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Section of Litigation Access to Justice Symposium
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** Robert Rothman (Chair, Section of Litigation) will give opening remarks before introducing you*

I. ACKNOWLEDGEMENTS

- Many thanks, Bob, for your introduction and for your leadership of the Section of Litigation, which is such an important entity to the American Bar Association
 - The Section in which I grew up as a lawyer, worked for decades, and in which I have so many friends.
- President Tommy Wells wanted to be with you today but had a previous commitment that all ABA Presidents must honor: representing our association at Rentrée, the opening of the legal year in Paris. Tommy's heart is with his friends from the Litigation Section. He sends his regards, and I am thrilled to be here with you today.
- Thanks, in particular, for the Section's commitment to access to justice — to the idea that all people, regardless of their economic status, are entitled to a fair and just legal process — which can not be had without the help of a lawyer. The ABA and millions of people across the country are grateful for your efforts.

II. IMPORTANCE OF ACCESS TO COUNSEL

- We have learned in America that *access to justice is fundamental to the Rule of Law.*
- This truth is recognized around the globe.
- As Kofi Annan, former Secretary-General of the United Nations, observed:
“The Rule of Law is not a luxury and justice is not a side issue... We have seen that without a credible machinery to enforce the law and resolve disputes, people resort to violence and illegal means... We have learned that the Rule of Law delayed is lasting peace denied, and justice is a handmaiden of true peace.”
- Our profession and our justice system have long recognized the essential role lawyers play in assuring that all people receive equal justice in criminal cases.
 - The right to counsel is a crucial part of the Sixth Amendment and was extended to defendants in state courts in *Gideon v. Wainright*.
 - In the court’s decision, Justice Black stated that: *“...in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”* 372 U.S. 335 (1963). Lawyers are recognized as central to assuring access to justice and safeguarding the Rule of Law.

- Since the *Gideon* decision in 1963, all indigent defendants in criminal trials have been entitled to a lawyer's help. *Gideon* was a step forward for justice.
 - But grave problems in our criminal justice system continue to deprive poor people of equal access to justice.
 - Public defenders are overworked and under-resourced.
 - Across the country, defenders are stretched so thin that they cannot fulfill their professional responsibility to their clients.
 - In many states, defenders refuse to accept new clients so they can adequately represent the hundreds they already have.
 - We must find a way to correct these problems to realize *Gideon's* promise in criminal matters.

III. THE CURRENT STATUS OF ACCESS TO JUSTICE FOR ALL

A. Access to Justice in the U.S.

- Despite serious flaws in the criminal defense system, poor people accused of crimes are better off than poor people involved in serious civil legal matters, at least in one significant respect: *criminal defendants have a Constitutional right to legal assistance.*
 - Millions of low-income people who face life-changing civil legal issues have no right to a lawyer and usually receive no help from a lawyer.

- Lacking the assistance of counsel in civil matters denies poor people access to justice no less than in criminal cases, and the consequences can be just as severe.
 - Without a lawyer’s help, many survivors of domestic violence cannot get the protection to which they are entitled, which puts their lives at risk.
 - Without a lawyer’s help, many families wrongly lose their homes and are put out into the street.
 - Without a lawyer’s help, many children cannot access health benefits for which they qualify and that they need to be healthy and strong.
- These and many other examples of high stakes civil legal issues can mean the difference between life and death. Yet 80 percent of poor people do not have access to a lawyer in civil matters when they need one.
- With their safety, housing, health, ability to feed their families, and ability to keep their families together on the line, these individuals too often must fend for themselves in a system that is complex and unfamiliar to them. Without a lawyer, “*equal justice for all*” loses its meaning.
 - In fact, studies show legal representation makes a significant difference in the outcome of many cases: in eviction cases, when tenants are

represented by attorneys, *only 22% are evicted, whereas 51% of unrepresented tenants are evicted.*

- That is why every year the ABA lobbies Congress to increase funding for the Legal Services Corporation, which provides legal assistance to poor people in civil matters. We sometimes face an uphill battle, but we have also made progress.
- Nevertheless we must do much more, especially in this fiscal climate. The needs of the poor are growing while our nation's coffers are emptying.

IV. MOVEMENT FOR CIVIL *GIDEON*

- Out of a conviction that we must do more to expand access to justice, the ABA adopted policy in August 2006 supporting the provision of counsel at public expense to poor people involved in civil matters where basic human needs are at stake — in essence, a policy in support of “civil *Gideon*,” or a right to counsel in many civil matters.
- Since the ABA adopted its “Civil *Gideon*” policy, a national right to counsel movement has emerged. A federation of lawyers and advocates from around the country are working together to establish a right to counsel in civil cases. They are making progress case by case, state by state.

- For example, this year in Louisiana, the state passed a law that provides for the right to counsel for low-income parents at risk of losing their parental rights in an intra-family or step-parent adoption.
- In New York, a bill that would provide legal aid for low-income seniors has been introduced in the New York City Council.
- Most recently, the ABA filed an *amicus* brief in the Supreme Court of Alaska, urging the Court to affirm that the Appellee, Siv Betti Jonsson, has the right to counsel in her child custody case.
 - The brief advocates “*the appointment of counsel for indigent litigants in adversarial child custody proceedings protects fundamental rights, promotes fairness, and ensures that complete and appropriate information is brought to bear on the assessment of the best interests of the child.*”
 - That describes why we are here, as well as why many of us became lawyers in the first place.

B. Access to Justice Internationally

- Lack of access to justice is not uniquely an American problem. Many countries around the globe are plagued with corruption, and intimidation of lawyers and judges is rampant, which threatens access to justice in the global community.

- Other countries’ approaches to ensuring equal access to justice for poor individuals in civil matters, however, are instructive:
 - For example, the 45 European countries governed by the European Convention on Human Rights have an affirmative obligation to provide equal access to justice for low-income citizens where their effective access to justice would be impaired without representation by counsel.
 - Closer to home, Canadian courts have held that the right to a fair hearing requires the right to counsel in civil cases.
 - In South Africa, one of the world’s youngest democracies, a land court has held that indigent people at risk of losing their land have the right to “*legal representation or aid at State expense if substantial injustice would otherwise result.*”
 - The court reasoned that “*there is no logical basis for distinguishing between criminal and civil matters*” because “*the issues in civil matters are equally complex and the laws and procedures are difficult to understand.*”
- Like these countries, the United States can — and should — recognize the fundamental importance of legal representation in civil cases.

V. CALL TO ACTION

- The ABA, the Section of Litigation, state and local Bar associations, and individual lawyers across the country have done much to help meet the legal needs of the poor.
 - Conferences like this symposium are critically important.
 - They help us to understand the costs of unequal access to justice, the obstacles we face to expanding access, and the strategies we should use to give more people — and ultimately all people — their day in court.
- In *The Other America: Poverty in the United States*, Michael Harrington wrote:
 - *“The other America, the America of poverty, is hidden today in a way that it never was before. Its millions are socially invisible to the rest of us...The poor are increasingly slipping out of the very experience and consciousness of the nation.”*
 - Harrington wrote this more than 45 years ago, but his words still ring true today.
- We might have expected our global financial crisis to focus more attention on poor people, but it has had an opposite effect. We read and hear often about the latest corporation to go bankrupt or the latest stock market tumble, but we do not hear much about the every day struggles of people across America who have lost their homes, their retirement funds, and their jobs.

- Freedom’s best protection is a fair justice system with fair laws and access to justice for all. It is for that reason that Daniel Webster called justice “*the greatest concern of man on earth.*”
- The lack of access to justice is not merely the concern of poor individuals: it is also our concern, as professionals in the field of law.
- One reason people of little means have become invisible in our country is that they do not have equal access to the legal process and the justice system, mechanisms that could — and should — document the problems of poverty in addition to helping individuals.
 - As lawyers and stewards of justice, then, we are not just trying to help individuals resolve their problems — we are also striving to make poverty itself more visible so that our government and civil society can do more to address its root causes.
- This is an extremely important and urgent charge, and it will require much more work from all of us. ***Together, we can get it done.***
- Thank you for everything you have done — and will do — for equal justice.