

2007 GUIDE TO INVESTIGATIVE SERVICES

# Los Angeles Lawyer



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## Ensuring Equal Justice under Law

**ETCHED IN THE ARCHITRAVE** above the marble columns that front the main entrance to the U.S. Supreme Court are the familiar words Equal Justice Under Law. These four simple words form the heart of our system of justice. They drive us to recognize the importance of the rule of law and the need for checks and balances on those who govern. But more important, the phrase compels us to acknowledge that every person is entitled to an equal opportunity to be heard.

We speak often of the fact that equal justice is achieved by ensuring that everyone who enters the judicial system is entitled to a trial before a jury and to voice their grievances to a judge who will rule fairly and with respect. But all too often we forget the critical role that lawyers play in ensuring equal justice.

The first, and most obvious role, is representation. This year, when Justice Earl Johnson Jr. accepted the Los Angeles County Bar Association's Outstanding Jurist award, he spoke eloquently about the importance of representation for all people, not just those charged criminally but also those seeking recourse or appearing in the civil courts. As Justice Johnson explained, equal justice is hard to come by when the battle is waged between a pro se litigant and an attorney. Justice Johnson's words echoed and expanded on a comment by Justice Hugo Black in *Griffin v. Illinois*: "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."<sup>1</sup>

Deborah Rhode, the director of the Stanford Center on Ethics and the Ernest W. McFarland Professor of Law at Stanford University, reports that "an estimated four-fifths of the legal needs of the poor, and the needs of two- to three-fifths of middle-income individuals, remain unmet."<sup>2</sup> She further writes that over the last two decades, national spending on legal aid has been cut by one-third and "legal services offices can handle less than a fifth of the needs of eligible clients."

While there are many fine firms that have active pro bono programs, there remain many whose practices are driven by the demand for increased per-partner profits. Partners and associates in these firms are discouraged from spending time on pro bono projects and ultimately bend to the pressure of increasing their billable hours. Ironically, lawyers who spend time on pro bono work often report that those cases are ultimately far more satisfying than litigating a massive patent or antitrust case for a *Fortune* 500 company. This is not at all surprising to trial lawyers, who have long appreciated the joy of working long hours with no guarantee of financial return for individuals who have suffered severe injuries as a result of some negligent act or those who have suffered a financial loss from a fraudulent act. But in the end, the harsh reality is that there are far more indigent and middle-income individuals who are unable to obtain representation than there are lawyers willing to give time to

assist them. We have the ability to change that. I urge all of you to accept Justice Johnson's challenge and strive to ensure that everyone who enters the legal system has the benefit of legal assistance.

Second, we have an obligation to make certain that judges retain their independence and are not subject to unjustified economic pressures. Right now, U.S. district court judges are paid far less than many other federal employees. Many newly minted law school graduates—including some who have clerked for our federal judges—earn many thousands of dollars more than these judges. Please join the Bar's efforts to correct this appalling fact by calling on your representatives

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in Congress to increase pay for federal judicial officers.

At the state court level, we must guard against untoward erosion in the conduct of judicial elections. No judge should ever have to mortgage a home to ensure reelection. And, none of our state courts should have to go begging for funding to fix courthouses that are seismically unsound or for simple necessities such as pencils and other supplies. We must also work hard to ensure that the Los Angeles Superior Court remains a strong and viable presence downtown. Recent efforts to develop the Grand Avenue corridor are to be applauded but not at the expense of the superior court. The seat of our local government is downtown. What message do we send to those who govern if they are able to walk blithely into their offices without ever having to pass by our courthouse? The old adage, "Out of sight, out of mind," will no doubt result. Each of you must speak out to your legislators, county supervisors, and councilmembers and make clear that the superior court must continue to stand in its current position facing those who govern in City Hall and the county building.

Third, we bear a strong responsibility to ensure that judges do not abuse their positions. There are hundreds of highly competent and dedicated individuals who have been elected or appointed as judges to our state and federal courts. Each day they rule fairly, wisely, and with respect and civility. But there are some who do not. No lawyer expects to win every argument. But every lawyer expects to be treated

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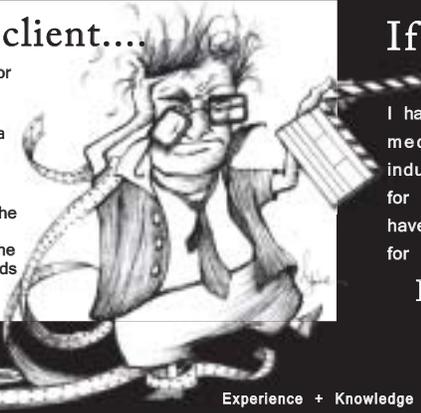
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with respect when arguing. This Association—through the leadership of many, including Robin Meadow, John Collins, and Edith Matthai—has implemented ongoing programs and committees devoted to ensuring that those who judge do not abuse their power. But we cannot act alone. We need your input and insight into those who act improperly so that we can act to correct the problems.

Fourth, we must ensure that civil litigants retain the right to a jury trial. Every day, fewer and fewer cases go to trial. If we allow this to continue, we run the risk of decreased funding for civil jury trials and the potential demise of that right. Collateral damage also results from fewer jury trials, because that means that fewer lawyers are learning how to try a case. Although the system could not survive if every case went to trial, a balance must be struck. We must encourage our young attorneys to go to trial and not continually harp on settlement. If a client is prepared to go to trial and the settlement proposals simply are not in the ballpark, do not ever be afraid to try the case. If you find yourself fearful of an impending trial, think of this: Trials are like airplanes, they take off every day.

And, finally, we must never, ever give up. We have an obligation to stand strong for the principles to which we committed ourselves when we took that oath and became members of the bar. But more importantly, we each owe it to ourselves and to our community to remain a presence in the law. I was deeply disappointed to read the cover article of the February 2007 issue of *California Lawyer*. Titled "We Quit," it confronted the increasing trend of women leaving law firms and the law. As only the ninth woman elected to run this 129-year-old Association, I simply cannot, and I will not, sit by and watch women check out of the practice of law. Moreover, this disturbing trend parallels the concerns of the legal community and the public over the general absence of diversity in the bar and the bench. Your Association, through the extraordinary efforts of a committee of amazing lawyers chaired by President-Elect Danette Meyers, recently sponsored a two-day summit aimed at promoting dialogue and commitment to action to increase diversity in the Los Angeles legal profession. That dialogue and the Association's commitment to increasing diversity will continue. But, each of you must join with us because it is only through you that we will truly have equal justice under law. ■

<sup>1</sup> Griffin v. Illinois, 351 U.S. 12, 19 (1956).

<sup>2</sup> Deborah Rhode, *Equal Justice Under Law*, at <http://www.scu.edu/ethics/publications/submitted/rhode/equal-justice.html>.