

# Uncivil Justice

From its earliest days, the law has been rooted in the idea of serving the greater good in society. In the first code of law written 3,700 years ago, Hammurabi noted that the purpose of the law is to protect the powerless from the powerful. That purpose is central to the American justice system, which promises “equal justice under the law” to all people. This maxim is so fundamental to our system that it is etched in marble over the entry to the Supreme Court building in Washington.

But in order for the law to provide equal justice to all, all people must have equal access to the legal expertise that only a lawyer can offer. Although our courts promise equal justice, unequal access to legal assistance by indigent persons, especially in civil cases, frequently means that an indigent person receives no justice at all.

Despite the best, and magnificent, efforts of America’s legal services and volunteer pro bono lawyers, low-income litigants continue

to lack adequate—let alone equal—access to counsel. Annually, seventy to eighty percent of the civil legal needs of the poor go unmet, leaving them to fend for themselves in a complicated legal system that is nearly impossible to navigate without a lawyer. Far from providing equal justice under the law, our legal system puts litigants who cannot afford a lawyer at a severe disadvantage compared to adversaries who can pay for legal representation.

Recognizing this problem, the Supreme Court in *Gideon v. Wainwright* ruled that the U.S. Constitution mandates that an indigent defendant be provided a lawyer in criminal cases. Although much still must be done to improve delivery of effective criminal defense to the poor, *Gideon* was an important first step in providing equal access to justice for all in America.

While *Gideon* seeks to protect the poor criminal defendant from wrongful imprisonment behind walls of stone and steel, it does not protect a poor person in civil disputes, which can imprison that person just as surely in poverty and discrimination. Every day, low income litigants appear in court without a lawyer in serious civil matters. Although many of these disputes

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involve rights protected by law and require understanding of the law, poor litigants have no recognized right to counsel in civil cases.

During my tenure as ABA President I am calling on all lawyers of America to join in a renaissance of idealism in the legal profession—to reinvigorate the public service mission that has defined the legal profession from the start of our nation. I have appointed a Presidential Commission to help achieve such a renaissance in public service by lawyers.

Related to this effort, I have also appointed the ABA Task Force on Access to Justice to expand access to justice for the poor, the disadvantaged and the vulnerable in America. I have also asked the Task Force to consider an important idea that merits discussion: the establishment of a right to counsel for indigent persons in certain seri-



ous civil matters, for example, those in which the integrity of family, housing, or health is at stake.

The United States lags far behind most of its peer nations in providing the poor with legal counsel in civil cases. Countries such as the Netherlands, Italy and South Africa, among many others, have long recognized access to counsel in civil cases as a constitutional right. Germany spends more than two and a half times more per capita than does the United States on civil legal services for the poor, and England spends ten times more. And instead of increasing funding for

civil legal services to those of limited means in the United States, funding continues to be reduced. Our bountiful nation can and must do more to help the poor among us obtain justice.

If we do not provide equal access to justice to everyone in our country in civil matters, we send the message that our system of justice is the province not of all, but of the privileged few. That is not what America stands for.

If we are to keep the eloquent promise of equal justice under the law for all, we must give true meaning to humanity’s earliest principle of the law: to protect the powerless from the powerful. ■

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