

**Council of the District of Columbia
Committee on the Judiciary**

**Testimony of
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In Support of Funding for Civil Legal Aid

March 27, 2006

The Motto of the District of Columbia is Justitia Omnibus, or 'Justice to All.' This noble sentiment for many persons living in poverty in the District of Columbia remains an aspiration.

The Mayor of the District of Columbia has included in his budget request one million dollars for civil legal services. This item is in response to a recommendation of the District of Columbia Access to Justice Commission for an appropriation to help address the crisis in equal justice. The Commission seeks funds to increase representation of tenants in Landlord and Tenant Court, to preserve affordable housing, to reduce access barriers by creating community based services, and to make legal services linguistically accessible by creating a shared interpreter bank. The Commission requested \$6.2 million to achieve these goals.

While we continue to urge that additional funds be made available to meet the Commission's request, we are pleased that the Mayor has recommended that the District join 43 States, including Maryland and Virginia, that support legal aid for persons living in poverty. Across the Country, State funding now provides more that \$160 million each year in support for legal aid programs.

The funding proposed by the Mayor, will add up to ten new lawyers to the network of providers who represent poor clients. As a result of this funding, thousands of District families and individuals will be served. The representation and assistance that these lawyers will provide will have profound benefits that will ultimately save the District far more money than is spent on this appropriation. For each prevented eviction, for example, the District will avoid the cascading costs associated with homelessness, job loss, interruptions to schooling, and other social consequences.

¹ Legal Aid was formed in 1932 to provide legal assistance to families and individuals living in poverty. We were originally an all-volunteer program with private lawyers staffing the office a few hours each week. Today, we are a law office with 17 lawyers, two paralegals. Our main office is in downtown Washington. We have a domestic violence satellite office at the Greater Southeast General Hospital and a Children's Health Project clinic in Southeast. Legal Aid staff handle cases involving domestic violence, custody, child support, housing, and public benefits. We receive about 10,000 requests for help each year. We are able to provide limited assistance in about 750 cases and we take approximately 500 matters for litigation.

There is no greater challenge confronting the legal profession today than the challenge of equal justice.

The American legal system promises equality. Since the beginning of the Republic, we have proudly claimed, what John Adams urged, to be “a nation of laws, not men.” Evidence of this promise appears throughout our founding documents. The Fifth and Fourteenth Amendments to the United States Constitutions guarantee equal protection of the laws and due process. The edifice of the Supreme Court reinforces the aspiration. “Equal Justice Under Law” is proudly inscribed above the entrance through which each must litigant pass on their way to the Court chamber. Even the Pledge of Allegiance promises “liberty and justice for all.” This great promise, however, remains hollow.

The legal needs of persons living in poverty are immense. Poor persons are more likely to encounter the legal system in cases where the stakes are high than persons of means – they are in danger of losing their homes, their food stamps, their access to health care, or the custody of their children. In addition, persons living in poverty are more likely to experience language and culture barriers that keep them from meaningfully asserting their rights.

According to the ABA one half of poor and moderate-income families experience a legal problem each year. The District of Columbia is a uniquely blessed place. While we have a small legal services community, we have a very generous bar. We have a pro bono community that is rivaled by no other. However, most legal needs continue to go unmet. In the District, there are 110,000 persons living in poverty. Nevertheless, despite a very active pro bono bar and the 100 or so lawyers working in legal services organizations, more that 90% of poor persons who need a lawyer never get one.

The demand for civil legal services is being driven by the persistence of poverty in the District.

Poor District residents are extremely vulnerable. Having made only small gains during the 1990s, poverty is again on the rise. Over the last decade, poverty in the District has become more concentrated. The District’s poorest residents are increasingly trapped in distressed neighborhoods that are largely ignored while the District gentrifies around them. High-poverty neighborhoods tend to be highly racially segregated, disproportionately comprised of women and children, and increasingly desperate.

The effects of poverty are profound. Children experience poverty at a higher rate than any other age group with 33% of children 0-5 living in poverty and 31.7% of all children under 18 being poor. ² African American children have the highest rate of poverty at 37.6%. Not surprisingly, most cases handled by legal aid groups touch on the lives of children in some way, either because they directly involve decisions about

² Kids Count, at 13.

custody or child support or because they address conditions in a child's home or income for a child's family.

More than one-third of mothers in the District fail to receive adequate prenatal care the District's infant mortality rate, while declining, remains at nearly 12 per 100,000. A rate that rivals the developing world.

Hunger is prevalent. According to the federal government 11,500 District children live in families that have insufficient income to purchase adequate quantities of food.

The rate of homelessness in the District is three times the national average. Almost 1000 homeless families with children apply for emergency shelter each year. Only three hundred families each year are actually provided shelter. Hundreds are on the emergency shelter waiting list at any given time.

If you are poor, having a lawyer matters.

Chief Justice William Howard Taft, wrote in 1926:

[T]he real practical blessing of our Bill of Rights is in its provision for a fixed procedure securing a fair hearing by independent courts to each individual. . . **Something must be devised by which everyone, however lowly and however poor, however unable by his means to employ a lawyer and to pay court costs, shall be furnished the opportunity to set fixed machinery of justice going.**
(emphasis added)

In the 80 years since Justice Taft wrote those words, the mechanism he urged to provide counsel does not exist. The consequences of the failure to heed his urging are played out every day in the Courts and administrative bodies of the District of Columbia. The result is that persons living in poverty are routinely denied their most basic rights.

The unavailability of lawyers to represent tenants facing eviction is an oft-cited problem here in the District. Nearly 50,000 cases are filed each year in the landlord and tenant branch of our Superior Court. Eighty-five percent of landlords have lawyers, but fewer than 1% of tenants are represented by counsel. Most tenants who end up in court are poor, many work in low-paying jobs, often have difficulty finding child care so they can come to court, and a significant percentage have limited English proficiency.

This raises the question, of course: Do tenants actually have a defense or would a lawyer merely be form over substance? A recent study of the Housing Court in New York City found a dramatic difference in outcome between represented and unrepresented tenants. Attorneys were randomly assigned to litigants and compared to an unrepresented control group. The researchers found that the rate of entry of judgment

against tenants was reduced from 52% to 31%, warrants of eviction were cut nearly in half, and defaults dramatically reduced. Most significantly, 18.8% of tenants with a lawyer obtained a stipulation for an abatement of rent while only 3.2% got one without counsel. Moreover, 45.9% of tenants with a lawyer obtained a stipulation requiring repairs while only 28.2% of unrepresented tenants were able to reach such an agreement.

Poverty law and the struggle for racial justice are intertwined.

Racial minorities are disproportionately subjected to poverty and thus disproportionately suffer the impact of a lack of meaningful access to justice. The consequences that flow from the denial of representation -- such as an avoidable eviction, unnecessary family instability or the improper loss or denial of an income -- further exacerbate economic inequality and perpetuate racial disparities in income, wealth and social status.

Law applied in an unequal fashion tends to obstruct the ability of the poorest and most economically disadvantaged to accumulate the wealth that is necessary to move out of poverty. It is expensive to be poor. Poor persons pay a premium for everything they do. Inner city groceries are more expensive and provide fewer options than big box stores in the suburbs. Credit through pay-day lending, rent-to-own and from sub prime lenders is often at rates that would be usurious in other contexts. Tax preparers take a huge bite in exchange for a rapid refund.

This economic exploitation is compounded by the vulnerability of persons living in poverty to fraud, predatory practices and other abuse. For example, with few advocates available to help, the poor family who is losing a home as a result of an illegally predatory sub-prime loan has no where to go. These cases, often complex to the experienced advocate, are well beyond the reach of the unrepresented litigant. The result is that what little equity that might exist is lost and that family sinks deeper into poverty.

The loss of accumulated wealth need not be the result of malicious motives. Here in the District wealth is being drained each day out of poor, largely African American communities through the operation of our property tax and probate systems. It is not unusual for a low-income family to have acquired a home decades ago when an hourly wage-paying job could support a modest mortgage in the District. The generation that purchased these homes is now dying. These homes are passed down, often informally, to the child who cared for the parents in later years. Title is never properly transferred. Because many of these homes are in transitional neighborhoods, speculators watch them like vultures, swooping in to buy them at the first default on taxes. As a result of a confused title and an inability to negotiate the system, often these homes are lost together with their equity, and developed for purchase by high-income city dwellers.

The equity in that house, especially in a neighborhood of rising property values, represented a real opportunity for that African American family to move from poverty. It was lost for no other reason than the complexity of the legal process and the unavailability of lawyers to provide help.

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The proposal in the Mayor's budget is a large step towards addressing this need. We are grateful for the Committees support.