

TESTIMONY OF HARRISON D. MCIVER, III

EXECUTIVE DIRECTOR/CEO

MEMPHIS AREA LEGAL SERVICES, INC.

Before The

COMMERCIAL AND ADMINISTRATIVE LAW SUBCOMMITTEE

Of The

HOUSE JUDICIARY COMMITTEE

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Chairman Cohen, Ranking Member Franks, and other members of the Subcommittee, my name is Harrison D. McIver, III, Executive Director/CEO of Memphis Area Legal Services, Inc. (MALS), a position I have held for more than eleven (11) years. As my short bio indicates, I would be considered a legal aid lifer having spent my entire career (32 years) in legal aid law firms or related organizations. I am indeed honored to be invited and have the opportunity to testify at this hearing and share the wonderful work that MALS and its dedicated staff do on a daily basis in a community where nearly 200,000 people qualify for our services. I am not testifying for my firm alone, but for 137 legal aid law firms, with thousands of dedicated legal aid workers, from across this country. All are here with me in spirit. I am also giving voice to the plight of the millions of potentially eligible clients. But for the efforts of legal aid law firms, with the assistance of volunteer attorneys, paralegals and others, access to justice would be even less of a reality than it is today.

Memphis Area Legal Services History

The Memphis Area Legal Services, Inc. story began in response to a profound tragedy for our nation. In 1968 in the wake of the death of Dr. Martin Luther King, Jr., the commitment and resolve of thirty members of the legal profession in the Memphis area, led by W. J. Michael "Mike" Cody, honored Dr. King's memory by advancing the dream of the dreamer. Though these lawyers and law students initially faced staunch opposition from the local bar, they nevertheless persevered until their dreams were realized when, on June 15, 1968, the Neighborhood Legal Services Project (NLSP) was established. When they were twice denied funding by the Office of Economic Opportunity (OEO), the NLSP founders pooled their own funds to support and organize the project and volunteered their time after normal work hours, with law students and a secretary staffing the office. Two years later, OEO funded Memphis and Shelby County Legal Services (MSCLS), due in no small part to many of the unsung heroes who helped establish the original NLSP. In 1974, when Congress passed the Legal

Services Corporation (LSC) Act, Memphis and other legal aid programs received additional funding. Subsequently, Memphis and Shelby County Legal Services' name was changed to Memphis Area Legal Services, Inc. (MALS) to better reflect the expansion of services to the three rural counties of Fayette, Lauderdale, and Tipton. MALS is one of four LSC-funded law firms in Tennessee.

Today, MALS, which will celebrate its official 40th Anniversary in 2010, is a multi-faceted law firm guided by values and principles that embody its commitment to "equal justice under law." Through its well-trained, dedicated and capable staff,¹ complemented by the volunteerism of the private bar, MALS continues to provide free legal assistance through advice and counsel, court and administrative representation, and community education and outreach to the low-income and elderly residents in Shelby, Fayette, Lauderdale, and Tipton counties, in accordance with board approved substantive priorities.

Delivery of Legal Assistance Faces Enormous Challenges

LSC's "Documenting the Justice Gap in America" accurately depicts the growing challenges legal aid firms are facing in our efforts to address the critical needs of our client population. This challenge is exacerbated by our struggling economy. While I believe that closing the justice gap will require multiple strategies and the collective efforts of all key stakeholders, we must start with a substantial increase in funding from Congress for LSC. Additionally, other federal grant opportunities, significant expansion and innovations in private attorney involvement/pro bono programs, and increased support from state and local governments, as well as the private sector will be needed.

MALS, like other legal aid law firms across this country as well as many private law firms, is feeling the brunt of a severe recession. But unlike private law firms, MALS's challenges arose as more and more low-income individuals and families experienced legal problems that were exacerbated by the bad economy. Notably, the unemployment number nationally is close to 10%, but in the four counties served by MALS the average rate is 13.3 %. Legal aid firms have always had more clients than they could ever serve, but nothing like what we have experienced over the past year. Bringing it close to home, MALS this year was forced to turn away nearly 65 % of the poor people who needed us, simply because we did not have the resources available that were necessary to meet their legal needs.

¹ MALS' employs a staff of 53 composed of 20 attorneys, 12 paralegals/housing counselors, 5 intake counselors, and 16 other administrative and support staff.

To put it bluntly: the Justice Gap in West Tennessee grew even wider this year. More than 200,000 people now live below the poverty line in our four county service area. That number represents an increase of 45,000 or a 23 % increase over the 2000 census figures. Things are not likely to improve in light of these staggering figures, and next year threatens to be the worse. We have 20 attorneys on staff, which means there is only one attorney for every 10,000 eligible clients in our community, compared to the one-to-300 attorney-client ratio for the general population. MALS expects 15,000 requests from low-income individuals for legal services in 2010. That's an overwhelmingly disheartening figure. Yet the lack of legal resources is not limited to MALS. As reported in the "Justice Gap", studies of legal needs throughout the nation conducted over a 15-year period show that less than one in five low-income persons actually receives the legal help they need. The mission of MALS and other legal aid organizations is to work hard every day to fulfill this nation's promise of "equal justice under law."

The demand for our services is best demonstrated by the number of applications that we receive for our services. When that number increases, it generally signals some combination of an increase in the number of individuals eligible for our services and in the level of hardship being faced by those who are eligible. Using that barometer, in 2006, we received 6631 applications for our services. By 2008, that number had increased by nearly 29% to 8552 applications. Using the first three quarters as a guide, in 2009, we will receive 10,694 applications. While the number has increased substantially each year, the greatest spike is from the 8552 applications that we received in 2008 to the 10,694 that we are projected to receive this year. That is a 25 % increase in just the past year, the approximate increase in the poverty population.

To show the impact that the economy is having on our client base, in 2006, fewer than 1500 applicants reported that they were either receiving unemployment benefits or had no income at all. In 2009, we have already had over 2000 applicants in that category and are expecting over 2800 by year's end. In 2006, we completed 2984 cases on behalf of our clients. By 2008, that number was up over 22%, to 3650 cases. And, in 2009, we are well ahead of where we were a year ago.

The 3650 cases completed in 2008 breakdown as follows: Consumer 14%, Education 1%, Employment 2%, Family 9%, Health 4%, Housing 27%, Income Maintenance 29%, Juvenile 1%, and other 14%.

Resources Have Not Kept Pace with Demand

While MALS relies heavily on its Legal Services Corporation grant, the core funding to sustain its delivery model, we have also aggressively pursued non-LSC funding in order to meet the ever-growing demand for legal assistance in our service area. MALS' total budget for 2008 was \$3,504,578 of which \$1,383,092 or 39% was from the LSC, and the other 61% included \$150,495 in IOLTA funds, \$240,294 in grants/contracts with the City of Memphis, \$793,765 in State of Tennessee dedicated funds, \$367,102 in other federal grants, \$148,651 in foundation funds, and \$421,179 in private contributions and cy pres awards.

MALS' total budget for 2009 is \$3,541,705, of which \$1,515,836 or 42% will come from the Legal Services Corporation, and the other 58% from other sources, including \$150,295 from IOLTA funds, \$285,000 from the City of Memphis, \$797,698 from the State of Tennessee, \$417,876 from other federal awards, \$175,000 from foundations, and \$300,000 from private contributions.

Despite our proactive efforts to increase revenues, we still fall far short in our capacity to respond to the widening of the justice gap.

MALS Work on Behalf of Low-Income Clients

We at MALS are extremely proud of the work we do for our clients. We have a reputation as an excellent law firm, staffed with highly skilled and experienced attorneys who are dedicated advocates for their clients. Our attorneys and support staff help people faced with foreclosures and other housing issues such as evictions, landlord and tenant disputes and housing discrimination, domestic violence and other family law matters, healthcare issues, and issues relating to social security and veteran benefits. Without access to a lawyer, for people faced with these devastating legal problems, equal justice under the law would be meaningless.

The following stories are but a few examples of the thousands of clients who have received high quality assistance from our dedicated staff. The vignettes are factual but the names are changed to maintain confidentiality.

- **“Dorothy”** suffered from extensive memory lapses and lost her ability to write, much less work. Doctors found a massive brain tumor. Yet, she was denied SSI benefits. She turned to MALS for help, and our paralegal advocated for her before the Social Security Administration. She now receives SSI benefits as well as health coverage.
- **“Julie”** was married for twenty years to a controlling and abusive husband. She tried to leave with her son, but due to her economic situation and lack of affordable legal

assistance, she was forced to stay with her husband. Eventually, she turned to our Family/Domestic Violence Unit when his abusive outbursts became more frequent and more violent. MALS was able to obtain an order of protection, possession of the marital home, and custody of their son.

- **“Carolyn,”** a 70-year client, refinanced her home for \$75,000, at an APR of 14.83% on a 30-year mortgage with a variable interest rate and a balloon payment. Our appraiser found the property was worth only \$49,000. Over the life of the loan, Carolyn would have paid total of \$337,734.00. After filing suit in federal court, MALS reached a settlement, with the principal lowered to \$39,000, at 6% fixed interest. The term of the loan stayed the same but the balloon payment provision was removed, and all arrearages were forgiven. Now the total repaid will be \$84,175. This representation saved our client \$253,559.
- **“Alicia”** had lived in her home for 30 years. She owed \$4,942 on the mortgage and had an A-1 credit rating. She was persuaded to obtain an equity loan for home improvements and to “pay off some bills,” for a total amount of \$19,057 at an 18% interest rate. Part of the amount that was financed was for credit life insurance for the lender. A year later our client was persuaded to refinance again at a similar rate and fees in excess of 15%, negatively amortizing the loan. Our Fair Housing Center attorney reached settlement after threatening the lender with litigation. The interest rate on the new loan was 6%. All outstanding property taxes were paid by lender, the principal was reduced to \$20,935, and the 30- year term was reduced to 10 years. Our client would have paid a total of \$189,378 over the course of the original loans. We saved her \$161,488, and in addition she received a settlement of \$27,890.
- **“Sara”** requires the use of a wheelchair. A women’s regional clothing store not far from her home required Sara and others using wheelchairs to enter the store through a rear service entrance in an alley. Many times Sara had to wait for long periods of time in the alley before someone opened the door for her. Once, she was completely denied entry. MALS sued on her behalf in federal court under the Americans with Disabilities Act and filed an administrative complaint with the United States Department of Justice. Through our combined efforts, we reached a consent judgment where the store will make modifications for wheelchair access through the front door and other modifications to become ADA compliant.

Volunteer Opportunities for Attorneys & Volunteers at MALS

MALS is fortunate to have a large group of dedicated pro bono attorneys and other volunteers who are interested in our work and are willing to give their time in a variety of ways to

supplement the work of our small but dedicated staff. Among our numerous pro bono programs are the following:

Traditional Case Referral: The longest running of MALS' volunteer lawyers' efforts is a basic pro bono program in which attorneys enroll and agree to take a certain number of a specific type of cases and provide individual representation or co-counsel with a MALS attorney.

The Bankruptcy Alternatives and Pro Bono Project was initiated because of a developing consensus among members of the Access to Justice Committee, bankruptcy judges and the MemphisDEBT Collaborative that our community was reaching a crisis point as consumers and debtors used the bankruptcy courts as their number one choice for resolving consumer and debt-related problems. Under the project, applicants for a bankruptcy are enrolled in a bankruptcy class conducted by MALS volunteer attorneys to ensure that applicants only use the bankruptcy options as a last resort, while determining which applicants truly are in need of additional assistance. The applicants who complete the class and need to file a Chapter 7 bankruptcy are referred to pro bono bankruptcy attorneys.

Atticus Referral Network: Originally conceived of by young lawyers, this program was specifically designed to facilitate a faster referral process using technology. The focus was recruitment at the bigger law firms to enlist associates to join in this network by designating a firm attorney in-house to serve a 'gatekeeper' function. The gatekeeper then forwards the requests from MALS' staff on to firm members who can select a case for pro bono representation.

MBA Business Section /Corporate Counsel Pro Bono Initiative (CCPBI): The most recent initiative creates a partnership between CCPBI, the Memphis Bar Association Business Section and MALS to provide a variety of services. Additionally, the CCPBI and the Business Section plan to work with the Memphis Small Business Chamber of Commerce, the Memphis Music Foundation and the Alliance for Nonprofit Excellence to match attorneys with small businesses, small business entrepreneurs, and non-profit entities.

Low Income Taxpayer Clinic (LITC): MALS has been awarded a grant from the IRS to create a LITC with a pro bono component to assist individuals with problems involving personal income taxes.

Law School Clinic: Third year law students at the University of Memphis School of Law under the supervision of clinical faculty provide legal assistance to eligible clients referred by the MALS Pro Bono Project. Currently the clinical program is housed at MALS.

In addition to these projects, our pro bono volunteers staff MALS's In-house Telephone Advice, Screening and Referral Project; Attorney of the Day, Courthouse (Pro SE) Project; Advice and Counsel Clinics; Saturday Legal Clinics; Advance Directives Panel; Conservatorship Panel; and Volunteer Mediation Panel.

MALS' Responsiveness to Specific Crises

Disaster response: In 2005, when Hurricanes Katrina and Rita devastated the Gulf Coast; an estimated 20,000-25,000 displaced individuals arrived in the Memphis, Shelby County with a myriad of needs including legal assistance. The legal community came together to formulate a strategy to respond. MALS was called upon to coordinate and implement the strategy, first by organizing volunteers and staff to be on-site at Red Cross designated centers. MALS then successfully acquired additional resources to establish a more long-term response. With United Way and Presbyterian Church grants, MALS hired additional personnel to staff an outreach center which focused primarily on FEMA-related matters.

Domestic violence (DV) is an epidemic in the city of Memphis and the surrounding suburbs. In 2007 and 2008, the Memphis metropolitan area had the second highest rate of violent crime in the country, and in 2008 more than 58% percent of all local violent crime was domestic violence-related. In 2008, a record number of 35 domestic homicides created what local leaders pronounced a "public safety emergency." In response to this crisis, MALS successfully sought a Legal Assistance for Victims of Domestic Violence grant from the US Department of Justice (DOJ). That funding complemented an earlier grant that had established a collaboration involving the city and county governments, law enforcement, victims' assistance, the YWCA and MALS as the administrative agent.

With a new Legal Assistance for Victims grant and a supporting grant from the Women's Foundation for Greater Memphis, MALS sought to address both the legal and other issues that impede the victims from freeing themselves from the abusive relations while achieving a level of self-sufficiency. Thus, the Opportunity Plus Project was created to enhance the well-being of domestic violence survivors and their families by empowering them to become economically and emotionally self-sufficient. Research indicates that financial independence, self-sufficiency and self-confidence are factors that enable victims of violence to leave their abusers and live free of violence. Economic independence is the primary factor that enables victims of violence to live independent from their abusers. This is one of the primary reasons that the Domestic Violence Project places emphasis on obtaining orders of financial support.

Foreclosure: Another crisis that has engulfed our country in recent years has been the continuing foreclosure saga. The foreclosure crisis in Shelby County continues to worsen. In 2008, we experienced a record breaking number of foreclosures (more than 12,000), and the

number of foreclosure sales actually exceeded the number of arms length sales for the first time in history. Through the end of August, there have been 9,104 foreclosures initiated in Shelby County as compared to 8,494 for the same period in 2008. This is a 7% increase.

Our Home Preservation Project continues to help more than 1,000 clients each year with foreclosure issues. However, one new issue that is becoming more and more common relates to tenants who are facing eviction because the home in which they are living has been sold at foreclosure. In many instances the tenant has continued to pay rent and had no knowledge of the foreclosure until a Sheriff's Deputy or process server appeared at their door with a foreclosure warrant. In that situation, the tenant often was faced with having their belongings set out on the street within thirty days of learning of the foreclosure. In some ways, a tenant in this position is in a worse position than a homeowner who loses his or her home to foreclosure.

In 2008, as a part of our Memphis Fair Housing Center, MALS established the Home Preservation Project (HPP) to target these compelling and systematic housing problems. The HPP was a natural outgrowth of effective advocacy in addition to fair housing and predatory mortgage lending in the Memphis area.

Lifting the Attorneys' Fees and Class Action Restrictions Would Expand Resources to Serve Clients

In 1996, Congress imposed on LSC grantees a wide variety of restrictions that have had a major impact on the ability of MALS and other legal aid programs to fully serve the low-income client community. Two of the most significant of these are the restrictions on seeking attorneys' fees and participating in class actions. Not only have these restrictions significantly limited the tools that MALS is able to use in representing its clients, but they have also substantially limited the resources that we have available to serve the eligible clients who need our help. This is but one example of the impact of these restrictions on the client community served by MALS.

By the year 2000, it had become clear that thousands of Memphians were at risk of losing their homes as a result of the proliferation of predatory mortgage loans, particularly in identifiably African-American communities in Memphis. MALS had become actively engaged in litigating individual predatory lending cases by that time and had developed a great deal of expertise in the area. A pattern of extremely exploitative lending activity had emerged that involved a group of real estate agents, home improvement companies, closing agents, mortgage brokers, appraisers, and national mortgage lenders. A team of MALS attorneys began working on a series of cases that involved allegations of reverse redlining in violation of the Fair Housing Act; the civil RICO laws; the Home Ownership Equity Protection Act; the federal Truth-In-Lending Act, and a large number of other legal theories. Ultimately federal lawsuits were filed

on behalf of 17 plaintiffs against more than 30 defendants. MALS was able to bring these cases because it receives substantial resources from sources other than Legal Services Corporation to do fair housing litigation.

The litigation went on for 7 years before settlements were reached against all defendants. By that time, MALS attorneys had invested 10,435 hours in the case. The settlements involved restructured mortgages, which saved the plaintiffs \$1,678, 401 in mortgage payments over the life of the loans. The plaintiffs also involved monetary damages of \$1,298,000, for a total benefit of \$2,976,401. In addition, MALS was able to recover \$86,500 in actual costs and expenses it had invested in the case.

Although MALS was able to recover its out-of-pocket costs, it was not able to get reimbursed for any of the time its attorneys and staff spent on the case. Had MALS been able to recover attorneys' fees, even at the modest rate of \$175 per hour, it could have recouped \$1,826,125 from the defendants for its work on the cases. This would have enabled MALS to serve between 2,500 and 3,000 additional clients in the years since 2007. In addition, based upon information obtained through discovery it appears that, had the cases been consolidated and certified as a class action, there may have been as many as 1,800 class members who could have received relief through the litigation.

MALS continues to be the only law firm in the Memphis area that does significant litigation regarding predatory mortgage lending and mortgage foreclosures and there continues to be an extraordinary need to help the approximate 15,000 families who will be faced with foreclosures in Shelby County this year.

Conclusion

I would like to thank the Subcommittee, Chairman Cohen, and Ranking Member Franks for holding these hearings and providing me with the opportunity to champion the essential contributions that Memphis Area Legal Services and legal aid organizations around the country are making to make "equal justice under law" more of a reality. As Judge Learned Hand stated, "if we are to keep our democracy, there must be one commandment, thou shalt not ration justice." Beginning to close the justice gap will be major step in our effort to ensure that we are not "rationing justice."