

EQUAL JUSTICE FOR ALL?



MARTIN AVILLEZ

BY WALTER TRUMBULL

"The vibrancy of our Democracy depends upon our willingness to ensure that the fullest range of voices and interests are represented and heard. This is what justice is all about."

~ROBERT F. UTTER, RETIRED JUSTICE,
WASHINGTON STATE SUPREME COURT

The answer to this question for most of us is as challenging as the question itself. The question is, does our system and practice of justice in America today really mean equal justice for all? This system that struggles now more than ever to administer the greater promise of its purpose, needs our undivided attention.

The idea that there is "equal justice" in America today is one which seems to depend greatly upon one's ability to access the system. Can there be justice for all of us, even if we can't even determine what our rights in any situation are? If you needed legal help today, to ask a question on a simple matter, what would you do? Your right to equal justice is too often determined by your ability to afford the "right" to access. Freedom and justice, at a price. A price which few can well afford.

It should then come as no surprise that with today's present political and economic dilemma, the very idea and act of justice in our society has fallen prey to profit and power, politics and partisanship. Can we ensure the right to counsel for the poor, the working poor (the middle class), and the rich? The system absolutely serves the rich, it always has. The poorest members of our society are also served through the indigent defense counsel, though by no means as effectively and as justly as those able to afford \$200.00 to \$500.00 an hour for representation. Of course, even this 'basic' tool, the indigent defense counsel protection, is now under serious attack. What about the rest of us, the nearly 80% of Americans who struggle to provide for ourselves and for our families? What access to 'equal justice' are we guaranteed by the Constitution? Only that which we can afford?

In regards to indigent defense counsel, it has certainly been a long hard fight for this basic right. The foundation of this right was set forth in *Webb v. Baird* (6 Ind. 13), the Indiana Supreme Court decision in 1853. It recognized the right to an attorney at public expense for an indigent person accused of a crime, grounded in "the principles of a civilized society," not in constitutional or statutory law. A civilized society? There's an idea worth consideration. Perhaps this idea was in the minds of those who gave this new nation a dream of freedom for all. Today, however, we now see our own state judiciary attempting to 'cut the throat' of the right to counsel for the poor. This combined with a similar movement in other states will leave the rich, alone in the land of the free, with justice.

The Indiana Supreme Court decision 150 years ago sent a message which compels us to remember this one idea: "It is not to be thought of in a civilized community for a moment that any citizen put in jeopardy of life or liberty should be debarred of counsel because he is too poor to employ such aid. No court

could be expected to respect itself to sit and hear such a trial. The defense of the poor in such cases is a duty which will at once be conceded as essential to the accused, to the court and to the public."

The Sixth Amendment to the United States Constitution states: "In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense." Yet it was not until 1914 that the first public counsel appeared in Los Angeles.

The unfortunate reality is that throughout most of the 20th century little really happened to further protect the rights of the poor, no less the rights of all working class Americans. The U.S. Supreme Court has moved at a relatively unimpressive rate in pursuit of this essential right. It was not until major decisions such as *Gideon v. Wainwright* and later *Argersinger v. Hamlin*, that further and more expanded rights were given to the poor in both criminal and misdemeanor state proceedings.

But serious problems remain. As the Justice Department discovered in a report conducted three years ago in 2000. In the report, *Improving Criminal Justice Systems Through Expanded Strategies & Innovative Collaborations*, the overall problem is summed up thusly: "Standards are frequently not implemented, organizational structures are weak, workloads are high, and funding has not kept pace with other components of the criminal justice system. The effects can be severe, including legal representation of such low quality to amount to no representation at all, delays, over-turned convictions, and convictions of the innocent. Ultimately, as Attorney General Janet Reno states, the lack of competent, vigorous legal representation for indigent defendants calls into question the legitimacy of criminal convictions and the integrity of the criminal justice system as a whole."

The obvious result of the above study can be seen through the conclusions of the recent National Legal Aid Defenders Association (NLADA) report on the 40th anniversary of *Gideon v. Wainwright*:

~No counsel at all: The dirty little secret of the criminal justice system is how many people accused of a crime receive no counsel at all.

~Excessive caseloads: With the present limit of 150 cases per year, many Public Defenders are carrying anywhere from 500 to 1,500 cases per year, severely limiting the quality of services.

~Lack of enforceable standards: More cases are being decided based not on the facts in their cases, but rather the jurisdiction. There is much work to be done to establish a system that the American Bar Association (ABA) itself uses, *The Ten Principles of Public Defense Delivery System*.

~Underfunding: The big issue. The government typically spends three times as much on prosecution than on public defense. Limited funding again diminishes the resources and training needed to adequately ensure justice.

~Lack of independence: National standards provide that defense should be independent from political pressures. The ability that the public defender has should be equal to that by which attorneys for those who can afford it have.

The problem we are now facing must be addressed by each of us. According to the National Council for Consumers of Legal Services, you are three times more likely to be named as a defendant in a civil or criminal suit that you are to spend one night in a hospital bed. We are all driven by another unfortunate system, the managed health care industry, to fork over thousands of dollars a year out of our own pockets, no matter how you look at it. This system barely manages to provide adequate and reliable health care for the majority of middle class workers. Of course again, if you are well off you can afford the best health care available. The medical insurance industry, as it was born of a need to attract more workers at the onset of World War 2, offered to them as a benefit, has now become a multi-trillion dollar industry. Do any of us believe we are getting the care we deserve? Where are these trillions going?

Likewise, we see huge profits in the automobile and life insurance industries. Industries which rely upon the threat of an accident to protect our future. What happens when your health, auto or other insurance carrier refuses a claim? What happened to your protection; what happened to your 'insurance'? They have \$500 an hour attorneys on their side to prevent any justice when we cry foul at their mistakes or purposeful neglect and manipulation. They are certain you will not be calling your attorney, as you more than likely cannot afford to retain one.

The larger and more problematic issue is the overburdened court system. One where almost half the cases could be settled out of the courtroom, giving public defenders and their limited resources a greater ability to provide the truly poor with the protection they deserve. We are a very litigious society here in the U.S.; many cases which are absolutely frivolous could be kept out of the system entirely if most people would handle their potential legal problems early on. But when you do not have the

financial resources to call a qualified attorney and get sound advice, you either just hope the problem goes away or you become a statistic. Driving the apparent failure of our justice system to even greater failures, we become the fuel for its demise. Is this the best we can do for ourselves? I know we can do better.

Another issue which the studies do not show is the fact that so many of us are at times being harassed and threatened with 'legal action'. Banks and credit card companies continually rewrite their software to return the highest yield on marginal credit risk customers. We are increasingly being profiled and rated, placed in further financial stress as a result of how many large financial institutions exchange and decipher our credit worthiness. We are left to fight our own fights with manufacturers who refuse to honor warranties, businesses that provide us unsatisfactory service and creditors who will stop at nothing to beat us into submission with the threat of legal action. Did I mention the biggest creditor (rhymes with 'predator') of all, the IRS? Tough to protect yourself from their ever-frightening tactics.

Many of us also experience difficulties on the job. Issues that have dangerous legal ramifications, issues that could threaten our employment. Employee rights are also under a continual threat of being minimized by micro-managing number crunches and HR Managers pressured by upper management to keep employees 'under control'. We can look everywhere in our daily lives and see how the growing number of small issues which occupy more and more of our time and energy, are exacting a higher and higher price. An industry survey suggests employees with legal problems at home are four times more likely to take a sick or personal day; that they use their medical insurance three times more often; and experience a measurable decrease in job performance.

Is there a solution? The National Association of Social Workers annual report shows clearly that although there is some availability of *pro bono* and legal aid work, there needs to be a way low and middle income citizens can get better legal services at reasonable cost. They see this as the biggest problem they face in assisting people with their problems. Of the few possible solutions, they see a definite benefit in the rise of pre-paid legal service plans. What is a pre-paid legal plan?

In 1972 a school teacher who had been in an automobile accident that was not his fault spent all of his savings defending himself in court. He believed there had to be a way for average working Americans to protect their rights and not be financially destroyed by an event they were not responsible for. The affair led this visionary man to establish a company that offered employees a benefit plan, providing legal help for anyone involved in an accident, on the job or in their personal driving.

From that beginning the solution to our present legal problems began to form. Today, 1.4 million American families, individuals and businesses have a legal services protection plan through this company. After 31 years, this legal plan offers a comprehensive list of benefits and coverage to protect every member. Remember this little fact: 80% of Europeans have some form of pre-paid legal service plan. They have for almost 50 years.

The legal service plan I believe can help everyone be proactive and not victimized by our legal system is one that I joined six months ago. It has truly protected me and actually paid for itself. How about that as a solution? You gain access to top quality lawyers and law firms for less than the price of a cup of coffee a day. Another good reason to drink tea.

Here's how it works:

You call a toll free number and tell the legal representative your problem. An attorney specializing in that field (one of 226 fields of law) calls you back to discuss your question or problem. The attorney will research your problem, and if a phone call or letter will help, will make the call or write the letter on your behalf.

If you or your spouse are named in a criminal or civil suit, you will receive up to 75 hours of trial defense benefits your first year, which also covers you on the job. If you or anyone in your family is cited for a moving violation, the provider law firm will advise you and represent you in court if necessary, as well as assist in other DMV issues. You will always receive at least 25% off any other legal services not covered. You can never be canceled and there is no contract. You, your spouse and children are covered not only in Oregon, but in every state in the U.S. and Canada.

Can you imagine how much easier life would be for all of us if we were able to truly have "justice for all." The peace of mind of knowing you are protected, your rights guarded, and you have the power that the rich have in our legal system.

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