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The right to counsel: a tool for fighting and preventing poverty

by John Pollock
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In comparing the rhetoric in Lyndon Johnson's 1964 "War on Poverty" speech to that used in present day politics, I'm struck by the change. In his speech to Congress, President Johnson referred to his desire to help the "one-fifth of all American families with incomes too small to even meet their basic needs," and the need to help people "escape from squalor and misery and unemployment rolls." He referred to "slums" and "migrant worker camps," and to the "needy." In comparison, elections over the past decade (and the 2012 election in particular) have rarely touched on poverty, choosing instead to focus exclusively on the middle class. When the poor have been discussed at all, it often has been in the limited context of "reducing dependency" in the form of slashing or altogether eliminating safety net programs. Yet income inequality is even steeper today than it was in 1964. So why are we afraid to talk more fully about poverty? When it comes to the connection between poverty and access to justice, I feel we suffer from the same dialogue problem: when the topic does come up, too often it is only in debates over attempted cuts to the budget of the Legal Services Corporation, which funds a big piece of the legal services work across the country.

Yet there is a way in which poverty and access to justice make their way into our mainstream dialogue. This is because our love affair with cop shows and legal dramas has meant that most people have heard the phrase, "You have a right to a lawyer. If you cannot afford one, one will be appointed to you." This makes sense to us: wrongfully going to jail is abhorrent, and so poor people are entitled to protection before they are subjected to such a punishment. Most Americans, however, would be truly surprised to find out that if a case is classified as civil, the right to a lawyer largely disappears, no matter how poor you are. They would be even more surprised to learn that this would still be true even for civil cases raising a risk of going to jail or losing custody of one's children forever. They would not understand why their right to a lawyer would depend on this classification, as opposed to what was at stake or how much they were in need.

The criminal/civil divide cripples our ability to effectively tackle poverty because no matter whether the matter is criminal or civil, there are devastating side effects that stem from the lack of counsel. In his speech, President Johnson identified unemployment and lack of money as the "symptom" of poverty rather than the root cause, which he suggested was a lack of opportunities, education, decent housing, and health care. I believe that the lack of opportunities, education, decent housing, and health care can in turn be a symptom of inadequate access to legal assistance in order to enforce one's rights. We are thus presented with a choice: we can either pay for poor people to have legal help, or we can pay for all the negative costs that arise when poor people lack such help, such as when wrongly evicted tenants wind up in taxpayer-funded shelters, or people denied restraining orders or life-sustaining health benefits wind up in taxpayer-funded emergency rooms, or people wrongfully terminated from employment wind up on taxpayer-funded unemployment.

The War on Poverty was a time when America was, for a brief moment, willing to talk the talk and walk the walk. It's time we got back to both,

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and doing so by providing true access to justice may allow us to achieve some of the equality envisioned 50 years ago.

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