

A Human Rights Lens on Civil Legal Assistance

by Martha F. Davis

Studies indicate that about 80% of low-income Americans cannot obtain needed civil legal assistance. The unmet needs are often critical, as pro se litigants face eviction proceedings, cut-offs of subsistence benefits, or issues of domestic violence. Available data also indicate that the indigent individuals seeking civil legal assistance are disproportionately people of color.

In 2008, the United Nations Committee on the Elimination of Racial Discrimination recognized that this lack of access to civil representation transgresses United States' obligations under the Convention on the Elimination of All Forms of Racial Discrimination (CERD). To address this human rights violation, the CERD Committee recommended that the United States, "allocate sufficient resources to ensure legal representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings, with particular regard to those proceedings where basic human needs, such as housing, health care, or child custody, are at stake."

In the two-plus years since the CERD Committee's review, the U.S. has taken few steps to comply with this recommendation. The Legal Services Corporation budget has risen slightly, but it still falls hundreds of millions of dollars short of what would be needed to ensure adequate legal representation of the indigent. Though Congressional hearings have touched on the issue, no concrete measures have emerged. Similarly, the Administration's Access to Justice Initiative has taken tentative steps to assist homeowners, veterans and workers in accessing pro bono attorney-mediators or legal services coun-

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For more information on the CERD treaty and U.S. compliance, see www.prrac.org/projects/cerd.php. See also www.ushrn.org

See 25 *Touro L.Rev.* 147 (2009) for a series of articles devoted to Civil Gideon.

For more information on the justice gap and legal services funding, see the Brennan Center for Justice, http://www.brennancenter.org/content/section/category/civil_justice/

Northeastern Law School's Program on Human Rights and the Global Economy (PHRGE) has authored several reports on international human rights and civil legal services, including Senate testimony on the issue. These are available at <http://www.northeastern.edu/law/academics/institutes/phrge/publications/index.html>

Information on the activities of the National Coalition for a Civil Right to Counsel is available at http://www.civilrighttocounsel.org/about_the_issue/overview/

For more information on the World Justice Project's Rule of Law Index, see <http://worldjusticeproject.org/rule-of-law-index/>

sel, but these new programs are piecemeal at best and may fail to help many in the lowest income brackets. The Rule of Law Index released in October 2010 by the American Bar Association's World Justice Project reflects this lack of progress: The U.S. ranks below all other wealthy nations, and only slightly above Colombia, Thailand and Turkey, in providing access to civil justice.

In the absence of robust federal initiatives, individual states have begun developing affirmative plans that move in the right direction. For example, funded by state and local bar associations, Massachusetts has initiated a pilot project to provide access to counsel in certain types of housing cases. California will implement its own pilot project, beginning in Summer 2011, to provide civil counsel in cases involving basic human needs. In contrast to Massachusetts, the California project will be funded through court filing fees.

These are important and inspiring new programs, the result of a great deal of hard work. But to meet its international obligations to eliminate the discriminatory justice gap, the U.S. must do more. Human rights monitoring under CERD and other treaties provides an opportunity to continue to hold both federal and state govern-

ments accountable for improving access to civil counsel in cases involving important human needs, and for learning from other nations that are far ahead of us in ensuring nondiscriminatory access to the courts. The U.S.'s next submission to the CERD Committee is due November 2011. ☒

William Hohri

We dedicate this issue of *P&R* to William Hohri, who passed away in late November, for his persistent and successful pursuit of redress for the 120,000 Japanese Americans who lost their liberty shortly after Pearl Harbor, interned in isolated prison camps around the country. While his 1983 class action damage suit against the federal government was rejected by the Supreme Court, his efforts succeeded in getting Congress to pass, and Pres. Reagan to sign, a 1988 apology and reparations bill, providing \$20,000 tax-free to all survivors of the wartime camps. Of particular interest was that his social activism was triggered by participation in James Meredith's 1966 Memphis-to-Jackson march for voting rights.