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Are the Doors to the Courthouse Really Open?

We are in bondage to the law so that we may be free.

—Marcus Tullius Cicero, c.60 B.C.

The 4th of July holiday naturally brings to mind sentiments of patriotism and pride in the principles upon which our country was founded. This is perhaps even more so this year as we witness daily news reports of the continuing efforts of the coalition to establish peace, democracy, and the Rule of Law in Iraq. The recently televised arraignment of former Iraqi President Saddam Hussein brought into dramatic focus the stark contrast between the brutal dictatorship imposed upon that nation under his regime and the beginnings of what hopefully will be an effective judicial system under the new government.

Although many of his surviving victims might very well prefer quick, rough justice insofar as Hussein and his accomplices are concerned, they have instead been afforded protective custody, legal counsel for their defense, and judicial scrutiny of their alleged crimes. Thus, even such reviled, accused war criminals will now be allowed their day in court. It is tragically ironic that Hussein so arrogantly took for granted the rights bestowed upon him in light of the blatant de-

nial of such rights to the people he so mercilessly ruled for many years.

Pause for a moment to contemplate how the disenfranchised common people of Iraq, especially the poor and impoverished majority, would have fared had they sought civil justice under the Hussein dictatorship as it existed before his defeat. Is there any question that they had no fair and impartial judicial recourse for redressment of their legal problems? If asked to compare that system to our own, most Americans might simply respond that there is no basis for comparison in America where everyone has access to justice in our legal system. But is that really the case?

You may find it as troubling as I have to learn that only an estimated one in five eligible individuals nationwide is receiving legal assistance when faced with a civil legal problem. Thus, while more than 43 million poor people in this country are currently eligible for funded assistance, they are served by fewer than 3,700 LSC-funded legal services attorneys nationwide.¹

The situation is equally disturbing in our own state. In Michigan, while there is approximately one attorney for every 319 citizens² there are more than 7,000 eligible poor for each one of our legal aid attorneys.³ Moreover, according to our best estimates, more than 80 percent of the civil legal needs of the poor remain unmet.

Unlike the criminal defense system in the United States, there is no constitutional guarantee that funding will be provided, in any amount, for poor people with civil legal needs. The cases handled by nonprofit legal aid programs cannot include fee-generating cases, such as product liability lawsuits, that private attorneys can accept on a contingency basis. The types of problems facing the impoverished are much the same as paying clients and can include issues such as family violence, domestic and child custody disputes, access to medical care, housing matters, financial and employment issues to name a few. Unfortunately, thousands of these individuals are effectively barred from the judicial system because they have insufficient funds to otherwise afford legal services, and there are simply not enough legal aid attorneys to handle their critical problems.

To complicate matters, during the last decade, funding for legal aid programs diminished significantly.⁴ This is perhaps not surprising in light of market conditions and the resulting impact upon governmental budgets, but the legal needs of the poor have not disappeared, they are for the most part merely unaddressed. As most of our members should now be aware, it was with this unacceptable predicament in mind that State Bar past Presidents Hon. Victoria A. Roberts and Hon. Alfred M. Butzbaugh led the Association to

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develop and implement our Access to Justice Campaign. Their concern that the doors to the courthouse, and thus our justice system, were effectively closed to the impoverished became the motivating force for what has since become a nationally recognized and a very successful program for raising funds to support nonprofit civil legal aid services for low-income families and individuals in Michigan.

I have been very proud not only to have been involved in the ATJ Campaign and Program during its development, but also sincerely appreciate the strong commitment and support shown by so many law firms, attorneys, and judges since the program's inception. Through the concerted efforts of ATJ lawyer volunteers throughout the state, we have so far received almost \$4.5 million in donations, pledges, and planned gifts through the Campaign. By virtue of my travels as President of the State Bar this past year, I have also come to appreciate the fact that many of our members also contribute their time and effort in handling pro bono cases for persons in need who might otherwise be unrepresented. Unfortunately, we are aware that only approximately 10 percent of our members have actually made donations to the Access to Justice Campaign. That is a discouraging percentage and an impediment to our increasing efforts to expand the list of contributors to this vitally important effort to the corporate and non-lawyer community.⁵

As much as I can empathize with the fact that our respective individual efforts and our valuable time must necessarily be expended in representing our paying clients and earning a living for the support of our own families, I would nevertheless urge each and every member of the State Bar who has not yet contributed to consider setting aside an annual contribution to the Access to Justice program. If the more than 31,000 active members of the State Bar residing in Michigan would do so, we would be able to raise over \$9 million per year in legal aid support for the poor, all at a comparatively minimal personal sacrifice.⁶ In considering your contribution, it may help to learn that the dollars that you may give can be returned to your own community even though the donation is directed to ATJ. My own firm members and I have contributed to the program

To contribute to the Access to Justice Fund visit www.michbar.org/programs/justiceinitiatives.cfm or call (517) 346-6300 or (800) 968-1442.

each year and we use the ATJ forms to re-direct all contributions back to the legal aid offices here in Grand Rapids. Whether you wish to direct your donation to your own community, or your preference is to focus on other areas in Michigan with more significant needs, I hope that you will consider making your own contribution to the Access to Justice fund.

On behalf of the State Bar I want to thank the thousands of lawyers who have already contributed their money and time to this worthwhile endeavor by our profession. This is a very meaningful way in which we can all give back to the public that we serve, and especially those most in need of our services. When our time is seemingly more and more at a premium, there can perhaps be no more deserving recipient of our charitable contribution than ATJ. Considering who we are and what we do, the following comment from U.S. Supreme Court Justice Lewis Powell, Jr. is especially pertinent:

Equal justice under law is not merely a caption on the façade of the Supreme Court. It is perhaps the most inspiring ideal of our society. It is

one of the ends for which our entire legal system exists... Also it is fundamental that justice should be the same, in substance and availability, without regard to economic status.⁷ ♦

FOOTNOTES

1. Report of Legal Services Corporation President Helaine M. Barnett to the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, April 2004. "Eligibility," is based upon standards for qualifying for LSC-funded legal assistance.
2. According to the Michigan 2000 Census, there were 9,938,444 residents of this state. As of April 2004, there were 31,117 lawyer members of the State Bar residing in Michigan.
3. Michigan residents at or below 125 percent of the poverty level are eligible to receive free legal assistance from a legal aid provider. As of 2000, 1,385,398 persons in Michigan were at 125 percent of the poverty level. For example, in 2004, a family of three with a total annual income of just \$19,588 would be eligible for free assistance from a legal aid agency. Data was accumulated by State Bar staff.
4. In recent years, legal aid programs in Michigan have faced a \$2 million decrease in LSC funding due to changes in the U.S. Census and a significant decrease in IOLTA revenue [down approximately 50 percent from the high] due to historically low interest rates. Many programs do not receive LSC funding and are completely dependent on local and state funding. Of the 41 entities eligible to benefit from ATJ fund donations, only eight receive some LSC funding. Source: Michigan State Bar Foundation.
5. Over the past few years a concerted effort spearheaded by immediate past President Reginald Turner in Southeast Michigan has been quite successful in eliciting substantial corporate contributions to the Access to Justice Campaign. This fall we intend to hopefully duplicate that effort in the Grand Rapids area.
6. An annual donation of \$300 would amount to approximately 82 cents per day per lawyer.
7. Address to the ABA Legal Services Program, ABA annual meeting, August 10, 1976.