



# 'EQUAL JUSTICE UNDER LAW': THE ROLE OF THE PRO BONO LAWYER

By Dick Thornburgh

**T**he aspiration emblazoned upon the façade of the U.S. Supreme Court — “EQUAL JUSTICE UNDER LAW” — cannot be achieved in a society that does not provide competent counsel to all who require it. Those in need cannot be left to sink or swim in an increasingly complex legal environment. We can be proud of the steps taken over the years by the legal profession to meet their needs.

It hasn't always been so. Fifty years ago, when I first commenced the practice of law, counsel for indigent persons was provided on a more or less hit-or-miss

basis. Various legal aid mechanisms, often funded through the local Community Chest or United Way, were available on a limited basis and bar committees tried to take up the slack where possible. In Allegheny County, where I practiced, I chaired the bar's public service committee, which worked with the courts to supply lawyers in criminal cases and provide referrals in civil cases from a roster of willing volunteers, but all on an ad hoc basis.

That all changed in the 1960s. The landmark case *Gideon v. Wainwright* established a constitutional right to a lawyer in serious criminal cases. This led in turn



those lawyers from the private bar who have added value to the work of publicly funded legal services organizations through their volunteer activities.

Today we face severe problems in the legal services area. Indeed, true crises exist in many communities. Let me share with you some statistics compiled by the Legal Services Corporation (LSC), the umbrella agency and largest single funder in this field, from its 134 programs across the United States:

- The number of people eligible for civil legal assistance is soon expected to reach nearly 66 million, an all-time high.
- The sharp rise in economic turbulence has been coupled with a shrinking pie of appropriations as federal support has been reduced 17 percent since 2010 to just \$348 million in 2012, an inflation-adjusted all-time low.
- Legal aid offices have been closed, staff has been laid off and more people have been turned away as fortunes declined. Nearly 1,500 positions are projected to have been eliminated from LSC-funded programs, a more than 15 percent reduction, and these programs have been obliged to turn away more than 50 percent of those seeking aid.

Last year LSC created a Pro Bono Task Force to assess how the effectiveness of its programs might be enhanced by more private-sector participation. Among its recommendations:

- LSC should assume a role as an information clearinghouse and source of coordination and technical assistance to participants, with an emphasis on developing a strong pro bono culture.
- LSC should review its private attorney involvement regulations, which allot 12.5 percent of its budget to pro bono efforts, to make them more flexible.
- A major public relations effort should be undertaken to emphasize the importance of legal services and its pro bono constituent in order to develop more public support for these programs.



- LSC should work with law schools and law firms to create legal services fellowships for recent graduates such as the Pennsylvania Legal Aid Network's Martin Luther King Jr. Fellowship Program.

Incidentally, on a personal note, I can tell you how important this latter effort can be. At my law school alma mater, the University of Pittsburgh School of Law, we established a modest recognition program some years ago for graduates entering into public service. It became increasingly apparent that a number of those applying had extended experience as students with legal aid and defender organizations and many were going into these fields following their departure from law school. We had not initially defined legal service as public, i.e., government, service but have now created a second award for legal services to recognize further the worth of such careers.

In addition, the LSC Pro Bono Task Force seeks the aid of bar leaders and the judiciary to recruit new pro bono lawyers into service as well as to amend rules of practice to provide, among other things,

more CLE credit for pro bono work in much the same vein as ethics requirements have been added to this regimen. Some seven states have already undertaken this kind of requirement and it is an area of substantial promise, in my view. Of further note is the recent requirement promulgated by Chief Judge Jonathan Lippman of the New York Court of Appeals that law students perform 50 hours of pro bono legal services under the supervision of an experienced lawyer as a condition of their admission to the state bar.

All of this is designed to further the fulfillment of Judge Learned Hand's timeless admonition: "Thou shalt not ration justice." For this is what we do when we fail to provide legal counsel to those who cannot afford to hire a lawyer — we ration justice so that only those who can pay receive the benefit of "Equal Justice Under Law" that our Supreme Court has set as a goal for all our citizens.

We can surely do better. In my view, the findings and recommendations of the LSC Pro Bono Task Force have set manageable goals and a clear path to fulfilling the aspiration toward equality and fairness that has characterized this nation since its inception. I hope we can welcome all lawyers and others across the nation to this effort. ♦



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This article was adapted from remarks presented to the Berks County Bar Association in Reading last fall.

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