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“Civil Right to Counsel” Resolution  
Pennsylvania Bar Association House of Delegates  
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I regret that I cannot be with you in person today as you, the members of the Pennsylvania Bar Association House of Delegates, deliberate and I hope approve the implementing of a defined civil right to counsel for indigent persons in Pennsylvania.

I briefly want to share some thoughts with you as you begin your deliberations.

First, I commend you for considering this historic resolution today. I commend the leadership of the Pennsylvania Bar for being at the forefront of what is now a burgeoning movement across our country – particularly the leadership of your President Andy Susko, and that of Dveera Segal, Co-Chair of the PBA’s Legal Services to the Public Committee, and Sam Milkes, Executive Director of the Pennsylvania Legal Aid Network.

And I commend the Commonwealth of Pennsylvania for having already led the way in implementing, by legislation or court decision, a right to civil counsel in matters involving child dependency, paternity and guardianship.

The Resolution before you is straightforward:

RESOLVED, that the Pennsylvania Bar Association urges the Commonwealth of Pennsylvania to provide legal counsel as a matter of right to low income persons in those categories of adversarial proceedings where basic human needs are at

stake, such as those involving shelter, sustenance, safety, health, or child custody.

At its heart, the Resolution urges a commitment by all in Pennsylvania to the principle that no one should be denied his or her legal rights because of the inability to afford counsel or legal representation.

It is the responsibility of all in society -- but particularly of lawyers -- to give life to the eloquent promise of equal justice, and *equal access* to justice, *for all* in our country.

We know that today, that promise is unfulfilled – it's an empty promise for millions of people – despite all the laudable pro bono efforts of lawyers in private practice, despite the dedicated efforts of legal services lawyers and programs across the country, and despite Congressional funding of the Legal Services Corporation since its creation more than three decades ago.

You have heard the documented statistics –

- That 80% of the legal needs of poor persons in Pennsylvania and throughout the US go unaddressed year after year --
- That 50% of the poor people across Pennsylvania who make it to a legal aid office are turned away because of limited resources --
- That more than *forty million* Americans qualify for legal aid because they are at or near the poverty level --
- That the meager funding provided by Congress to the Legal Services Corporation provides help for only about *one million* of those forty million Americans.

Do you think that those forty million Americans might be justified in feeling that the justice system protects only people with money, and not them? That society does not care about them? Isn't it time that, finally, we try a new solution to this shameful situation?

For that reason, as ABA President I appointed the ABA Task Force on Access to Civil Justice to address the problem. I asked a distinguished group of judges, lawyers and others to consider an idea whose time has come in America: a right to counsel on the *civil* side funded by the state -- for poor and vulnerable fellow Americans, parallel to the right that now exists on the *criminal* side.

The US Supreme Court held in *Gideon v. Wainwright* that the Sixth Amendment guarantees a right to counsel paid by the state to an indigent who faces imprisonment.

But “imprisonment” in America can be by other than steel bars. In the US, every day, in every community, a poor person is imprisoned by devastating health problems, by homelessness, and by poverty-related problems that a lawyer could help solve.

I asked the ABA Task Force to consider whether the ABA, at long last, should endorse a civil right to counsel in adversary legal matters that threaten needs that are basic to human existence.

In a democracy all citizens – whether rich or poor – should have the assistance of counsel when custody of children is threatened; or loss of shelter is imminent; or to obtain legislatively-mandated health benefits. In those areas, every person in America should have counsel at his or her side to help secure their legal rights – whether criminal or civil.

No one in America – the most bountiful country in the world – should be without counsel when those basic needs are threatened. No one.

A civil right to counsel for poor persons may be viewed as “cutting edge” in *the US* – but such a right has been recognized in many civilized nations around the world for a century or longer – in constitutions, statutes, and court decisions.

In *Lassiter v. Department of Social Services* the US Supreme Court in a 5-4 decision in 1981 held that the US Constitution does not require a *civil* right to counsel. Respectfully I say that the five justices in the majority got it wrong. I believe that in time *Lassiter* should be – and will be -- overturned.

Until then, the states are free to address the issue in a number of state-constitution and due process-based ways, ways that are very thoughtfully discussed in the final report and recommendations of the ABA Task Force on Access to Civil Justice. If you have not yet read that report, I suggest that you do so – at [www.abanet.org](http://www.abanet.org).

The Task Force Force's report and recommendation that the ABA endorse a civil right to counsel were adopted by a *unanimous* vote of the ABA House of Delegates at our Annual Meeting in August 2006. What more powerful, historic, statement could be made by the 550 delegates to the ABA House from throughout the US to address this shameful situation?

Since then there has been growing activity in states coast to coast regarding implementation of a civil right to counsel. I have spoken about the issue to very receptive and supportive bar associations and citizen groups in numerous states – including California, Washington State, Alabama, New York, Maryland, Ohio, Montana, and my own state of Massachusetts, among others. I am pleased that the Massachusetts Bar Association House of Delegates recently adopted the resolution that is now before you by a unanimous vote.

When I was a boy my parents – perhaps like your parents – reminded us that where there is a will, there is a way. There is no doubt that the will exists among Pennsylvania lawyers to provide equal justice, and equal access to justice, for fellow human beings.

The Resolution before you simply states a basic principle, one that is worthy of your support. As I said to my colleagues in the Massachusetts Bar Association House

of Delegates before they voted on the Resolution, matters such as the scope and cost of implementing the civil right to counsel will receive the careful consideration of all, once we have endorsed the principle. But that can only happen if we have endorsed the principle.

I ask you today to lead the way for all your fellow citizens in implementing a civil right to counsel in Pennsylvania. I know that, together, we can get it done not only in Pennsylvania, but throughout the United States.

Thank you for your kind attention, and thank you for the vote you are about to take.