



Submission by **Agewell Foundation USA, Inc.**

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Access to Justice

Older People in USA have had variegated roles in the justice system since the beginning of recorded Western history. The people now leap across centuries to highlight some relevant crime, and the justice system. Due to the dramatic projected growth of the elder population, the number of older people involved in the criminal justice system can be expected to increase, even if crime rates remain the same. Increasingly, older people will constitute a greater proportion of all crime victims, offenders, judges attorneys, witnesses, jurors, and prisoners. Recent statistics indicate that the older people represent the fastest growing age group in the state and the federal prisons.

Access to justice is fundamental human right, particularly critical for the indigent peoples of the world, those who typically depend on support for many of their basic needs (food, housing, heating etc.), and access to justice should be seen as no less fundamental. Furthermore, access to justice without appropriate legal advice puts the claimant at an immediate disadvantage. Access to justice is a vital human right and abuses of that right are a common subject for pro bono older persons.

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly on December 10, 1948 (the “Declaration”) includes several articles that highlight the importance of access to justice.¹ Article 8 of the Declaration states that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” Article 10 of the Declaration states that, “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him.” Accordingly, barriers to a fair and public hearing or to an effective remedy are contrary to human rights as described in the Declaration.

The principle of access to justice for all under international law was further strengthened in 1976 when the International Covenant on Civil and Political Rights (the “Covenant”) entered into force. Article 2 of the Covenant, states that, each party to it will “ensure that any person whose rights or freedom as herein recognized are violated shall have an effective remedy”.

The United Nations Development Program has identified these and other international agreements or declarations as components of a normative framework for access to justice in international law. In addition to these agreements and declarations, there are also various regional human rights systems that have a history of recognizing the right to access justice.

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In many cases, including in the US, direct support for the costs of legal representation is provided only when the relevant individual faces incarceration. Access to justice for those facing the loss of other important civil and economic rights is thus imperiled.

Where access to justice is constrained or the provision of legal aid is limited, the importance of pro bono older persons is obvious. A willingness on the part of each member of the legal profession to do some work without remuneration or reward can do much to fill the access to justice gap in their respective jurisdictions. As stated by the United States Supreme Court, “in a time when the need for legal services among the poor is growing and public funding for such services has not kept pace, lawyers’ ethical obligation to volunteer their time and skills pro bono publico is manifest.”



Older Americans experience of neglect, exploitation, and physical or emotional abuse by older Americans. Elder abuse is a catch-all phrase to describe various types of abuse, neglect or exploitation. Elder abuse is a growing problem in the United States, yet the extent of the problem is not really known.

There seems to be a finite number of law schools offering elder law, although the number may increase slightly from time to time. Although there are a number of specialty courts in existence (family court, domestic violence court, drug court to name a few), there does not seem to be much momentum for the establishment of an elder court division.

Elder law in the United States is truly a growing industry, driven by the increasing population, the growing complexity of the issues, laws and policies, and the interest and recognition of elder law by the attorneys in the United States. The U. S. laws and policies certainly do not hold the only answers to the issues, and much can be learned from collaborations with other attorneys and educators in other countries as we remind ourselves that aging is a global issue. Elder law is not dependent on the existence of public benefits or other programs or any other factors that some commentators say will contribute to the diminishment of it as a practice area.



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