

STATEMENT OF THE CASE

Legal Aid Bureau, Inc. (Legal Aid), American Civil Liberties Union of Maryland (ACLU-MD), Health Education Resource Organization, Inc. (HERO), Homeless Persons Representation Project (HPRP), House of Ruth Domestic Violence Legal Clinic (House of Ruth), Maryland Coalition Against Sexual Assault (MCASA), Maryland Disability Law Center (MDLC), Maryland Volunteer Lawyers Service (MVLS) and Women's Law Center, Inc. (collectively "Amici") hereby adopt and incorporate by reference the statement of the case as set forth in the Appellant's brief.

QUESTION PRESENTED

Whether the unmet need for legal counsel for indigent civil litigants warrants the appointment of counsel in cases involving fundamental rights and basic necessities of life?

STATEMENT OF THE FACTS

Amici hereby adopt and incorporate by reference the Statement of the Facts as set forth in Appellant's brief. Appellant Deborah Frase is an indigent mother who was unable to obtain counsel when strangers to her family sought custody of her children. Her repeated requests for counsel were ignored or denied. Although she struggled valiantly to defend herself, her lack of legal expertise meant that she was unable to present information effectively and was unable to protect herself against serious legal errors. As a result, her custodial rights have been seriously compromised. Appellant's experience is, unfortunately, an all too common occurrence in Maryland's courts.

Amici provide a variety of legal services to low-income Marylanders. On a daily basis, the work of Amici demonstrate access to legal counsel protects the most fundamental necessities of life - familial integrity, shelter, health, sustenance and freedom from violence. Amici also witness the inequities people without resources experience as they try, too often unsuccessfully, to resolve difficult legal issues without assistance. Nonetheless, every year, Amici are forced to turn away thousands of individuals eligible for their assistance because Amici do not have adequate resources available to address the overwhelming need for legal services. Most of those individuals who are refused services generally cannot find assistance elsewhere. As a result, individuals' homes, families, health and livelihoods are often seriously compromised or even lost. While the individuals involved bear the brunt of the consequences, there is also a significant cost to society. The destabilization of individuals and families frequently results in the need for more intensive and costly services and assistance. Resolution of the issue before this Court – whether indigent civil litigants have the right to appointed counsel in cases involving fundamental rights and the basic necessities of life – is thus vitally important to all Maryland residents, not just those for whom the assistance is sought.

ARGUMENT

1. INTRODUCTION

“I have spent the last six months looking for counsel. Legal aid cannot represent me because of their workload. They referred me to Y.W.C.A. They cannot help me. Legal aid suggested me to try the A. A. County Bar Association. They also, because of workload, cannot help me at this time. I went to court and lost my house and kids that I have raised all their lives...”

So begins a letter Legal Aid recently received from a man who sought legal counsel to represent him in a contested custody proceeding. Disabled and unable to afford a private attorney, he applied for free representation but the office could not take on his case because it was swamped handling cases of other clients. Efforts to obtain legal assistance from other agencies proved futile and, left without any other recourse, he was forced to proceed pro se. He walked away from court convinced that he had been denied the opportunity to seek justice; he walked away from court without his home and his children.¹ His experience is not unique. He now joins the Appellant in the ranks of thousands who needed and sought legal counsel, but were left to navigate the complex legal system without representation and experienced devastating results.

¹ Dissatisfaction with the legal system is common among unrepresented persons. *See generally*, D. Michael Dale, *The State of Access to Justice in Oregon. Part I: Assessment of Legal Needs*. Sponsored by the Oregon State Bar, the Oregon Judicial Department, The Office of Governor John Kitzhaber (Mar.31, 2001)(on file with the Legal Aid Bureau, Inc.)(Studies conducted in Oregon found that almost 75% of people have negative feelings about the legal system when they are unrepresented. By contrast, most people who are represented report feeling positively about the legal system).

2. EVERY YEAR MILLIONS OF POOR PEOPLE ARE HARMED WHEN THEY DO NOT OBTAIN DESPERATELY NEEDED LEGAL ASSISTANCE.

National, state and other studies have consistently found that the legal needs of the poor remain unmet. In 1994, the ABA performed a study to assess the legal needs of low- and moderate-income individuals.² The study found that approximately half of the study participants had experienced a legal problem during the past year, but nearly three-quarters of the low-income households and nearly two-thirds of the moderate-income households had not received legal assistance.³ The most common categories of unmet legal needs reported dealt with issues relating to personal finance and consumer problems, housing and property, community and regional issues including inadequate police and other municipal services, and family and domestic issues.⁴ Low-income respondents presumed that legal representation was not available to them: they reported a “sense that it would not help and that it would cost too much.”⁵

Statewide studies have reached the same distressing conclusion: the legal needs of the poor, including the elderly, children, the disabled and victims of domestic violence are simply not being adequately addressed. A 1989 study in Maine found that the available legal assistance was “wholly inadequate” and that over 75 percent of the low-income people surveyed who had a legal problem went without assistance.⁶

² American Bar Association, Consortium on Legal Services and the Public, *Legal Needs and Civil Justice. A Survey of Americans. Major Findings from the Comprehensive Legal Needs Study* (1994).

³ *Id.* at approx. 1.

⁴ *Id.* at approx. 3.

⁵ *Id.* at approx. 12.

⁶ Wendy F. Rau, *The Unmet Legal Needs of the Poor in Maine: Is Mandatory Pro Bono the Answer*, 43 Me. L. Rev. 235, 238 (1991).

Approximately sixty-five percent of those unmet legal needs involved basic necessities, defined as income maintenance and employment, health, utility problems (electricity, heat and water), housing and education.⁷ The study concluded that over 200 additional legal services lawyers would be needed to fill the gap.⁸ In 1990, a study in Pennsylvania found that there was a “severe and growing unmet need” for legal assistance and that costs of not addressing those needs are “enormous.”⁹ Five years later, these findings were echoed in study of legal needs in Minnesota which concluded that there was a “serious and growing unmet need” especially in cases involving “domestic violence, housing, and other matters relating to basic subsistence.”¹⁰

Study after study in state after state have found that an overwhelming percentage of the legal needs of low-income people is unmet: Washington, D.C. (90%);¹¹ Louisiana (85-95%);¹² New York (86%)¹³; Massachusetts (85%);¹⁴ Illinois (80%);¹⁵ New Hampshire (80%);¹⁶ Oregon (80%);¹⁷ Nevada (60%);¹⁸ California (72%);¹⁹

⁷ *Id.* at 238.

⁸ *Id.* at 244.

⁹ Louis S. Rulli, *Foreword: Pennsylvania Legal Services At Risk*, 68 Temp. L. Rev. 541, 552 (Summer 1995).

¹⁰ Thomas C. Mielenhausen and Charles A. Krekelberg, *A Better Idea: Reporting Pro Bono Services* (March 1999) <http://www2.mnbar.org/benchandbar/1999/mar99/pro_bono.htm>

¹¹ Lynn E. Cunningham, *Legal Needs for the Low Income Population in Washington D.C.*, 5 U.D.L.C. L. Rev. 21, 58 (2000).

¹² William P. Quigley, *The Unmet Civil Legal Needs of the Poor in Louisiana*, 19 S.U.L. Rev. 273 (1992).

¹³ Wayne Moore, *Improving the Delivery of Legal Services for the Elderly: A Comprehensive Approach*, 41 Emory L.J. 805 (1992)(citations omitted).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Kimberly A Gulley, *Equal Access to Justice: The Responsibility of the Legal Profession*, 4-FALL Kan. J.L. & Pub. Pol'y 105 (1994)(citations omitted).

¹⁷ D. Michael Dale, *The State of access to Justice in Oregon.* *supra.*

¹⁸ Franny Forsman, “... With Liberty and Justice for All?” *Who is Responsible for Providing Equal Access to Justice?* 3 JUN Nev. Law. 12 (1995).

¹⁹ California Commission on Access to Justice, *The Path to Equal Justice, A Five-Year Status Report On Access to Justice in California* 3 (Oct. 2002). <<http://www.calbar.ca.gov/calbar/pdfs/accessjustice/2002-Access-Justice-Report.pdf>>

New Mexico (60-75%);²⁰ Colorado (approximately 75%);²¹ and Ohio (83%).²² Studies addressing specific populations have reached similar conclusions.²³ The vast proportion of those unmet needs relate to the underpinnings of familial or individual stability, health or safety. In Oregon, for example, most services are needed in the areas of family law, particularly child custody, child support and domestic violence cases, followed by shelter, public services and consumer issues. Not surprisingly, as poor people struggle to leave welfare, employment law issues, including payment of proper wages, unsafe conditions, wrongful discharge and discrimination, were emerging as a category of serious unmet need.²⁴ The New Jersey study identified housing and consumer problems as the most frequently experienced legal problems;²⁵ shelter and basic subsistence topped New York's list, followed by consumer, health and familial violence.²⁶

²⁰ State Bar of New Mexico, Legal Services and Programs Committee, *Legal Services Corporation State Plan 5* (Oct. 1, 1998)

<http://www.algodonesassociates.com/legal_services/state_planning/NM%20LSC%20State%20Plan.pdf>

²¹ Colorado Judicial Branch, Legal Services/Pro Bono Subcommittee of the Judicial Advisory Council, *Report of the Legal Services/Pro Bono Committee of the Judicial Advisory Council, Executive Summary* (June 1998)<<http://www.courts.state.co.us/supct/committees/judicialadvisorydocs/fulltextprobono.pdf>>

²² The Spangenburg Group, *an Assessment of the Unmet Civil Legal Needs of Ohio's Poor (The Spangenburg Report), Final Report, Executive Summary 5* (Sep. 1991)

<<http://www.olaf.org/aboutolaf/ourpublications/spangenburg/Spangenburg.pdf>>

²³ In Illinois, one author suggests that only six percent of legal needs of seniors are being addressed by legal services providers. See generally, Lee Benezet, *Senior Legal Assistance Services: A Well-Kept Secret, Practice Tip, Illinois Bar Journal* (July 2000). In Wisconsin, only eighteen percent of the legal needs of seniors are being addressed. Wayne Moore, *Improving the Delivery of Legal Services for the Elderly: A Comprehensive Approach, supra.*

²⁴ D. Michael Dale, *The State of access to Justice in Oregon. supra.*

²⁵ Legal Services of New Jersey Poverty Research Institute, *Legal Problems, Legal Needs, The Legal Assistance Gap Facing Lower Income People in New Jersey 27* (Oct. 2002)(on file with the Legal Aid Bureau, Inc.)

²⁶ The Legal Services Project, *Funding Civil Legal Services For the Poor, Report to the Chief Judge, Executive Summary* (May 1998)< <http://www6.law.com/ny/links/poor.html>>.

3. LEGAL NEEDS OF LOW-INCOME MARYLANDER'S ARE NOT BEING MET.

A. Studies Conducted in Maryland Find a Vast Unmet Need.

Studies of unmet legal needs conducted in Maryland mirror the findings of other states. Although Maryland is one of the wealthiest states in the United States, nearly half a million Maryland residents - including 141,000 children and over 50,000 individuals aged 65 and older - live below the poverty threshold.²⁷ However, the numbers based on the poverty level are merely the tip of the iceberg. Hundreds of thousands of Marylanders live above the poverty line but struggle daily to provide adequate shelter, food, medicine and other necessities for themselves and their families.²⁸ For them, a lawyer (and justice) is an unlikely, unimaginable, and unobtainable luxury.

In 1995, a survey of legal needs found that low to moderate income Marylanders had at least one legal problem in the previous year, but less than a third contacted an attorney.²⁹ Of those who contacted a lawyer, almost a third did not obtain

²⁷ In Maryland, 438,676 individuals live below the poverty level. U.S. Census Bureau, American Fact Finder, *DP-3. Profile of Selected Economic Characteristics: 2000. Maryland.*

http://factfinder.census.gov/bf/_lang=en_vt_name=DEC_2000_SF3_U_DP3_geo_id=04000US24.html

²⁸ For a family of three, the poverty guideline is currently set at only \$1,272.00 a month. However, the cost of rent alone in some Maryland counties can exhaust that amount. For example, in Montgomery County, the average cost of monthly rent for a two-bedroom apartment is over \$1,100.00. Even with a housing subsidy, a family of three with income at or above the federal guideline may not be able to pay for other significant costs including food, clothes, daycare, medicine, educational supplies, and transportation. Recently, a study found that in order to make ends meet, a family of three living in Montgomery County needs an average income of \$4,085 per month, which is over three times the amount established by the federal guidelines. *See generally*, Diana Pearce, Ph.D., with Jennifer Brooks, *The Self-Sufficiency Standard for Maryland*. (Dec. 2001) Prepared for Advocates for Children and Youth and The Center for Poverty Solutions <http://www.sixstrategies.org>; *See also*, Ann O'Hara and Emily Cooper, *Priced Out in 2002* 1 (May 2003)(In 2002, the average rent for a one-bedroom apartment was equal to 105 percent of the SSI benefit amount received by individuals with disabilities)

http://www.tacinc.org/cms/admin/cms/_uploads/docs/PO2002.pdf.

²⁹ University of Baltimore, School of Law; University of Maryland, School of Law; Maryland Bar Association, *Maryland Legal Needs Assessment Survey*. Mason-Dixon Political/Media Research, Inc. 10 (Feb. 1995).

representation.³⁰ The most commonly cited legal problems experienced by low to moderate income Marylanders who participated in the survey were problems relating to housing, employment, consumer and family law. None of the survey respondents who had legal needs related to housing, the most commonly cited problem, which included issues of lack of security leading to break-ins or assaults, issues with lead paint, and lease disputes, had obtained legal representation to assist them.³¹

Findings from a 1992 study regarding access to justice in domestic and family law matters were even more dire: the percentage of low-income persons receiving needed domestic legal assistance was closer to eleven percent and was probably “significantly below” that percentage.³² The study concluded that not only did low-income litigants encounter obstacles trying to obtain information about domestic legal rights, and finding legal services providers, they encountered even more when forced to proceed pro se. Additionally, the study found that the substantial delay in these cases has “particularly harsh effects” on low-income individuals. Similarly, in 1988, the “Cardin Report” found that only one in five individuals who were experiencing a legal problem and who were eligible for legal assistance (from state-funded sources) actually received the free assistance.³³

³⁰ *Id.* at 10.

³¹ *Id.* at 9.

³² Advisory Council on Family Legal Needs of Low Income People: A Joint Project of the Maryland Legal Services Corporation and the University of Baltimore School of Law, *Increasing Access to Justice for Maryland’s Families* 50 (Mar. 1992).

³³ The MD Judicial Commission on Pro Bono, *Report and Recommendations*. (March 2000)(citing the *Action Plan for Legal Services to Maryland’s Poor, A Report of the Advisory Council of the Maryland Legal Services Corporation* (1988)).

B. Barriers Associated With Poverty.

Living in poverty often means more than that basic necessities such as food and shelter are barely within reach. An increasing number of Maryland's poor are also coping with other significant barriers to services and opportunities, including the lack of affordable housing, access to health services, and language barriers. Maryland, like so many other states, is grappling with staggering numbers of people facing homelessness,³⁴ lack of education,³⁵ mental and physical health concerns and disabilities, substance abuse, domestic violence³⁶ and the effects of HIV.³⁷

³⁴ During 2002, over 50,000 people sought shelter with agencies serving the homeless; those shelters provided 1,677,268 bednights, but had to turn away over 40,000 individuals seeking assistance due to a lack of space or lack of funds. Maryland Department of Human Resources, Community Services Administration, Office of Transitional Services, *Annual Report on Homelessness Services in Maryland, Fiscal Year 2002*. <<http://www.dhr.state.md.us/transit/pdf/ann2002.pdf>>.

³⁵ There are 565,086 Maryland residents over the age of 25 who do not have a high school diploma. U.S. Census Bureau, American Fact Finder. *DP-2 Profile of Selected Social Characteristics: 2000. Maryland*. <http://factfinder.census.gov/bf/_lang=en_vt_name=DEC_2000_SF3_U_DP2_geo_id=04000US24.html>. For a discussion of the link between poverty and education, see Maryland State Department of Education, *Literacy Works: Moving From the Margins to the Mainstream. December 2001: Report of the Task Force to Study Adult Education* (Dec. 2001)(stating that low literacy levels are highest in jurisdictions with high unemployment and high poverty).

³⁶ In 2001, 20,688 reports of domestic abuse were made to law enforcement. Maryland Network Against Domestic Violence, *Domestic Violence in Maryland* (2003)<<http://www.mndav.org/ucr%20stats.htm>>. For a discussion of the effect of poverty on domestic violence, see Jody Raphael and Richard M. Tolman, Ph.D., *Trapped by Poverty, Trapped by Abuse. New Evidence Documenting the Relationship Between Domestic Violence and Welfare. A Research Compilation from the Project for Research on Welfare, Work and Violence, a collaborative project of Taylor Institute and the University of Michigan Research Development Center on Poverty, Risk and Mental Health* (1997)(indicating a correlation between poverty and incidence of domestic violence)<www.ssw.umich.edu/trapped/pubs_trapped.pdf>; see also, Amy Farmer and Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 *Contemporary Economic Policy* 158-172 (April 2003)(Finding that women in the lowest income households have seven times the abuse rates of those in the highest income households).

³⁷ Maryland, with a cumulative total of 23, 537 cases of AIDS, is among the top ten states reporting AIDS cases. Center for Disease Control-Division of HIV/AIDS PREVENTION-*Basic Statistics* (last modified May 8, 2003) <www.cdc.gov/hiv/stats.htm>. For the relationship between poverty and HIV, see Center for Disease Control, CDC Fact Sheet, *HIV/AIDS Among African Americans, Key Facts*. (visited May 14, 2003)(Studies have shown there is a direct relationship between higher AIDS incidence and lower income) <www.cdc.gov/hiv/pubs/facts/afam.pdf>.

Additionally, it is estimated that approximately 16,000 immigrants resettle in Maryland each year,³⁸ and nearly a quarter of a million Marylanders report being able to be speak English less than “very well.”³⁹ The inability to speak English well not only hinders access to services; it also makes the non-English speaker vulnerable to unfair and unscrupulous practices:

- During an investigation of the denial of several food stamp applications, a legal services attorney discovered that local social services agency workers were instructing non-English speaking Latino applicants to check off a box marked “withdraw” on the application. At no point in the process of filling out the application were the applicants provided with a Spanish translation of the form or told that marking the box would have the effect of withdrawing the application. Only after a lawyer challenged the practice were these clients able to obtain benefits to which they were entitled.

Without the assistance of counsel, barriers to appropriate services can be difficult, if not impossible, to overcome and often have lifelong consequences:

- A local school system placed an eighteen-year-old student with multiple disabilities including deafness, emotional disturbance and developmental delays in a residential school for several years. Despite the student’s use of sign language to communicate, the student was not placed in a signing environment and he did not receive interpretive services for his academic or residential programs. Only after a legal services provider contested the treatment was this student finally placed in a program that could meet his communication needs. In addition, as a result of the legal services provider’s representation, the student received 3 years of compensatory education services, giving him a chance to become a functioning member of society.

³⁸ Maryland Office for New Americans, *Quick Statistics on Maryland’s Foreign-born and Refugee Populations* (visited May 16, 2003)<<http://www.dhr.state.md.us/mona/stat.htm>>.

³⁹ 622, 714 Maryland residents speak a language other than English at home. 246,287 speak English less than “very well.” For census taking, language ability is self reported and classified as “very well,” “well,” “not well,” and “not at all.” U.S. Census Bureau, American Fact Finder. *DP-2 Profile of Selected Social Characteristics: 2000. Maryland, supra.*

C. On a Daily Basis, Amici See But Cannot Address the Unmet Need.

It is estimated that there are approximately one million people in Maryland who are financially eligible for free legal services.⁴⁰ Yet there are less than two hundred attorneys who work for Amici and other legal services providers throughout Maryland.⁴¹ The ratio is approximately one legal services attorney for every 5,000 poor Marylanders, while the overall ratio for the general population in Maryland is one attorney for every 173 people.⁴² For the needs of those individuals to be met by legal services providers, each attorney on staff would have to carry a caseload of two to three thousand cases a year.⁴³ As a result, providers must reject thousands of compelling cases and individuals who generally have no other options are effectively denied meaningful access to the courts.

A recent, informal survey of some legal services providers in Maryland conducted by Amici confirmed that the providers cannot come close to adequately addressing all the needs of those who sought their assistance. From those who responded to the survey,⁴⁴ almost one in four individuals seeking assistance was turned away without any service. For the overwhelming majority of those who were served, the assistance was limited to referrals, information and advice.

⁴⁰ The MD Judicial Commission on Pro Bono, *Report and Recommendations*, *supra*, at 2.

⁴¹ *Id.*

⁴² According to the 27th *Annual Report* of the Attorney Grievance Commission of Maryland, there are 30,646 attorneys admitted into practice in Maryland. Maryland has an overall population of 5,296,486. U.S. Census Bureau, American Fact Finder, *DP-1. Profile of General Demographic Characteristics: 2000. Maryland*. <http://factfinder.census.gov/bf/_lang=en_vt_name=DEC_2000_SF1_U_DP1_geo_id=04000US24.html>.

⁴³ This is assuming that each case has a distinct legal issue. However most practitioners know that most clients come with a series of issues that need to be resolved. For example, the client faced with eviction may not be able to pay her rent because she has been improperly denied welfare assistance or because she has not received the child support to which she is entitled.

⁴⁴ MDLC, Women's Law Center, HPRP, Allegany Law, Legal Aid, House of Ruth, and MVLS.

Amici turn down potential clients for different reasons. Some individuals are turned away because the organization cannot handle the type of problem they present. Some cases must be turned away because of conflicts.⁴⁵ Many funders have strict income limitations.⁴⁶ In addition to turning away income ineligible applicants, legal services providers who receive funding through the federal Legal Services Corporation are precluded from serving certain categories of individuals, including undocumented individuals and prisoners needing representation in litigation.⁴⁷

However, the majority of those individuals, who seek legal assistance from legal services providers but are turned away each year, are turned away because there simply are not enough resources to meet the demand. Knowing that those who are turned away will generally not find assistance elsewhere, legal services providers are placed in the difficult position of having to prioritize which applicants most need their assistance. Many organizations perform a form of legal “triage” serving only the most “critically legally wounded,”⁴⁸ by providing less help than would be optimal on many cases and/or by providing substantial assistance in a smaller number of matters that they believe will

⁴⁵ In 2002, Legal Aid turned away 894 cases due to conflicts. 788 of the cases turned away involved domestic issues. In smaller communities, where there are fewer legal service providers available to represent the low-income population, these numbers are significant. In Allegany County, Legal Aid turned away sixty cases due to conflicts. Allegany Law was able to refer twenty cases to pro bono attorneys; however, for the forty who could not be served, there are no other options for no or low cost representation.

⁴⁶ Applicants for services from federally funded legal services programs ordinarily must have family incomes at or below 125% of the federal poverty level while Maryland Legal Services Corporation funding allows agencies providing legal services to serve individuals whose income is less than \$17,341 (50 % of the median income).

⁴⁷ Official estimates are that there are approximately 44,000 undocumented persons living in Maryland. Maryland Office for New Americans, *Quick Statistics on Maryland's Foreign-born and Refugee Populations*, *supra*. Maryland has approximately 23,000 incarcerated persons. Maryland Department of Public Safety and Correctional Services, Division of Correction, *Demographics-2002*. <<http://www0.dpscs.state.md.us/doc/statistics.shtml>>.

⁴⁸ Michael Millemann, *Mandatory Pro Bono in Civil Case: A Partial Answer to the Right Question*, 49 Md. L. Rev. 18 (1990).

have a substantial impact on many. Many providers establish criteria for priority cases, attempting to focus on the most dire needs and most vulnerable clients.

For example, Legal Aid's mandate from its funders is to provide civil legal services to low-income persons and the elderly. There are few restrictions on the eligible population beyond income⁴⁹ and only a few mandated restrictions on the type of civil legal needs that can be addressed.⁵⁰ However, there are only enough funds to support approximately eighty attorneys to respond to these needs statewide.⁵¹ As a result, Legal Aid has established strict case acceptance guidelines. In the domestic area, Legal Aid limits its representation (beyond advice, information and referral) to a narrow group of cases: custody issues only where a child is at risk of abuse or neglect or where there is removal (threatened by lawsuit or actual) of a child from a long-term custodian; spousal support only where the household is not eligible for subsistence income; and cases involving the Uniform Child Custody Jurisdiction Act. Thus, many custody and most visitation matters and divorces, as well as guardianships, adoptions, child support, name changes and other domestic matters, do not fall under the guidelines.⁵² Similarly,

⁴⁹ The approximately 67,000 undocumented individuals and prisoners who Legal Aid cannot represent are but a fraction of the 1million low-income individuals and the additional 500,000 elderly persons who make up the nearly 1.5 million persons potentially eligible for some type of services from Legal Aid.

⁵⁰ Federal regulations prohibit representation in certain fee-generating cases, specified types of drug-related public housing evictions, redistricting, abortion, euthanasia and other cases – a very small percentage of the legal needs of the low-income and elderly.

⁵¹ Although Legal Aid currently employs approximately 130 attorneys, approximately fifty of them solely represent children in Child in Need of Assistance cases, which are not included in the services discussed here. Of the remaining eighty, a number have supervisory and other duties which means that some of their time must be allocated to activities in addition to direct client representation.

⁵² In fact, most “garden-variety” custody disputes between recently-separated parents do not meet these guidelines, yet the demand for representation in this context is great. Further, the effect on primary caretakers and their children, many of whom suddenly find themselves living in poverty, and who are forced to proceed without representation, often against a represented spouse with greater financial resources, can be disastrous.

representation in housing cases is limited to “priorities” including: retaining public and subsidized housing, private breach of lease cases, mobile home evictions and substandard conditions. Advice and brief service is generally the only assistance Legal Aid can provide for a wide variety of other kinds of mistreatment by landlords.⁵³

Almost everyday, Legal Aid receives requests for assistance that do not meet these guidelines, but where an attorney could change the outcome for the applicant:

- A fifty-five year old woman in public housing in a rural area needed a new water heater. Housing maintenance negligently installed the new water heater causing massive flooding and destruction of all of her household goods. The resulting mildew and mold exacerbated the woman's serious bronchial asthma and allergies. Management claims there is no other apartment to which she can move. Unfortunately, because she literally has a roof over her head, Legal Aid cannot assist her. There are no other resources for this type of case in her area. Without litigation assistance, she will be left on her own to cope with the loss of all her basic household goods, which she cannot afford to replace, as well as with the on-going threat to her health, and management will not be held accountable for its conduct.

No matter what the justification for denial of services, every time providers turn a case away, they know that those who are left without assistance can suffer untold injustice.

A snapshot of a single day at Legal Aid dramatically illustrates the unmet demands on an overburdened system. On an average day, Legal Aid staff receive requests for assistance from residents of every county in the state and may speak with between 200-300 applicants who call or walk into its 13 offices and 4 courthouse pro se sites. On March 24, 2003, about one-third of the 225 applicants (including all of those at

⁵³ Housing and family law cases form a significant portion of LAB's practice, reflecting the high demand for these litigation-intensive areas of law. In addition, LAB assists clients obtain and retain critically important public benefits and health care, and helps to protect basic workplace and consumer rights, as well as access to education, when there are no other providers to whom aggrieved individuals and families may turn. Within each of those areas, LAB has identified types of cases which are accorded "priority", based on the potential or actual effect on the safety, health, stability or self-sufficiency of those involved.

the pro se offices) were seeking help with family problems. Another third were seeking assistance with housing or consumer problems and the rest for a wide range of civil legal problems, including school expulsions, employers' failure to pay final wages, denial of medical assistance benefits for home-bound elderly persons and many others. Of those 225 applicants, about 200 were financially eligible.

At Legal Aid on that day, the attorneys on staff, besides performing intake for new applicants, were already working on over 3,500 cases accepted for representation. As a result, less than thirty of the 200 eligible applicants' cases could be accepted for representation beyond limited advice and referrals. Annually, for over 44,000 of the more than 50,000 individuals who were provided with legal assistance by Legal Aid during 2002, the assistance provided was limited to advice, information and referral.⁵⁴ Advice, information and referral may help forestall litigation by addressing legal problems before they escalate into full-scale adversarial proceedings and therefore are critically important components of the array of services legal service programs offer. Early intervention by a lawyer generally benefits all parties to a dispute, as well as the courts. However, many of the situations for which Amici provide advice or information really warrant attorney involvement in litigation or contested administrative proceedings.

Nonetheless, in many of those situations, attorney involvement is not possible due to limited resources:

⁵⁴ Legal Aid's experience is typical of all Amici. For example, of the 607 cases closed by HPRP in 2002, 220 were provided with brief advice, Allegany Law provided brief advice, information or referral to 382 of the 488 individuals served, MDLC closed 2360 cases, over half of which were provided with brief advice and referral information and ACLU-MD provided brief advice, information or referral to 417 of the 580, MLSC income eligible cases that were closed during 2002.

- A young woman with two small children was being verbally – but not physically – abused by her police officer husband. She had no family or other resources in Maryland. She needed child support, use and possession of the family car and home to take care of the children if she separated from her husband. It is not a case that is within the legal services provider’s case acceptance guidelines. Pro bono assistance for domestic cases in her rural area is unavailable due to lack of attorneys. Due to limited resources, the local domestic violence program has to limit representation to persons who are being physically abused or are immediately in danger of physical abuse. Although the specter of escalating abuse looms over her family, there are no other legal services providers in her area to assist her with prompt representation in court, which could avoid future harm to herself and her children.

Even where the case is within the case acceptance guidelines, lack of resources (as occurred in Ms. Frase’s case) may require that a legal services program decline to provide representation beyond advice:

- Recently a mother of a 3-year-old child approached a legal services office seeking counsel to represent her in a contested custody and contempt of visitation matter. Following some disturbing statements made by the child suggesting sexual abuse, any visitation was supposed to be supervised. However, the father admitted that the visits were not supervised. The matter was being investigated by the local department of social services who told the mother that if she lets her child visit with the father, the child will be placed in the state’s custody. Since the mother then refused to provide visitation, the father filed for custody and contempt. The office could not represent her. Additionally, the mother lived in a rural area and could not be referred elsewhere because there were no other legal services available.

In cases where the provider cannot offer assistance, individuals are often referred to other legal services organizations. However, the referrals are frequently made to organizations that are equally overwhelmed, under-funded and understaffed.⁵⁵ The limited number of providers results in people being shunted from door to door, agency to

⁵⁵For example, Legal Aid refers to HPRP, House of Ruth, CASA de Maryland, and law school clinics, among other places and House of Ruth refers to Legal Aid, Family Law Hotline, and MVLS, among other places.

agency, without knowing where and when the assistance they need will be forthcoming.⁵⁶ Many run out of time, get frustrated, and are left to muddle through on their own. While some are fortunate and find assistance promptly, others get no assistance or may end up getting assistance only after they have suffered significant damage.

4. POVERTY GIVES RISE TO ADDITIONAL LEGAL ISSUES IN WHICH BASIC NECESSITIES ARE AT RISK.

Many legal problems that affect those in poverty are faced by all segments of society, regardless of income. These include issues relating to divorce, custody, child support, child abuse, domestic violence, education, consumer law, bankruptcy, elder law, discrimination and employment.⁵⁷ However, those living in poverty often face additional legal problems that are related directly to their precarious economic status. Access to housing and to basic subsistence income through public benefits such as Temporary Cash Assistance (TCA) and social security can prevent people from falling through the cracks of society. Without the assistance of counsel, people are unable to adequately protect their interests or to navigate the complexities of bureaucratic procedures, and are often harmed further by the very same system from which they are seeking assistance:

⁵⁶ Maryland Legal Assistance Network, a collaborative effort of legal services providers in Maryland and the MLSC, is attempting to prevent or lower client transfers between programs by creating one point of entry for services. While this program will hopefully improve access to available services, it will not add resources. A response to the survey question “Does your organization refer applicants to other providers demonstrates the frustration felt by the providers when they turn away applicants: “we know with certainty that [individuals seeking legal assistance] will generally not be able to obtain legal representation from the legal services community due to the priority of other organizations and/or a lack of resources.”

⁵⁷ Of the 109,430 cases handled by MLSC-funded legal services programs in 2002, 43% dealt with family/domestic law problems. The rest dealt with housing (25%), Juvenile (7%), Consumer (7%), Income Maintenance (2%), Individual Rights (2%), and Other – including employment, health, education, immigration- (14%). Maryland Legal Services Corporation. *Annual Report 2002*, at 5.

- A woman, with physical disabilities, depended on TCA to care for herself, her teenage son and her grandchild, who has been diagnosed with a seizure disorder. Despite many attempts to explain her disabilities to her case manager, she was assigned to an inappropriate work activity. When she was unable to comply with the requirements of the activity, her benefits were terminated at the beginning of the winter. She re-applied and promptly provided all requested medical documentation, but her application was denied. Finally, after four months without benefits for herself and the two children in her care, she was able to obtain representation to challenge the agency action and her benefits were reinstated.
- An older Spanish-speaking woman was being sued by her landlord for failure to pay six months' rent. She had been paying the apportioned amount of rent she was required to pay, however, because the landlord had not submitted the appropriate paperwork for voucher approval, the local housing authority had not paid its portion of the rent. With a legal services attorney's assistance, the woman successfully defended the lawsuit, had her voucher renewed, and avoided homelessness.

In addition to dealing with legal needs stemming from their poverty status, for many being poor is a barrier in itself. Poverty often means:

- more than simply not having a car - it means finding money to pay for a ride that often needs to be planned days, if not weeks, in advance.
- working in marginal jobs without benefits - jobs that do not allow for time off to search for an attorney or to go to court - jobs, that if you do take the time off, may not be waiting for you when you return.
- paying for rent and other necessities in cash, without receiving receipts, whether or not you request one.
- living in substandard housing but knowing that if you give your landlord trouble, there are dozens of other people who will gladly take your place.
- being just one of a thousand⁵⁸ failure-to-pay-rent cases scheduled on the docket on the day your case is being heard.

However, those problems are only the initial hurdles impoverished people need to overcome. Even when pro se litigants appear in court,⁵⁹ the procedures are not self-

⁵⁸ Telephone interview with court clerk in Baltimore City's District Court who estimated that there are over 1,000 Failure to Pay Rent cases on the docket daily (May 19, 2003).

⁵⁹ Often people, who are unable to find representation, simply do not appear for court because they are intimidated by the process and frequently do not understand their rights. Others may view the legal system as just another instrument that will cause them harm.

explanatory. Individuals do not know how to gather and organize information for use as evidence,⁶⁰ they may not know how or when to contact opposing parties, or how to file paperwork with the court. Like Ms. Frase, once in court, pro se litigants do not know how to make appropriate objections, present and admit evidence, solicit testimony from and conduct cross-examination of witnesses, or raise an appropriate defense.⁶¹ It is therefore not surprising, that at the conclusion of cases, many pro se litigants ask, “what just happened?” When the opposing party is represented, the results can be even more unjust. Frequently pro se litigants look to opposing counsel for advice in the case, risking disastrous results:

- A pro se litigant appeared in court to defend her alleged non-payment of rent. Opposing counsel told her that she could leave because the case was going to be worked out due to some inaccurate calculations of the rent amount actually due. The woman left and judgment by default was entered. She lost her home and her housing voucher. She then contacted a legal services provider, whose attorney had to speak with the landlord’s attorney and the court clerk and review the tapes of the proceedings to prove the client’s claim that she was not present at the hearing. Only after those intensive efforts did the landlord agree to vacate the judgment and the housing authority agree to reinstate the voucher so that she could leave the homeless shelter.

Appointment of counsel will not resolve the very real and difficult hurdles poor people face, simply trying to survive. It will, however, reduce the inequity of forcing them to protect their most basic needs in a forum where formal rules and practices, as

⁶⁰ Poverty often also means that having a permanent address or access to a telephone (let alone a fax machine, computers or copier) cannot be taken for granted.

⁶¹ Community Training and Resource Center and City-Wide Task Force on Housing, Inc., *Housing Court, Evictions and Homelessness: The Cost and Benefits of Establishing A Right to Counsel* (June 1993) at FN. 41(Stating the study found that tenants who were represented by an attorney raised issues relating to habitability more than twice as often as those tenants who were not represented).

well as the need to communicate technical legal arguments, thwart their ability to present their claims effectively.

5. ADEQUATE LEGAL REPRESENTATION RESULTS IN THE PRESERVATION OF HOME, HEALTH AND FAMILY AND THEREBY GIVES REAL MEANING TO THE CONCEPT OF JUSTICE FOR ALL.

In the day-to-day practice of providing legal services, Amici see the results of timely legal intervention. With the assistance of counsel, some matters can be promptly resolved with a telephone call or a letter, quickly preventing costly damage to the client as well as to society.⁶² A call to a landlord who is threatening to lock out a tenant may prevent homelessness. The ability to identify and promptly address legal issues can prevent a problem from developing into a full-fledged court case that can waste both limited court time and legal resources. Counsel may bring about a swift resolution to a matter that might otherwise have created needless and misdirected litigation:

- A client received a notice from his landlord that he was to be evicted the next day from his Section 8 senior/disabled housing. He contacted a legal services attorney who discovered that a judgement had been entered despite the fact that the client had not received notice. The attorney filed a motion to stay the eviction and vacate the judgment, which was granted, and the landlord dismissed the underlying complaint, saving the client from becoming homeless.
- A sixty-one year old man sought the advice of counsel because his wages were being garnished in error and over \$3000.00 had already been taken. He spoke limited English and had not been successful in attempting to correct the error. A legal services attorney investigated and discovered that the client's name, social security number and birth date (off by nineteen years) were different from that of the judgment debtor. After the legal services attorney filed a motion to stop the garnishment, the corporation paid the wages back within two weeks without further court involvement, relieving the client of substantial harm and saving court resources.

⁶² Thomas C. Mielenhausen and Charles A. Krekelberg, *A Better Idea: Reporting Pro Bono Services, supra* (underscoring the societal benefits from legal services, including relieving spouses and children from abuse, preventing homelessness and educational instability, protecting access to food, clothing, medical care and safe and sanitary housing, obtaining critical income supports and reducing costs for court systems.)

These cases involve the most personal, private and important matters of the individuals concerned. Those who can afford to spend thousand of dollars protecting their interests do, while those in poverty are forced to go without. Usually unable to argue applicable law, apply the rules of evidence and highlight significant facts, pro se litigants are frequently denied a just outcome.

- A mother in her seventies and in declining health approached a legal services provider for assistance. Her adult daughter, who has cognitive developmental disabilities, was found ineligible for Medicaid services. A legal services attorney represented the daughter on appeal, establishing the daughter's eligibility and determined that the eligibility determination methods used by the state were incorrect. Although the mother will probably never stop worrying about her daughter, she is now assured that her "little girl" will receive the appropriate services.
- The mother of three children sought counsel following a pendente lite hearing, where the court ordered that one child be placed with her paternal grandparents. A legal services attorney successfully represented the mother at a subsequent hearing and the mother regained custody. Both the court and opposing counsel conceded that the evidence did not support depriving a parent of custody by a third party. Yet, without the assistance of counsel, the mother had not been able to argue the applicable law.

Amici are frequently involved in matters where counsel has made the difference between what would otherwise be a daily struggle for dignity and safety and the ability to experience a quality of life that many Marylanders take for granted.

- For approximately four years, a patient in a state psychiatric hospital had spent the majority of his time in restraints. Despite several years of advocacy on his behalf by family members, he remained in restraints. A legal services attorney represented the patient and with the use of expert testimony challenged his "treatment." The man was discharged and has been living in the community for the past two years.
- A mother living in public housing did not have heat. Her daughter suffers from serious health problems and the lack of heat during the previous winter had resulted in hospitalization in an intensive care unit. Following her discharge, services providers would not come to her house to provide needed services because the home was too cold. The mother complained to appropriate authorities without success. Contact with the housing authority's legal department also proved unsuccessful. Only after a legal

services program drafted and threatened to file a federal complaint and a motion for injunctive relief, supported by the child's physician's affidavit attesting to the imminent harm to the child, did the housing authority relocate the family thereby preventing further hospitalization.

- A nursing home resident with physical disabilities wanted to leave the home and to live in the community. A relative controlled her finances and told the nursing home that he did not want the client to be discharged. With the legal services attorney's assistance, the client was able to free herself from the relative's control and leave the home. She now resides in her own apartment.

When a person is poor, the inability to protect his or her interests can result in more than a one-time unfavorable court decision. The decision can have a far-reaching ripple effect that results in further destabilization. Often those who seek assistance for a particular matter are, in fact, facing a myriad of legal problems. Legal intervention can prevent or limit the damage caused by the impending chain reaction of events.

- A woman, with significant psychiatric illness, who was denied alimony at trial even though she had no income, no prospective income and her husband earned in excess of \$250,000, approached a legal services provider for assistance. A legal services attorney successfully represented her on appeal preventing the otherwise certain outcome of a life spent in poverty and the need for substantial public resources to support her.

Studies have found that prompt legal representation can prevent a downward slide and can be a cost-effective stabilizing force. A recent study, addressing a Department of Justice report about the decline in incidences of domestic violence, found that the provision of legal services was one of three factors leading to the decline of domestic violence.⁶³ The study found that while most services provided to help battered women, including hotlines, shelters, safe homes and emergency transportation assistance, have

⁶³ See Amy Farmer and Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence, supra*, (finding that the provision of legal services, improved educational and economic status of women, and demographic trends, largely the aging of the population, were significant factors relating to the decline).

not impacted significantly on the incidence of domestic violence, the provision of legal services has.⁶⁴ Legal services assist battered women with practical assistance in matters pertaining to custody, child support and protective orders, thus providing women with “real, long-term alternatives.”⁶⁵

Similarly, a 1993 New York City housing court study found that the provision of legal counsel to indigent tenants would prevent a majority of evictions and would actually save the state money. A pilot project found that when the tenants had counsel, evictions were prevented in ninety percent of the hearings.⁶⁶ Without counsel, tenants were unlikely to raise legal or substantive issues affecting their cases; they also were unable to challenge effectively the numerous false and frivolous petitions filed by landlords.⁶⁷ The study concluded that providing legal counsel was less expensive than the cost of providing services to families once they had been evicted.⁶⁸ A more recent study found only twenty-two percent of represented tenants had final judgments entered against them compared to fifty-one percent of unrepresented tenants.⁶⁹ Amici’s everyday experiences in courtrooms around Maryland echo these findings.

⁶⁴ *Id.* at 10.

⁶⁵ *Id.* at 11.

⁶⁶ Community Training and Resource Center and City-Wide Task Force on Housing, Inc., *Housing Court, Evictions and Homelessness: The Cost and Benefits of Establishing A Right to Counsel* 14 (June 1993).

⁶⁷ *Id.* at 20.

⁶⁸ *Id.* at iv. (suggesting that 67 million dollars could be saved by providing counsel to low-income tenants in eviction proceedings); *see also*, Minnesota State Bar Association, “*With Liberty and Justice for All*” *Legal Aid: Essential to the Justice System*. March 2003 (Stating that by preventing homelessness in an estimated 2,650 cases, legal aid save the Minnesota government almost four million dollars in shelter subsidy costs). Maryland spends a significant amount of money addressing homelessness. In 2002, Maryland’s Emergency and Transitional Housing and Services Program received \$3,736,108.00 in funding. Maryland Department of Human Resources, *Stakeholder’s Summit*. (Nov. 2002).

⁶⁹ Carol Seron, *et al.*, *The Impact of Legal Counsel on Outcome for Poor Tenants in New York City’s Housing Court*, 35 L. Soc’y 419 (2001).

- A fifty-nine year old man did not pay rent per a court order setting his rent at \$0 due to the horrendous conditions in his home. However, without being served, he was sued for unpaid rent, and the court, unaware of the prior case, granted judgment for possession. All of the man's possessions were put out on the street and were stolen before he got home from work and discovered the eviction. A legal service attorney filed a motion and he regained possession of his home. However, he has lost all of his belongings and the legal services provider cannot represent him in an action to replace his household goods.
- Previously homeless, a young mother obtained a housing voucher. When she was about to move into her apartment, the manager told her that the assigned apartment was not ready and had her move into another apartment. Shortly thereafter, her voucher was terminated because she was in an ineligible apartment. She appealed the termination without success. After a legal services attorney filed a federal complaint, the termination was reversed. However, shortly after she was reinstated, the landlord filed suit against her for the amount of rent due while she was in the "unapproved" apartment. The legal services attorney intervened again, and the landlord dropped the suit.

Despite the fact that having a lawyer is often the single most important factor in obtaining meaningful access to justice, many of Maryland's poor seek legal representation but continue to be refused services because of a lack of resources. The unrepresented individual must argue her case as best as she can, and live with the devastating consequences.

- A mother with children was living in subsidized housing for the homeless. She received an eviction notice because "her lease was up." The mother attempted to obtain an attorney from a legal services program but was turned away due to unavailability of legal resources. Despite being advised as to what to say in court and as well as being provided with highlighted copies of the applicable federal regulations, explicitly stating that such eviction is impermissible, to provide to the court, she was unable to make her case and the court ruled against her.

CONCLUSION

Over 150 years ago, Alexis De Tocqueville wrote that “lawyers belong to the people by birth and interest, and to the aristocracy by habit and taste; they may be looked upon as the connecting link between the two great classes of society.”⁷⁰ For justice to be meaningful, it cannot be available only to those who can afford it. An impoverished parent’s fight to retain her custodial rights is no less important than that of a wealthy parent; her right to meaningful access to justice is no less crucial. By offering free legal assistance, Amici open the doors to the courthouse for those who would otherwise not be able to afford counsel. Their timely intervention often avoids litigation and limits the extent of harm experienced by those least able to weather adversity.

Establishment of a right to counsel in those cases which progress to litigation and in which fundamental rights and basic human necessities, such as shelter, health or custody are at stake, will not solve the problem of inadequate legal resources for poor people. It will, however, provide a critical safety net for those individuals who are facing dire loss in the arena they are perhaps least equipped to handle. It provides a last opportunity for individuals for whom early but necessarily limited intervention by overextended legal services providers has not worked. And it will reduce the number of cases where individuals sustain irrevocable harm even before they reach a legal services provider.

⁷⁰ Patricia M. Wald, *Becoming a Player: A Credo for Young Lawyers in the 1990s*. 51 Md. L. Rev. 422 (1992) citing Alexis De Tocqueville, *Democracy in America*, at 286(1835) (citations omitted).

In those situations where Amici are able to provide representation, the travesty of justice only being available for a price is avoided. However, Amici cannot meet the growing and overwhelming need for free legal assistance, so thousands of impoverished Marylanders who seek assistance each year are sent away. Unfortunately, justice becomes something else that they cannot afford. This is a price that neither the individuals involved nor society can afford to pay.

Even without a legal background, Ms. Frase, along with so many others who have sought representation, realized what was at stake and knew that counsel was needed to advocate for her interests and protect her rights. She, like many others, applied for legal assistance, but was sent away. Every day, Amici see the effects of one-sided justice and attempt to intervene whenever they can.

Unfortunately, 200 attorneys cannot ensure justice for the almost one million Marylanders who need representation. Justice will have to come from somewhere else.

Respectfully submitted,

Hannah E.M. Lieberman
Rhonda B. Lipkin
Jessica L.C. Rae
Legal Aid Bureau, Inc.
500 East Lexington Street
Baltimore MD 21202
(410) 539-5340

Counsel for Amici Curiae
Legal Services Providers

Dated: June 18, 2003

Times New Roman, 13 pt.