



THE VIEW FROM THE BENCH



What Grand Challenges do you see in your court?

Dean Levi turns to leaders in the judiciary — Chief Justice Tani Cantil-Sakauye (Supreme Court of California), Chief Justice Nathan L. Hecht (Supreme Court of Texas), and Chief Judge Robert A. Katzmann (U.S. Court of Appeals for the Second Circuit) — for the view from the bench.

LEVI: How would you respond if the National Academies asked you to identify the Grand Challenges for your court systems? And how would we make progress on the challenges?

HECHT: I took inspiration from the ambitious nature of the Grand Challenges identified by the National Academy of Engineering and aimed high, as you encouraged us to do, David.

First, we must remove all barriers to access to justice. We simply must continue to work very hard to ensure that people with limited means and increasing legal needs can have access. We're going to need to look harder at reducing the cost of legal services. It is absolutely essential that legal representation be available for everyone who needs it. One idea is to encourage law students to represent people of modest means in exchange perhaps for shortening their time in law school. Perhaps we should require pro bono service by law students and lawyers, possibly for CLE credit.

This connects to another challenge, which is reducing the cost of law school. We need to expand loan forgiveness so lawyers will consider public interest work.

I also believe we must explore affordable alternatives to traditional court settings. On the criminal side, we have had specialty courts for a long time, which are very effective. Although those courts are still operating within the court system, there are lots of nonjudicial participants who evaluate defendants and offer rehabilitation programs to make the courts successful. The criminal justice system needs a lot of strengthening just to meet the demand and make sure that indigent counsel are readily available and trained to handle the cases that require legal counsel.

On the civil side, I would consider treating family cases as nonadversarial proceedings, especially when the parties are able to use standard settlement agreements. The process should be overseen by someone with legal training, but that person does not need

to be a judge. I strongly believe in preserving trials by jury in civil cases, and we must protect that process. But again, we must make it more accessible. And I believe we must work to reinstall professionalism in lawyers.

CANTIL-SAKAUYE: I join your five challenges, David, and also Nathan's. I'll add mine that I think are different. From a California perspective, recognizing that the judiciary lacks the power of the purse, which lies in two other branches, we need a stable, reliable, baseline funding formula. This formula is necessary for us to plan and to meet our obligations, especially in times of economic crisis and downturns when courts are used more heavily than in other times. Additionally, it's an opportunity for us to be recession-proof, knowing what our baseline is in order for us to plan our operations and manage them.

I also think that a Grand Challenge for us is that we've been doing business as a judiciary and a legal profession the same way since statehood, and even ▶

before that we mirrored England. So I think it's time to be forward-thinking about what we know as law practice, and to redesign or reengineer the future of the delivery of justice. So creating a futures commission to look forward and study improvements is a Grand Challenge. We've recently done this in California, bringing together judges, lawyers, legal organizations, and other key stakeholders to look at a new future for the judicial branch, finding new ways of bringing justice to those who need it, without sacrificing due process.

One of my other Grand Challenges is that we — this goes to access to justice in the sense of providing and matching legal service to people in need — that we raise the profile of public sector work, pro bono work, of low bono work, legal services; that we create opportunities for new lawyers to understand that service in the legal profession and the judiciary is not always the flagship firm in the plaintiffs' bar. It is, in fact, service to people who are in need of representation. Maybe it is tied up in the cost of law school. But we need to raise the profile of what public service really means to people and to lawyers.

I think the last one that I would talk about is that it's really important to stay relevant as a co-equal branch of

government amongst an increasingly nonlawyer legislature and administration. We need to maintain our relevance by outreach, by supporting civic learning and civic engagement, by joining when we can on appropriate subject matters that move service to the public forward. And to really stop being seen as another agency, because that threshold perspective colors everything in the legislature and how decisions are made about how the branch can go forward and the freedom that we have to go forward.

KATZMANN: For me, a very good place to start is a mission statement of the federal courts, crafted some 20 years ago for the federal courts long-range plan:

“The mission of the federal courts is to preserve and enhance the rule of law, by providing to society a just, efficient, and inexpensive mechanism for resolving disputes that the Constitution and Congress have assigned to the federal courts. That unique mission requires commitment to conserving the federal courts as a distinctive judicial form of limited jurisdiction in our system of federalism, leaving to the state courts the responsibility of adjudicating matters that in light of history and sound division of authority rightfully belong there. The mission also

requires protection of judicial independence to ensure that the judicial branch can carry out its constitutional role in the governmental system of checks and balances, to preserve and protect the individual rights and liberties guaranteed by the Constitution, to interpret and enforce treaties and federal statutes and regulations and to ensure that cases are decided fairly and impartially.”

Thinking about that mission statement, what do we need to ensure that mission can be accomplished, and in that sense what are the challenges? One challenge is the need to ensure access to the courts to many who are denied access because of cost. David, you talk about those challenges in your excellent lecture. A second challenge is the need to preserve necessary resources for the operation of the courts. The courts as you well know occupy just two-tenths of one percent of the federal budget, under \$7 billion. Ensuring that there are those sustainable resources is critical as well. Then the third challenge that I would identify is to promote public understanding of the courts, to ensure that there is a vital and independent judiciary.

LEVI: Let's talk further about keeping the courts focused on their particular missions. This might relate to the relationship of the courts to the other



“I think it is important, given our ever-changing legislature and the absence of lawyers in the legislature, that we have a budget that is decision backlash-proof in order that we can continue to provide necessary services.”

– Chief Justice Cantil-Sakauye, pictured at left announcing her Three-Year Blueprint for a Fully Functioning Judiciary .

branches, and, Bob, you're among the nation's experts on that topic.

KATZMANN: Courts will do whatever they're asked to do when legislation results in added responsibilities. But I think the other branches of government need to be mindful whether the federal courts are the best institutions to resolve those disputes, and if federal courts are called on to assume additional responsibilities, to ensure that there are the resources to discharge the administration of justice effectively and fairly. Over the last several years, while courts are increasingly looked on as entities that can solve problems, the courts are constantly under pressure to do more with less.

We've been fortunate vis-a-vis other institutions in terms of funding for the courts, though we've lost in the last few years some 3,100 people (14 percent). That the courts have been able to do as well as could be hoped for in difficult times in part is due to the ongoing efforts by the federal judiciary to reduce costs; the excellent work of the Budget Committee of the Judicial Conference, chaired by Julia Gibbons; and the efforts of my colleagues on the Judicial Conference Judicial Branch Committee, who, along with judges across the country and bar groups, reached out to the members of Congress and their staffs to make the case for support for the judiciary. And the Chief Justice, of course, in his year-end report, makes the case very well.

That said, I am concerned that in future years, as we face budgetary crises like budget sequester, the courts' capacity to do their work will be increasingly challenged. For now we're able to function adequately, with much appreciation for the support we've gotten from Congress. But securing requisite resources is always something we have to be very vigilant about. We understand that these are difficult times and there is waste that needs to be attacked, and the courts have been

trying to do that. I think, though, we are at that point where further cuts will have a very deleterious impact on our capacity to do the work that the public expects us to do and that the judiciary as a branch of government wants to do.

LEVI: Stable funding and resources are high on the list for everyone. How would you propose handling the need for more stable funding?

CANTIL-SAKAUYE: For us, a stable funding formula should take into account population, the number of judges, and the number of cases that are filed each year over a range of years. And I would add that it should not be only fee-based. There has been a need here to increase fees, filing fees and other forms of fees, to in some way supplement the budget for the courts. That sort of pay-to-play system can go against the principles of equal access to justice.

I think it is important, given our ever-changing legislature and the absence of lawyers in the legislature, that we have a budget that is decision backlash-proof in order that we can continue to provide necessary services. One of the ways you accomplish that is by educating the decision makers and the governor's department of finance about how a judicial branch operates, how it spends its money, and what it's spent on — i.e., the laws that you pass that are unenforceable without the judicial branch — and also so they understand that we are fully prepared to be accountable.

California recently instituted a funding formula for the trial courts based on a three-year average of cases that are being filed in those courts. We have seen that our largest counties, San Bernardino and Riverside, for example, need far more judges and have far more cases filed there. If that formula is revisited every three to four years, it's something that can be modified based on data and accountability from

the courts. But you have to know that the original funding formula is based on some rational data that permits us to plan and that takes into account the variables of judges and staff, population, and case filings.

Once we have a base of funding, a stable, sustainable formula, we are able to plan more efficiently because we can look out to future years.

HECHT: In Texas, most of the funding for most of the trial courts comes from the counties. The state's funding for the judiciary is mostly for the appellate courts. But the problem is just as Tani describes: It's very difficult for the courts to try to make improvements in efficiency and handling of cases if they don't know what the financial situation is going to be.

I would also note that, for us, though we've had pretty good funding through the difficult economic times, we're trying our best to persuade the legislature and the governor that we cannot take the same hit that other government services take when hard times come. So much of the work of the judiciary is dependent on personnel. We don't have in our budgets initiatives or programs that we can cut when the word comes down that all budgets must be reduced X percent, like other agencies can.

The mission of the judiciary is more like the mission of public safety, where smaller cuts make a huge difference. The budget ought to be based more on cases and the work that we have to do and not just trying to be leaner.

KATZMANN: We had a sense of the long-term effects of a sustained sequester in 2013, when for example the defenders' offices were severely cut in terms of their resources, very much affecting the capacity of the federal courts in districts across the country to pursue cases in a timely fashion. That was a huge problem. There also are cuts that took place in terms of clerks' offices and their ability to meet the

needs of the public.

The fact that the sequester was of limited duration shouldn't obscure the reality that if the sequester had continued over time we would have been seriously adversely affected in our capacity to timely and efficiently discharge the administration of justice. Even in areas like security, there were concerns during budget sequester as to whether we'd be able to protect our courthouses in the way that they should be. Some of our courthouses undertake very sensitive cases, terrorism cases, so the threats of sequester were not imagined — they were real.

LEVI: On the federal courts, there's also this related phenomenon where some districts are just very underwater because of the loads they are carrying. Bob, what about the need for additional resources for those courts that are very underwater?

KATZMANN: The problem of judicial resources for these underwater districts can be very challenging. When we talk about the need for these judicial resources, it is a very nonpartisan issue. It's a question of getting the work done in districts where there is just an overwhelming need. But even where there are political leaders in Congress with clout whose jurisdictions cover the affected districts, even that is sometimes not enough to secure those resources. So I think the necessity of constant attention and determi-

nation to secure those resources will remain constant.

LEVI: Tani, is your point about the judiciary needing to be forward-looking partly about understanding the promise of technology and how we might provide adequate legal services to a growing population?

CANTIL-SAKAUYE: Yes, we think that many of our innovations and efficiencies — for short hearings, for continuances, for motions, though clearly not for trials — will come from use of technology. That's the expectation of the generation of lawyers coming behind us, and that's the expectation of the public. We think that's where we might best be able to accomplish greater access and more efficiency without sacrificing due process.

HECHT: I agree with Tani. Technological changes have made it possible for us to consider real changes in the ways the trial courts are structured, so that cases can be directed more readily to the path or the procedural place where they can get an appropriate resolution. That's something the National Conference of State Courts task force has been working on for about a year. And we have agreed for a long time that it would be better to get simpler cases to simpler procedures and handle them more quickly with less expense. Technology makes it possible for us to really be able to do that for the first

time. It's kind of a technology-and-access problem rolled into one.

CANTIL-SAKAUYE: I think there's an expectation already that somehow you should be able to go online and link to what you need. I think it would be beneficial to a great number of self-represented litigants, those who can't afford lawyers as well as those who can. Technology really gives us a reach that we've never had before.

I also think technology can be useful in boosting the public's trust and confidence in the judiciary and the legal profession, in the sense that we can use technology like social media to be more transparent, to make ourselves more understandable to the public. I think it's vital that the public stay engaged and know what we do and how important it is, and social media can help them understand it. That to me is also the reach of technology.

LEVI: What do you think, Nathan, of using social media to make the case to the public and to be both transparent and accountable? Justice Don Willett, a Duke Law graduate on your court, makes use of social media.

HECHT: It's hard for me to see the benefits of social media in this context, though if anyone could find them, it would be Justice Willett. I still think that most of what we do is pretty boring. I do think there's a benefit to seeing the civil justice system work, and social media might promote that.



“If Congress is going to continue to be supportive of the courts, that support will depend to some extent on how important these issues are to their constituents. So educating those constituencies is of great importance.”

– Chief Judge Katzmann

But the most important thing, I think, is access.

LEVI: Bob, what do you think the federal judiciary can do to promote public understanding of the judiciary?

KATZMANN: One of the things I'm trying to do as chief judge is basically borrow from the efforts that have been made across the country, at the state level and also to some extent at the federal level, like Justice [Sandra Day] O'Connor's project and Justice [David] Souter's project, to increase the level of public understanding about the operations of the federal courts.

So as a first step, in my first year as chief judge, while I was still chair of the Judicial Conference Judicial Branch Committee, the Federal Judicial Center and the Administrative Office of the U.S. Courts undertook a survey of what federal judges do in terms of outreach to the public. That survey will be released soon, and it will categorize the kinds of activities that are being undertaken by federal judges across the country. We had something like a 62 percent response rate, which is fantastic. You see all sorts of activities, such as bringing students into the courthouse, adult education courses on the judiciary, judges going out into communities, the construction of learning centers in courthouses, the creation of library 'learning labs,' where students come in to learn legal research. Some courts have roundtable discussions with judges about issues having to do with the Constitution and the workings of the courts. Judges also preside over student moot courts and mock trials. These are all efforts over time to increase understanding. We're also trying to reach out to various professional organizations, not just bar organizations, that may have an interest in learning about the courts.

When you look at recent polling data, from Pew and the Annenberg Center, and you see the very low level of knowledge in the public of the

courts — about how many justices there are, who the chief justice is, how the Congress works — you really see a need for increasing that understanding. If Congress is going to continue to be supportive of the courts, that support will depend to some extent on how important these issues are to their constituents. So educating those constituencies is of great importance.

LEVI: Can we talk a bit about judicial elections? We found in the last cycle that there was quite a lot of outside money coming into judicial elections, including retention elections. What do you think can be done to work with that process, because most states are going to have elective systems of one sort or another for the foreseeable future?

HECHT: I can give you the short answer for Texas, which is that nothing's going to happen. Many have been trying to make some sort of change in our partisan election system for the third of the century that I've been on the bench and long before that. Merit selection passed the Texas Senate in two consecutive sessions in the '90s but never got out of committee in the House. And Gov. (George W.) Bush and Gov. (Ann) Richards before him, and Gov. (Rick) Perry for the last 14 years, none of them has been in favor of it. Not so much because of any disagreement in principle; they just didn't think the people would buy it.

Absent some sea change — which could happen, I don't want to completely rule it out — the people are not likely to change their minds. I just finished running, and one issue — not a major one, but still an issue — was the continued election of judges. It is seen as an accountability issue. The people want to be able to remove public officials, including judges, who they believe are not serving the public. But the fundamental flaw in the argument for partisan elections is that there's no way in the world you're

holding judges accountable when you don't even know who they are on the ballot. In urban areas there are scores of judges on the ballot. Even lawyers have trouble making reasoned choices. Still, it's easier to argue for voting, and the arguments for change make little headway.

The other thing I've noticed, and I believe this is really true in the last 15 years, is that the shrillness of politics and the intransigence of political figures is more difficult for judges to ignore. When I first came to the bench, 33 years ago, very few judges looked over their shoulders. They pretty much thought that as long as they did a good job and worked hard, decisions in particular cases and social issues they really had nothing to do with were not going to make it impossible for them to get reelected. That's less true today. I always say — and I believe it's true — that Texas judges do their very best to be fair arbiters in every case that comes before them, but my fear is that, more and more, politics is shaking them.

But on that score, merit selection/retention has its own problems. I was just down in Florida, and they've had two rounds of very difficult retention elections in which rulings in particular cases were central issues. That has not really come to Texas, but I just think it's a matter of time. So all election-selection systems have problems. I don't have any practical solution.

LEVI: How is it in California? It's been a while since it's been really heated up over a judicial election.

CANTIL-SAKAUYE: First let me say exactly what Nathan has said: Political races for judgeships undermine and threaten our checks and balances in a democracy, and we do our future injustice if we even begin to yield on the political attacks on judges. In California we have a different system than Texas — and I'm just shaking my head listening to Nathan — apart from ▶

1986, when California had a retention election challenge to Chief Justice Rose Bird and Justices Cruz Reynoso and Joseph Grodin. It was an ideological challenge; it was partly political of course, but it was an ideological challenge and it wasn't a matter of dark money.

And since that time in the history of California we haven't seen it, and our system remains the same. Our approximately 1,800 trial judges in our Superior Courts run in general election, and there has not been — that we have seen — an influx of dark money and challenges the way we have seen in Florida, Kansas, and Iowa. And at the appellate level, it's a retention election.

But I firmly believe that what's happening nationally will come to California, and I worry that by the time the dark money and the politics of judicial elections come to California, those organizations coming from the outside will have cut their teeth on those other states and will bring in a very sophisticated operation.

I agree there's not much of a solution, but I tend to tilt at windmills, especially in this state, and have really tried to take up the cry of retired Justice Sandra Day O'Connor and my predecessor Justice Ronald George by collaborating with our state's superintendent of public instruction to get civics taught in the core curriculum in K-through-12 schools. We tell the story of the judiciary, we teach what

a retention election is, what a general election is, that a judge is not a politician in a black robe.

We've also partnered with business and labor and most recently with counties in an effort to raise awareness of these issues and to do it ahead of time — before that money comes in, before the next presidential election. I make no claim about ideological electioneering, but political attacks — we have to prevent that from happening the best we can.

LEVI: Nathan, would that kind of approach work in Texas? Trying outside of the election cycle to convey to the public the importance of judicial decisional independence?

HECHT: We've done all that, too, and I agree with Tani we've got to do all we can to foster an appreciation for the historical role of the judiciary in the government. But just having been on the ballot, I met a lot of voters who were not enamored with judicial independence. Pretty much everyone was the other way. They'd say, "Why should the judiciary be independent? They're supposed to be ruling in favor of what we think our constitutional rights are anyway, and if they don't, we don't want them."

We're one of two states that still have straight-ticket voting for judges — the other is Alabama. And a bill in the legislature would do away with that, so the ballot would still show the candidate's party

label, but you couldn't vote for all the judges of one party while you're voting for everyone else in that party. But it's never gotten out of either house. The current practice is just deeply entrenched.

So yes, I think we should preach independence. The bar does it, the legislature, they all say they believe it. But it hasn't translated into any kind of a change in the selection system.

LEVI: That wasn't very cheerful. But you got elected, Nathan, so the bottom line is that very good people get through it. It's just that it's painful, and it puts a lot of pressure on you.

HECHT: It does. And there's a lot of happenstance to it. A few things could change and it wouldn't happen.

LEVI: Perhaps the federal analog to the question about elections is about the nomination and confirmation process and how judges are viewed? There is a fair amount of writing by political scientists and journalists that judges are just "politicians in robes." How do you deal with this?

KATZMANN: It's incumbent upon everyone who wears a robe to act in a way that removes any perception of partisanship or inappropriate preference on the issues. We also live in a world where it's not just what judges say or don't say, but in this world of the 24-hour news cycle and the proliferation of social media, where



“ I always say — and I believe it's true — that Texas judges do their very best to be fair arbiters in every case that comes before them, but my fear is that, more and more, politics is shaking them.”

— Chief Justice Hecht

any commentator can offer a view on anything that anyone else does, it creates a lot of noise and, I think, misperceptions. It's something that all of us have to be concerned about.

One thing that always bothers me is when I read a news article about a case and it will say, "Judge David Levi, appointed by President so-and-so," as if David Levi votes in the way of the president who appointed him. That kind of thing concerns me. The Judicial Branch Committee over the years, from the time when Deanell Tacha and Brock Hornby chaired the committee, has worked with the Newseum and the First Amendment Center to have programs with journalists. And increasingly, in this age of bloggers, who is a journalist is not at all clear. How do you reach out to those communities about the courts? How do you educate them about the judiciary?

That's a real challenge. In terms of the conventional media, the challenge is that there are far fewer outlets and resources, and very few of these media have full-time people who cover the courts and who are therefore knowledgeable about the courts. The absence of understanding of the courts in the media is a real problem we see every day.

LEVI: Let's turn to the criminal justice system. I said a little bit about capital punishment. It's not exactly a system, at least in California.

CANTIL-SAKAUYE: You're right. The numbers with respect to the death penalty, at least in California, remain relatively unchanged, with over 700 people on death row, most dying of old age or illness. And while there's a fair amount of representation on automatic appeal, there's very little representation for habeas petitions for the same inmates on death row.

Since the '70s, since we've had the death penalty, California has executed 13 people. A study indicated that if

California were to become current with its backlog it would require one execution per week for the next 14 years. We are in a place where our electorate recently passed two initiatives that basically reduce crime, including one initiative that took six felonies and reduced them to misdemeanors under certain conditions. We have the three-strikes law, where on the third strike you go to prison for 25 years to life; then we've had a reform, passed by initiative, that now permits resentencing of three-strike offenders if their third strike was not violent or serious with some other qualifications. We've also had the governor pass a comprehensive criminal realignment program in California that emphasizes processing at the county level rather than at the state prison level.

So California's electorate is trending in a way that we are looking at less punishment and certainly more evidence-based, local, county-program sentencing. Many of us judges were for years used to the determinate sentencing law — one of those, as you said, 'grand reforms' that has caused its own problems — and we are now seeing a change in how California voters view crime and punishment in California.

HECHT: I don't think there has been any discernible relaxation in the laws that would lead to the death penalty in Texas. But fewer people are being executed, and that's been noted in the national press. It keeps going down, and nobody really has a good idea of why that's happening.

LEVI: Bob, is the criminal sentencing system in the federal courts undergoing a lot of change?

KATZMANN: At the court of appeals level, the challenges aren't really as great. It's really at the district court where the rubber hits the road and district judges deal with the sentencing guidelines and how things have worked post-*Booker*.

LEVI: Is there an opportunity to have academic study around questions of rehabilitation and sentencing that would be helpful to judges? If we're moving into an era of less determinate sentencing with lower overall crime rates, I wonder if there's an opportunity there.

CANTIL-SAKAUYE: I think that we could use more data. We have judges of different generations who have seen the swings from punishment and rehabilitation to risk assessment to evidence-based sentencing. But in order to get to where we are actually addressing the problem of recidivism, we need to change attitudes and behavior, and that's not going to come about unless scholarly and practical studies show that there is an alternative that is part punishment but rehabilitative in the long run.

I say this because the convincing in some respects doesn't have to come to the judicial branch. In my view it has to be legislative. Our judges look at the statutes and they look at the range of sentences they can impose based on how the legislature has passed that bill to the governor. We're not decision makers in that sense. The legislature is in the first instance the responsible decision maker.

So could academic institutions look at penal codes and enhancements and special circumstances and do a study? I think that would be helpful. I think it would be helpful for legislators, as they look at sentencing alternatives, instead of punishing every crime to the maximum, finding a range and methodology to treat the underlying symptoms to prevent recidivism.

HECHT: We have made some inroads on the problem as a whole, starting with juveniles. The Council of State Governments did a study in Texas on schoolyard misconduct that has been criminalized as a result of the zero-tolerance reaction to guns and shootings and problems on school campuses. It ▶

had just gotten so out of hand. All these kids were being ticketed for all sorts of offenses that no one would have thought really would be criminal.

So the Council of State Governments went out and looked at the cases, analyzed the data, and showed that this was not helping discipline on school campuses. It was at best just neutral. In response, the legislature decriminalized much school misconduct. As a result, criminal filings went down, and discipline problems in the schools do not seem to have gone up.

Now there's an issue in Texas with truancy and failure to attend school. In 2014, over 100,000 misdemeanor criminal citations were issued to kids playing hooky. Again, the Council of State Governments did a study and said this isn't working. If the idea is to get kids in school, and threatening them with criminal punishment is supposed to incentivize that, it's not happening. So the legislature is in the throes of discussing whether they're going to make it much harder to charge truants with crimes.

Thirdly, again, the Council of State Governments — I don't know why they like Texas so much — has done a study on where juvenile delinquents are best rehabilitated, in a state detention facility or in their home communities. They've looked at hundreds of thousands of cases and done a huge study showing that overwhelmingly kids are better rehabilitated in programs close to home rather than in some lockup across the state.

We've also had an increase in the number of veterans courts. Because of our appreciation for the unique struggles of veterans returning home, when those struggles lead to nonviolent criminal conduct, they should be rehabilitated if possible. So we have 20 veterans courts around the state whose goal is to try to fully explore rehabilitation before punishment is considered, and there's a lot of success there.

The philosophy throughout is to

look toward rehabilitation for more success in the criminal system, and I think it will continue.

LEVI: Bob, I know you have been concerned about access to the federal courts?

KATZMANN: I'd like to mention one area that I've been very much involved in, specifically access to legal representation for immigrants. When I became a federal judge in 1999, the caseload of the Second Circuit in terms of immigration cases was 2 percent. Within a few years, in the early 2000s, our docket reached 40 percent in immigration cases. It's now down to about 23 percent, which is still substantially more than in the '90s.

I was really struck in case after case by the poor quality of representation for immigrants, and it seemed to me that everybody was suffering because of it, not just the immigrants. By the time the courts of appeal get these cases the die is often cast. One had the sense that if there had been a lawyer at the very outset of proceedings, long before the case had reached us, the outcome might have been different. I also had the sense from talking to government lawyers that their work would benefit if there were good representation on the other side, and of course that's true for the immigration judges as well.

The immigration representation problem is two-fold in this country. More than 40 percent of immigrants in deportation proceedings don't have representation. And in too many of these cases the quality of counsel is substandard. I think this is an area where increased representation, development of new technologies in different languages that could be accessible, is very important.

We've made some strides here in New York: I got together a group of terrific people, the Study Group on Immigrant Representation. Funding was secured for a research project. Sen.

[Daniel] Moynihan, a mentor of mine, used to say you're entitled to your own opinion but not your own facts. So we had the first comprehensive examination of the nature of the immigration representation crisis in New York, and what could be done to meet that crisis; and from this inquiry has resulted a series of activities to provide access to legal representation for noncitizens with worthy claims. I see this as an area where the bar can play a very important role. A recent, exciting innovation is the Immigrant Justice Corps., which is the first program dedicated to training young lawyers and also young college graduates working as paralegals, to provide some measure of representation for noncitizens.

LEVI: How inspirational to spend time with the three of you. You're so thoughtful and such effective, tireless leaders. It makes me proud to know that you are leading such important parts of our judicial system.

HECHT: Thank you.

KATZMANN: I'm honored to have been asked.

CANTIL-SAKAUYE: Well, thank you. I really enjoyed reading your article, David, and hearing this discussion. It makes me feel happy that we're not alone!

LEVI: It's an honor to have the three of you talk these issues over in this first issue of the reborn *Judicature*. Thank you.
