

The Least of My Brothers

Contributed by John Browning
Tue, Feb 22, 2011, 08:36 AM

In 2009, the "Legally Speaking" column "Brother, Can You Spare a Lawyer?" spotlighted the crisis in funding for legal aid to the poor. Back then, in the depths of the economic crisis, a perfect storm had been created. Coping with factors like layoffs, rising unemployment, and mounting foreclosures, the number of Texans who couldn't afford to pay for legal help was higher than ever. But at the same time, existing sources of funding for such services were rapidly evaporating; many legal aid programs were and are funded through monies collected from the interest on lawyers' trust accounts (IOLTA), and the plummeting interest rates translated into a steep drop in what was collected. That amount went from over \$20 million in 2007 to slightly more than \$5 million in 2009. The coalition of groups administering legal aid programs statewide requested \$39 million in state aid in 2009 to make up for the shortfall. In response, the legislature came through with a one-time biennium grant of \$20 million. As James Sales, the chair emeritus of the Texas Access to Justice Commission observed, the stopgap measure "didn't give us all we needed to operate, but it allowed us to sustain the system." The Texas Access to Justice Foundation, created in 1984, is Texas' primary funding source for indigent legal representation in civil matters. It administers a variety of funding sources that assist nonprofit groups statewide in providing legal aid to over 100,000 Texas families each year. But now it's two years later, and while there are signs of improvement, the economic problems continue as the recovery is painfully slow. The factors behind the perfect storm of 2009 are still present: interest rates remain at historical lows, the nation is still mired in a recession, and despite the decrease in funding, the number of Texans in need of indigent legal assistance has grown by more than 600,000 since 2009. Statewide, roughly 5.7 million low-income Texans qualify for legal aid (a family of four cannot have more than \$27,938 in annual income if it is to qualify, and an individual's income cannot exceed \$13,613). That translates to only one legal aid lawyer available for roughly every 10,838 Texans who qualify. Intensifying the crisis is the fact that not only has the number of those in need gone up, but also that the needs themselves are greater. Foreclosures, evictions, assistance for veterans seeking benefits, help for the elderly—all of these are at higher levels than before. In addition, societal ills that tend to spike during economic doldrums, such as domestic violence, have led to an increase in the demand for legal services to the poor. What happens when low-income individuals and families find access to legal help cut off or greatly diminished? On an idealistic level, it means that we will have betrayed the promises we made as a society from our very beginnings, that everyone regardless of income level will have access to our justice system and that the words "and justice for all" enshrined in our Pledge of Allegiance will truly mean something. On a pragmatic level, it means that more Texans will join the ranks of the homeless or seek other forms of public assistance as they sink further below the poverty line. As Texas Supreme Court Justice Nathan Hecht, the Court's liaison on access to justice issues, stated, "Assisting struggling Texans with civil legal needs not only impacts those Texans directly but the entire state as well. Helping Texans gain access to justice leads to self-sufficiency and ultimately lessens the need for taxpayer support . . . The Supreme Court is committed to making sure the civil justice system is available to everyone who needs it."

For some, it can indeed be a matter of life and death. A large percentage of cases taken on by legal aid programs involve domestic violence and custody issues. The Aid to Victims of Domestic Abuse, for example, is a Houston-based legal aid organization dependent upon state funding that represented nearly 1,700 cases in 2010 alone in family courts. So what can be done about it? In the midst of a state budget crisis in the billions of dollars, another "white knight" check from the legislature is hardly likely. In fact, preliminary state budget estimates during this session call for a 51% reduction in legal aid funding—a \$23 million decline, according to the Texas Equal Access to Justice Commission. Sure, we can look to lawyers in private practice to do more pro bono work, but that's already happening. On one recent day, an email plea from Legal Aid for Northwest Texas seeking lawyers from the Rockwall County Bar Association to take on four matters in need of placement drew volunteers for all four cases within minutes. Even with pro bono efforts and the current level of funding for legal aid programs, legal assistance for the poor falls dramatically short of meeting the overall need, and roughly only 20% of those in need around the state actually receive help.

Several legislators are introducing bills designed to address the crisis in legal aid funding in Texas. One such bill would mandate an increase in district court filing fees, which would raise an estimated \$6.6 million over the next two years. Another piece of legislation calls for funds generated by consumer protection lawsuits filed by the Attorney General's office to be earmarked for a new Consumer Assistance Fund, which will then distribute the monies to private, consumer-focused charitable organizations. Representative Elliott Naishtat has filed House Bill 1392, which will institute a fee for creditors on the transfer of property following a foreclosure sale, and then use those fees to fund civil legal services for the indigent. Senator Jose Rodriguez has filed Senate Bill 726, which establishes the Judicial Access and Improvement Fund. The El Paso Democrat's bill would create a judicial access and improvement account to provide funding for indigent defense, judicial technical support like electronic filing, and basic civil legal services by imposing certain court costs and fees (like recording fees). Representative Pete Gallego, one of the legislators who has been vocal in calling for support for legal aid funding in Texas, emphasizes the need for such efforts, saying "The legislature plays an important role in protecting our state's most vulnerable citizens, and it is vital that we do everything we can to ensure that all Texans have access to justice."

If you believe, as I do, that everyone deserves access to the legal system regardless of income level, then speak up in support of legislative measures like these. Call, write, or email your state representative and state senator. I urge my colleagues in the legal profession to help, not just with financial donations to organizations like the Texas Bar Foundation

and the Texas Equal Access to Justice Foundation, but also by taking on some pro bono work as well. Programs all around the state, like Legal Aid of Northwest Texas, are clamoring for volunteer attorneys. Bar association-affiliated efforts are also eager for help; as the Dallas Volunteer Attorney Project aptly describes it, it's "billable hours for the soul."

I'd like to say that the reasons why I donate money to organizations like the Texas Bar Foundation and donate some of my time to people who can't afford to pay me is rooted in a sense of obligation that comes part and parcel with what I consider a noble profession. But for me at least, it goes far deeper than that. Among the most enduring lessons of the Catholic faith instilled in me by my parents and reinforced by countless nuns and priests during years of Catholic education are the words found in Matthew 25, verses 31–46. Christ reminds his followers that when they fed the hungry, clothed the needy, looked after the sick, and visited those in prison, they did all of these acts for Him: "Whatsoever you do for the least of my brothers, that you do unto me." When we refuse to help the least of our brothers and sisters, including during their time of legal need, we turn away from God.