

EQUAL JUSTICE

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INTRODUCTION	53
I. THE NEED	54
II. LEGAL SERVICES CORPORATION	56
III. MISSISSIPPI VOLUNTEER LAWYERS PROJECT	58
IV. MISSISSIPPI ACCESS TO JUSTICE COMMISSION.....	59
IV. WHAT IS TO BE DONE?.....	59

Equal justice. It arrived on the Mayflower in 1620, in the form of the Mayflower Compact.¹ And, after surviving the next 150 years of colonization under English domination, it found its way into our Declaration of Independence, and it even endured the Revolutionary War.² Then, following a 126-day debate—as our Founders listed within its Preamble the five purposes for our Constitution—it earned the number two spot, finishing ahead of three highly-ranked competitors: common defense, general welfare, and the blessings of liberty.³

The judicial branch, entrusted by the Constitution with preserving the precious principle of equal justice for all, signaled early and solid support in the form of two inscriptions—one facing east, and the other facing west—carved above the sixteen marble columns at the United States Supreme Court: **“EQUAL JUSTICE UNDER LAW”** and **“JUSTICE – THE GUARDIAN OF LIBERTY.”**⁴

¹ See MAYFLOWER COMPACT para. 2 (1620) (“And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall be thought most meet and convenient for the general Good of the Colony.”).

² See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”).

³ See U.S. CONST. pmbl.

⁴ See *The Court Building*, SUPREME COURT OF THE UNITED STATES, <http://www.supremecourt.gov/about/courtbuilding.aspx> (last visited Jan. 31, 2013).

But as in all things human, lofty principles often yield to the harsh realities of practical application. And “equal justice under law”—if honestly applied—would mean the poor would stand equal to the rich in our courts. That would mean not only informing the poor of legal resources available to them—but actually having legal resources available. And that, of course, would require public funding of a sufficient number of lawyers, together with adequate staff and resources, to meet the need. The government has not. It is not. And it is not likely to in the foreseeable future.

While we may be unwilling to actually provide equal justice in our courts, we are not shy about pushing forward with the *appearance* of equal justice. Courtrooms, buildings, new judges, multimedia-presentation systems, electronic-filing systems, and the like, all, arguably, are good, but they are hardly designed to make a direct impact on the poor who have no lawyer. The simple truth is, our impressive legal façade ignores the systematic and continuous denial of fair and equal access to our courts and “equal justice under law.”⁵

I. THE NEED

If Mississippi is not the poorest state in the country, it is so close to the bottom in so many categories that ranking does not really matter. Over one-fifth of our entire population lives in poverty.⁶ And for our children, it is even worse—one out of every three Mississippi children lives in poverty.⁷ Mississippi has the lowest life expectancy and the highest percentage of adults twenty-five and older who have not completed high school or

⁵ *The Court Building*, *supra* note 4.

⁶ See, e.g., *Report of Public Hearings on The Unmet Civil Legal Needs of Low-Income Mississippians*, MISS. ACCESS TO JUSTICE COMM’N 5, 38 n.9 (2009), <http://www.msatjc.com/pdf/New%20ATJ%20Report.pdf>; see also *State and County Quick Facts: Mississippi*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/28000.html> (last visited Jan. 31, 2013) (stating that 21.6% of Mississippi citizens, compared to 14.3% of U.S. citizens, live below the poverty level).

⁷ See, e.g., *Data Across States: Children in Poverty (Percent)—2011*, THE ANNIE E. CASEY FOUNDATION, <http://datacenter.kidscount.org/data/acrossstates/Rankings.aspx?ind=43> (last updated Sept. 2012) (last visited Jan. 31, 2013).

earned an equivalent degree.⁸ And our traditionally high rates of unemployment and illiteracy have been made ever worse by Hurricane Katrina and the Gulf Oil Spill.

These more than a half-million Mississippians who live in poverty include children, abused spouses, veterans, the elderly, and the disabled.⁹ For comparative purposes, imagine the number of legal needs in a city with a population of 500,000—for instance, Tucson, Albuquerque, Sacramento, Kansas City, or Las Vegas.¹⁰ According to the Mississippi Access to Justice Commission, impoverished Mississippians will have approximately 220,000 legal needs each year.¹¹ The resources available to meet those needs are meager. While one lawyer is available to serve every 429 persons in the general population, only one legal-services lawyer is available to serve every 6,415 persons who live in poverty.¹²

Conservative estimates suggest that, out of every 100 persons who are qualified for legal-services help and who have a qualifying legal need, only thirty will seek assistance from a legal-services office, often because they are unaware a legal-services program exists.¹³ And of those thirty who seek help, fifteen are turned away because our legal-services offices are underfunded and understaffed.¹⁴ The eighty-five percent who are unreachable by legal-services programs must find a privately funded lawyer, a pro bono lawyer, or no lawyer, as they seek equal justice in our courts.

There are two ways to deliver legal services to the poor: through lawyers who are paid from public and private sources,

⁸ *Report of Public Hearings on The Unmet Civil Legal Needs of Low-Income Mississippians*, *supra* note 6, at 1.

⁹ *Id.* at 9.

¹⁰ See *State and County Quick Facts: Tucson (city), Arizona*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/04/0477000.html> (last visited Jan. 31, 2013); *State and County Quick Facts: Albuquerque (city), New Mexico*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/35/3502000.html> (last visited Jan. 31, 2013); *State and County Quick Facts: Kansas City (city), Missouri*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/29/2938000.html> (last visited Jan. 31, 2013); and *State and County Quick Facts: Las Vegas (city), Nevada*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/32/3240000.html> (last visited Jan. 31, 2013).

¹¹ *Report of Public Hearings on The Unmet Civil Legal Needs of Low-Income Mississippians*, *supra* note 6, at 17, 37-38 n.8.

¹² See *id.*

¹³ See *id.* at 17.

¹⁴ See *id.* at 9.

and through lawyers who work for free (pro bono). And of the three primary sources of funding for non-pro bono programs (federal funds, state funds, and contributions), federal funding is—by far—the largest.¹⁵ In fact, in Mississippi, federal funding comprises almost all of the funds available to legal services.¹⁶ While several states support legal services through state-funding appropriations, Mississippi, like many other states, does not.¹⁷

II. LEGAL SERVICES CORPORATION

In 1974, Congress created the Legal Services Corporation (LSC) to allocate its annual appropriation of federal funds to state programs that provide legal representation in civil matters for Americans living below the poverty line.¹⁸ Initially, LSC-funded legal aid was available to low-income persons in every county in every state. But over the past several decades, as other pressures have affected allocation of tax dollars, LSC funding has been reduced by more than fifty percent,¹⁹ to the extent that—while still the primary source of funding for legal services for the poor—it now provides help to only a small fraction of those in need.

In Mississippi, LSC funds two primary legal-aid centers: North Mississippi Rural Legal Services, Inc., in Oxford, with a total of twelve attorneys to service thirty-nine counties in the northern part of the state, and the Mississippi Center for Legal Services in Hattiesburg, which services the southern forty-three counties with nineteen attorneys.²⁰ These two offices, with only thirty-one lawyers, are expected to provide the legal services needed by the more than 500,000 Mississippi citizens who live in poverty. Again, to put this in perspective, imagine that Las

¹⁵ See *id.* at 5-6.

¹⁶ See *id.*

¹⁷ For instance, 2011 state appropriation for civil legal aid in Arizona was \$1,000,000; North Carolina, \$671,000; Virginia, \$1,900,000; and West Virginia, \$400,000. *Resources for Civil Legal Aid, 2011 Data Collection*, A.B.A. 1, 2, 6, 7, http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2012/05/national_meetingofstateaccessjusticechairs/lsc_laid_atj_funding_data.authcheckdam.pdf.

¹⁸ See *Report of Public Hearings on The Unmet Civil Legal Needs of Low-Income Mississippians*, *supra* note 6, at 2.

¹⁹ *Id.*

²⁰ *Id.* at 9.

Vegas—a city of approximately 500,000 citizens²¹—had only thirty-one lawyers.

The total LSC budget for all legal services in Mississippi for the 2012 fiscal year was \$4,764,415.²² That amount will be reduced, in 2013, by 12.4%, and Mississippi can expect another 12.4% reduction (or greater) in 2014, resulting in a budget loss of more than \$1.1 million, while poverty and unemployment numbers and rates have risen steadily.²³

According to the LSC 2013 Budget Request, civil legal-aid attorneys are the lowest paid within the entire legal profession.²⁴ The nationwide average entry-level salary is \$42,000 a year, as compared to the average \$115,000 for entry-level private attorneys (in Mississippi, these numbers are much lower).²⁵ After ten-plus years of service, a legal-aid attorney can expect an annual income of approximately \$60,000.²⁶

Mississippi has a Loan Repayment Assistance Program (LRAP) which provides some assistance to legal-aid attorneys in repaying their law-school debts.²⁷ The average law school debt in 2011 was \$96,567, and LRAP provides a maximum of \$16,800 in assistance over three years.²⁸ According to LSC, these numbers could get worse.²⁹

²¹ The United States Census Bureau estimated Las Vegas to have a population of 589,317 in 2011. *State and County Quick Facts: Las Vegas (city), Nevada*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/32/3240000.html> (last visited Jan. 31, 2013).

²² *Report of Public Hearings on The Unmet Civil Legal Needs of Low-Income Mississippians*, *supra* note 6, at 9.

²³ *See Budget Request Fiscal Year 2013*, LEGAL SERVICES CORPORATION 7 (2012), <http://www.lsc.gov/sites/default/files/FY%202013%20Budget%20Request.pdf>.

²⁴ *Id.* at 26.

²⁵ *Id.* at 27.

²⁶ *See id.*

²⁷ *State Loan Repayment Assistance Programs*, A.B.A. (Sept. 21, 2013), http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/loan_repayment_assistance_programs/state_loan_repayment_assistance_programs.html (last visited Jan. 31, 2013).

²⁸ *Id.* at 26.

²⁹ *See, e.g., id.* at 27 (“While the Congress has established other loan repayment assistance programs for civil legal attorneys, Congress did not appropriate funds to the Civil Legal Assistance Attorney Student Loan Repayment Program (CLAARP) authorized in the Higher Education Act for FY 2012.”).

III. MISSISSIPPI VOLUNTEER LAWYERS PROJECT

In 1982, the Mississippi Bar and the LSC joined forces to form the nation's first formal, state-wide volunteer program, the Mississippi Volunteer Lawyers Project, or MVLP.³⁰ Even before the MVLP completed its first year of operation, the American Bar Association and the National Legal Aid and Defender Association cited it as the country's single most outstanding program among state bar associations.³¹ The MVLP's primary funding comes from a sub-grant from LSC, which requires that 12.5% of the funds it allocates to Mississippi be spent on private-attorney involvement.³²

MVLP exists to recruit pro bono lawyers and refer them cases. The MVLP staffs full-time attorneys who both represent low-income clients and recruit lawyers from the private bar for pro bono representation. In 2009, the MVLP was successful in persuading approximately one-fourth of the 6,723 members of the Mississippi Bar to sign up with the program.³³ However, only 539 of these 1,800 attorneys actually accepted case referrals.³⁴ With a staff of twelve attorneys, the MVLP opened 3,950 cases in 2009.³⁵

In summary, Mississippi's poor have approximately 220,000 legal needs each year.³⁶ Our legal-services offices and the MVLP, combined, are able to handle approximately 15,000 of those needs. The rest rely on privately-funded programs such as the Mississippi Center for Justice, Mission First Legal Aid Clinic, the legal clinics at our two law schools, or the benevolence of private attorneys who take cases for free, without reporting them to the MVLP.³⁷ Still, even the most conservative estimates are that more

³⁰ *Report of Public Hearings on The Unmet Civil Legal Needs of Low-Income Mississippians*, *supra* note 6, at 5.

³¹ *About*, MISSISSIPPI VOLUNTEER LAWYERS PROJECT, <http://www.mvlp.net/about/> (last visited Jan. 31, 2013).

³² *See Report of Public Hearings on The Unmet Civil Legal Needs of Low-Income Mississippians*, *supra* note 6, at 5-6.

³³ *See id.* at 6.

³⁴ *See id.*

³⁵ *Id.*

³⁶ *Id.* at 17, 37-38 n.8.

³⁷ *See id.* at 6.

than 150,000 legitimate legal needs go unmet each year.³⁸ The need is enormous.

IV. MISSISSIPPI ACCESS TO JUSTICE COMMISSION

On June 28, 2006, the Mississippi Supreme Court entered an order establishing the Mississippi Access to Justice Commission (MATJC).³⁹ The Court charged the Commission with the duty to evaluate the need for legal aid in Mississippi, to inventory available resources, and to develop new and innovative ways to increase legal aid to the poor.⁴⁰ Stated another way, the purpose of the MATJC is to “bridge the justice gap” and develop ways to provide low-income persons the equal justice promised by the Constitution.

The MATJC has faithfully met, conducted studies, convened hearings in each of our congressional districts, and formulated strategies to increase funding for legal services and to make our courts more accessible to those who have no choice but to represent themselves.⁴¹ The MATJC’s records and findings are open to the public.

IV. WHAT IS TO BE DONE?

Assuming sufficient political will to right this ship, what would it take? Mississippi is not likely to see any substantial increase in LSC funding in the foreseeable future.⁴² For several years now, I have advocated an expansion of pro bono representation in Mississippi under a modified delivery system. Our current system of centralized administration has proven quite effective in certain areas and respects, but fairly ineffective in reaching lawyers in remote parts of the state and matching them up with the legal needs of the poor.

³⁸ See *id.* at 17, 37-38 n.8.

³⁹ *Id.* at 2.

⁴⁰ See *In re: Establishing the Miss. Access to Justice Comm’n*, No. 89-R-99032-SCT, at 2-3 (June 29, 2006) (en banc), available at <http://courts.ms.gov/images/Opinions/133134.pdf>.

⁴¹ See *Report of Public Hearings on The Unmet Civil Legal Needs of Low-Income Mississippians*, *supra* note 6, at 2.

⁴² See *supra* notes 22-23 and accompanying text.

In my view, we should engage in a coordinated effort to strategically place a full-time MVLP lawyer in every population center in the state. These pro bono coordinators would develop personal relationships with the local attorneys, recruit them, and work with them in assigning pro bono cases. Only through substantial expansion of pro bono participation do we have any real hope of significantly improving representation for the poor and moving toward achieving equal justice for all.