

# Remarks of Dahlia Lithwick on Access to Justice

Benefit for Justice  
National Center for Access to Justice at Fordham Law School  
Nov. 14, 2018

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## Introduction

At 7:30 pm on Wednesday, November 14, 2018, Dahlia Lithwick, Senior Reporter for *Slate* and host of the podcast, *Amicus*, spoke about access to justice and the rule of law to approximately 120 people at the Benefit for Justice hosted by the National Center for Access to Justice at Fordham School of Law in New York City.

## Remarks

I want to thank David. I want to thank the host committee, the amazing honorees tonight, and I just want to thank all of you for including me in NCAJ's Benefit for Justice.

This is truly and has long been a very prized organization to me because I think it's dedicated to notions of justice in the very purist sense.

Now, I cover the Supreme Court. It's true I've been covering the Supreme Court for 20 years. I am still probably the youngest reporter on that beat. The reporters leave the way the Justices do. Toes up. We don't, none of us, ever leave this beat.

For the most part, it's been a pretty conventional beat. I just went and took dictation, and I wrote about the dormant commerce clause, and then I went home and took care of my kids.

After Justice Scalia died, things changed pretty profoundly, pretty quickly, and we saw a raft of really, unprecedented, actions, things I had never seen on the beat.

It started with Merrick Garland being denied. Not even a confirmation hearing, not even courtesy meetings. But, then, Neil Gorsuch. And, then, whatever happened with Brett Kavanaugh, which, I have to tell you, I'm still processing.

And so the question, I think, is: What does the Supreme Court, and the scale at which I cover the Court, have anything to do with NCAJ?

And in some ways there's an attenuated connection. They are both about law, and courts, and rule of law.

But, I think that they both hover around some of the same principles I want to think about with you, tonight. And, that is, the ways in which things that we thought were immutable law, and rule of law, were, in fact, very fragile norms. And that things that, when people put up their hands two years ago and said, “but, but, Merrick Garland, why is there no law?” And, I would just shrug, like, “Cheers,” and say, “Norm.”

Because, I think that a lot of things we thought were carved into stone, are not. Around civility, truth, around, say, being a qualified jurist before you come before the judiciary committee.

But, even crazy, crazy, norms, like we are now having law review grade conversations about whether presidential tweets have the force of law.

These are not norms that we are used to exploring, and certainly norms around whether the president can summarily deny access to a White House reporter, claim that it was because he put his hands on her, and then claim, oh no, that wasn't what happened, it was just other stuff, move on. These are not norms that I am used to covering, as though these are even conversations we are meant to be having.

And so I want to be clear this is not, in my view, a partisan or polemical point.

In my view, if you are in a world where you value the norms that undergird the rule of law, this is a very, very, strange moment when you are literally contending with an executive that says something that isn't true on average 30 times a day.

Which is why George Conway, who the president calls Mr. Kellyanne Conway, and some of the most stalwart conservatives in this country, launched an initiative today to counter the violation of norms, the erosion of rule of law. This shouldn't be a partisan or polemical problem.

And while none of this may seem like it has, immediately, all that much to do with access to justice, there is this massive national circus level at which rule of law and norms are being eroded, and I write about those.

But, like you, I am also a lawyer, and so I think constantly about the importance of access to justice. And, I am concerned when access to justice becomes ever more difficult. Because, as we are starting to see, if it's just a world of fragile norms, then law is really just about power.

And, I think if we have learned one immutable thing in the last few years, it is that power and law, combined, really do undermine what all of us believe to be equal access to justice and the law.

And so, as a lawyer and as a reporter, I am going to urge you to see the through-line between what we are talking about here tonight – access to justice, equal access to the law -- and the work that I do every day trying to think about the erosion of large scale norms and values and

traditions, that are the only thing, as it turns out, that stands between pure power and how we think about law.

And, law is not the same as power. The framers carefully constructed a Constitution, and a Bill of Rights to ensure that the vulnerable did not exist at the whim of the most powerful.

And, so, when a landlord locks somebody out of his or her home. Or, when a creditor takes somebody's life savings. Or, a police department just takes your car. Or, when a government agency terminates your food stamps. Or, when a court imposes fees or fines on somebody who has been charged with having committed a crime . . .

The same principle of rule of law, the same principle of rule of law, the same norms, the same principle of equal justice under the law, come into play.

And, when we see it at a macro level every day, it's easy to say, "Oh, well, I missed it at this micro level." And, yet that is what this organization shines its light upon.

The work of NCAJ is truly about enabling the justice system to work effectively so that landlords cannot change locks without going to court, so the creditor cannot force somebody to defend a case unless proving the creditor owns the debt, so that the government cannot terminate your benefits without accountability.

And, yes, everybody wants justice. We all believe in justice. That's why we went to law school.

But, some people, some institutions, as it turns out, have an awful lot more access to justice, than others.

And, that's where NCAJ's work is most important. The work has been essential always, as I've covered it. But, it is more essential now, than ever, including the Justice Index, which you will hear about, later

And, I think that what I want to tie together for you, tonight, as I close, is that recent, national, large scale, crazy, events – the firing of an attorney general, the threats to destroy the Mueller probe, taking away credentials, calling the press, my colleagues, the enemy of the people – all of those things are deeply connected to the project that is happening here in front of you.

The idea that everybody, everybody, is entitled to equal protection under the law. Everybody is equally accountable to the norms and the rules that we all used to stand for.

When the Senate refused to allow Merrick Garland's nomination even to be heard, that was a violation of those norms and the rule of law.

When Brett Kavanaugh's nomination was approved, without proper vetting, that was a violation of norms and the rules that we have come to hold dear.

When partisan nominees without a trace of judicial or even courtroom experience are advanced to the highest appellate courts of the land, that is the rule of law, the norms of how we vet judges, being eroded.

And, yes, when the attorney general is fired because he followed a law requiring him to recuse from the Mueller investigation, well, that too, is the rule of law, our values, the norms of equal justice, being eroded.

So, I want to close with a note about the importance of truth and facts. And, I say this not just as a journalist, who every single day sets her hair on fire, with the words: “but it’s true; but it’s real; but, it’s a fact; no, really, it happened.”

I want to say it, also, because I am a sandwich of truth telling. I am not just a journalist but also a lawyer. And, truth and facts are the very nuts and bolts of what, we, do, as lawyers. And, we, as lawyers, are uniquely able to understand what happens to the rule of law, when truth and fact are at the disposal of the powerful.

We know that even though you are taught in law school, we were all taught in law school, that you can be a little selective about facts, you can be a little funky about facts, you cannot lie about the facts, you cannot distort the facts, you cannot withhold the facts. And, as lawyers, if we don’t have truth and facts, we don’t have law.

And that is the sand that is slipping away under our feet.

So, Gandhi said, the true measure of any society can be found in how it treats its most vulnerable members. And, of course, of course, there are many ways to measure how we treat the most vulnerable.

But, I want to suggest to you tonight that access to justice, access to truthful facts about justice, has to be paramount, among the measures of how we treat our most vulnerable.

The concept that the poor can enforce their own rights against the powerful.

The concept that promises that all of us, from the weak to the strong, will be equal under the law.

Without access to justice, without the facts that are the lever to gain access to justice, there can be no rule of law.

And, in a world, right now, at this moment, when news is called fake, when alternative facts are trotted out, when videos are shown that involve crazy karate chops of despair that never, ever, happened.

And in which people with power dominate the accounts of what is truth, and what is factual.

We look to NCAJ for leadership to insist on fact, to insist on what is true, to demand justice, and to expand the notion of justice, and to improve the world, even as it seems to be shrinking in upon itself.

And so, as lawyers, as Americans, as friends, and as true champions, all of you, of the rule of law, of the norms of truth and civility that, I think, undergird everything we do and think about.

I thank you for all the work that you do, to improve this world, to improve truth, to improve norms and civility, and to improve justice and access to justice in your job, in your side jobs, in the ways you raise up your children.

I want to thank you for being here with us tonight, and for including me in this celebration tonight. And, I support the work you all do to make the world more equitable, more just, and more rooted in truth.

[Transcription ends, 15.40 min]