**Public Hearing on Mayor Fenty’s Fiscal Year 2011 Budget Gap Closing Plan**

**Before the Council of the District of Columbia, Committee of the Whole**

**Testimony of Peter B. Edelman**

**District of Columbia Access to Justice Commission**

**November 30, 2010**

Mr. Chairman and Members of the City Council, 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 Co-Director of the University’s Center on Poverty, Inequality, and Public Policy. I am here in my capacity as the Chair of the District of Columbia Access to Justice Commission which, as you know, was created by the D.C. Court of Appeals to address the scarcity of civil legal services for low and moderate income District residents and to reduce the barriers these litigants face in navigating the civil justice system.

I am proud to be joined today by leaders of many segments of the legal community – the Chief Judges of both the D.C. Superior Court and the D.C. Court of Appeals, the President of the District of Columbia Bar, the Executive Director of the District of Columbia Bar Foundation, directors and staff of numerous legal services organizations – to urge you to fully fund the Access to Justice Program at the level previously appropriated for FY2011. This program is a pivotal force in ensuring access to the courts for thousands of vulnerable District residents.

This is the third time in two years that we have come before you to seek protection for this vital program which provides counsel for the rising number of District residents who are in urgent need of legal assistance. Each of those times, the program has been threatened with severe and disproportionate cuts that would cripple the program and leave thousands of residents without counsel even when those things they most value – their homes, their jobs, their children – are in jeopardy. The last two times the Council recognized the essential role this program plays, not only in sparing individual litigants from legal disasters, but also in saving the District money, preserving property values and neighborhoods, and leveraging millions of dollars and thousands of hours in law firm support. Your leadership on this front has allowed us to make substantial and meaningful progress in closing the justice gap. I urge you once again to preserve funding at the previously appropriated level for this program which has had a dramatic impact across the city and has, without a doubt, spared countless residents from eviction, joblessness, family violence, destitution and other legal disasters.

I know that these are challenging economic times for our city and that the Council is faced with extremely difficult choices. However, the cut proposed by the Mayor is profoundly disproportionate. The proposed funding level of $1.579 million for the civil legal services grant program represents more than a fifty percent reduction from the levels approved by this body in the spring. Contrary to what is stated in the Mayor’s Plan, this cut will not return funding to FY2010 levels. It puts funding at the level the Mayor tried and failed to get during the summer of 2009. The proposed cut will force legal services providers to terminate, or at least severely restrict, initiatives that have changed the face of service provision in underserved neighborhoods, particularly in Wards 7 and 8. Such a massive cut will roll back the critical progress we have made in improving access to justice and, when combined with the precipitous funding losses wrought by the recession, will do lasting damage to our fragile legal services network.

The Gap Closing Plan presented by the Mayor concentrates the most severe cuts on those residents least able to bear them. As reported by the D.C. Fiscal Policy Institute, programs serving indigent District residents account for 20% of local dollars but are bearing 40% of the proposed cuts. Few if any of the other programs that have been funded is threatened with a fifty percent cut. We understand that the District is facing a significant shortfall, but it is incomprehensible that the Mayor would propose such a huge cut in the Access to Justice program, which provides services of last resort for the District’s most vulnerable residents.

The Mayor’s plan also cuts funding for the Loan Repayment Assistance Program by over $20,000. This important program assists District legal services lawyers who are facing crushing educational debt. It has been a powerful tool to help legal services providers to attract and retain a diverse group of talented attorneys who might otherwise be unable to manage at the salary levels typical of legal services organizations. This is a small amount of money for the District but for a staff attorney earning only $40,000 per year, every dollar in loan repayment counts. The combination of low salary and high debt loads forces too many dedicated and experienced attorneys out of the public interest market at a time when their skills are most needed.

The testimony offered by Chief Judge Washington, D.C. Bar President Ron Flagg, Legal Aid Society Acting Executive Director Eric Angel, and D.C. Bar Foundation Executive Director Katia Garrett thoroughly describes the tremendous impact the Access to Justice funds are having across the city and in our courts, as well as the fragile nature of the legal safety net. I will not duplicate those presentations. What I would like to focus on is the widening justice gap in our city, the terrible damage the proposed cut would cause, the efficacy of this program, and what other jurisdictions are doing to protect access to legal services.

Before turning to those issues, I want to highlight the overwhelming support for this program across all segments of the legal community. As was documented in a report produced by the Council’s Committee on Public Safety and the Judiciary in May 2010, the Committee received extensive comments from a wide range of individuals and organizations, universally calling on the District to fully fund the program. This included letters from the Chief Judges of the D.C. Superior Court and the D.C. Court of Appeals, the President of the District of Columbia Bar, and twenty-five former Presidents of the District of Columbia Bar. In addition, individual and group letters were submitted by nearly sixty different organizations, including the D.C. Catholic Conference, the Trial Lawyers Association, the Council for Court Excellence and five voluntary bar associations. The litigation section of the Bar, which has over 3400 members, issued a public statement urging the Council to protect the program, and was joined in its appeal by nine other sections which together represent nearly 10,000 Bar members. This support was not limited to the legal community. Letters were also submitted by a wide range of social services organizations, highlighting the vital importance of legal resources for their struggling clients. It is rare for such a large swath of the legal community to coalesce around an issue, particularly one that addresses services for the indigent. The public outcry over the proposed cuts to the program is testament to its effectiveness and importance.

**The Justice Gap is Widening**

Since the Council voted this spring to fund this program at $3.5 million ($3.279 million for civil legal services grants and $221,000 for LRAP), the need for these funds has certainly not diminished. As you are well aware, the hints of economic recovery that are being felt across the country have not yet materialized in the District. In October, the *Washington Post* reported that the recession has driven poverty rates to startling levels. More than one in four District children – and more than one in three residents East of the River -- now live in poverty. Moreover, more than one in ten District residents – over 60,000 people – live below half of the poverty line which is just under $11,000 for a family of four. This represents an increase of 14,000 residents living in deep poverty since 2007.

These dire economic circumstances have dramatically increased the demand for legal services, particularly around issues of foreclosure, eviction defense, income security programs, and family violence. When I testified in April, I alerted the Council that legal services providers had reported a 20% increase in demand for services, even as their capacity to meet those needs was plummeting. The anecdotal evidence indicates that the need continues to rise. One provider reported to us that traffic to the Landlord Tenant Resource Center rose from 5200 to 5600 litigants in the last fiscal year, including litigants referred by legal services providers who were already past their capacity. Activity in the Consumer Law Resource Center increased by a stunning 87%. Providers across the city report anecdotally that the need for services has only intensified.

At the same time, the capacity of the network to meet these urgent needs has fallen dramatically. All funding sources for legal services have been undermined by the economic downturn. As is documented in *Rationing Justice*, the joint report released by the Commission and the D.C. Consortium of Legal Services Providers, the network lost over 25% of its funding in 2009 – a drop of over $4.5 million dollars. This forced the network to shed 12% of its attorneys, and nearly 40% of its non-legal staff, even as rising numbers of desperate clients streamed into their offices urgently seeking help. As a result, thousands of District residents did not receive help with essential legal issues and many undoubtedly suffered devastating consequences as a result. Funding for legal services has reached crisis levels. Decreased support from government and foundation sources, a constriction in individual donations, and a precipitous drop in IOLTA income of over 50% from FY2009, and over 80% from FY2008 has simply left the network reeling.

I fear that a cut of the magnitude proposed by the Mayor will put some parts of the network over the edge. Over the last two years, organizations have already cut their budgets to the bone. In order to preserve client services, they depleted reserves, decreased salaries, used furloughs, narrowed programs, eliminated intake sites, slashed training budgets and cut back on systemic advocacy. There is simply nothing left to cut but direct services to clients. The cut proposed by the Mayor will translate directly into staff reductions and would likely cost the District approximately 11-13 legal services attorneys. This is on top of the 21 attorneys lost in the 2009 due to the recession and the attorneys shed due to the drop in District funding for FY2010. We asked providers to tell us what a 50% cut would mean for their programs and they provided the following alarming data:

* The only legal services provider with an office in far Northeast would lose 2 -½ attorneys and would have to close one of its neighborhood offices East of the River;
* One domestic violence organization would lose three full-time attorneys, cutting its legal staff by 50%;
* One housing provider would have to lay off its staff attorney and terminate its participation in the Court Based Legal Services Attorney of the Day Project, which provides same day services to tenants at risk of losing their homes;
* One full service provider would have to choose between cutting an attorney from the Court Based Legal Services Program or shutting down its Community Lawyering Project in its entirety;
* Another provider would lose half of its publicly funded attorneys, resulting in the loss of representation for approximately 1500 clients;
* One provider that is co-located with medical and behavioral professionals to provide vital services to Ward 7 and 8 residents struggling with HIV- and AIDS- related issues would lose the only full time attorney in its Southeast office;
* Another provider would have to terminate its Jail Advocacy Project which provides legal services to individuals in the D.C. Jail with mental health needs; that project has already provided services to over 200 individuals, provided legal information and self-help materials to over 2500 individuals, and provided training to over 1000 individuals;
* The Interpreter Bank, which because of the FY2010 cuts had to cap services to legal services providers, would have to either cut all translation services or eliminate access for some providers entirely.

If effectuated, these program cuts would severely undermine the progress we have made in addressing the justice gap. When coupled with the FY2010 cuts, which have already undermined some critical initiatives, we are talking about a serious rollback of services in some of the most underserved neighborhoods in our city.

**This Program is Effective, Cost-Efficient, and Saves the District Money**

I testified extensively in April about the effectiveness of this program, which has doubled the number of attorneys practicing East of the River, substantially increased representation in landlord-tenant court, created an Interpreter Bank that is a national model, and brought services to extremely isolated and underserved populations including housebound seniors. I have attached my former testimony and will not repeat those facts here. Rather I would like to give just one small illustration of the tremendous impact of these funds. The eight publicly funded attorneys staffing the Court Based Legal Services Attorney of the Day Project provided emergency, same day services to clients facing eviction in over 600 cases in 2009 alone. Since the project’s inception, the project has served nearly 2000 clients. In approximately half of those cases, representation extends beyond the emergency court appearance. In roughly 80% of the cases, issues are either resolved the same day, or the case is accepted by a legal services provider or matched with pro bono counsel for further representation. This is a phenomenal increase in representation in an area where the stakes could not be higher. Before the public funding, it was estimated that only 3% of tenants had the assistance of counsel. Now that percentage is climbing steadily. We have a long way to go but this one example illustrates the stunning impact of these funds. There is no doubt that, but for this program, countless District residents with meritorious eviction-defense cases would be doubled up, sleeping in shelters, or braving the cold streets tonight.

I urge you to keep in mind that this program actually saves the District money. Every dollar cut from legal services does not just injure the individual who is denied assistance; it results in greater expenditures elsewhere, often in public dollars. As I stated in my April testimony, research studies around the country show that each dollar of legal aid money that is lost often requires $4 to $7 dollars to pick up the pieces. At a time when the entire safety net is under extreme pressure, we should be doing all we can to keep families from having to rely on these costly public programs, not only because it is the right thing to do for that family but also because it serves the District economically. Legal services attorneys help individuals to secure veterans, disability, social security and medical benefits from federal sources. The savings generated by that work is substantial. The Disability Benefits Project in Massachusetts generated more than $7.7 million in federal revenue in 2007 using only $1.2 million in state funding. Similarly, legal services lawyers keep clients housed and mitigate reliance on the shelter system. Given that it costs more than $25,000 to house a family in an apartment-style shelter for a year, a publicly funded lawyer averting evictions quickly recoups for the District the cost of her salary, while sparing families the trauma of eviction. Moreover, the work legal services providers do promotes the stability of neighborhoods more broadly. By enforcing the city’s building codes, they help to preserve property values and maintain neighborhoods. By keeping residents employed, they reduce strain on public benefit programs.

Access to Justice funds also make it possible to leverage pro bono contributions and maximize support from law firms for poor communities. District law firms are among the most generous in the nation in supporting legal services efforts. Just last month, eleven firms agreed to infuse substantial pro bono resources into the legal services network by institutionalizing Senior Lawyers Programs at their firms. But these contributions hinge on the existence of stable legal services organizations to identify and mentor cases and provide training, supervision and quality control.

**Other States Support Public Funding for Legal Services**

The District is not alone in facing crushing financial pressures. Yet it is in the minority in its impulse to dramatically contract funds for legal services. Across the nation, a number of other jurisdictions have recognized the importance of these funds and have increased public funding, or have avoided making significant cuts, even when forced to make drastic reductions in other areas. In my April testimony, I reported that nationwide there had been a net increase of over $20 million in support for legal services. In 2010, a more difficult year for state legislatures than 2009, there was still a net increase of $8.7 million. Just yesterday the *New York Times* reported that New York’s Chief Judge is proposing a $100 million increase in state funding over four years for lawyers who represent indigent clients in housing, child support, and other critical cases. This would be in addition to the $8.8 million in new funding that was provided during the 2010 legislative session to offset crippling IOLTA losses. Wyoming provided its first ever state funding for legal services. Florida doubled its appropriation in order to provide resources for foreclosure work.

Many of these jurisdictions are facing daunting budget crises just as we are but they have not responded by slashing legal services for those most in need. They recognize that it is neither prudent nor cost-effective to cut legal services which ultimately save more money than they cost.

**Conclusion**

Everyone here knows that the Council is faced with hard choices and that the last thing anyone wants to do is harm those vulnerable residents who are already bearing service reductions from all quarters. I urge you to keep in mind, however, that cutting these funds will leave legal services providers and clients with impossible choices. Organizations are already running at capacity, on unforgiving budgets, and are straining under the overwhelming demands for services. They have cut everywhere they can – the only possible reduction left is in direct services to clients. Many organizations are already accepting only the most urgent cases. With further staff losses, how will they decide who to serve? The veteran or the disabled child? The housebound elder or the domestic violence victim? Save a home or secure Food Stamps? The choices are impossible.

Only the District can ensure that these vulnerable clients have somewhere to turn. I urge the Council to fully fund this program at the level appropriated for FY2011.

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