

Imagine a Society without Attorneys

By Nevin J. Mindlin

A society without lawyers? The concept is not inconceivable. For a period of time during our early colonial history, the practice of law was prohibited in a number of colonies. After the settlement of Jamestown in 1608, Virginia prohibited lawyers from the courtroom. That was also true of Connecticut by 1645. The Massachusetts Body of Liberties, 1641, prohibited the practice of law anywhere within the colony. Many American colonists were poor, uneducated individuals who left England because they felt oppressed and cheated by the English upper-class elite, of which lawyers were a part. Professor Lawrence Friedman has suggested that this early period represents "the dark ages of American law." The Salem witchcraft trials of 1692 certainly fit that characterization.

By the time of the American Revolution, the position and role of attorneys had changed markedly. The 1700s evidenced a dramatic rise in the number and popularity of attorneys. Lawyers played an increasingly vital role in our society. Think of the many founders of our republic, such as John Adams, James Madison, Thomas Jefferson and John Marshall. During a recent trip that I took to Colonial Williamsburg, an interpreter at the colonial capitol said the American Revolution was the only revolution that was led by lawyers and that was fought over the fundamental principle of the rule of law.

Toward the end of last year, we watched Pakistani lawyers take to the streets to protest repression and assert the need for the rule of law. The principle of the rule of law as a basis for a just and open civil society has reached a level of global awareness. A 2006 study by the World Bank titled "The Wealth of Nations: Measuring Capital for the 21st Century"

demonstrates that the economic well-being of any country is preponderantly dependent upon the rule of law (as well as the education/skills of a society's citizens). There is little doubt that the rule of law, which is so fundamental to the nature and character of our nation, has been the basis for our nation's historic success, both politically and economically.

Yet the rule of law, as fundamental a principle of a just society as it is, retains its legitimacy only to the extent that it is broad-based and encompasses the respect and confidence of all of our citizens. Access to justice is the basis of that legitimacy; it is a key component of democracy. Without access to justice, there is no legitimate rule of law.

The simple fact is that for many people in Pennsylvania, the use of an attorney is today prohibitive. This is especially true for the poor but also includes an increasing number of the middle class. The extent of the unmet need for civil legal services, particularly for the poor, has been well documented. For these citizens, justice must necessarily appear to be only for the wealthy. Consequently, access to justice is compromised and this key element of democracy is undermined.

It is to the credit of the PBA that the importance of access to justice is recognized. Several PBA resolutions have been adopted that address this important issue: support for the increase in funding for civil legal aid in Pennsylvania, support for law school loan repayment assistance for public service attorneys and support for the right to counsel for indigent individuals in certain civil cases. The PBA is also strongly committed to pro bono work.

Recognition of the importance of access to justice, however, is not enough. Action is required. It is necessary for the bar to make its position known on this fundamental

issue and to seek to ensure that this need is met. On May 5, the PBA will again host its Day on the Hill event in Harrisburg. Our theme this year is "Access to Justice," with particular attention to adequate funding for civil legal services and law school loan forgiveness for public service attorneys. State funding for civil legal aid has been flat. In comparison to inflation and to the efforts of other states, Pennsylvania has fallen behind in funding these vital services. Public service attorneys are hard-pressed financially with the burden of law school tuition debt. The level of law school debt in comparison to the level of starting salaries has an adverse impact upon the ability of law graduates to enter into and remain in public service employment.

Stand up for the principle of "liberty and justice for all." Please join your colleagues in Harrisburg for the PBA's Day on the Hill on May 5! Access to justice will be advanced and the value of the legal profession as a key component of democracy will be strengthened. ☪

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Legal Services Tax Proposal Defeated

The PBA Legislative Department thanks all PBA members who contacted their state representatives opposing expansion of the state sales tax to professional legal services. The measure was rejected by the House 148 to 47 on Jan. 29.