

Just Female: A Global and Local View of Women and Access to Justice

Lesley F. Rosenthal¹

“Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”

Dr. Martin Luther King, Jr. - Letter from the Birmingham Jail

This year 2020 marks the centenary of the passage of the 19th Amendment, guaranteeing and protecting women's constitutional right to vote. Its passage marked the largest expansion of democracy in the history of our country.

In commemoration of this important anniversary, as part of a panel discussion convened by the Second Circuit Judicial Conference of 2020, the New York Bar Foundation highlights its work in promoting access to justice for women.

Just as counting women into the franchise marks a significant achievement for our democracy, a searching inquiry into the ways that women access justice tells us truths about the state of our justice system as a whole. What are some of the access to justice issues facing women in particular? How do they differ from the issues facing men? Does the justice gap look similar or different when viewed through a global and local lens?

First, let us define a few terms: What do we mean when we talk about Access to Justice? The United States Department of Justice established the Office for Access to Justice (“ATJ”) to address the access-to-justice crisis in the criminal and civil justice system. ATJ’s mission was “to help the justice system efficiently deliver outcomes a justice system that efficiently delivers outcomes that are fair and

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accessible to all, irrespective of wealth and status,” to “promote accessibility [and] eliminate[e] barriers that prevent people from understanding and exercising their rights,” to “ensure fairness, delivering fair and just outcomes for all parties, including those facing financial and other disadvantages,” and to seek “increased efficiency, that fair and just outcomes will be delivered effectively, without waste or duplication.”²

What are some key challenges to Access to Justice in our times, particularly for women, and what can we do to address them?

According to the World Justice Project, people all over the world face legal problems relating to employment, housing, education, health, and family life. How they are addressed – or not – “goes to the heart of people’s social, economic, and physical well-being.”³

People all over the world experience consumer issues, housing, and money and debt issues. These can include problems with a landlord over rent, repairs, or payments; problems with neighbors over noise or litter; becoming homeless; disputes over poor or incomplete professional services; problems with a utility bill or supply; insurance claims being denied; threats from debt collectors; extortion from a gang or other criminal organization; difficulty collecting money owed; and more.⁴

Researcher Sarah Chamness Long, the WJP’s Director for Access to Justice Research, has undertaken a rigorous, survey-based study of specific Access to Justice Issues facing people, and especially women, around the world. Her research reveals that legal problems are ubiquitous around the world; that men and women have different legal needs; and that legal problems that affect women differently than men. Key areas where women experience legal problems more frequently than men include⁵:

- Difficulties obtaining child support payments;

² United States Department of Justice, Office for Access to Justice, <https://www.justice.gov/archives/atj> (last accessed 11/29/20).

³ Elizabeth Andersen, executive director of the World Justice Project.

⁴ <https://worldjusticeproject.org/our-work/research-and-data/global-insights-access-justice-2019>

⁵ Presentation of Sarah Chamness Long, Second Circuit Judicial Conference, September 25, 2020, p. 12.

- Threats or physical violence from a current partner, ex-partner, or other household member; and
- Disagreement over the content of a will or division of property after the death of a family member.

Further exploring the gender dimensions of the justice gap, WJP research reveals that women experience more family-related disputes and family-related lethal violence. Although 81% of homicide victims worldwide are men, women make up a much higher share of family-related (64%) and intimate partner (82%) victims of homicide.⁶

Women's particular legal problems also arise globally from the fact that they lack legal identity in low-income countries. Another key disparity arises in the informal economy, where women are more likely to be employees or unpaid contributing family workers.⁷

The hardships that result from legal problems are manifold, and they affect women and men differently, with women experiencing ill health more frequently, and men experiencing substance abuse problems more frequently, as a result.⁸ Regardless of gender, people who are poor are disproportionately impacted by legal problems.⁹

Key recommendations arising from the WJP study are: (1) to address the root causes of women's vulnerability, including poverty, economic and social rights, and legal identity; (2) to prevent and respond to intimate partner violence; and (3) to provide legal aid and legal empowerment to women.¹⁰ Future studies on the legal needs of women will enable advocates of women and access to justice to track progress and change in these areas.

We turn now from the global to the local. As former New York State Chief Judge Judith S. Kaye noted in 2002:

Civil legal services can mean the difference between having a roof over your head or being homeless; between going hungry or receiving food

⁶ *Id.* p. 21, citing United Nations Office on Drugs and Crime, Global Study on Homicide.

⁷ *Id.*

⁸ *Id.* p. 17.

⁹ *Id.* p. 18.

¹⁰ *Id.* p. 23.

stamps; between children languishing in foster care or being returned to their parents... For a family seeking protection from eviction, for an elderly person confused by the social services bureaucracy or for a battered woman fleeing domestic violence, having access to adequate legal services can be critical to their safety and well-being.¹¹

Judge Kaye's words raise the crucial question, what particular Access to Justice challenges do women face in New York State? Are their problems similar to their sisters around the globe? How is the experience of women and access to justice changing over time in our area?

We do not yet have complete answers to these questions. We do, however, have some evidence from the grant records of The New York Bar Foundation. The NY Bar Foundation is the charitable arm of the New York State Bar Association. Since 1950 the Foundation has been raising funds and making grants to worthy law-related projects throughout the state. In the current (2018-21) period in which I am privileged to serve as its President, the Foundation has made the Rule of Law, and specifically improving Access to Justice, the central theme of its strategic plan.

With assistance from Foundation Executive Deborah Auspelmyer, we have delved into Foundation grant-making dating back to 2010, charting out trends in funded projects that directly or primarily provide access to justice to women.

Although impressionistic, our examination of these recent grants reveals some telling patterns in New York that echo many of the findings of the World Justice Project regarding women worldwide.

Legal services to victims of domestic violence is far and away the largest category of grants the Foundation makes to organizations serving legal needs of women. Projects serving this most vulnerable population predominate over the next largest category of grantee by a factor of two.

This observation, while notable, should not be surprising. As Rachel Louise Snyder observes in her powerful new book, *No Visible Bruises*,

¹¹ Court's Special Office Strives to Ensure Equal Justice for All, N.Y. ST. JURY POOL NEWS (N.Y. State Unified Court Sys., New York, N.Y.), Winter 2002, at 1, https://www.ny.courts.gov/reports/jpn/jpn2002_01.pdf (reporting Chief Judge Kaye's remarks before New York's first Access to Justice Conference).

domestic violence has reached epidemic proportions in the United States:¹²

- Fifty women a *month* are shot and killed by their partners.
- Domestic violence is the third leading cause of homelessness.
- 80 percent of hostage situations involve an abusive partner.
- In some 20 percent of abusive relationships a perpetrator has total control of his victim's life.

Countries including Britain and France have laws to protect against this kind of coercive control or psychological abuse, but the United States does not.¹³

One grant that the New York Bar Foundation recently awarded, in Buffalo, NY, was to help the Family Justice Center of Erie County streamline its process to provide one-stop, free, wrap-around services for victims of domestic violence and their children through extensive collaborations with 13 on-site/on-call partner agencies. Prior to this program, victims had to travel between agencies, often with children and without transportation. In too many cases this was not only time consuming and extremely frustrating, but unsafe, prompting many victims to return to the abuse. The system was too fragmented to access, not user friendly, and lacked a mechanism for providers to collaborate on complicated cases. Included in the continuum of services is a forensic medical unit providing a registered nurse to examine the victim in the private setting of the family justice center rather than at the often cold and crowded emergency room or police station. The photographs, documentation and statements provide a higher quality of evidence for the DA's office and local police department as well as to any civil attorneys representing the victim in custody, divorce or family offense proceedings. This program exemplifies improved access to justice for women in New York State, and how those improvements can improve our justice system overall.

Family law matters is the next largest category of New York Bar Foundation grantee serving a largely female client base. Reflecting the times, one recently funded project provides web-based connectivity allowing attorneys to remotely

¹² Rachel Louise Snyder, *No Visible Bruises: What We Don't Know About Domestic Violence Can Kill Us* (Bloomsbury Publishing 2019), cited in NYTimes Book Review, June 7, 2019, <https://www.nytimes.com/2019/06/07/books/review/rachel-louise-snyder-no-visible-bruises.html> (last accessed 9/20/20).

¹³ Snyder, p. 37.

assist family court litigants in rural or other areas where there is a shortage of representation.

The third largest category of grants directly or disproportionately serving women is to organizations providing assistance in **immigration matters**. One recently funded project exemplifying this area of need is a legal assistance project in New York City to elevate and empower low-wage Latina immigrant women in the workplace.

A large and growing number of projects lie at the intersection of all three of our top areas of funding: domestic violence, family law, and immigration. These cases are complex, involving matrimonial law, child custody, and oftentimes housing assistance, as well as immigration help and economic assistance such as gaining access to benefits or consumer debt. As we have seen, the dominance over the victim of domestic violence is so comprehensive, the abuse so all-consuming, that the woman requires specialists in five or six different areas of the law to regain her autonomy. Looking back at Foundation grantmaking patterns over the last 10 years, it is striking that the increasingly complex needs are met with increasingly ingenious interdisciplinary solutions from the state's legal services community, despite perilously scarce resources.

Finally, the Bar Foundation is called upon increasingly to fund post-incarceration re-entry services for women. Although the United States is home to just 4% of the world's female population, it holds 33% of the entire world's incarcerated female population. The National Association of Women Judges has reported that while males remain the largest population in the nation's prisons, the number of female inmates continues to climb, growing by more than 700% over the last 35 years.¹⁴ This seven-fold growth is attributed to stricter drug penalties, more expansive laws, and an absence of re-entry programs.¹⁵

The Foundation recognizes the need for post-incarceration legal services for women as a growing need and as an emerging women's access-to-justice issue.

In sum, echoing Dr. King's exhortation that none of us lives in a just society until all of us live in a just society, the late United States Supreme Court Justice Ruth

¹⁴ Women in Prison, National Association of Women Judges, <https://www.nawj.org/catalog/community-outreach-programs/women-in-prison> (last accessed 9/20/20).

¹⁵ *Id.*

Bader Ginsburg said that, “I don’t say women’s rights—I say the constitutional principle of the equal citizenship stature of men and women.” As we address the access-to-justice concerns that are particular to women, we better realize the constitutional principle of equal justice for all.