

**Host:** Welcome to “Amici,” news and insight from the New York Judiciary and Unified Court System. We are chatting today with Justice Fern Fisher, who serves as deputy chief administrative judge for the New York City Courts and is also tasked with statewide responsibility for access to justice issues.

Judge Fisher's career started in the Civil Court as a Legal Services attorney practicing in Manhattan Housing Court.

She served as Deputy Director of Harlem Legal Services. and as an Assistant Attorney General of the New York State Department of Law. She also provided pro bono legal services to Harlem-based community organizations as a project director of the National Conference of Black Lawyers.

Judge Fisher was appointed Judge of the Housing Part of the Civil Court in 1989 and, a year later was elected to the Civil Court, where she served as Deputy Supervising Judge. In 1993, she was elected to the state Supreme Court and assigned to the City and Matrimonial Parts. In December 1996, she was appointed Administrative Judge of the Civil Court of the City of New York, where she served until March 2009 when she was appointed to her current position.

**Host:** First, Judge Fisher, could you very briefly describe what you do in your two distinct roles as Deputy Chief Administrative Judge and head of the Access to Justice initiatives?

**Justice Fisher:** As the deputy chief administrative judge, I am in charge of all the court operations within the City of New York. Within that position I am also the administrative judge of the civil courts of the City of New York, which was my original position. And as the Access to Justice Director, I am in charge of the Access to Justice program for the State of New York.

**Host:** Why don't we first talk about your administrative role. You had been in court administration for more than a decade before being designated as Deputy Chief Administrative Judge. After so much time in court administration were there still surprises when you took on the city-wide responsibilities?

**Justice Fisher:** Yes, there were. I had been in charge of one court, a court I was very familiar with because I was a judge in that court and had also been a practitioner in that court. When I took over the DCAJ job I took over responsibility

for criminal issues, surrogate issues and family court issues – and each of those courts has distinct cultures and distinct issues, so yes I was surprised. I was also surprised by the breadth and depth of the issues.

**Host:** Your DCAJ title specifically refers to the New York City courts while as Director of Access to Justice Programs, your scope is statewide. Do the New York City Courts function differently from those outside the City? Are the issues confronting the courts within and outside the City different? And what about the judges and the non-judicial staff – are they interchangeable with their counterparts upstate and in Long Island?

**Justice Fisher:** Let's start with the differences between city courts and the courts outside the city.

As I am sure you are aware, the courts are structured differently outside the City of New York. Outside the City of New York, you have town and village justices, which we don't have in the city. We have district courts and county courts, which we don't have in the City of New York. So that is different.

In the city, three of the courts are uniform – the criminal court, the family court and the civil court. Those are citywide and are administered uniformly. Outside the City of New York, each court operates a little bit differently because they are not uniform courts. Certainly, outside the City of New York they are faced with issues that we don't have. For example, there are courts in rural areas, where it is difficult to get to the court, difficult for people to make contact with the court because of the distance. We don't have that problem in the City of New York. In the City of New York, you get on a subway or a bus and you can get almost anywhere.

New York City is more culturally diverse, although that is changing and outside the City of New York the individuals who use the courts are becoming more diverse. The volume is a little bit more in New York City, and it is a little more compact because the geographic area is smaller. But the problems, in terms of legal issues, are about the same.

**Host:** In some ways, New York City and the courts have a symbiotic relationship. Do the courts mold the city or does the city mold the courts?

**Justice Fisher:** I think it depends. I actually think most of the time the city molds the court. What happens in the City of New York dictates the kind of legal issues we see, and as a court system that is responsive to the public we have to mold what we do to address the issues that New Yorkers are facing. And that has changed. For example, in Housing Court more recently we are seeing issues with bed bugs, which we didn't have before. A few years before that, it was mold and we had to address issues in court cases that involved mold. Now we are addressing bed bugs. Foreclosures – the city has driven us to have to develop programs. When we started to have foreclosures, mainly in Queens and Brooklyn, we had to address those issues.

So, I think the city molds us most of the time. Clearly, as I mentioned earlier, the diversity, particularly on the Access to Justice side, has made us become more responsive to the different needs of people who come into our courts. Every year we get more and more diverse.

**Host:** Let's turn now to Access to Justice – which we all know is the signature issue of Chief Judge Lippman. And just to be clear, in this context, are talking about civil legal services?

**Justice Fisher:** We are fortunate to have a chief judge who is national leader on access to justice issues. In my book, he is the number one chief judge on this issue. So, whatever we do on access to justice, he keeps the bar very, very high.

Access to justice issues do involve criminal issues, but my office is focused mainly on civil issues so most of what we do involves civil legal services.

**Host:** I see. There is, of course, a right to representation in criminal cases, as articulated in *Gideon v. Wainwright*. But is there anything comparable on the civil side?

**Justice Fisher:** Well, you know, in family court you are entitled to an attorney in a custody proceeding if you cannot afford an attorney. So that is akin to the *Gideon* right. Unfortunately, we don't have a right to counsel in most civil cases. We are far from a *Gideon*-like situation in civil cases. We would like, as a court system, to move toward providing assistance to people who don't have lawyers. But we know

there are 2.3 million people who come into our courts without one.

**Host:** Can you explain the ways in which an unrepresented person is disadvantaged when she or he comes to court?

**Justice Fisher:** Individuals go to law school for three or four years to learn law, both substantive and procedural, and it is very difficult. If you are someone without a legal education or someone who is not well educated. The average New Yorker reads on a fifth grade reading level. It can be extremely confusing to navigate through a court system when you don't know what the rules are. It's like playing football or chess without the rules. You just can't do it.

So, we have a serious situation with people who don't have lawyers and clearly don't have a clue what to do with respect to their legal issues.

**Host:** The chief judge has referred to "Civil Gideon." How exactly would that work?

**Justice Fisher:** We use the term "Gideon" because that is a term everyone recognizes, but it would work a little differently if we could get to what I call the "perfect world." In my perfect world, everyone who needs an attorney and can't afford an attorney gets one. We are moving toward that. In the end, I think the way our system will eventually look like ... is we will give people lawyers in life-affecting cases – housing, family, consumer debt, foreclosures, health. The Access to Justice Task Force had been proposing incremental steps to move towards providing, if not an attorney for everyone, at least legal assistance. Legal assistance can take various forms. It could be an attorney for representation or unbundled legal services. It could be computer assistance. We would like to move toward ensuring that everyone could get some form of legal assistance, starting with self-help measures and all the way to full representation.

What will it look like a few years from now? If I had a magic wand, everyone that needed a full representation lawyer would get one and individuals whose cases were not as complicated would at least have a limited assistance lawyer, and everybody would get some kind of assistance.

**Host:** Chief Judge Lippman has implemented a 50-hour pro bono rule for law students. What are your thoughts on this and how have you fostered this initiative?

**Justice Fisher:** You're talking to the choir. I think what he did was fantastic. I agree with him that you have to instill the notion of pro bono early in a lawyer's mind. We should start the minute they put their foot in the door at law school, and that is what the 50-hour rule does. I agree with Judge Lippman that law students can provide valuable legal assistance to individuals and through the Access to Justice program we have been doing this for years. We use law students during their free time, particularly during the summer when they are out of school, to provide legal advice and legal representation of individuals. We are, I believe, the only court system in the country, that has a student practice order in both the First and Second department that allows law students who are participating in volunteer programs that my office runs to actually represent people in court if they are second or third year students. During the summer, they handle housing cases, uncontested divorces, and consumer debt cases.

So, I know first-hand that law students can help close the justice gap. They are enthusiastic, they have the energy, and they have the time. They can be trained to provide high quality legal services, and they do. Every single law student who has volunteered with us leaves here with great training, and I have to say the overwhelming percentage actually loved the experience.

**Host:** Let's discuss "unbundled legal services." First, what are they, and second what are the benefits and barriers?

**Justice Fisher:** Unbundled legal services are also called limited scope services or limited task services, and you will hear those terms used interchangeably. Generally, in our legal culture a lawyer handles a case from the very beginning, from the day the client comes in and is interviewed, to filing pleadings, to doing discovery, to doing motion practice, to doing settlements, to doing trials, to doing appeals. That is full representation.

Unbundled legal services means the client drives exactly what services he or she wants the lawyer to provide. So, the lawyer might just do legal research for the client. Or the lawyer might just do discovery, depending on what the client wants. It is a movement that has taken hold in the country. Some states are very, very

active with limited scope representation or unbundled legal services. The lawyer does parts of cases.

**Host:** Is there any help available for the self-represented, anywhere services available for those who simply do not have access to a lawyer?

**Justice Fisher:** Well, let's go back to the unbundled legal services. The programs that the Access to Justice Program operates with volunteer lawyers and volunteer law students are all unbundled, meaning the law student or the volunteer lawyer only does a part of the case. So, for example, in an uncontested divorce program the lawyer or law student only drafts the proceedings, which in a divorce is the whole thing. If you don't get the paperwork right, you are not getting divorced. Our volunteer lawyers and law students make sure the paperwork is correct. They help individuals fill out the paperwork, and then their job is done. They individuals are responsible for filing the papers themselves and making sure that everything is finished.

In our "volunteer lawyer for the day" program, our lawyers and law students only give advice. They help people settle their case. If the case doesn't settle and the case has to go to trial, the representation ends. So, we have first-hand experience with unbundled legal services through the Access to Justice program, and I can tell you for example that the consumer debt program, which is a volunteer "lawyer for the day" program, we have represented over 15,000 people.

Now, there is some resistance to unbundled legal services from some members of the bar. Why? We are creatures of habit. People know what they know. They know what they were taught in law school, and they have been practicing the same way for years. So, when you say to someone, "Let's try something different," there is a natural resistance.

Some members of the bar are resistant to unbundled legal services because they think they will lose business, which I don't think is accurate; I think they will have more business. Some legal service organizations are not in favor of unbundled legal services because they think it will cut against the movement to get full representation – Gideon civil legal services. So, there is some resistance in New York.

But I can tell you that people are beginning to realize that unbundled legal services are not for everybody. Some people need full representation and some cases require full representation, but we could expand services with unbundled legal services and people would get more help, not less.

**Host:** Judge, I'm curious. Do you think the person requesting unbundled legal services is qualified to know what they need?

**Justice Fisher:** It is important to make sure that legal services are provided appropriately. The individual has to be able to handle only having a lawyer part time. Right now in New York State we have barriers to unbundled legal services because our Civil Practice Laws and Rules aren't set up to do limited scope representation. That's why we don't have it across the board in New York. The CPLR requires a judge consent to a lawyer getting out of a case, and most judges don't want lawyers to get out of a case. It is difficult to get judges to do that. We would need a change in our CPLR rules for practitioners to actually do unbundled legal services.

We should put our resources toward making sure that those people who need full representation get full representation, and those who are able to handle parts of their cases on their own get limited scope representation. If we talk about moderate income individuals who are not eligible for legal services – people who are not indigent but don't have the resources to pay large legal bills – this would give the moderate income people the ability to access a lawyer for the part of the case they need the most help with.

For example, in a divorce if the most important issue is child custody or visitation and you don't really care about the equitable distribution part of the case, you would just get the lawyer to do the child custody part...For the moderate income people who are struggling with legal fees, unbundled legal services might be a solution to increasing access to justice. We see many, many, many, many people coming into the courts with moderate incomes and no attorney because they can't afford an attorney.

**Host:** Can you tell us about some of your proudest Access to Justice accomplishments to date?

**Justice Fisher:** First, my accomplishments are due to my staff. I have the best staff in the state, led by my chief counsel, Rochelle Klempner.

It is hard to pick a few, but clearly our volunteer lawyer for the day programs are significant not only for the number of people we have helped, 15,000, but because it is a novel concept that the courts should provide assistance to individuals. We are one of the few court systems that haven't taken hold of that issue, and I was fully supported by [former Chief Judge Judith] Judge Kaye and Judge Lippman on that issue.

I think our computer do-it-yourself programs, and we are the leader in the country on that with 25 computer programs which people can access on the internet and receive tutorials. It's not just putting in information and it spits out a form. It is tutorial. It helps the person fill out a form that is necessary to get into court or respond to a case, and we are, as I said, the leader in the country. In fact, both Judge Lippman and I were invited to the White House to speak, he on pro bono and me on our computer programs, because of our leadership in these areas.

Each month, more and more people access these programs. That clearly opens access to justice issue because you can't get to court if your forms are not filled out properly. And you can't prove your case unless you have some information on how to prove your case. Our programs help people fill out the forms and also provide information about what's necessary to go to court and prove your case. We have family and housing and consumer, we have name changes for surrogate's court, a domestic violence program for advocates and we are every day developing more forms. Our newest one is for uncontested divorce.

I think we are also the first court to actually offer training and education in a poverty simulation, where judges, clerks, court attorneys do a simulation and live the life of somebody in poverty for about four hours. We have offered it in the civil, family and criminal court and more recently we been asked by law schools to do it. We did it for Brooklyn Law School and Touro Law School, and the students are now getting exposure to poverty. Why should they be exposed to poverty? Because people don't come to court with just legal issues; they come with legal issues fueled by other issues, and poverty does fuel legal issues. We need to be sensitive to what someone who lives in poverty experiences so we might better

understand their legal issues. For instance, if someone is being evicted what led to their being evicted? Training people in poverty issues as well as cultural diversity, so we understand that people who come to our courts are not all the same. They come from different countries, different economic statuses, and it colors how people experience the criminal justice system. If you come from a country where the justice system is not as open and fair as ours, you might be scared to death of the court if the judicial system you came from was not only not fair, but oppressive. We try to educate our judges and non-judicial personnel with respect to the differences people bring into the justice system that colors their ability to navigate the system.

Those are some of our accomplishments, but we have so many and I am very proud of what we do.

**Host:** What are the major goals for 2015?

**Justice Fisher:** Well, some of them we have to keep secret! But the Access to Justice Task Force is extremely interested in unbundled legal services and making sure that we move forward with that in the State of New York. One of the things my staff and I will be planning is an unbundled conference. We will certainly move forward with at least another do-it-yourself program. And we will continue to do our volunteer lawyer programs and provide as much legal service as we can. My staff will also be looking to more schools to do the poverty simulation. Basically, we will do what we always do – and that is to do our best to close the justice gap.

**Host:** Well, thank you, Justice Fisher. And thank you for listening to this edition of “Amici.” If you have a suggestion for a topic on Amici, call John Caher at 518-453-8669 or send him a note at [jcaher@nycourts.gov](mailto:jcaher@nycourts.gov)