

## Access to Justice Movement Falls Short

When I read articles such as “It’s the Institution,” a review of the 2009 Annual Meeting program “Law Libraries and the Access to Justice Revolution” in the September/October 2009 issue of *AALL Spectrum*, I have mixed feelings. I am both proud and infuriated. I am proud to read about court initiatives to assist the public, and I am infuriated that these same articles are not more critical of how we got to the point that the reference desk tries to help unsophisticated people prepare wage claims and personal injury suits.

The Access to Justice Movement is well-meaning but is, as Ms. Krishnaswami says, reactive. The Access to Justice Movement is dealing with the effects of 20 years of government deregulation. Underfunded and understaffed government agencies have failed to enforce laws and have instead told wronged individuals to file private lawsuits, leading to situations like this one covered by Steven Greenhouse in the March 25, 2009, *New York Times* article, “Labor Agency is Failing Workers, Report Says”: “...the Government Accountability Office found that the agency, the Labor Department’s Wage and Hour Division, had mishandled nine of the 10 cases brought by a team of undercover agents posing as aggrieved workers...The report pointed to a cavalier attitude by many



Wage and Hour Division investigators, saying they often dropped cases when employers did not return calls and sometimes told complaining workers that they should file lawsuits, an often expensive and arduous process, especially for low-wage workers... ‘Low-wage workers may be unable to afford attorney’s fees or may be unwilling to argue their own case in small-claims court,’ it [the report] said, ‘leaving them with no other options to obtain their back wages.’”

How many other government agencies are doing the same?

I do not want to belittle the intentions of Access to Justice supporters. Court initiatives, such as New York’s Access to Justice, are doing a lot to help self-represented litigants. The New York City Civil Court has an excellent website. The Mental Hygiene Part helps families who are trying to get medical help for mentally ill family members. The Surrogate Court helps families get guardianships for orphaned children. The courts are doing excellent work to make legal procedures easier in routine matters.

My law library does not get those questions from self-represented litigants. Instead, I get complex questions: how do I get back pay, my boss harasses me, the realtor rented me an apartment infested with rats, the hospital staff neglected my father and he died. These are complex questions that result from government policy. These questions need to be put in the political arena and not be limited to individual effort.

In all the articles I read on Access to Justice, the emphasis is on fairness of proceedings. Somehow, if litigants are

treated with respect by court personnel and see that the courts are procedurally neutral, they will be satisfied even if they lose. The suggestion is that by participating in government, individuals are able to act as full citizens and regain a sense of personal authority and autonomy. We need to question this.

Readers of the State, Court, and County newsletter will remember my article, “Profiling at the Reference Desk—Another Viewpoint” (34:2 *SCLL News* 12, 13). In that article, I question Charley Dyer’s assertions that law librarians help self-represented litigants. I argue that since courts do not collect data on srl’s outcomes, we do not know if the litigant who stays in the library for two hours reading is helped or discouraged. Without data interpreting litigant outcomes, we cannot judge the effectiveness of our practices.

While we participate in the Access to Justice Movement, we need to change its slogan to “Access to justice means access to government.” We need to ask if small claims courts provide fair outcomes for the one-time user or the frequent user. We need to ask if court procedures make personal injury litigation too expensive for attorneys to take on any but the most remunerative cases. We need to ask if administrative agencies are able to do their job. We need to coordinate our library stats with court stats. Most importantly, we need to participate in the discussion of how to create a responsible government. We need to be citizens ourselves. ■

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