



Court Access Should Not Be Rationed

Defined Right to Counsel in Civil Cases is an Issue Whose Time Has Come

Michael S. Greco

Imagine facing a serious legal problem—an eviction proceeding, a child custody dispute, or a life-and-death health issue—without the assistance of counsel. Countless lower-income Americans face such situations every day without legal help.

Numerous reliable studies at the national and state levels have documented that 70 percent to 80 percent of the civil legal needs of poor people go unaddressed year after year. And a recent study by the Legal Services Corp. found that half of all people seeking legal assistance from LSC-funded programs are turned away because of a lack of resources. The legal needs of the victims of Hurricane Katrina and Hurricane Rita are now compounding the legal aid crisis in the U.S. It is a source of shame and simply unacceptable that in the wealthiest nation on earth, we have failed to make good on the promise of equal justice and equal access to justice for all.

In order to address this situation, I have appointed the ABA Task Force on Access to Civil Justice. The task force is chaired by Howard H. Dana, Jr., associate justice of the Maine Supreme Judicial Court and a former member of the board of directors of the Legal Services Corp. The task force members include highly respected and dedicated lawyers and judges from throughout America.

I have asked the task force to help support and expand the network of state Access to Justice commissions that the ABA helped inaugurate several years ago. These commissions, which are in place or planned in 25 states, are helping to build the

capacity of state and local legal services programs, expand pro bono efforts, make the courts more accessible to self-represented litigants, and improve cooperation among entities that serve the legal needs of the poor.

And these commissions are showing very encouraging results.

Taking *Gideon* Further

Equally important, I have asked the task force to consider another idea whose time has come: the issue of a defined right to counsel in certain serious civil matters, such as those that threaten the integrity of one's family, shelter, or health.

In its landmark 1962 decision in *Gideon v Wainwright*, the U.S. Supreme Court recognized that under our Constitution, an indigent criminal defendant must be provided a lawyer before he or she may be imprisoned behind bars of steel. But 43 years after *Gideon*, we have not yet recognized such a right for poor people facing equally serious civil legal problems that can imprison them just as surely in poverty and despair.

No one in our nation should have to go to court unassisted when facing a problem that could result in loss of shelter, family dissolution, or serious adverse health consequences. Americans should not be subject to grievous harm at the hands of a legal system that they cannot navigate or even understand on their own.

If we are to meet the goal of equal justice for all, such critically important legal assistance cannot be rationed by the teaspoonful. Nor should it be subject to long waiting lists, limited capacity, and narrow legal aid priority lists that increasingly are based on a triage approach.

The importance of ensuring access to legal services and to justice for the most vulnerable in a democratic society cannot be over-

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stated. The ability of an individual to address civil legal needs with the help of a lawyer can make the difference between stability and poverty, between hope and despair.

I encourage all members of the ABA to follow the work of the Task Force on Access to Civil Justice, and to become engaged in a national dialogue on the idea of a right to counsel in serious civil matters. The legal aid crisis in the U.S. cannot be solved in one year, or even two or three, but it is critically important that we finally commit to doing something about it.

Above the doors to the Supreme Court Building are etched the words "equal justice under law." That eloquent statement, in this bountiful land full of hope and promise, today is hollow rhetoric to far too many in our society. It is our obligation, yours and mine, to give life to those words. ♦

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