court specifically hired to spearhead these efforts.

We do not claim to have all the good ideas in Ohio, and we are not bashful about borrowing those from others. The model for the commission will be found by studying the 27 other states that already have such commissions.

I learned how other chief justices structured their programs by attending a national meeting of State Access to Justice Chairs last year. Because of their established programs, we will be able to determine what works and what will not work for Ohio and what we can embrace.

An Access and Fairness counsel may work very well in several areas related to access such as the Americans with Disability Act, assisting the Supreme Court's Interpreter Services program in increasing access to justice for those with limited English proficiency, developing a diversity curriculum for judges, and strengthening diversity on the bench and the bar. Those are all noble goals and goals I think are very attainable.

The Access and Fairness attorney could focus on continuing legal education requirements in this area, working with the affinity bar associations, and combating the existence of biases.

I am excited about moving forward with this idea and seeing where it leads, and I feel fortunate to have the opportunity at this conference to learn from all of you about the best ways forward to succeed in our efforts. It is really important work, and I'm not standing before you merely to welcome you here

today. It's really an offer and a challenge to stay engaged beyond just being here today.

If you are truly interested, we can take all the help that you can possibly give, and the sharing of ideas, and working to create what is best for Ohio. Because what is best for Ohio turns out not only to be what is best for the population that will be served by an Access to Justice Commission and the challenges that will be met for that segment of our citizens, but that's great for the entire state. I look at the big picture as well as the little picture and the minutia and the day to day, but you can really get revved up and charged up by looking at the big picture and I think what we are doing here today is a really important segment of what the big picture will eventually look like both in Ohio and in America.

So with that, again welcome and I thank you immensely for being here this morning. Thank you.