Most attorneys who visit Washington, D.C., make a point to visit the U.S. Supreme Court building. It symbolizes the ultimate and final authority of law in our great country. The inscription on the façade states very simply, “Equal Justice Under Law.” However, Pennsylvania lawyers usually do not stop in to see the Supreme Court Chambers when they come to Harrisburg, missing out on an equally inspiring experience. Article I, Section 11 of the Pennsylvania Constitution provides: “All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.” The origin of this first sentence of Section 11 can be traced directly back to the Magna Carta. Pennsylvania has had five constitutions since the American Revolution — 1776, 1790, 1838, 1874 and 1968. Each of them had an open-courts clause. The word “open” can be defined as having the courts available to anyone suffering legal injury, or that the courts are physically open to the public.

Equal justice for all persons regardless of economic status is a basic concept and right in our system of justice. Sadly, however, it is an unrealized right. Today we still find the majority of America’s poor unable to have legal representation when faced with civil legal issues. How can the courts be “open” without access to a lawyer? What can be done to encourage more pro bono services? Bold new suggestions may lead to addressing the need for equal justice under law.

First, there needs to be a greater emphasis within the law school curriculum on lawyering as a unique profession that “gives back to the public.” Pro bono opportunities should be introduced to law students to give them the sense of what it is like to help those who cannot afford legal services and to recognize the importance of using their special skills to give back to the community. That will result in students interviewing for associate positions asking what pro bono opportunities are available at the firm.

Second, law firms need to undergo a cultural change in recognizing the importance of pro bono, in not only assisting those in need, but in legal development and in training associates and giving appropriate billing hour credit. Firms should be encouraged to include a section on their pro bono contributions and policy on their Web sites. Three Pittsburgh law firms have demonstrated that commitment in a dramatic fashion. Tharp Reed & Armstrong, Dickie McCamey & Chilcote, and Reed Smith have been the first three law firms to participate in the Lawyers on Loan program, providing an experienced associate to work full time at Neighborhood Legal Services while continuing to receive full salary, benefits and credit for advancement within the firm. Reed Smith donated two attorneys for six months each; Tharp Reed & Armstrong and Dickie McCamey & Chilcote each provided an associate for a full year.

Third, bar associations can play a major role in promoting pro bono. Many bars have created full-time pro bono staff positions with increasing pro bono service and access to justice as the job description. The Allegheny County Bar Association, the Philadelphia Bar Association and the Pennsylvania Bar Association are among those that have passed resolutions calling upon members to provide substantial hours of pro bono service. Recently, the Pennsylvania Bar Association House of Delegates endorsed the goal that each Pennsylvania lawyer provide pro bono service every year.

In all of this, the role of the judiciary is critical. The
climate of opinion acknowledging the importance of pro bono work by those in leadership positions within both the federal and state judiciary has signaled the importance of pro bono to members of the bar. Court orders simplifying in forma pauperis status, allowing limited appearances in custody cases, and the timing and scheduling of cases with pro bono counsel can be of an immense help in having attorneys contribute.

However, even the most optimistic among us know that even more is needed to achieve equal access to justice for the poor. In 2005, American Bar Association President Michael S. Greco appointed the ABA Task Force on Access to Civil Justice. He 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.”

This would indeed be a bold step and is contrary to the holding in Lau v. Department of Social Services. In that 1974 U.S. Supreme Court case, a 5–4 decision held that the U.S. Constitution does not require a civil right to counsel, unlike the prior decision in Gideon v. Wainwright holding that the Sixth Amendment guarantees a right to counsel paid by the state for an indigent who faces imprisonment. However, establishing a civil Gideon with a civil right to counsel for poor persons when basic human needs are at stake has been recognized in many civil nations around the world for a century or longer—in constitutions, statutes, and court decisions.

The report and recommendation of Greco’s Task Force called for the American Bar Association to endorse the civil right to counsel and was adopted by a unanimous vote of the 550 delegates to the ABA House of Delegates. His many awards include the University of Pittsburgh School of Law Distinguished Alumni of the Year Award and the Pennsylvania Legal Aid Network Excellence Award.

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service are forced to leave just as they are becoming most productive to their employers. A 2005 survey of 661 Pennsylvania law students interested in a public service law career found that the average debt burden was $98,124.

A Task Force on Loan Forgiveness and Repayment Assistance was established by the Pennsylvania Bar Association which led to recommendations to help address this critical issue. A Loan Forgiveness Implementation Committee is now attempting to put in place specifics from the Task Force including drafting legislation creating a statewide loan assistance program administered by PHFA to benefit prosecutors, defendants, legal aid lawyers, and other nonprofit organization lawyers serving the poor and disadvantaged. This legislation has been introduced in both the Pennsylvania House and Senate.

Progress is being made. Congress enacted the College Cost Reduction and Access Act of 2007 which will provide limited help to some law graduates. However, it will not help all.

Every Pennsylvania law school now has created a student loan repayment assistance program to begin to help its graduates. The Philadelphia and Allegheny County Bar Associations have instituted programs. The Allegheny County Bar Foundation pledged $150,000 and have already assisted 23 public interest attorneys, public defenders, and district attorneys. These are just the first steps in a long journey enabling law students to consider a career in public service law.

These pieces of the puzzle to improve access to justice all fit together. The pieces will require the collective efforts of many. It will take federal and state legislation; investments by local, state, and national bar associations; public and private support; and assistance from lending institutions, law schools, and lawyers. The ensuing dialogue addressing these issues and how to open the courthouse doors wider will be challenging and exciting. The results could dramatically change our system of justice, improve the lives of many of our poor, and make us a society truly equal under the law.

Our mission remains to live up to our constitutional mandate. All Americans are entitled to equal access to our Courts. We can and should do our part in that noble crusade.

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