**Public Hearing on Mayor Gray’s Fiscal Year 2013 Budget Request**

**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 20, 2012**

Mr. Chairman and Members of the City Council, thank you for the opportunity to testify today. My name is Peter Edelman and I am a professor at Georgetown Law Center and Faculty Co-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 in 2005 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 Chief Judge Lee Satterfield, the President of the District of Columbia Bar and the Director of the District of Columbia Bar Foundation. As has been the case since the inception of the Access to Justice Program, the Commission is extremely fortunate to have partners in so many segments of the D.C. legal community working together to ensure that the most vulnerable members of our community have access to legal services.

I am particularly proud to be joined today by Anthony Overton, a client of the Legal Aid Society of D.C., who is here to tell you about how the legal assistance made possible by the Access to Justice Program saved his home and brought his family back from the brink of legal crisis. Each year, leaders from across the legal community testify at this hearing about the tremendous impact of this funding. None of us, however, can illustrate as powerfully as Mr. Overton will in his testimony how this funding is literally saving lives.

I wish I were here to tell you today that the economic crisis facing individuals living in poverty is waning. As the Members of this Committee know well, indigent District residents continue to suffer greatly. The most recent census data revealed that during the course of the recession, 17,500 additional D.C. residents fell into poverty. Moreover, the number of residents living in deep poverty – defined as those living below **half** of the poverty line – has risen by 25% since 2007. Child poverty has increased by more than a third since the start of the recession, leaving three out of every ten children living below the poverty line. While poverty remains most concentrated in Wards 7 and 8, where approximately one out of every three residents is impoverished, poverty has been rising much faster in the areas of Wards 4, 5 and 6 since the recession began. The D.C. Fiscal Policy Institute forecasts that these conditions will not abate any time soon. Leading indicators of poverty – such as participation in the food stamp program and unemployment levels – suggest that there is little relief in sight.

This ongoing economic fragility continues to drive up the number of residents in urgent need of legal services, and the severity of the crises they are facing. Even before the recession, the need for legal services far outstripped the supply. According to the legal needs report published by the Commission in 2009 – *Justice for All?* – in every critical area examined – eviction prevention, domestic violence, public benefits, child support, employment, consumer and many others – there was an appalling dearth of services. In domestic violence cases, for example, where the safety of a victim and often her children was in jeopardy, the representation rate was a mere two percent. Rates in landlord-tenant cases, where families were faced with the loss of the homes, were similarly dismal at three percent, although that has risen somewhat because of the funding provided by the city.

The recession has greatly exacerbated the justice gap. In the first year of the recession alone, providers experienced an approximately 20% increase in requests for services. In the same time period, the legal services network lost 25% of its revenue, forcing it to shed 12% of attorneys and nearly 40% of critical non-legal staff. As a result, thousands of District residents were forced to fend for themselves when seeking to protect their most basic human needs.

We know anecdotally that neither the demand for services, nor the desperation of the clients seeking assistance, has ebbed. High unemployment, unremitting homelessness, staggering foreclosure rates, and strained public systems continue to drive many more clients to the doors of legal services organizations than can possibly be served. While some sources of financial support for legal services have started to recover, IOLTA revenues, the largest source of non-public funding for legal services, remains severely depressed. IOLTA – which is the revenue stream that has traditionally provided the key operating funds necessary to keep the doors of these organizations open – has decreased by over 80% since 2008, and has been at roughly $550,000 since FY 2010. Based on current projections, the D.C. Bar Foundation estimates that IOLTA revenue in FY 2013 will be less than half a million dollars, as opposed to over $2 million received in FY 2007 and FY 2008. These millions of dollars in lost funding have seriously compromised the ability of the legal services network to meet even the most dire client needs. And there is no promise of improvement until the interest rates increase which is not likely to happen in the foreseeable future.

The District government appropriation has been – and continues to be – the lynchpin for ensuring the availability of legal services for those most in need. The Access to Justice appropriation has provided between $3.1 and $3.6 million each year since FY 2007 in urgently needed funds (except for FY 2010 where drastic revenue shortfalls led to a 20% cut in July 2009 from the $3.56 million initially appropriated). This funding stream has fundamentally transformed the capacity of the network. In addition to supporting approximately thirty lawyers who serve the most underserved neighborhoods in the District, the funds have doubled the number of attorneys working east of the Anacostia River. The funds have also supported unique initiatives that serve populations – such as homebound elders – that previously had sparse access, if any, to legal assistance. This Committee has heard many times about the tremendously successful landlord-tenant attorney of the day project which in 2012 alone provided same day representation to nearly 650 tenants in danger of eviction. This year, the funding enabled that model to be replicated in the Paternity and Support Branch to provide same day services in child support cases. This is a need that the legal services community has long struggled to meet and which the Court has repeatedly identified as a service gap. Since its launch last summer, that project has benefitted over 400 individuals. Over 75% of the individuals served reside in the District’s four poorest wards. Also new this year is a legal project, co-located with an Anacostia-based social services provider, that provides services to formerly incarcerated women as they reunite with their families and communities. The nationally recognized Community Legal Interpreter Bank which provides essential interpretation services to non- or limited-English speaking residents continues to thrive. It now has 89 interpreters available to provide services in 37 different languages and in FY 2012 provided over 1300 telephonic interpretations, over 180 live interpretations, and over 50 translations. In addition, the Loan Repayment Assistance Program, which helps to reduce the staggering loans that many legal services lawyers face and has become an important tool for providers to recruit and maintain a talented and diverse corps of anti-poverty lawyers, supported 25 attorneys serving 10 legal services organizations.

Beyond these absolutely essential individual interventions for individual residents, the Access to Justice funds have an invaluable benefit to the community more broadly. By stabilizing fragile families, publicly funded attorneys have reduced reliance on costly public support systems. By moving clients from locally-funded to federally-funded public benefits programs they spare the District government significant costs. Publicly funded attorneys have also promoted the stability of neighborhoods by uncovering predatory lending schemes, enforcing the city’s building codes, and preserving safe and affordable housing. And their presence in and around the high volume calendar courtrooms deters opposing counsel from exerting undue pressure or “cutting corners” in matters with pro se litigants.

We are deeply grateful that the Mayor recognized the tremendous value of civil legal services and included $3.25 million for the Access to Justice Program in his FY 2013 budget request. While Mayor Gray laudably closed the projected FY 2013 budget gap with a mix of spending cuts and revenue measures, low and moderate income District residents continue to bear the brunt of these difficult economic times. Most of the $53 million in local reductions fall on human services and other programs that serve these residents. Limitations in health care coverage, no new affordable housing resources, reductions in TANF benefits and a projected shortfall in homeless services will cause pain for our clients and challenge our justice community’s ability to respond to ever-growing need.

I want to assure the Members of this Committee that the Commission and its partners are acutely conscious of the ongoing revenue pressures facing our city and are committed to leveraging a range of other resources to ensure maximum support for legal services and to magnify the impact of every dollar spent to expand access to justice.

The Commission worked intently this year to infuse additional funds into the legal services network and to magnify the effectiveness of existing resources. First, the Commission has utilized the Raising the Bar in D.C. Campaign to substantially increase private funding for legal services. As the Committee may recall, the Campaign establishes revenue-based benchmarks for law firm donations to District legal services organizations. Although many District law firms have provided generous financial support to the legal services network for many years, that largesse is not universal. The Campaign publicly recognizes and celebrates firms that pledge to give .11% (platinum level), .09% (gold level), or .075% (silver level) of their D.C. office revenue per year to support the provision of legal services.

This first year of the Campaign has substantially increased the resources flowing to the legal services network. The twenty-three firms that met benchmark levels in 2011 together donated over $3 million to local legal services organizations. This represents over a half million dollar increase in giving by those firms from 2010 levels. This over 20% increase in donations by these firms represents a strong statement of commitment by the private bar, particularly in this time of ongoing economic uncertainty, and represents the type of private-public partnership that is essential to closing the justice gap. The Commission believes that the generosity of the private bar was in part incentivized by the government’s steadfast commitment to preserving this vital funding stream. It is a critical statement that the government is not expected to play a disproportionate role in fulfilling the responsibility of ensuring equal access to justice. The Commission is all too aware that even with this significant infusion of funds, the need for services is many multiples higher than available resources. To that end, the Commission is already working to increase the number of participating firms in 2012.

The Commission also continues to focus on other potential funding sources. The historic mortgage foreclosure settlement has made potential funds available to assist homeowners already impacted by or at risk of foreclosure. The Commission is working closely with the legal services and housing counseling communities on a joint proposal to the Office of the Attorney General for the most efficacious use of these funds. If awarded, those funds will permit the legal services network to intensify legal interventions in this area of tremendous need.

Third, the Commission continues to work in close partnership with the D.C. Bar Pro Bono Program to increase pro bono service by private attorneys. The Commission and the Pro Bono Program continue to coordinate the *SAILS (Senior Attorney Initiative for Legal Services) Project* which is harnessing the vast experience of the many talented senior lawyers in the District to meet the urgent needs of indigent residents. Through the Project, eleven firms are working to institutionalize a senior lawyer program at their firms though which senior or retired attorneys will undertake substantial pro bono work as a next phase of their careers.

In addition, the Commission and Pro Bono Program worked with the District of Columbia Courts this year to launch the Pro Bono Honor Roll. The Honor Roll recognizes attorneys who provide 50 hours or more of pro bono service – or 100 hours or more of service for a higher recognition category – per year. In this inaugural year, over three thousand attorneys qualified for the Honor Roll, including over two thousand who qualified for the High Honor Roll. The attorneys represent over 120 legal settings including over 80 law firms (from large firms to solo practitioners) and a wide range of federal government agencies and other settings. Since the initiative relied on a self-nomination process, this is likely only the tip of the iceberg in terms of the number of attorneys providing pro bono service. The District has traditionally had one of the most generous pro bono cultures in the nation, but that pro bono commitment has been challenged by changes to the law firm business model and the contraction of new associate classes. As a result, this is a crucial time to publicize the widespread commitment to pro bono work throughout the legal community and thereby magnify the number of attorneys donating their time and expertise to those in need.

Pro bono contributions are – and will remain -- an integral part of the legal services delivery system in the District. We will simply not be able to fund the legal services network sufficiently to meet the expanding needs of indigent residents. The funds provided through the Access to Justice Program make these essential pro bono contributions possible. Without legal services providers to identify and mentor cases and provide training and supervision, this invaluable pro bono resource would be untapped. It is only possible to leverage these pro bono contributions, and the concomitant law firm resources, because of the legal services infrastructure that the D.C. government appropriation makes possible.

Fourth, the Commission continues to work in close partnership with the courts to remove barriers to self-representation for those who cannot secure counsel. Even the most efficient and well-resourced network will not be able to provide counsel to every individual who needs assistance. As has historically been true, even in the best of economic times, the need for services will continue to outpace available resources. Providers will be forced to triage, focusing on the most acute cases, and on the clients for whom mental illness, physical disability, trauma caused by family violence, language access issues, and others serious challenges make self-representation impossible. Given this reality, it is imperative to make self-representation a viable option for the thousands of indigent and modest means residents who will have no other choice.

The Commission and its partners continue to work to implement in the District the most promising practices from across the nation. Earlier this year, the Commission worked with the Court to ensure that the revised Code of Judicial Conduct clarified the steps judges can take to assist pro se litigants without running afoul of their ethical obligations. The Commission is deeply grateful to the Court for its leadership in this area, and notes that the District’s language is setting the standard for other jurisdictions. The Commission and the Pro Bono Program also recently launched a limited scope representation initiative that we hope will greatly enhance the ability of pro se litigants to receive assistance with the most daunting parts of their cases.

By augmenting pro bono service and removing barriers to self-representation, the Commission is ensuring that each dollar provided by the District government is magnified. The Court Based Legal Services Attorney-of-the-Day Project is but one example of the tremendous value each single dollar of this appropriation creates. As you know, this highly effective program provides same day representation to tenants who are in imminent danger of losing their homes. These attorneys are often the last line of defense in preventing homelessness. The eight publicly-funded attorneys staffing the Project provided emergency, same day services to clients facing eviction in nearly 650 cases in 2011 alone.

In addition to the extraordinary work performed by the publicly-funded attorneys, the project also leverages substantial pro bono contributions. Those publicly funded attorneys placed over 60 cases with pro bono counsel in 2011 and provided mentoring and support to enable volunteers to handle those cases. In doing so, they greatly multiplied the impact of each of those public dollars. The publicly funded attorneys further extended the reach of public dollars by also working with the Landlord Tenant Resource Center to create and maintain self-help materials for litigants who cannot obtain representation.

Through this one project – which is only one of the highly effective and creative programs supported by the appropriation – approximately 2,000 tenants and their family members were served either by legal services lawyers or by pro bono counsel in 2011. And all of this assistance was secured by a public investment of only $550,000. If the legal disasters faced by these tenants were not averted, the cost to the District would have been many multiples more. It costs the District more than $25,000 to house a family in an apartment-style shelter for a year. Last year the project conservatively spared 200 individuals or families from wrongful eviction. This represents an estimated savings for the District of more than $5 million in return for a public investment of $550,000.

And beyond these cost savings are the immeasurable impact on the lives of these families. These publicly funded attorneys are providing life-altering interventions. Their work remediates egregious housing code violations that threaten the health and safety of poor families. In hundreds of instances, their work keeps marginal families in their homes, sparing them the trauma of eviction. Given that no newly homeless families are being placed in shelter, the stakes could not be higher.

Thank you for the opportunity to testify today about this crucial program and the work the Commission is doing to maximize resources for legal services and to magnify the effect of every public dollar spent on this program. I urge the Council to preserve the funding at the level proposed by the Mayor which is $3.25 million for fiscal year 2013. We greatly value the Council’s leadership in this area and I look forward to answering any questions you may have.