

**Testimony of Eric S. Angel, Executive Director, and
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The Legal Aid Society of the District of Columbia**

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

Hearing on B21-879, “Expanding Access to Justice Act of 2016”

October 19, 2016

The Legal Aid Society of the District of Columbia¹ strongly supports Bill 21-879, the Expanding Access to Justice Act of 2016, which would authorize the D.C. Bar Foundation to issue new grants to legal services providers in the District to create demonstration projects establishing a right to counsel in certain types of housing cases.

While our testimony focuses on providing a right to counsel in housing cases – and in particular, the importance of representation for tenants facing eviction – we share the larger concerns and goals expressed by the Council in this Act:

- Access to justice is particularly crucial in court or administrative proceedings involving fundamental human needs, namely preservation of liberty, housing, safety, family integrity, health care, nutrition, education, income, and employment.
- Each year, tens of thousands of low-income residents of the District face loss of these fundamental human needs through a civil court or administrative proceeding without the assistance of an attorney. This is an access to justice concern of the highest order.
- Access to counsel through civil legal services providers is a powerful tool for protecting fundamental human needs, reducing poverty and inequality, and ensuring that all of the District’s residents can fully participate in the life of the city.
- While individual representation is critical to empowering low-income communities and achieving equal access to fundamental human needs, so too is systemic reform to laws and policies and the functioning of judicial and administrative tribunals.

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last 84 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer protection.

- Demonstration projects to test out the concept of providing a right to an attorney in civil cases involving fundamental human needs are an important mechanism for gathering data about the numerous benefits that can be realized by investing in civil legal services.

The Expanding Access to Justice Act is an important step toward closing the justice gap in the District of Columbia. We applaud Councilmember Kenyan McDuffie and his staff for their leadership on this Act.

The Act would fund projects to represent low-income individuals in five key areas: 1) defense against eviction lawsuits, 2) enforcement of the housing code to address housing conditions, 3) preservation of housing subsidies, 4) enforcement of the District’s rent control laws, by contesting housing provider petitions or bringing tenant petitions, and 5) preservation of the rights of individuals in the homeless services system. Our testimony focuses on the area where Legal Aid focuses much of our limited resources: the defense of tenants facing eviction in the Landlord and Tenant Branch of D.C. Superior Court.

A stable, sustainable funding stream will be critical to the success of the Act. As the Council works to identify funding, we want to emphasize two principles. First, funding for the Act should not be taken from other budget priorities for low-income communities. Second, funding for the Act should not supplant the existing Access to Justice funding, which already is being used to help thousands of low-income residents of the District each year.

Legal Aid’s Work on Housing Cases and the Housing Right to Counsel Pilot Project.

The District of Columbia faces a housing crisis. During the past ten years, the District has lost nearly half of its low-cost housing units.² The average rent for a one-bedroom apartment in the District now tops out at over \$2,000.³ Yet, a resident working full-time at the District’s minimum wage of \$10.50 (above the federal minimum wage) can only afford a monthly rent of \$546.⁴ Individuals subsisting on Social Security Disability or Temporary Assistance to Needy Families can afford much, much less – without a housing subsidy, they are effectively locked out of the rental market. The centralized waiting list for subsidized housing maintained by the D.C. Housing Authority still numbers over 40,000 families, and it has been closed for more than three years.⁵

² Wes Rivers, D.C. Fiscal Policy Institute, *Going, Going, Gone* 1 (March 2015).

³ Perry Stein, “Median rental price for a one-bedroom D.C. apartment is \$2,000, study says,” *Washington Post* (March 12, 2015); Rent Jungle, “Rent trend data in Washington, District of Columbia” (reporting average one bedroom apartment rent of \$2176 a month and two bedroom rent of \$2899 per month, as of September 2016), *available at* <https://www.rentjungle.com/average-rent-in-washington-rent-trends/>.

⁴ National Low-Income Housing Coalition, *Out of Reach 2016* 46, *available at* http://nlihc.org/sites/default/files/oor/OOR_2016.pdf.

⁵ *Performance Oversight Hearing on the District of Columbia Housing Authority Before the Committee on Housing and Community Development*, 21st Sess. (D.C. 2015) (statement of Adrienne Todman, Executive Director, D.C. Housing Authority).

Legal Aid’s Housing Law Unit seeks to address this housing crisis by keeping families in safe, affordable, accessible, stable housing. Our attorneys represent individual tenants to defend against eviction or loss of a critical housing subsidy, to bring their landlords to court for needed repairs, and to enforce their rights under the District’s rent control laws. We also help families enforce their rights under local and federal fair housing laws, subsidized housing laws, and more.

In addition to making justice real in individual ways, we strive to make a systemic impact by addressing the laws and policies that perpetuate unequal access to housing. Legal Aid attorneys advocate and collaborate with District agencies, members of the Council, and other key stakeholders on a range of housing policy issues. Through our *Barbara McDowell Appellate Advocacy Project*, we bring cases raising important housing issues before the District’s highest court, the D.C. Court of Appeals, where decisions can impact thousands of low-income District residents.

Legal Aid represents hundreds of individuals and families facing eviction each year. Much of this work is centered around two of Legal Aid’s signature projects. The *Landlord Tenant Court-Based Legal Services Project* – currently in its tenth year of operations with our project partner Bread for the City – provides same-day and extended representation through a legal services office sited in the Landlord and Tenant Branch of D.C. Superior Court. The *Housing Right to Counsel Pilot Project* – run by Bread, Legal Aid, Legal Counsel for the Elderly, and the D.C. Bar Pro Bono Center, with strong pro bono support from area law firms – focuses on defending tenants facing eviction from subsidized housing. The latter project is modeled as a right to counsel demonstration project, in which we guarantee representation to qualifying tenants.

Eviction Has Devastating Consequences on Families and Neighborhoods and, Ultimately, on the District.

Eviction defense is vitally important first and foremost because of the devastating consequences that eviction too often has on individuals, families, neighborhoods, and communities. Earlier this year, Harvard sociologist Matthew Desmond published his path-breaking book *Evicted: Poverty and Profit in the American City*, which charts his experience living in low-income communities in Milwaukee, Wisconsin for over a year and studying eviction up close. The central thesis of Desmond’s book is that eviction is a cause, not just a condition, of poverty. He argues powerfully that eviction too often has been overlooked and misunderstood in larger conversations about housing policy, even as its consequences have ravaged low-income families and their communities. As Desmond succinctly states the dimensions of the crisis: “Poor black men were locked up. Poor black women were locked out.”⁶

Combining compelling personal narrative with comprehensive social science analysis, Desmond and his team make the following findings about eviction:

⁶ Matthew Desmond, *Evicted: Poverty and Profit in the American City* (2016).

1. Evicted families may be forced to accept substandard housing conditions. Families with an eviction on their record may be unable to secure decent, affordable housing because landlords will simply not consider an applicant with an eviction on their record.⁷ “Because many landlords reject applicants with recent evictions, evicted tenants are pushed to the very bottom of the rental market and often are forced to move into run-down properties in dangerous neighborhoods.”⁸
2. Evicted tenants too often forced to move to poorer and more dangerous areas. Desmond and his research team found that families who experience a forced move typically relocate to worse neighborhoods than those who move under less demanding circumstances.⁹
3. Eviction can lead to loss of a vital housing subsidy. A court-ordered eviction results in loss of a subsidy for tenants whose assistance is tied to their units and also is a basis to terminate tenant-based assistance.¹⁰ For those on the waiting list for subsidized housing, eviction and unpaid debts often count as a strike against an applicant.¹¹
4. Eviction disproportionately affects families with children. Desmond notes “Children didn’t shield families from eviction; they exposed them to it.”¹² Even after accounting for other facts such as how much the tenant owed the landlord, household income, and race, Desmond found that the presence of children in the household almost tripled a tenant's odds of receiving an eviction judgment.¹³
5. Eviction results in tenants losing important possessions that are expensive to replace. Some tenants cannot afford to move larger, more expensive items such as furniture and appliances and are forced to leave behind these and other possessions when evicted. Even for tenants able to pay for storage initially, items may be lost later if payments are not made to the storage facility.¹⁴
6. Eviction has proven negative effects on children’s health and schooling. Substandard housing conditions to which evicted families too often must relocate can degrade a

⁷ *Id.* at 297.

⁸ Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. Soc. 88, 118 (2012).

⁹ *Evicted, supra*, at 297.

¹⁰ Matthew Desmond and Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 94(3) Soc. Forces 295, 299 (2015).

¹¹ *Evicted, supra*, at 297.

¹² *Id.* at 287.

¹³ *Id.* at 332.

¹⁴ *Eviction and the Reproduction of Urban Poverty, supra*, at 119.

child's health, ability to learn, and sense of self-worth.¹⁵ Eviction also is associated with higher rates of adolescent violence and poor school performance.¹⁶

7. Eviction has been linked to employment instability. Desmond's research has found that the likelihood of being laid off is roughly 15 percent higher for workers who have recently experienced eviction.¹⁷ Eviction causes many stresses on low-wage workers that can lead to job loss: a forced move can "consume renters' time and cause them to miss work; consume their thoughts and cause them to make mistakes on the job; overwhelm them with stress and cause them to act unprofessionally in the office; result in their relocating farther away from their worksite and increase their likelihood of tardiness and absenteeism; and lead to homelessness, relationship dissolution, and other severe consequences."¹⁸

8. Eviction can lead to psychological instability, depression, and even suicide. Desmond reports that half of recently evicted mothers reports multiple symptoms of clinical depression, double the rate of similar mothers who were not forced from their homes.¹⁹ Psychiatrists have cited eviction as "a significant precursor to suicide."²⁰

Unrepresented Tenants In Eviction Proceedings Too Often End Up with Unfair Outcomes and a High Risk of Eviction.

More than 32,000 complaints for possession were filed in the Landlord and Tenant Branch of D.C. Superior Court in 2015. Our best estimates indicate that landlords were represented in 90 to 95 percent of all cases filed, while tenants received representation from an attorney in only 5 to 10 percent of contested cases.²¹ On any given day, the Branch may have anywhere from 100 to 200 cases scheduled to be heard by only two judges. The court is high-volume, fast-paced, and can be intimidating for a party proceeding without the assistance of an attorney. Individuals with disabilities, limited English proficient litigants, and those facing barriers of low literacy and similar challenges do not fare well in this process.

Predictably, the imbalance in representation and power leads to unequal results. Many tenants (20 percent in 2015) receive a default judgment in the case filed against them after failing

¹⁵ *Evicted, supra*, at 299.

¹⁶ *Eviction and the Reproduction of Urban Poverty, supra*, at 89 (citing Sharkey and Sampson 2010; Pribesh and Downey 1999).

¹⁷ *Evicted, supra*, at 296.

¹⁸ Matthew Desmond and Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 Soc. Prob. 46, 59 (2016).

¹⁹ *Evicted, supra*, at 298.

²⁰ *Id.* at 299.

²¹ The Superior Court has not published statistics on representation in its recent annual reports. Legal Aid draws these figures from our own sampling and analysis of 2015 cases. For these purposes, a "contested" case is one that is not dismissed by bulk filing on or before the first court date.

to appear in court.²² For those who appear and whose cases are not dismissed, the majority (72 percent in 2015) enter into one-sided consent judgments with their landlord's attorney.²³ The typical consent judgment involves the tenant agreeing to pay back all rent money allegedly due on a very tight schedule. If the tenant pays late or misses a payment, the landlord can lift the stay on the judgment and start the eviction process within days. Repairs or other obligations on the landlord seldom are included as part of these agreements, and any such obligations are considered independent, not excusing the tenant's nonpayment. In other words, the form consent judgment tends to be forgiving with respect to terms that apply to the party with counsel (the landlord), yet strict to the point of draconian with respect to the terms that apply to the unrepresented party (the tenant).

Unrepresented tenants who decline to enter into these one-sided consent judgments face significant risks. Many such tenants "confess" judgment when they appear before the court, unable to articulate legal defenses without the assistance of an attorney. Tenants attempting to proceed to trial on their own must attempt to navigate an area of the law that has been described by one D.C. Court of Appeals judge as one of the most doctrinally complex in the District. Subpoenaing witnesses, gathering exhibits, and introducing such evidence at trial can be overwhelming without help from an attorney.

At the end of the day, many tenants brought into the Landlord and Tenant Branch ultimately face the risk of eviction. In 2015, approximately 20 percent of tenants in non-dismissed cases received a writ of restitution, the order to the U.S. Marshal Service to start the eviction process. We estimate that nearly a thousand evictions ultimately took place across the District in 2015.²⁴ Those figures do not include many tenants who vacate before the Marshals arrive. Each such forced move is a human tragedy for a family, a community, and the District overall.

Tenants Represented by Attorneys in Evicting Proceedings Achieve Fairer Outcomes and Are Much Less Likely to Face the Risk of Eviction.

What difference can it make for a tenant facing eviction in the Landlord and Tenant Branch to have an attorney by her side? Through our Housing Right to Counsel Pilot Project, Legal Aid and our project partners have been collecting data to answer this question. Our results are preliminary and based on a relatively small set of cases, so these results should be considered preliminary and subject to future revision as more results come in. But they begin to paint a picture of the difference an attorney can make.

²² *District of Columbia Courts Statistical Summary 2015* 10. More than 20 percent of tenants default and never appear, but some of these cases result in dismissals when the landlord takes no further steps to perfect the judgment.

²³ *Id.*

²⁴ These figures are estimates based on Legal Aid's our own sampling and analysis of 2015 cases. The Council may wish to try to request this information from the Court or the U.S. Marshal Service for precise figures.

Since our project launched in May 2015, we have represented our 400 tenants, including over 125 cases referred out for representation by our pro bono partners. We have gathered detailed data about how cases have progressed and the outcomes that represented tenants have achieved. The results, described below, indicate that representation by an attorney contributes to fair outcomes and a much lower risk of eviction.

The Housing Right to Counsel Pilot Program is focused on tenants living in subsidized housing who are facing eviction, and it includes pre-court outreach followed by in-court representation. Volunteers for Legal Aid track all eviction cases as they are filed. Landlords must indicate on the form complaint whether a unit is subsidized. Of all of the cases involving a subsidized unit (approximately 20 percent of all cases filed), we randomly select 1 out of every 7 tenants to be part of the Project.

Selected tenants receive a letter informing them that, if they meet income guidelines, they will receive an attorney if they call a hotline. Legal Aid staff and volunteers respond to hotline calls and perform a short intake. Tenants are then matched with an attorney. Approximately 30 percent of cases are resolved through limited representation provided by Bread or Legal Aid in our courthouse office. The rest of the tenants receive extended representation from a legal services or pro bono attorney.

To draw comparisons about results, Legal Aid also is tracking a control group of randomly-selected cases involving eviction of subsidized housing tenants that are not part of our Project, gathering the same data about case progression and outcome. Not surprisingly, tenants in this group are much less likely to secure access to counsel. While 24 percent of tenants that receive our outreach letter follow up and receive representation from an attorney, only 7 percent of tenants in the control group ever receive such representation.

The data gathered as part of the Housing Right to Counsel Pilot Project include the following findings:

1. Represented tenants are much less likely to default. Only 1 percent of tenants who receive representation through the Project later default in their cases. By comparison, 36 percent of other tenants in contested cases have a default entered against them at some point.
2. Represented tenants are much more likely to contest the case against them. Tenants represented by the Project contest the landlord's claim by moving to dismiss or for judgment or requesting a trial or an evidentiary hearing in 55 percent of cases. Only 11 percent of other tenants take such a step.
3. Represented tenants get more time to resolve their cases. The eviction process is a summary process even for represented tenants, but working with an attorney and contesting a case often provides tenants with the space and time they need to reach a fair and reasonable resolution. Tenants represented by the Project resolve their cases, on average, 66 days (9 weeks) after their first court date; only 11 percent of these tenants enter an agreement on their first day in court. By contrast, 63 percent of other

tenants resolve their case on their first court date, and the average time to disposition is only 16 days.

4. Represented tenants are more likely to enter settlement agreements, not consent judgments. The majority of tenants represented by the Project are reaching settlement agreements to resolve their cases (63 percent); very few enter a consent judgment (8 percent) or have judgment entered without a trial based on a default (1 percent). The majority of other tenants either enter a consent judgment (43 percent) or have judgment entered without a trial (18 percent); only 21 percent enter a settlement agreement to resolve the case.
5. Represented tenants face a lower risk of eviction. Most represented tenants never face even the risk of eviction. Only 4 percent of tenants represented by the Project have had a writ of restitution issued against them and only 2 percent have been evicted from their homes. For other tenants, 27 percent of concluded cases result in a writ of restitution being issued, and 6 percent result in a writ being executed, an actual eviction.

The results of our Housing Right to Counsel Pilot Project are not unique. For example, a pilot in Quincy District Court (outside of Boston, Massachusetts) providing representation to tenants facing eviction found that represented tenants were twice as likely as unrepresented tenants to be able to remain in their homes and received financial benefits that were five times higher.²⁵ In New York City, a recent influx of funding to legal services providers has increased representation rates for tenants facing eviction from 1 percent to 27 percent, and at the same time the eviction rate has dropped by 24 percent.²⁶ These studies and others, as well as preliminary data from our project here in the District, suggest that providing representation can reduce eviction rates.

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Increasing access to counsel for tenants facing eviction, subsidy termination, poor housing conditions, or significant rent increases under rent control is one of several strategies needed to address the District's housing crisis. Legal Aid strongly supports the Expanding Access to Justice Act of 2016, an important step in closing the justice gap.

Thank you for this opportunity to testify.

²⁵ Boston Bar Ass'n Task Force on the Civil Right to Counsel, *The Importance of Representation in Eviction Cases and Homelessness Prevention* 1, 15-17 (March 2012).

²⁶ New York City Office of Civil Justice, *2016 Annual Report* 1-2, 20, 31 (June 2016).