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REMEMBER THE INDIGENT: The View From Outside the Tower

*Michael A. Mogill**

It has been more than 200 years since Abigail Adams penned a letter to her husband, John, then a delegate to the Constitutional Convention and later to serve as our second President, urging that he and his fellow delegates “remember the ladies” in their drafting of the Constitution. Many would contend that her plea fell upon deaf ears, unanswered until the Constitution much later was amended to include guarantees of the equal protection of the laws and the right to vote regardless of gender. I was reminded of Abigail Adams’ words during my recent sabbatical, which I chose to spend as a volunteer at the Carlisle Office of Legal Services, Inc.

Shortly before I began my sabbatical, I had attended my childrens’ school one morning and been prompted to remember that ours is a system in which we pledge “liberty and justice for all.” That pledge, along with the implorings of Abigail Adams, remained in my mind during my tenure with Legal Services. The nature of my work at the Legal Services office was not entirely new to me, given my prior years spent in public service. Though no longer a “rookie,” my work with the indigent in cases ranging from landlord-tenant to consumer to unemployment compensation to domestic matters awakened memories of the piercing needs of the low-income population and their dearth of legal representation.

It is my goal to direct this message to all alumni, those newly graduated and those seasoned in the law. The message itself is rather simple, to inform about the important nature of the work needed to assure that there

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is “justice for all.” In doing so, I have in mind both educational debts as well as the pressures of bar exams and job searches. I also know the benefits of the degree which you have received and the opportunities that await to help those less fortunate. I do not mean to lecture from the “temple” of the Model Rules and their view that “a lawyer should aspire to render at least 50 hours of pro bono public legal services per year” to those with limited means. While you have already received instruction in our professional code, it may be more compelling to note that only about ten percent of law schools require any pro bono service by students and only a handful impose specific requirements on faculty. Instead, I will focus on the importance of representing the indigent to the clients, to the bar, and to ourselves.

One of my first recollections during my sabbatical was how Legal Services offices are hopelessly understaffed. Years of funding cutbacks have led to reductions in staff, restrictions on the types of cases handled, and the inability to handle numerous cases even with the advent of referral panels. Indeed, studies have indicated that four out of every five legal needs of the poor are not met. We live in a complicated society, one that is designed by and for lawyers; the presence of lawyers is necessary to assure the justice system works for all, regardless of their personal means.

However, as Derek Bok has reminded us, there is now too much law for the wealthy and too little for the poor. We should not want the very fact of “poverty” to decide cases, yet for those who are unrepresented this is a fact of life because they fare far worse in our system of laws. We should not want people to go unrepresented, because problems can fester if unresolved within a system of social order and become even costlier concerns to society. These problems are particularly acute among the poor, who also typically lack the education and experience necessary to effectively represent themselves. Yes, it is the indigent who personally suffer from the lack of representation—without significant pro bono work, we ultimately must ration justice.

Yet, it is not only the indigent who languish from the denial of access to legal services—the bar itself also loses in our system of insufficient representation. As attorneys, we are the “gatekeepers of justice”; in that position, we must acknowledge that people need to address their grievances in an orderly and competent manner within the legal system we have created. Such procedures serve to eliminate chaos and to establish a degree of order that is central to both the rule of law and the legitimacy of the government.

It is no great secret that the legal profession is perpetually condemned to suffer the indignity of “lawyer jokes” and the disrespect of a significant portion of the populace. Estimates show that the average time spent on pro bono work by our profession is less than one-half hour per week; moreover, only ten to twenty percent of those who perform significant pro

bono work do so on behalf of low-income clients. Admittedly, the bar has worked to fill the gap created by the downsizing of legal services programs through special grants, judicare programs, and referral panels. Yet, as legal services cutbacks have increased, there has been an actual drop in the number of attorneys offering pro bono services. This decline is made all the more precipitous by the current legal challenge to the interest on lawyer trust accounts (IOLTA) funding which has served to augment precious legal services funding over the past several years.

An increased effort to improve pro bono contributions will improve the public standing of attorneys. Indeed, a survey by law school deans has revealed that such activity generates important good will with both alumni and the general public. By showing that we care, we send a message to the public. As we serve the community, we serve our profession and society, thereby providing access to the legal system. Ultimately we will be able to deliver not only the legal services needed by the indigent, but also the important message that justice is available without regard to one's economic status.

Nor should we forget that pro bono work is important to our own development as professionals and, dare I say it, as human beings. Pro bono work provides the benefit of gaining experience in practice. These opportunities can range from actual trial experience to professional contacts to involvement with community groups and charitable organizations. There is growth in bettering our problem-solving skills and expanding our perspectives, as well as the possible residual effect of enhancing our reputations. By providing representation to those with lesser means, we can give them renewed hope in the system—after all, some access to representation is better than the current alternative. And, yes, it can “feel good” to believe that one has really made a difference by giving of one's time in a selfless manner to those in need, thus lending a comforting purpose and meaning to our professional lives. There are times when we all—practitioner, business person, or academic—encounter staleness or burnout in our careers. Yet, whether novice or veteran, we all have it within ourselves to provide the means to sensitize ourselves while serving the “have nots” of society. These individual commitments will provide an inspiration for others, and we can take solace in doing something of value for both the indigent client and the system in which we practice.

On a more personal level, I proudly acknowledge that my own days of practice included a significant amount of pro bono work for the indigent and that I appreciated the opportunity to volunteer with Legal Services. I realize that this was a “choice,” which is something we all are given—after all, even the language in the Model Rules remains aspirational, not mandatory. At best, I can only encourage each of you to give of yourselves and become a problem solver for those in need, thus enjoying the fruits of

your labors in a very meaningful way. By doing so, we can renew our commitment to procedural fairness and to social justice, perhaps planting the seeds for constructive societal change. Let us serve the unrepresented, our profession and ourselves—let us remember the indigent.