

JUSTICE TO ALL

The Continuing Work of the Access to Justice Commission

By Kathryn Alfisi

When the District of Columbia Access to Justice Commission reached its second anniversary on February 28, its members had reason to celebrate. Since the District of Columbia Court of Appeals created the commission in 2005, the group has made steady progress in its work to improve the availability of civil legal services to District residents, culminating in the recent appropriation of \$3.2 million for that purpose by the D.C. Council.

The success has taken some commission members by surprise.

"If you had said to me at the beginning that within two years we were going to have \$3 million in appropriations, see a loan repayment bill get passed, and be working on setting up an office at the landlord and tenant court, I would have said that you were absolutely insane, there's no way we could get that stuff done—but we did," says Jonathan Smith, who, outside his commission duties, is executive director of the Legal Aid Society of the District of Columbia.

Fellow commission member Patty Mullahy Fugere, cofounder and executive director of the Washington Legal Clinic for the Homeless, is similarly thrilled, particularly about the city's appropriation, which is the largest amount the District of Columbia has ever provided for civil legal services.

"I've been doing this for a long time and have been very involved in budget advocacy issues, and never have I seen any initiative move forward so quickly and with so much significant

support from the community as well as the council," she says. "That's one of the things that we had hoped for with the commission, that it would be a gathering of people who would be able to accomplish things that each of us on our own would not be able to."

There is still a great deal for the commission to accomplish, however, before *Justitia omnibus* (Justice to all) becomes more than just the city's motto.

Although Washington is a city with a substantial pro bono effort and numerous legal services providers and law school clinics, the need for legal assistance still exceeds the available resources, and thousands of low-income residents face eviction, loss of child custody, denial of public benefits, or the inability to obtain a protection order without legal representation or advice. It is estimated that only 10 percent of residents' legal needs are being met.

It is a multifaceted problem that has no simple or quick solutions, but the commission is tackling it in stages, working closely with numerous individuals and organizations in the legal services community and beyond to study and discuss issues, create proposals, and arrive at methods that will achieve lasting results.

The city's appropriation, which the D.C. Bar Foundation will distribute to grant-based programs that support areas identified by the commission, is but one of those methods, and with it comes a whole set of concerns.

"Certainly this is going to be an ongoing process," says the commission's executive director, Sunil Mansukhani. "No one believes that just getting \$3 million more in funding is going to solve all the problems, and it would be naive to think otherwise. What it does allow is for some creative thinking among people who are very experienced in this area."

The commission also started off 2007 focusing on enhancing

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the coordination of intake and referrals, tracking the progress of the Bar Foundation's IOLTA Bank Initiative, working on a needs study, and planning for further funding and increased pro bono partnerships, all of which reflect the commission's broad approach, which was set forth in the order creating it.

In the Beginning

In 2003 the D.C. Bar Foundation issued a report, titled "Civil Legal Services Delivery in the District of Columbia," that became the catalyst for the formation of the D.C. Access to Justice Commission.

The report's findings included some startling statistics about poverty in the District. According to the report, one in five District residents lived in poverty and the demand for family shelter had increased 150 percent since 1999. It also identified lack of affordable housing as the biggest challenge of low-income residents.

To effectively address what it stated was "the crisis in access to justice," the report concluded that "there must be a continuum of services that includes brief advice and counseling, limited and full representation, access to trained and qualified legal interpreters, systematic litigation, client empowerment, and policy advocacy." It also recommended that the private bar, legal services providers, and the judiciary join together "in a concerted effort to enhance dramatically the ability of our neediest citizens to gain access to justice."

The D.C. Consortium of Legal Services Providers and the D.C. Bar joined the Bar Foundation in its call for the formation of a commission that would address these challenges.

"We needed something bolder, grander, more profound, that was going to address not only the availability of civil legal services but also . . . the way the justice institutions are structured to exclude poor persons from having to have their voices heard," says Smith, who was involved in the early discussions to create a commission.

By the time the Bar Foundation issued its report, several states had established some sort of access-to-justice commission to address civil legal needs. (Currently there are 25, including the District's.)

Robert Echols, the state support director for the American Bar Association's Resource Center for Access to Justice Initiatives, says the commissions started springing up about 12 years ago as a reaction to cuts in federal funding and the restrictions placed on the remaining funding. States realized, he says, that they could no longer depend on federal funding to support legal services.

Echols believes that like the creation of the Legal Services Corporation in the 1970s and the development of Interest on Lawyers' Trust Accounts (IOLTA) programs in the 1980s, access-to-justice commissions represent a major step in the development of state funding for civil legal services.

The commissions' principal function, he says, is to bring together all the relevant stakeholders to take a big-picture approach to the issue. However, whereas some focus more on funding, others concentrate on "ensuring that all the different pieces of the system work effectively together."

Those involved in establishing a commission in the District of Columbia thought it was important to create a body that took a comprehensive approach and would effect real change.

"From the beginning we said this was going to be an active commission. This was not going to be a report-giving commis-



Judge Inez Smith Reid

sion. No recommendations were going to come out of it. We were going to try to get some things done," says Smith.

Equally important in the commission's creation was having the full support and participation of the D.C. Court of Appeals.

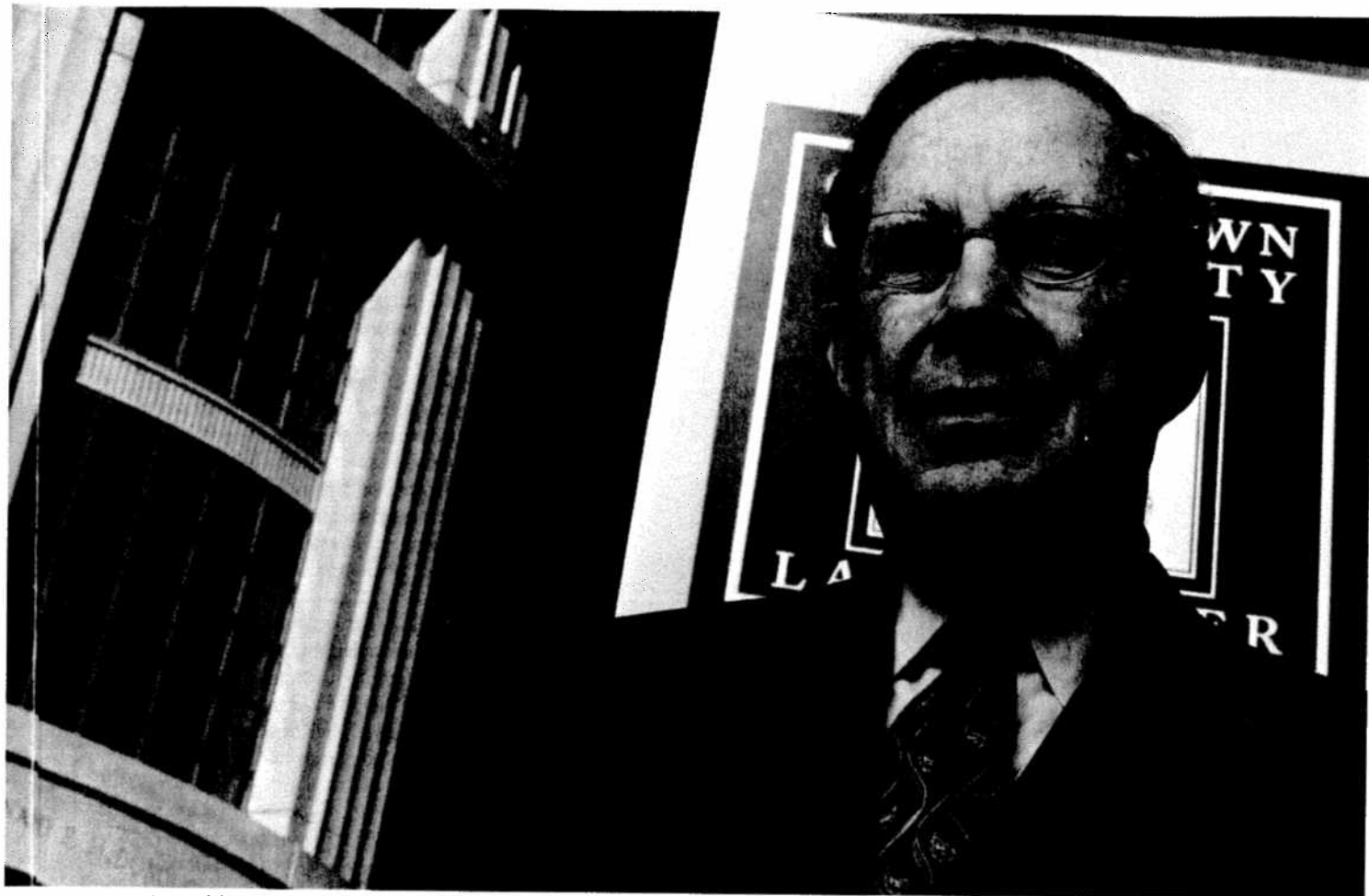
"That's one of the points that Jonathan [Smith], Andy Marks, and others said to us at the outset, that it was very important that the court create the commission, because then it would have some standing, not only with the community at large, but also with the critical bodies, the executive and legislative branches of government," says Judge Inez Smith Reid.

On February 28, 2005, the court issued a formal order establishing the District of Columbia Access to Justice Commission and charged it with responsibility for developing strategies to improve access and reduce barriers; facilitating efforts to improve coordination and support of civil legal services programs; working with the courts, administrative agencies, and lawmaking bodies to promote rules and changes that would allow for greater access to the justice system; and proposing and promoting strategies to raise public, private, and volunteer resources and funding.

Commission members were nominated by the D.C. Bar, the D.C. Bar Foundation, the Consortium of Legal Services Providers, and the D.C. courts' Joint Committee on Judicial Administration in the District of Columbia.

Peter Edelman, who teaches constitutional law, social welfare law, and public interest lawyering at Georgetown University Law Center, was chosen to chair the commission.

Over the course of his long and distinguished career, Edel-



Peter Edelman

man has been an advocate for the poor, whether through his role as director of the New York State Division of Youth, a special assistant to the assistant attorney general of the Department of Justice's Civil Division, a partner at Foley & Lardner, issues director for Senator Edward Kennedy's 1980 presidential campaign, or legislative assistant to Robert F. Kennedy.

In addition to Edelman, Mullahy Fugere, Reid, and Smith, the following individuals were appointed to serve on the commission: Jane Golden Belford, chancellor of the Archdiocese of Washington; Gloria Wilder Braithwaite, president and chief executive officer of Core Health; Marisa Demeo, professor of law at Howard University; Stephanie Duncan-Peters and Hiram Puig-Lugo, judges on the D.C. Superior Court; Andrew Marks, a partner at Crowell & Moring LLP; Shirley Massey, an injured-worker advocate; Jayne Park, executive director of the Asian Pacific American Legal Resource Center; Stephen Pollak, a partner at Goodwin Procter LLP; Vanessa Ruiz, a judge on the D.C. Court of Appeals (succeeded Eric Washington, who resigned on becoming the court's chief judge); Paula Scott, chief of the Civil Legal Services Division of the D.C. Public Defender Service; Joan Strand, professor of law at George Washington University; and Robert Wilkins, a partner at Venable LLP.

Commission members get together every six weeks at Goodwin Procter for meetings that are open to the public.

"We generally function by consensus, and for the most part our differences make for rich discussions that help move us forward," says Edelman of the meetings.

Unmet Civil Legal Needs

The District's recent economic revival has left many of its residents behind and increased the already substantial income divide.

According to a 2004 study by the D.C. Fiscal Policy Institute (DCFPI) that looked at data from the 2000 census, the District has the greatest income inequality of any major U.S. city. In 1990 the average income of the top-fifth households was \$186,830, and the average income of the bottom fifth was \$6,126.

"One of the things that is happening [in the District] is that you have enclaves of highly concentrated poverty," says Smith. "Neighborhoods have become either rich neighborhoods or poor neighborhoods, and that's terrible for the city, because the problems of poverty become magnified."

Housing in particular is a concern. A 2005 DCFPI analysis of then recently released census data showed that the District saw close to 12,000 affordable housing units replaced by almost 15,000 high-cost units in 2004, and that median rent prices increased by 9 percent and median home prices by 32 percent between 2003 and 2004.

The city's legal services providers see the reality behind these statistics every day. They see how much of a struggle it can be to find safe and decent affordable housing; they see residents who are unaware of their housing rights and suffer as a consequence; they see how homelessness can sometimes be just one eviction away.

According to Mullahy Fugere, "A lot of people who wind up homeless find themselves in landlord-tenant court somewhere along the way."



Jonathan Smith

Annually, the Landlord and Tenant Branch of the D.C. Superior Court handles approximately 50,000 of the Civil Division's 130,000 filings. Less than one percent of tenants before the landlord-tenant court have legal representation.

Superior Court Chief Judge Rufus G. King III focused on the problem of pro se litigants in his April 2006 testimony before the D.C. Council supporting the commission's request for city funding. He said that most pro se litigants' lack of legal knowledge makes it difficult for them to explain their case to the court, and the technical nature of landlord-tenant law makes it difficult for litigants to "understand what claims and defenses are available to them."

For instance, tenants may not know that poor housing conditions could be a valid defense in their case, or that if they receive federal housing subsidies or live in public housing their landlord must comply with a litany of federal and local regulatory requirements before filing suit against them.

Unrepresented landlords, who usually own a single dwelling or a small number of units, also face difficulties in court, specifically on technical matters such as filling out a complaint form correctly or not understanding their obligations under the District's rental housing statutes and regulations, said King.

Nearly 75 percent of the 50,000 cases filed in the court end in dismissals or default judgments when a defendant does not

appear, and two-thirds of the remaining cases are closed by confessions of judgment or consent agreements, which, according to King, tenants with legal representation rarely enter into because they can "have a significant impact on the tenant's credit and future ability to obtain rental housing."

Pro se litigants in landlord-tenant court can receive assistance through the D.C. Bar Pro Bono Program's Landlord Tenant Resource Center, which helps them navigate the court system and understand the legal procedures surrounding a particular case, although it does not provide representation.

Some representation is available through legal services providers such as the Legal Aid Society and Bread for the City, and through law school clinics such as Law Students in Court (LSIC), a clinical program of a consortium of District law schools that has an office near landlord-tenant court.

The Superior Court is also working to make improvements by helping to establish self-help centers at the court such as the Landlord Tenant Resource Center, simplifying court forms and documents and making them available online, and providing a Spanish-speaking interpreter. The need for legal assistance, however, is still far from being met.

"The process has improved, but there's room for more improvement. The main problem is the lack of representation," says Judge Reid. "With the D.C. Bar and LSIC there are some resources available for the tenants, but it's simply not enough."

And housing issues extend beyond the landlord-tenant court.

"It's so important to look at the long term and ways in which you can reform the system and how certain types of policies and initiatives might address problems," says Mullahy Fugere. "If you put more lawyers in landlord and tenant, you prevent evictions, but people still might be living in housing that's not affordable and in poor condition."

Lawyers are also needed to provide brief services such as letter writing, which could resolve housing disputes before they get to court, and to take on housing code violation cases, tenant association cases, and tenant right-to-purchase cases, which could help more people retain their housing in the long run.

Because of the small number of housing lawyers available to work on housing issues, the priority has been given to eviction proceedings.

Although perhaps the most prominent, housing is not the only area where access to civil legal resources is important.

Lack of access to civil legal services can also result in "families who go without support because their public benefits got screwed up and they didn't have a mechanism to fix it, or families who live with violence because they don't know how to get a protection order from the court," says Smith.

The community's lack of knowledge about their legal rights is in itself a concern.

"There can be very grave consequences to people not knowing their legal rights," says Mullahy Fugere. "Loss of income, loss of jobs, discrimination, domestic violence, or the forces of economic development and gentrification. All of these things can happen when people don't know that they have rights and protections and that there are resources available to assist them."

Adequate Funding

In order to have legal resources available for low-income residents, there must first be adequate funding.

When the commission began its funding efforts, 43 states were already providing financial assistance to legal services providers through direct appropriation or filing and court fees, or via both methods, but in the District there was only a small amount of money provided for domestic-violence-related matters, primarily through court fines and fees.

In creating its funding proposal, the commission held detailed discussions with numerous groups—including administrative law judges, Catholic University Columbus School of Law's clinical faculty, the Center for Law and Social Policy, the Council for Court Excellence, the D.C. Bar Pro Bono Program, and the D.C. Bar Courts, Lawyers and the Administration of Justice Section—to determine where and how much funding would have the greatest impact.

These discussions led the commission to recommend that the D.C. Council allocate \$6.2 million in fiscal year 2007 for the provision of additional legal services lawyers in underserved parts of the city, the hiring of more lawyers for housing-related matters, and the creation of a shared interpreter bank.

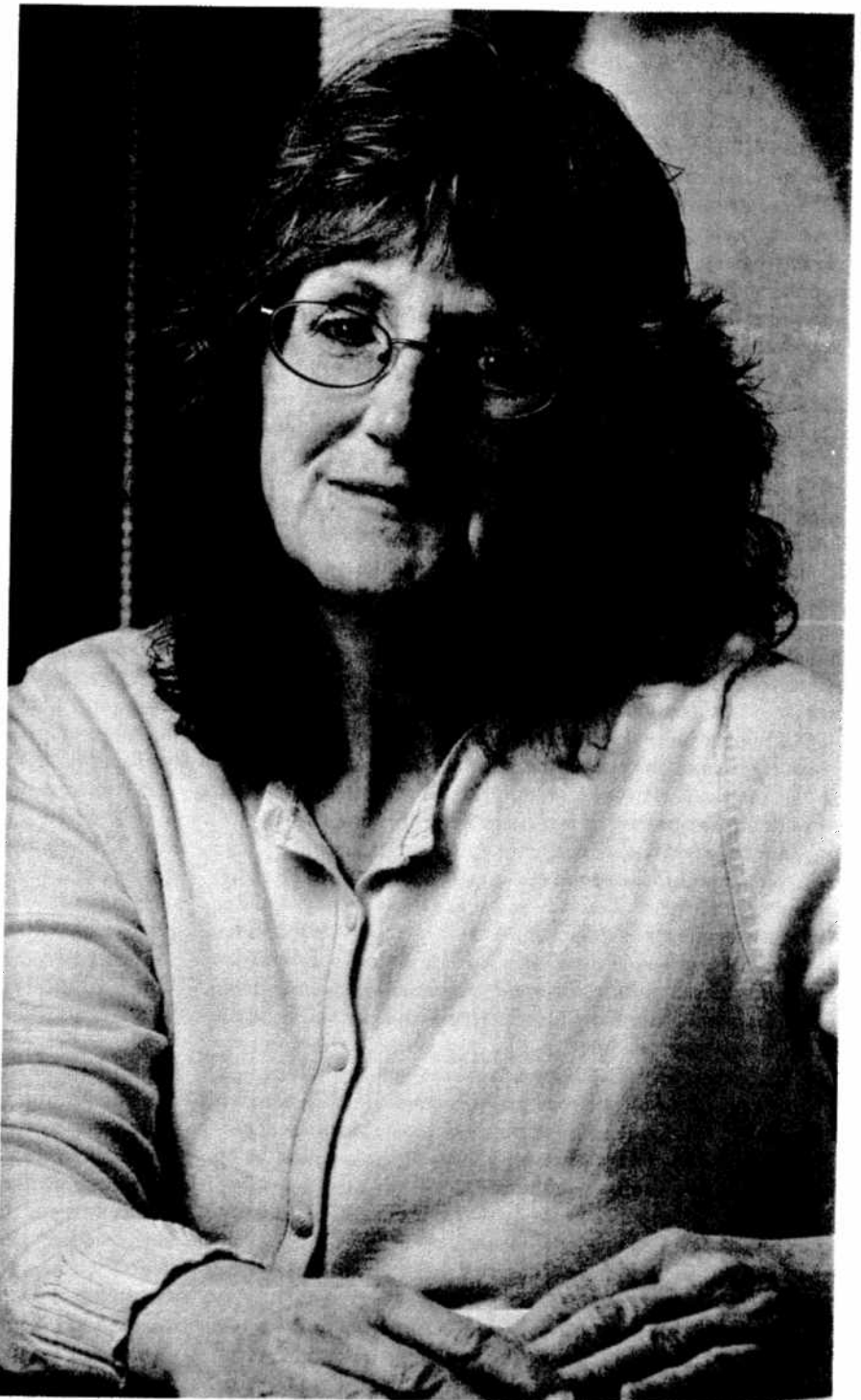
The commission's funding request received written or vocal support from numerous social service, legal service, and faith-based organizations; the chief judges of the Court of Appeals and the Superior Court; and every living D.C. Bar president not currently a member of the judiciary.

"I think it's important to keep in mind that, generally speaking, we have a compassionate community that believes in justice, and we've often found that when we put out a call for support in the legal community, people are willing to get involved," says Mullahy Fugere. "It's a question of getting the word out there to the right people and having it delivered by the right messenger. We had the right messenger delivering the message not only to the mayor's office, but also to the community, to allow us to garner support."

The D.C. Council responded by appropriating \$3.2 million for civil legal services and related initiatives that were outlined by the commission in its funding proposal.

"When we started [the request for public funding], it was just an idea of something quite important that we hoped to be able to do, but we didn't have a sense of how long it would take or whether it was even possible," says Edelman. "The fact that we got funding of the magnitude we did during the first biennium of our existence is just terrific."

Judge Reid credits Edelman (whom she first met when both of them worked at the New York State Division of Youth) for a



Patty Mullahy Fugere

good deal of the commission's early success. "Years ago he and I collaborated on the creation of an employment group to help those who face discrimination in employment, and in a matter of months he was able to get us organized and get us funding. So Peter has a track record of doing things like this."

For Mullahy Fugere, the funding success was also a result of the gravitas of the commission. "A handful of us from the legal service community probably could have walked the halls of the city council for many years trying to get somebody to listen to us say that we think there should be funding for civil legal services, but it was the fact that it was a commission that took this on, with the support and connections that it has, that made a difference."

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Distribution

The \$3.2 million appropriation will be distributed by the Bar Foundation through grants-based programs in the following areas: increasing legal services in underserved neighborhoods, increasing legal services for housing-related matters, and improving language access through the creation a shared legal interpreter bank. (Part of the funding will also go toward assisting poverty lawyers in the repayment of school loans.)

The funding for services in underserved neighborhoods and toward housing-related matters is expected to allow for the hiring of 25 to 30 additional legal services lawyers. (Recruitment efforts will target new and experienced lawyers.)

"I think it will make a huge difference," says Smith of the additional lawyers. "We estimate that there's between 100 and 120 lawyers in the legal services network now. So if you have 25 more lawyers added, we'd be growing by as much as 25 percent. . . . Is it going to make it so that everybody who needs a lawyer gets one? Absolutely not—we're far away from that—but it's a huge step forward, and if we do it thoughtfully and strategically so that these lawyers are in exactly the right spot, it will be a tremendous help."

Additional housing lawyers could provide representation in landlord-tenant court, before the Rental Housing Commission, and before the District of Columbia Housing Authority, as well as work on advocacy issues such as preventing evictions, preserving affordable housing, and supporting tenant ownership.

Providing more lawyers and a greater legal services presence in underserved areas of the city will make it easier for poor residents to receive assistance. Because only about 10 full-time legal services lawyers in the District are located east of the Anacostia River, many residents remain either unaware of organizations that could assist them or have difficulty traveling to an organization's office.

The recruitment of additional lawyers should be made easier by the Loan Assistance Repayment Program (LRAP), which is administered by the Bar Foundation with the intention of easing the financial burden of poverty lawyers working and living in the Washington metropolitan area.

Funding is provided through two sources: the foundation and the city council, which will provide up to \$250,000 through the District of Columbia Poverty Lawyer Loan Assistance Repayment Program Act of 2006.

"The LRAP program is especially exciting because of the need to keep good lawyers in the city doing this kind of work," says Claudia Withers, the Bar Foundation's director of programs.

LRAP will provide up to \$60,000 (the yearly maximum is \$12,000) for the repayment of educational loans of lawyers working at legal services providers in the District and making less than \$65,000 annually.

According to Withers, the Bar Foundation received approximately 40 applications by the December 15 deadline. Midyear applications may be offered depending on funding availability.

The \$3.2 million will also be used to fund the development of a shared legal interpreter bank that would train and provide legal services providers with qualified Amharic, Chinese, French, Korean, Spanish, and Vietnamese translators.

"No matter what language they speak, residents with limited English proficiency face a tremendous barrier that needs to be overcome," says Jayne Park, the commission member heading

the interpreter bank initiative.

Many of the estimated 39,000 limited-English-proficient (LEP) District residents live in poverty and are unaware of their legal rights, and although there are a number of interpreters working in the city, few are focused on providing translations in a legal context.

In November the commission held an all-day language-access roundtable with legal and social service providers, government officials, directors of community-based interpreter banks, and others who work with the LEP community to discuss the problem and pose potential solutions. Out of this discussion came the idea of establishing a shared interpreter bank that would replace the city's ad hoc approach to language assistance.

The plan is to have the interpreter bank serve several functions: work closely with community-based interpreter groups to recruit interpreters and translators; train recruits with the skills to work in a legal setting; maintain a centralized registry of qualified interpreters and translators; hold translation-related events; monitor the quality of services; and handle some administrative work.

It is expected that the bank will be a multiyear project, and that the 2007 funding will be used for planning. Future funding will be contingent upon further appropriations.

Park says this year's planning will address such details as developing a training curriculum and testing instruments, and figuring out the best way to make the translators available to the legal services providers.

"Also we have to make sure there is synergy with what the rest of the legal service community is hoping to develop," she says. "I know there is talk about creating a centralized call center, and there is a question of how that would interface with our project if, for example, someone who doesn't speak English proficiently calls the center."

Call for Proposals

The Bar Foundation issued its request for proposals in December, and gave providers until February 2 to submit their proposals. Applicants should be notified of their acceptance by March 30, and the grant contracts should be signed and the funding distributed by the end of April.

Legal services providers were encouraged by the Bar Foundation to create proposals involving partnerships between themselves and social service or health and medical providers, such as what the Legal Aid Society did in 2005 when it partnered with the Children's Health Project at THEARC in Southeast to provide legal services twice a week.

One grant proposal being put forth has the Asian Pacific American Legal Resource Center partnering with Ayuda, a legal resource provider for the Latino population, and the African Resource Center, a community-based organization that works with the African immigrant population, to focus on providing community outreach.

"We want to make sure we're in neighborhoods doing community-based intake, doing community-based legal intake, organizing legal education workshops, and making our services very accessible," says Park. "Through these avenues we want to try to increase awareness within our immigrant communities about legal issues, what resources are available to them, and how they can access them."

Without such outreach efforts, she says, the immigrant community would not be able to access the language assistance system "no matter how many trained interpreters you have."

A collaborative project between the Legal Aid Society, the

Neighborhood Legal Services Program, and Bread for the City, and involving the D.C. Bar Pro Bono Program, that provides representation for low-income litigants in landlord-tenant court has already been implemented, although the providers are seeking additional funding through the city appropriation.

Lawyers from the participating providers (working on a rotating basis) started staffing a space near the court in late February where they may provide both tenants and landlords with legal representation. That representation may include limited appearances, as in January the Superior Court issued an administrative order permitting lawyers to enter a temporary appearance so they can represent litigants while their cases are being reviewed for extended representation.

"It's such an important idea to have lawyers there, because people are much more likely to get assistance . . . if they can have access to a lawyer more quickly and conveniently," says Smith. "We're very committed to doing this. And if the Bar Foundation chooses not to fund it, then we will be hitting the streets to find other resources to do that."

As a director of a legal services provider, Smith is well aware of the barriers people face in trying to find a provider to assist them. Often they are referred from one provider to another until they are "bouncing around like a ping-pong ball."

"Many programs spend a tremendous amount of resources telling the client no," says Jan May, director of AARP Legal Counsel for the Elderly (LCE) and a member of the commission's Support Functions Committee, which has spent several months studying how legal services providers can coordinate the intake and referral process.

In his capacity as LCE director, May has been working with the Legal Aid Society and numerous other providers on a grant proposal calling for the creation of a centralized call center that would allow clients to get to the right provider quickly and efficiently without supplanting providers' current intake systems. May says the call center would be developed along the lines of the AARP Legal Counsel for the Elderly Hotline, which has provided legal assistance to people 60 years of age and older for the past 20 years.

May suggests a system that is "really concrete, not just 'call this number,' but something where the call center can either electronically patch the call over to the provider or, at the very least, send them an e-mail stating that so-and-so has a problem and asking the provider to talk to this client per an agreement."

Whether or not the proposal receives funding, the commission will continue to build upon the committee's work that led to its issuing recommendations to enhance the coordination of intake and referrals. The committee recommended increasing communication among intake staff; increasing use and functionality of the Web site LawHelp.org; facilitating efforts to ensure that legal services providers have sufficient technological support; letting providers offer legal services in the courthouse; and collaborating with providers on a coordinated referral network.

Expanding Agenda

In addition to the disbursement of public funds, this spring will likely see the release of a report based on the information gathered from the a needs study that the commission implemented with the assistance of DLA Piper US LLP, the intent of which is to reveal more detailed information about the District's unmet civil legal needs.

The study consisted of several components: a request for statistics about pro se litigants gathered from the Superior

Court and the Office of Administrative Hearings; a comprehensive questionnaire sent to legal services providers (including governmental entities that provide civil legal services); a survey sent to about 28 social services providers; and intake surveys sent to legal services providers asking them to record information on all the people who sought legal assistance during a one-month period.

"We think it's going to be a model for the country," says Edelman. "There have been surveys done in other communities, but they tended to be done either through focus groups or telephone polling, and they tended to be expensive, while we've done this for nothing other than the extremely valuable work of DLA Piper."

As a director of a legal services provider, Mullahy Fugere sees the study as a useful tool to help improve services. "I'm looking forward to the results of the study so I can ensure that the decisions I'm making about my program are based on the reality of my clients' lives and not on what I presume them to be. The more we can find out about what clients are struggling with, the more we can fill in the gaps in the services we provide."

In its 2008 fiscal year public funding proposal, the commission is asking the District government to fund the same three areas as it did in 2007 by appropriating \$3.4 million to allow for inflation and a slight increase for the second stage of the shared legal interpreter bank.

The commission is also slated to work with the D.C. Bar Pro Bono Program on expanding pro bono partnerships with midsized law firms.

Pro bono, says Mansukhani, is an important part of providing legal services, but to be effective it has to be utilized in the right way. "Our hope and our expectation is that by getting the public funding and getting more lawyers out there that some of these lawyers can spend time mentoring pro bono attorneys so we can leverage that funding. Pro bono doesn't work very well unless you have someone who is an expert that is able to guide a pro bono attorney along at various points."

Other issues on the commission's agenda this year include looking into the viability of establishing support centers and the retention of legal services lawyers.

"There was a much more robust support center network around the country 10 or 20 years ago, where within each state there would be a group that would be responsible for impact litigation or policy advocacy, for example," says Mansukhani. "I think what we want to do is look and see if it is feasible to recreate that in the District. . . . It could be the collaborative work of a few different groups or an addition to an existing group. The exact contours would take a while to develop."

Commissioners would also like to identify ways—training and mentoring programs and salary increases have been mentioned—to improve the retention rate of legal services lawyers and play a role in the process.

And while it may be moving ahead with new projects and a new funding request, the commission will continue to focus on the 2007 public funding as grants are awarded and the money is put to use.

"Spending the new money well is going to be an extremely high priority for a long time to come, because the digestion of that much change is a major process, and it will reveal a whole new set of issues," says Edelman. "We're so fortunate to start out with these new resources, but to use them well and wisely is really a major continuing challenge."

Kathryn Alfisi is a staff writer for the D.C. Bar