**Public Hearing on Mayor Fenty’s Fiscal Year 2011 Budget Request**

**for the Office of the Attorney General**

**Before the Council of the District of Columbia**

**Committee on Public Safety and the Judiciary**

Testimony of Peter B. Edelman

District of Columbia Access to Justice Commission

April 30, 2010

Mr. Chairman and members of the Committee, thank you for the opportunity to testify this morning. My name is Peter Edelman, and I am a professor at Georgetown University Law School and Faculty Director of the University’s Center on Poverty, Inequality, and Public Policy. I am here in my capacity as Chair of the District of Columbia Access to Justice Commission. As you know, the Commission was created by the D.C. Court of Appeals to address the scarcity of civil legal services available to low and moderate income District residents and to remove barriers these residents face in navigating the civil justice system. We are proud to have D.C. Court of Appeals and Superior Court judges, leaders of the D.C. Bar and the D.C. Bar Foundation, legal services providers and other community leaders working together on the Commission to improve the lives of the District’s most vulnerable residents.

The District, along with 49 other jurisdictions, provides greatly needed support for legal services. The Council’s vital support has greatly enhanced access to justice efforts in the District. These funds have brought lawyers to shamefully underserved communities across the city, particularly east of the Anacostia River. They have supported a shared legal interpreter bank that makes it possible for clients who are limited English proficient or deaf to communicate with their attorneys and have some measure of equal access to the justice system. They have also helped legal services organizations to hire and retain talented and committed staff attorneys, who work at substantially lower wages and with fewer resources, to stave off legal crises for indigent District residents.

I am here because the Mayor’s proposed budget would cripple this program and, in the process, make our system of justice both less effective and less efficient.

I know that these are hard times for our nation and for the District. Revenues have fallen, unemployment and foreclosures have risen, and more D.C. residents—especially children—are living in poverty. I also know every member of the Council agrees that the last thing any of us wants to do is harm the people who are in desperate need of help in this troubled time. Yet the Mayor’s proposed funding cut would slash the Access to Justice budget to half of what it was in fiscal year 2009. This will force legal services organizations to cut attorneys and staff and severely reduce the number of people that they can help. Combined with the FY 2010 20% funding cut, which will hit the network next month, this cut will cost the District 18 – 20 legal services attorneys. This is on top of the 21 attorneys lost in 2009 due to the recession. As a result, thousands of District residents, many with resolvable legal issues, will not get legal assistance.

Legal services are stretched to the limit. Cuts in staff mean cuts in services. How will they choose who to help and who will be left to fend for themselves? How will they choose who to help and who will be left to fend for themselves? A returning Iraq veteran who has been denied disability benefits or a sick child who cannot get health insurance? A domestic violence victim or an elderly client being victimized by her caregiver? A single mother of three losing her home or a single mother of three losing her food stamps? And the tragedy is that many of the people they will turn away will have fully resolvable legal problems. With counsel, the legal crises could be averted. Without counsel they will fend for themselves, usually with devastating consequences.

The excellent testimony of Judge Reid, Chief Judge Satterfield, D.C. Bar President Kim Keenan, Legal Aid Society Executive Director Jonathan Smith, and D.C. Bar Foundation Director of Programs Claudia Withers admirably describes the impact these funds are having across the city and the terrible damage that the proposed cut would cause. I will not duplicate their presentations. What I would like to focus on is how these funds are needed to make the entire system work better and what other jurisdictions have done to protect access to legal services.

**Access to Justice Funds Have a Multiplier Effect**

Every dollar cut from legal services does not just injure low-income individuals; it also results in greater costs elsewhere, often in public collars. Based on research studies around the country, each dollar of legal aid money lost often requires $4 to $7 in government spending to pick up the pieces. For example, legal services attorneys help individuals secure veterans, disability, social security, and medical benefits from federal sources. When these federal benefits replace state and local benefits, the savings can be significant. A recent report found that the Disability Benefits Project in Massachusetts generated more than $7.7 million in federal revenue in 2007 using just $1.2 million in state funding.

You have heard other witnesses discuss the costs to the public fisc when a family is evicted. It is estimated to cost more than $25,000 to house a family in an apartment-style shelter for a year. And that does not account for the additional costs to the city in emergency services, public benefits, and medical care when a family falls into utter crisis, and the long term costs as a result of the interruption to education or other social consequences of homelessness for children. Given these costs, a publicly funded attorney averting evictions quickly recoups for the District the cost of her salary, while also sparing a family the trauma of losing their home. And of course the work legal services providers do benefits the District more broadly. They enforce the city’s building codes, preserving property value and maintaining neighborhoods. They keep residents employed, preventing further strain on public benefit programs. They uncover predatory lending and other schemes that prey on elderly residents. They keep families self-sufficient and mitigate reliance on costly public support systems.

Access to Justice dollars are also magnified by the tremendous pro bono contributions they facilitate. District law firms are among the most generous in the nation in providing help to those most in need. But these pro bono hours simply cannot be leveraged to their maximum effect without legal services lawyers to identify cases, and provide training, supervision and quality control. One publicly funded organization with a $3 million budget was able to leverage $7 million in pro bono services in 2009. That means that every dollar contributed either by the District or by a private donor, multiplies itself by more than three. And that story is repeated throughout the District.

**Other States Have Recognized the Importance of Public Funding for Legal Services**

While revenues are down everywhere, many other jurisdictions have understood the importance of legal services and have increased public funding, or have avoided making cuts even as they were making drastic reductions in other areas. Nationwide there has been a net increase of over $20 million in support for legal services.  In the group of states that decreased support, D.C.'s 20% cut for FY2010 is among the most severe. Only four states made deeper cuts percentage-wise than the District.

California, which is suffering the worst economic crisis in the country, not only maintained its funding, it recently passed a law creating a right to civil legal aid in certain types of cases for low-income residents. Texas increased funding by over $13 million, and Connecticut increased funding by over $7 million, to compensate for IOLTA losses. Just two weeks ago, the Maryland General Assembly took steps to generate $6.1 million annually for civil legal services. The Washington legislature cut approximately $5 billion in other spending but protected all funding for indigent defense and 98% of funding for civil legal services.

District residents need these services just as desperately as the residents of these other jurisdictions. In 2008, approximately 17% of the District’s population was living below the poverty level, including 25% percent of children. The D.C. Fiscal Policy Institute estimates that 11,000 additional residents fell into poverty last year due to the recession. Unemployment is at historic post-Depression levels and nearly one in four District families with children had at least one period last year during which they lacked money to buy adequate food. Even before the recession, too few low-income residents had access to legal counsel. The recession has increased foreclosures, driven up the number of individuals who rely on income and food security programs, increased the severity and incidence of domestic violence and made homelessness more prevalent. More families are living one legal problem away from disaster and there are fewer lawyers available to help them.

Many of these jurisdictions are facing daunting budget crises, just as we are. But those jurisdictions recognize that it is simply not effective to cut legal services, which ultimately save more money than they cost.

**The Access to Justice Funds Preserve and Improve the Administration of Justice**

While helping individual residents and saving the District money are critically important objectives, the Access to Justice funds have yet another essential effect. They preserve and improve our system of justice, which is a fundamental measure of how we judge ourselves as a society.

Last fall, in the middle of a historic economic crisis, Governor Schwarzenegger of California signed the bill I mentioned earlier that directed new revenue to supporting civil legal services programs for Californians who cannot afford counsel. While the District does not share California’s court funding structure, the findings of the legislature in the Act, AB 590, are instructive. I would like to quote just a few of them here, with my emphasis added:

(f) The doctrine of equal justice under the law is based on two principles. One is that the substantive protections and obligations of the law shall be applied equally to everyone, no matter how high or low their station in life. The second principle involves access to the legal system. **Even if we have fair laws and an unbiased judiciary to apply them, true equality before the law will be thwarted if people cannot invoke the laws for their protection.** For persons without access, our system provides no justice at all, a situation that may be far worse than one in which the laws expressly favor some and disfavor others.

(g) Many judicial leaders acknowledge that the disparity in outcomes is so great that indigent parties who lack representation regularly lose cases that they would win if they had counsel. **A growing body of empirical research confirms the widespread perception that parties who attempt to represent themselves are likely to lose, regardless of the merits of their case, particularly when the opposing party has a lawyer, while parties represented by counsel are far more likely to prevail.** Judicial leaders and scholars also believe that the presence of counsel encourages settlements. Just as importantly, court opinion surveys show that more than two-thirds of Californians believe low-income people usually receive worse outcomes in court than others. **Unfairness in court procedures and outcomes, whether real or perceived, threatens to undermine public trust and confidence in the courts.** The sense that court decisions are made through a process that is fair and just, both in substance and procedure, strongly affects public approval and confidence in California courts. As many legal and judicial leaders have noted, the combined effect of widespread financial inability to afford representation coupled with the severe disadvantages of appearing in court without an attorney foster a destructive perception that money drives the judicial system. **Respect for the law and the legal system is not encouraged if the public perceives, rightly or wrongly, that justice is mainly for the wealthy**.

(h) Equal access to justice without regard to income is a fundamental right in a democratic society. It is essential to the enforcement of all other rights and responsibilities in any society governed by the rule of law. It also is essential to the public's confidence in the legal system and its ability to reach just decisions.

(i) The adversarial system of justice relied upon in the United States inevitably allocates to the parties the primary responsibility for discovering the relevant evidence, finding the relevant legal principles, and presenting them to a neutral judge or jury. Discharging these responsibilities generally requires the knowledge and skills of a legally trained professional. The absence of representation not only disadvantages parties, it has a negative effect on the functioning of the judicial system. **When parties lack legal counsel, courts must cope with the need to provide guidance and assistance to ensure that the matter is properly administered and the parties receive a fair trial or hearing. Those efforts, however, deplete scarce court resources and negatively affect the court's ability to function as intended, including causing erroneous and incomplete pleadings, inaccurate information, unproductive court appearances, improper defaults, unnecessary continuances, delays in proceedings for all court users, and other problems that can ultimately subvert the administration of justice**.

What is true in California is true in D.C.: legal aid saves the District time and expense in court costs and bolsters the public’s faith in the system—a faith that has been shaken by the financial crisis and press reports of Wall Street versus Main Street. The Access to Justice funds improve the administration of justice and help us all be equal, in fact and not just theory, in the eyes of the law.

**Conclusion**

As I said at the outset, I understand that the Council is faced with hard choices. I urge you to keep in mind that cutting these funds will leave legal services providers and clients with impossible choices. As is documented in *Rationing Justice*, the joint report released by the Commission and the D.C. Consortium of Legal Services Providers,[[1]](#footnote-1) organizations have already cut their budgets to the bone. In order to serve as many clients as possible in 2009, they depleted reserves, decreased salaries, used furloughs, narrowed programs, cut intake sites, cut training budgets, and cut back on systemic advocacy. In 2010 there is little left to cut but direct services to clients. How will they choose who to serve and who to turn away? Save a home or secure health care? Protect a domestic violence victim or an exploited senior citizen? The choices are impossible.

As you have heard from others, only the District can help these programs running. No other funding source is expected to recover in 2010. I urge the Committee to fully fund this program.

Thank you for giving me the opportunity to testify. I look forward to answering any questions.

1. The Report and Executive Summary are included as Attachment I. [↑](#footnote-ref-1)