

## 2002 Judge Edward R. Finch Law Day Speech Awards Winner

**3<sup>rd</sup> Place**

**Deborah G. Hankinson**

**Justice**

**Texas Supreme Court**

### **Assuring Equal Justice for All**

Every year since 1958, when President Dwight D. Eisenhower established Law Day, we have commemorated this day by celebrating our American heritage of liberty, justice and equality under the law.

On this Law Day 2002, I am here to talk with you about strengthening our commitment to its theme: "Assuring Equal Justice for All." This phrase marks a fundamental pledge we give as attorneys to the society we serve and to the individuals whose rights we are committed to protect.

Yet, former Harvard University president Derek Bok has summed up the current state of our legal system in his aphorism: "There is too much law for the rich, and too little law for the poor."

I submit to you that a responsive and responsible justice system should not and cannot deprive or even discourage, poor people from seeking help for serious legal problems; in other words, the rule of law must be available to us all. As associate justice Lewis Powell once said: "Equal justice under law is not just a caption on the façade of the Supreme Court Building. It is perhaps the most inspiring ideal of our society...It is fundamental that justice should be the same, in substance and in availability, without regard to economic status."

For this reason, I believe that we cannot "assure equal justice for all" without assuring "access to justice for all."

As attorneys, our professional obligation to provide access to justice was recognized as early as 1836. In his treatise, *A Course of Legal Study, Addressed to Students and the Profession Generally*, David Hoffman recognized an American lawyer's duty to provide legal services to the poor as one of fifty resolutions regarding the department of the legal profession: "To my clients I will be faithful; and in their causes, zealous and industrious. Those who can afford to compensate me, must do so; but I shall never close my heart, because my client's means are low. Those who have none, and who have just causes, are, of all others, the best entitled to sue, or be defended; and they shall receive a due portion of my service cheerfully given."

Today, section 6 of the Texas Disciplinary Rules of Professional Conduct provides: "Every lawyer, regardless of professional prominence or professional work load, should

find time to participate in or otherwise support the provision of legal services to the disadvantaged. The provision of free legal services to those unable to pay reasonable fees is a moral obligation of each lawyer as well as the profession generally.” The ABA’s Model Code of Professional Responsibility echoes this principle.

I wish I could tell you that as an attorney I have done my part. That as a practicing attorney, I met the State Bar aspirational goal of fifty hours of service per year. Or that I made financial contributions to help fund legal services. But I did not. It was not until several years after I began my judicial service that I faced my responsibility.

And then, not quite two and half years ago, I sat with the Supreme Court of Texas in a hearing on the status of civil legal services for the poor in Texas. The Court took written submissions and for over seven hours heard testimony from many interested and dedicated people. Speaker after speaker articulated the need for more funding and more attorney involvement, each presenting a variety of ideas. But no one contended that this problem belongs only to attorneys and that only attorneys can solve it.

I was persuaded that day in January 2000, and am now even more convinced, that the present need for legal services by the poor reflects a failure of our social structure. If the need is to be met and our goal of equal justice for all is to be realized, then the legislature, other governmental bodies, the courts, the bar, and society as a whole must acknowledge the problem and work together. And our profession must lead the effort.

This new perspective has guided our efforts in Texas over the last two and one-half years. We have created the Texas Access to Justice Commission to confront the pressing civil needs of indigent Texans. The Commission is designed to involve all who can help in meeting those needs, including the entire legal profession as well as other disciplines and citizen groups with a stake in the issue, and to raise the commitment to provide access to justice to a higher level. Through the Texas Access to Justice Commission, we are assessing needs, identifying new approaches to meeting those needs, and searching for new money - and more of it, of course.

But make no mistake, the situation was urgent then, and is still urgent now.

Listen to the needs in human terms for a moment.

Tina Price, an attorney from the Women's Haven in Tarrant County, wrote to the Court in response to the announcement of the January 2000 public hearing:

"I can speak about a client who was turned down by West Texas Legal Services for an unknown reason. She could not afford an attorney, even one at a reduced rate. She had two children, and her abuser was going to fight her for custody every step of the way. Her husband, the person who was physically assaulting her, had legal representation. She was stuck without any options in her mind but to risk losing in court her precious children. What did this woman do? She went back to her husband. She went back to the man who had been physically hurting her and emotionally stripping her of any self-esteem she had

left. His threats about taking her children were becoming all too real to her. It is my hope that we do not read about her death in the newspaper because no free legal representation was available to her."

And from the files of a Texas legal services provider - a story of how legal representation matters:

A seventy year-old woman was being evicted from her public housing apartment because she would not allow maintenance men to enter her unit as required by her lease. After the Housing Authority had issued numerous notices to vacate, the elderly woman contacted her local legal aid office. While investigating the case, the legal aid attorney found out that the woman had been raped on the property the previous year, and as a result, was afraid of all men and was unwilling to allow any man into her home. After some negotiation, the housing authority stopped trying to evict this elderly woman and made special arrangements to accommodate her.

And finally a report from south Texas on the difference pro bono participation can make:

"Many of the more than 1000 colonias in the Rio Grande Valley were established decades ago by developers who bought undesirable land, divided it into subdivisions, and sold lots to low-income families. Over the years, developers invested little or no money in infrastructure, such as sewage, water, and roads leaving thousands of families living without such basic necessities as running water or paved roads. Rather than selling lots through traditional financial institutions, the developers issued contracts for deed, high interest notes that are virtually impossible to pay off. A family that missed one payment could lose the property, including any improvements that had been made. Members of the Texas Young Lawyers Association from around the state have teamed up with legal services lawyers and law students to help nearly 1,500 colonia residents gain clear title to their land and convert high-interest contracts for deed to more secure financing. Their work offers the real promise of financial security to families who have been struggling for years to share in the dream of land and home ownership."

The American Bar Association has estimated that 80% of low-income people in this country who need a lawyer do without. Eighty percent.

What types of legal services do these citizens do without? The most basic: advice and representation on family, housing, consumer, and public benefits issues - all matters that affect their day-to-day existence.

And who are these people?

As many as one-quarter of our disabled citizens, almost a third of our elderly, a quarter of our children, and close to four out of ten single-parent households.

To qualify for most legal services and pro bono programs, a person must live at or below 125% of the federal poverty guideline - this means a family of four with an income of no more than \$22,625, or a single person with an income of no more than \$11,075.

In Texas, we may be talking about over 3 million people. Yet, we employ only 350 lawyers in civil legal services programs to serve this population.

One lawyer for every 8,837 low-income residents.

Think about it: Three lawyers - just three lawyers - practicing in a town the size of San Marcos. Two full-time attorneys and one part-time attorney in a town the size of Georgetown. Or fifty-five lawyers serving a city the size of Austin.

And then consider that Texas currently ranks 39<sup>th</sup> among the fifty states in legal services funding. We spend just \$16.44 per poor person annually for legal services.

These facts and figures paint a grim picture. A picture made more grim when we think about the circumstances faced by people, like Tina Price's battered client, who are being denied access to justice,

Of necessity, our approach to changing this picture has become more comprehensive and better coordinated under the leadership of the Texas Access to Justice Commission

Yet, in the end, our professional obligation remains as clear as when it was first acknowledged by David Hoffmann in 1836. We are still challenged to commit ourselves individually to this endeavor if we are to succeed.

Today, as we celebrate equal justice for all, each of us should seize this opportunity to renew that commitment.

How can we do that? I have come prepared with suggestions - several reflect our new comprehensive approach to access to justice - although my list is by no means complete.

I first urge you to pledge to meet the profession's aspirational goal of at least fifty hours of pro bono service annually. And then fulfill that pledge. Remember we only have 350 paid lawyers serving our low-income population - we must fill the service gap through pro bono participation.

When you receive your bar dues statement this year, do not opt out of the voluntary \$65 access to justice contribution. Last year, Texas lawyers voluntarily contributed over \$500,000 when they paid their bar dues - an increase from the \$60,000 that was contributed the previous year. If every Texas lawyer would make the \$65 contribution, the Access to Justice Commission has estimated that we would raise \$3.6 million for access to justice. Think of the number of legal services lawyers we could fund for that amount of money. But if you do decide to change the total amount listed as owing on your statement, then I urge you to change the form not to eliminate the

contribution but to increase the amount of your access-to-justice contribution to more than \$65.

Join the effort to construct a statewide access-to-justice website. TexasLawHelp.org will provide open access to legal information for low-income clients and several levels of controlled access to legal information designed to assist legal services advocates and pro bono attorneys in their representation of low-income clients. The call has gone out for legal education materials and other self-help resources so that website content can be developed.

Check out the Bexar County assisted pro se litigation program. Can it work in Travis County to simplify the legal process for civil pro se litigants and allow the process to work more efficiently for other litigants and the courts when pro se litigants are involved?

Get involved with the systemic issues committee of the Access to Justice Commission as its members work to identify systemic changes that can improve access to justice by poor Texans, such as rule changes and the removal of access barriers for disabled and non-English speaking persons, and to develop proposals for implementing those changes.

Help with the access-to-justice education effort as we reach out to the bar, the judiciary, law schools, colleges, high schools, and elementary schools so that all may realize the importance to our country of equal justice for all.

Urge our law schools to prepare their graduates to enter the profession with an understanding of their obligation to serve those in need of civil legal services. Course work can familiarize students with the issues most frequently raised in poverty law matters, and clinic programs can give students first-hand experience providing legal services to indigent clients. In this way, new lawyers will not be heard to say, as many Texas lawyers do now, that they do not know how to help a domestic violence victim in a custody matter or how to assist an elderly person secure housing. Nor will they be insensitive to the need for their representation.

Then, through your law practice management practices, reinforce what the law schools have taught our new lawyers by supporting their commitment to access to justice.

Consider how you can help support a new lawyer who wants a career as a legal services lawyer but is unable to pursue that goal because he or she has left law school saddled with the national average of \$80,000 in education-related debt. While the Texas Legislature has approved a loan-forgiveness program for new lawyers who commit to legal services work, the program has not been funded. Can you help secure private or public funding for that program?

Finally, I urge us all to mentor new attorneys and to lead them by our example. They must learn from us that the ideal professional life for attorneys, as Associate Justice

Stephen Breyer has said, "is not public service added on to other career obligations, but public service as part of an integrated professional life."

We are reminded today by this Law Day celebration that our law promises equal justice for all. This promise is not fulfilled when low-income individuals and families have no meaningful access to the civil justice system. This de facto denial of equal justice challenges us as lawyers because we are the guardians of our justice system.

Of all the challenges to our profession, this may be the greatest. But not because of the overwhelming need. Not at all.

The challenge of equal justice under the law is our greatest challenge because it requires that each and every one of us do something to assure access to justice - regardless of whether we serve as a member of the judiciary, or teach law, or practice in a large international law firm, as a solo practitioner, in a corporate law department or in government service.

Without this commitment, the justice system may continue to function but the rule of law will suffer. "If we do not maintain justice," the English philosopher Sir Francis Bacon warned, "justice will not maintain us."

This is your challenge, as much as mine, and history will judge whether we succeed in this fundamental effort to assure that all may know what it means to have equal justice by having access to justice.

*Justice Deborah G. Hankinson is a member of the Texas Supreme Court.*

*This speech was delivered at the Law Day Luncheon of the Travis County Bar Association in Austin, Texas.*