



# Civil Gideon and Access to Justice

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By Joseph A. Sullivan

**A**s the United States celebrates the 50th anniversary of the landmark U.S. Supreme Court ruling in *Gideon vs. Wainwright*, recognizing a constitutional right to counsel to those charged with crimes who cannot afford representation, this is also an opportune time to highlight a growing movement to provide similar legal assistance in adverse civil proceedings where basic human needs are at stake. It is a time to highlight the hard work and emerging success of the effort led by the Philadelphia Bar Association's Civil Gideon and Access to Justice Task Force, launched five years ago by then-Chancellor Sayde J. Ladov, and culminating in a breakthrough year in 2013, under the leadership of Chancellor Kathleen D. Wilkinson, in which this blue-ribbon panel has led the way to new projects such as the landlord-tenant Legal Help Center in Municipal Court, exploration of new representation initiatives in the Family Court division, and the award of an ABA grant with the support of Chief Justice Ronald D. Castille, that has paved the way for public hearings across Pennsylvania on the dire need for legal help and possible solutions.

Imagine the plight of a widowed senior citizen, living alone in a small house that needs a new bathtub and plumbing in the only bathroom in the house. A contractor knocks on her door one day, asking if she needs home repairs, and she agrees to sign an agreement he produces, with lots of small print, and then she pays him \$3,000, the majority of her remaining savings. The contractor then sends in unlicensed workers, who install a new bathtub that falls through the foundation and can't be used; they also fail to turn off the water, so that leaking water drips down into the kitchen below, making it unusable. The contractor then disappears, leaving the widow without a kitchen or bathroom, or her money, and her calls to the contractor go unanswered.

Luckily, this senior knew about SeniorLAW Center and called them for help. The Center connected the widow with a pro bono attorney, who after obtaining a default judgment against the contractor, was finally able to collect through a debt owed by a third party. The widow then hired a second contractor who fixed her plumbing problems. Two years after she first paid for the work, she finally has her bathroom and kitchen back in working order.

But many others are not so lucky, in this and other basic needs relating to housing, child custody and essential health care needs. Indeed, some seniors like this one have had to abandon their homes or apartments and move in with relatives, or worse, move to shelters or become homeless.

This story, and thousands of others involving shelter, custody, health and safety reflect a growing recognition that in areas of fundamental need, counsel should be provided to those without the means to pay. This "Civil Gideon" movement, sometimes referenced by other equally compelling terms such as "right to counsel" and "access to justice" began formally in 2009 with formation of the Task Force – a diverse blue-ribbon panel of judges, bar leaders, legal services attorneys and private bar representatives, and set about this hard work by looking at some undisputed statistics and demographics about the state of legal representation for low-income individuals and families in Philadelphia, across the commonwealth and throughout the country.

These investigations confirmed what many legal services lawyers already knew, namely, that legal representation is largely unavailable to a large number of low-income Americans in desperate need. In 2009, the Legal Services Corporation conducted a survey of all federally funded legal services programs and found that 50 percent of those seeking legal representation are turned away at the door, for lack of adequate funding. Other studies conducted here in Pennsylvania, and in at least eight other states, paint an even bleaker picture: only one in five, or 20 percent, of low-income persons with serious legal needs are able to get help from

any source, public or private. The lack of representation in landlord-tenant court, mortgage foreclosure, and physical and mental abuse and child custody disputes is even more dire in Philadelphia, which has the highest percentage of low-income residents among the ten largest cities in the United States.

With these sobering realities, the Civil Gideon Task Force knew that a multi-year effort would be needed and went to work. The Task Force created three working groups to research the gaps in legal services. Two groups have been charged with addressing two areas of fundamental need, namely, representation in eviction and mortgage foreclosure proceedings, and in child custody and termination of parental rights matters. The Housing Working Group has been led by Anita Santos Singh of Philadelphia Legal Assistance and Karen Buck, executive director of SeniorLAW Center, who worked tirelessly with Philadelphia Municipal Court President Judge Marsha Neifield on process issues that culminated in the Legal Help Center. The Family Court Working Group, led by private attorney Megan Watson and Molly Callahan of Women Against Abuse, has collaborated with Supervising

Judge Margaret Murphy to explore new pro bono and procedural initiatives. The Task Force also recognized that the story of the desperate need and the potential economic benefits of civil legal representation needed to be told more clearly and Professor Lou Rulli of Penn Law School and Vice Chancellor Albert Dandridge have taken charge of spreading the word in the media and public events such as Chancellor's forums and lectures.

#### EMERGING THEMES

A number of themes have quickly emerged, reflecting the complexity of the issues and the need for creative thinking and

innovation.

- Judicial leadership is essential.
- Collaboration among a broad set of stakeholders is required, working on projects and initiatives that will serve as demonstrative proof of the value of legal services.
- The enormity of the civil justice gap will require the readiness to innovate at all levels, from empowering individuals forced to represent themselves in court with basic tools, to court-based advice and limited representation projects to temporarily address legal needs, to greatly expanded full legal services representation at all levels.
- There is a keen awareness that only one measure – greatly expanded funding for free legal services for the poor over time – can completely address the access to justice gap.
- At the same time, there is an emerging and welcome recognition that cost-benefit studies, in Pennsylvania and across the country, have shown that for each dollar spent on legal services, somewhere between \$5 and \$11 in

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quantifiable outcomes and savings can be achieved.

- Finally, there is a growing appreciation that these facts and conclusions are part of a bigger story about what access to justice and fundamental fairness mean not only for those desperate for legal services but to basic principles of a just and free society.

#### **COLLABORATION AMONG MANY STAKEHOLDERS**

A guiding example of the power of collaboration, created shortly before the Task Force began, is the Court of Common Pleas' Mortgage Foreclosure Diversion Project, launched by Judge Annette M. Rizzo and then-President Judge C. Darnell Jones in 2008. The well-known secret of the extraordinary success of the Project is the broad collaboration it inspired. The courts, a steering committee from the Bar Association, the City of Philadelphia, housing counselors, legal services providers including CLS, PLA and VIP and community workers all joined

forces to bring lenders and low-income borrowers together to engage in court-supervised mediation to save homes from foreclosure. At its recent fifth-anniversary celebration, the Project highlighted the power of collaboration: more than 5,700 homes saved from foreclosure and, as determined by a Redevelopment Authority study, nearly 85 percent of these homeowners are still in their residences a year and a half later.

At the start of its fourth year, the Task Force announced a new collaborative effort with the official launch, on Jan. 31, 2012, of the Philadelphia Landlord/Tenant Legal Help Center, with the support of President Judge Neifield, a Task Force member. This court-based but independent project provides limited advice and representation to individuals who come to the court on certain days and hours each week. Initial funding was secured through the efforts of Task Force member Gerald McHugh and the American College of Trial Lawyers.

Ironically, the Legal Help Center

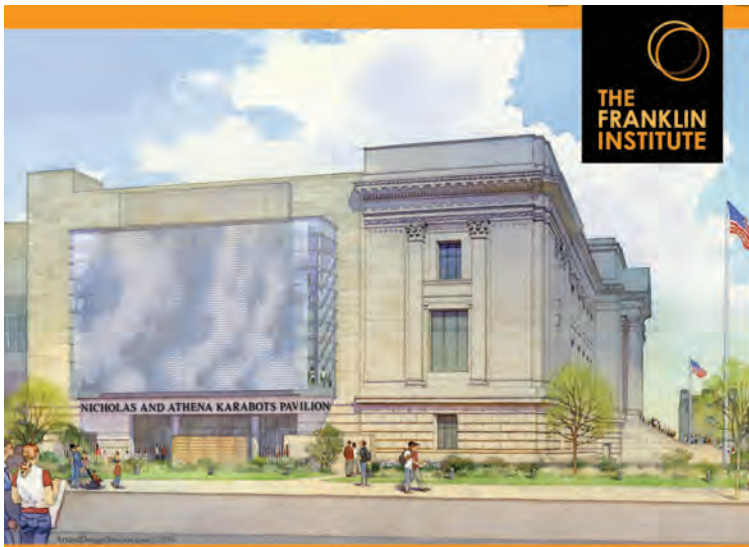
demonstrates two sides of the legal services quandary – the power of collaborative action, but also the very real weaknesses of a civil legal system that is underfunded to begin with, and for which no guaranteed source of funding exists. The Legal Help Center has only been open for limited hours each week and necessarily cannot assist literally thousands of low-income residents who need legal representation. Without further funding, the Center's very existence is in jeopardy.

#### **FUNDING, FUNDING, FUNDING.**

As the short history of the Landlord-Tenant Help Center thus far shows, without greatly increased and stable sources of funding for legal services providers, the promise of Civil Gideon and true access to justice is illusory.

The Task Force has been instrumental in raising the profile of the gaps in the justice system and the consequent harms to the community. Among the highlights are:

- Through Task Force efforts, the June 2011 Bar Quarterly Luncheon



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featured keynote remarks by Chief Judge Jonathan Lippman of New York, who launched that state's Task Force to Expand Access to Civil Legal Services, with statewide hearings on the need for legal representation, development of a budget and greater funding from the legislature.

- Philadelphia Task Force members later met with Chief Judge Lippman and developed outreach strategies based, in part, on the New York model – including hearings to be conducted in cities and regions across the commonwealth.
- A Chancellor's Forum was hosted in November 2012 by then-Chancellor John Savoth, featuring Superior Court Judge Anne Lazarus, Judge Fern Fisher, deputy chief administrative judge of the New York City court system and state Sen. Stewart Greenleaf, who volunteered to conduct hearings under the auspices of the state Senate Judiciary Committee, which he chairs.
- As these events made increasingly apparent, a combination of greater public awareness, innovative projects and substantially more and stable funding are essential to closing the gap.

#### JUDICIAL LEADERSHIP

The Supreme Court of Pennsylvania has expressed its acute awareness of the funding gap for civil legal services. Chief Justice Castille and his colleagues have supported numerous efforts to generate funding through statewide IOLTA programs, filing fee surcharges, *pro hac vice* fees for out-of-

state attorneys and allocations from attorney registration fees. In a major new step the past year, the Chief Justice created a new rule that provides that 50 percent of all unclaimed or residual fees in class action settlements, also known as *cy pres* awards, be distributed through IOLTA to legal services providers statewide.

#### INCREASED FUNDING MAY PAY FOR ITSELF AND MORE

Over time, the Task Force realized that providing more civil legal services in areas of basic need actually pays for itself – and more. In the Fall 2012 *Philadelphia Lawyer* article “Money Well Spent,” Task Force member and Penn Law School professor Louis Rulli reported on the economic impact of increased legal services, noting that impact studies are now underway and that while still in the early stages, such studies “point to highly favorable economic returns to local economies from each dollar spent on legal aid.”

Rulli cited a 2012 Pennsylvania IOLTA-commissioned report examining the impact of filing-fee funds over five years, and the overall economic benefit of free legal help in civil matters. The report, conducted by an independent entity, found that for each dollar spent on legal aid, “\$11 of quantifiable economic outcomes and savings was realized for all residents of the Commonwealth.” In dollar terms, the report found that a total of \$53.6 million was spent in 2011 on Pennsylvania’s civil legal services programs that, in turn, yielded \$594 million in income and savings for Pennsylvanians. Similar studies in



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Armed with letters of support from Chief Justice Castille and then-President Tom Wilkinson of the Pennsylvania Bar Association, Chancellor Wilkinson and the Task Force, with substantial working support from Philadelphia Bar Association pro bono coordinator Merrill Zebe, were successful in obtaining an ABA grant to help launch this new statewide collaborative group.

New York, Texas, Massachusetts and Florida pointed in the same direction, with the payback from each dollar of legal services funding ranging from roughly \$5 in Florida and New York and \$6 or more in Massachusetts and Texas.

**IS 2013 A BREAKTHROUGH YEAR?**

In January 2013, all these forces coalesced into what many have called a breakthrough year, under the active leadership of Chancellor Wilkinson and with the active support of Chief Justice Castille.

First, the Task Force led by Cathy Carr and myself, and the Legal Services to the Public Committee of the Pennsylvania Bar Association agreed to create a new statewide Civil Legal Justice Coalition, with leaders of both the Pennsylvania and Philadelphia bar associations reaching out to other leading bars, such as the Allegheny and Dauphin County Bar Associations as well as Pennsylvania IOLTA, led by Stephanie Liebhart, and the Pennsylvania Legal Aid Network, led by Sam Milkes, and other key stakeholders.

Armed with letters of support from Chief Justice Castille and then-President Tom Wilkinson of the Pennsylvania Bar Association, Chancellor Wilkinson and the Task Force, with substantial working support from Philadelphia Bar Association pro bono coordinator Merrill Zebe, were successful in obtaining an ABA grant to help launch this new statewide collaborative group. The Coalition selected three chairs: Jennifer Clarke, executive director of the Public Interest Law Center of Philadelphia; Sam Milkes, executive director of PLAN in Harrisburg; and incoming Allegheny County Bar Association President Jim Creenan to lead the charge. The Coalition's first task was to plan the 2013 series of statewide hearings on the justice gap. In 2014, the Coalition will continue to investigate solutions to the many issues in the funding puzzle, including the possibility of creating a new Access to Justice Commission (ATJC) in Pennsylvania. Since 2000, ATJCs have been created in 30 states, including the District of Columbia, to coordinate efforts to identify and remove barriers to civil justice for low-income and disadvantaged people.

Under the auspices of the Senate Judiciary Committee, chaired by Sen. Greenleaf, three hearings were conducted, one each in Harrisburg, Philadelphia and most recently in Pittsburgh. Witnesses have included many who cannot afford legal counsel, from single parents with children to the disabled, the elderly, the near-homeless and the under-employed and

unemployed. Social services, legal services and civic leaders have also testified.

In launching the first hearing, on May 27 in Harrisburg, Sen. Greenleaf made it clear the Committee wanted to hear what a difference legal services made to individuals whose fundamental needs – housing, health care and access to children – were at risk of irrevocable loss. Time and again, Sen. Greenleaf asked the witnesses: “What would have happened to you if free legal help were not available?” And time and again, the witnesses answered that if they had not had legal help, they would have ended up losing their children and their homes, and may have ended up living on the streets. Indeed, many said they would have lost nearly everything that matters. Transcripts and videos of the hearings are available on the Philadelphia Bar Association's Civil Gideon Corner, at [www.philadelphiabar.org](http://www.philadelphiabar.org).

Both the live testimony and written submissions amounted to a clarion call for action to secure fundamental rights and basic fairness in the legal system. In his live testimony at the May hearing, Chief Justice Castille reaffirmed a key component of any future funding system providing significant resources for legal services; Chief Justice Castille issued a call for funding civil legal services in the same way that other basic needs, such as roads, the police and the courts are paid for, that is, through stable, ongoing line-item budget allocations. And as the economic impact studies are now showing, additional investment in legal services yields substantial benefits for the society as a whole.

As we celebrate the 50th anniversary of *Gideon* and its protection of the basic constitutional right to counsel in criminal matters, we are moving decisively, if incrementally, to recognize a comparable need for legal representation for civil legal matters involving fundamental human needs that implicate the sanctity of the home, the integrity of the family and the right to fairness in our legal system for all. The Task Force and the new Civil Legal Justice Coalition are in motion, pushing forward in several directions. With open minds, vision, determination and hard work, we can move closer to a society that promotes fairness and greater access to justice for everyone. ■

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