“Equal Justice Under Law:
The Role of the Pro Bono Lawyer”

Keynote Remarks by
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To a Luncheon Meeting of
The Berks County Bar Association
To Celebrate Pro Bono Week

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The Abraham Lincoln Hotel
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Thank you for the opportunity you have extended to me today to come to Berks County and join in the celebration of the 4th Annual Pro Bono week. You have every right to be proud of the leadership exhibited by members of your bar and the support given to MidPenn Legal Services in the cause of providing representation to members of your community who might otherwise be denied such help.

These efforts, of course, find their inspiration in the aspiration emblazoned upon the façade of the United States Supreme Court – “Equal Justice under Law.” This goal cannot be achieved in a society that does not provide competent counsel to all who require it. Those in need cannot be left to “sink or swim” in an increasingly complex legal environment. And we can be proud of the steps taken over the years to meet their needs.

It hasn’t always been so. Fifty years ago, when I first commenced the practice of law, counsel for indigent persons was provided on a more or less “hit or miss” basis. Various legal aid mechanisms, often funded through Community Chests or the local United Way were available on a limited basis and bar committees tried to take up the slack where possible. In Allegheny County where I practiced, I chaired the Bar’s Public Service Committee which worked with the courts to supply lawyers in criminal cases and references in civil cases from a roster of willing volunteers, but all on an ad hoc basis.

That all changed in the 1960s. The landmark case of *Gideon v. Wainwright* established a constitutional right to a lawyer in serious criminal cases. This led in turn to the establishment of public defender offices in many areas and, following a survey of all 67 counties carried out by the Young Lawyers Division of the Pennsylvania Bar Association while I served as its chair. The report highlighted
shortcomings in this area ans led to the enactment of legislation providing for such an office in every county. Thereafter, during the 1967-68 Constitutional Convention where I served as an elected delegate, I was privileged to co-sponsor a constitutional provision mandating a public defender’s office for each county.

About the same time, the need for legal services in civil cases prompted the establishment of local legal services organization such as Neighborhood Legal Services Association (NLSA) in my home county of which in 1966 I was an incorporator and original board member. Federal dollars from the so-called “War on Poverty” provided steady and reliable funding for these operations across the nation, but such efforts were not without their share of problems. Local lawyers frequently objected to what they characterized as “socialism” in the practice of law by these groups, others saw competition from legal service organizations as a threat to their own practices. These issues were hotly debated, but most local bar associations memberships ultimately approved the concepts underlying legal service programs.

Now, of course, organizations like NLSA, are firmly established. Last year our Allegheny County group celebrated its 45th anniversary and assembled alumni from across the nation for a reunion in Pittsburgh, complete with a high school yearbook-type publication with bios and picture of an impressive group of those who had gone on to distinguished public and private sector careers from their beginnings as staff or board members of the legal services organization.

These efforts have had their ups and downs, to be sure, but it has long since been recognized that organizations such as these provided an essential safety valve against unrest during the 60s and 70s and are now included as an important component of our system for the administration of justice. Since the outset, an
important part of the resources mustered for this undertaking has been the work of
the pro bono bar, those lawyers from the private bar who have added value to the
work of publicly-funded legal services organizations through their volunteer
activities. Which brings me to the subject at hand.

Today, we face severe problems in the legal services area. Indeed, true
crises exist in many communities. Let me share with you some statistics compiled
by the Legal Services Corporation (LSC), the umbrella agency and largest single
funder in this field, from its 134 programs across the United States.

The number of people eligible for civil legal assistance is expected to reach
nearly 66 million by the end of this year, an all-time high.

The sharp rise in economic turbulence has been coupled with a shrinking pie
of appropriations as federal support has been reduced 17 percent since
2010 to just $348 million this year, an inflation-adjusted all time low.

Legal aid offices have been closed, staff has been laid off and more people
have been turned away as fortunes declined. Nearly 1,500 positions are
projected to have been eliminated from LSC-funded programs, a more than
15% reduction, and these programs have been obliged to turn away over
50% of those seeking aid.

Last year, LSC created a Pro Bono Task Force to assess how the
effectiveness of its programs might be enhanced by more private-sector
participation. Its report was rendered earlier this month and can be obtained from
the LSC web site. It essentially sets forth four recommendations:
LSC should assume a role as an information clearing-house and source of coordination and technical assistance to participants with an emphasis on developing a strong pro bono culture.

LSC should review its Private Attorney Involvement regulations which allot 12.5% of its budget to pro bono efforts to make them more flexible.

A major public relations effort should be undertaken to emphasize the importance of legal services and its pro bono constituent to develop more public support for these programs.

LSC should work with law schools and law firms to create legal services fellowships for recent graduates such as the Pennsylvania Legal Aid Network’s Martin Luther King, Jr. program.

Incidentally, on a personal note, I can tell you how important this latter effort can be. At my law school alma mater, the University of Pittsburgh School of Law, we established a modest recognition program some years ago for graduates entering into public service. Increasingly, it became apparent that a number of those applying had extended experience as students with legal aid and defender organizations and many were going into these fields following their departure from law school. We had not initially defined legal service as public, i.e. government, service, but have now created a second award for legal services to further recognize the worth of such careers.

The Task Force also seeks the aid of bar leaders and the judiciary to recruit new pro bono lawyers into service as well to amend rules of practice to provide, among other things, more CLE credit for pro bono work in much the same vein as ethics requirements have been added to this regimen. Some seven states have
already undertaken this kind of requirement and it is an area of substantial promise, in my view. Of further note is the recent requirement promulgated by Chief Judge Jonathan Lippman of the New York Court of Appeals that law students perform 50 hours of pro bono legal services under the supervision of an experienced lawyer as a condition of their admission to the state bar.

All of this is designed to further the fulfillment of Judge Learned Hand’s timeless admonition: “Those shalt not ration justice.” For this is what we do when we fail to provide legal counsel to those who cannot afford to hire a lawyer – we ration justice so that only those who can pay receive the benefit of that “Equal Justice under Law” that our Supreme Court has set as a goal for all our citizens.

We can surely do better. In my view the findings and recommendations of the LSC Pro Bono Task Force set manageable goals and a clear path to fulfilling the aspiration toward equality and fairness that have characterized this nation since its inception.

I hope we can welcome all here present and lawyers across the nation to this effort,