

TESTIMONY OF SENATOR TOM HARKIN
HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
HEARING ON THE CIVIL ACCESS TO JUSTICE ACT
TUESDAY, APRIL 27, 2010

Chairman Cohen, Ranking Member Franks, other members of the Subcommittee, thank you for the very kind invitation to testify on the importance of legal services. I am very appreciative that you are shining a spotlight on the need to expand and improve vital civil legal services to our most vulnerable citizens.

It is a particular honor to be here with Representative Scott, who has been a tireless champion for ensuring equal rights and justice for all Americans.

This issue is personal for me. Before I was elected to Congress, I practiced law with Polk County legal aid in Iowa. I can honestly say the work I did with legal aid is some of the most rewarding of my career. I know first-hand how crucial legal assistance is to struggling families who have no place else to turn when they have lost a job and are facing a foreclosure. I know the invaluable assistance that legal aid provides to battered women trying to leave abusive marriages while fearing for their safety and the safety of their children. I know that, without access to an attorney, the poor are often powerless in the face of injustice and wrongdoing.

Unfortunately, too many Americans today cannot afford legal representation. In many parts of this nation, more than 80 percent of those who need an attorney go without one. Nationally, over 50 percent of applicants for federally funded legal services who request legal aid are turned away because programs lack adequate funding.

And, the problem is only getting worse. Because of the economic downturn, demand for legal services is skyrocketing. As just one example, in Iowa, the number of housing related cases handled by Iowa Legal Aid increased by nearly 300%. At the same time, many states have

slashed their budgets for legal services, and federal funding continues to be inadequate. It is no surprise that the Chief Justice of the Texas Supreme Court recently noted that legal aid programs have reached what he calls a “crisis of epic proportions.”

This has very real consequences for the freedom, security, and health of low-income Americans. Simply put, millions of our fellow citizens are unable to enforce their rights. The senior who is a victim of a financial scam cannot protect the retirement she has earned and is entitled to. The family that faces the loss of a home cannot take advantage of consumer protections in order to ensure their children have a place to sleep. The battered woman cannot get the protection she needs from an abusive husband. These citizens are denied justice not due to the facts of their case or the governing law, but solely because they cannot afford an attorney. This is not justice. And, to state the obvious, it makes a mockery of the principle of equal justice under the law.

As a legislator, I want to highlight another consequence of the inadequacy of legal services. All of us have worked to enact laws designed to improve the lives of the American people. One of my proudest achievements, for example, is the Americans with Disabilities Act. But, the ADA and countless other laws are merely pieces of paper with the President’s signature in some dusty law library if individuals whom the law was meant to protect are unable to enforce their rights. When people who are wronged and have legal redress, but are unable to vindicate their rights solely because they cannot afford an attorney, it is the law itself that is eroded.

Finally, I want to emphasize that the problem goes beyond clients being turned away. Congress has imposed severe restrictions on the clients that LSC-funded attorneys are allowed to represent, as well as on the legal tools that attorneys are allowed to use in representing their clients.

The fact is, in many cases, these restrictions impede the ability of legal aid attorneys to provide the most meaningful and effective legal representation. They often have prevented lawyers from doing what attorneys are ethically bound to do: Provide zealous representation. Further, by limiting the range of tools that legal aid attorneys can employ compared to other members of the bar, the restrictions have created a system of second-class legal representation.

Last year, along with Congressman Scott and Chairman Cohen, I introduced the Civil Access to Justice Act. This bill would improve both the quantity and quality of legal assistance in the United States, and I am grateful for your hearing on this legislation today.

By the way, for the record, let me just say that nobody was more disturbed by recent GAO reports and IG findings regarding LSC than I was. As a former legal aid attorney and strong supporter of funding for legal services, any dollar wasted by poor oversight and poor corporate governance is a dollar that is unavailable to provide much needed assistance to our most vulnerable citizens who need legal help. That is why I personally told LSC management, in no uncertain terms, that corporate governance must improve. It is also why a central feature of the bill I introduced is improved corporate governance. And, it is why I am excited about the new corporate leadership at LSC, including the new Chair, John Levy, and Vice Chair, Martha Minow. Corporate governance needs to be improved at LSC, and I am confident these new leaders will make the necessary changes.

Finally, I want to emphasize, legal services is not a Democratic or Republican issue. It was President Nixon who created the Legal Services Corporation and who said, in 1962, "I would suggest there is no subject which is more important to the legal profession, that is more important to this nation, than . . . the realization of the ideal of equal justice for all." As my former Republican colleague Senator Domenici once declared: "I do not know what is wrong

with the United States of America saying to the needy people of this country that the judicial system is not only for the rich. What is wrong with that? . . . That is what America is all about.

After years of grossly underfunding this essential program – denying legal representation to millions of low-income citizens – and denying legal aid lawyers the full panoply of tools they need to represent their clients effectively, it is time we fulfill the promise of our Constitution.

With passage of the Civil Access to Justice Act, “Equal Justice under Law” will be more than an ideal chiseled on a marble façade; it will be a concrete reality for millions of our citizens, who, today, are denied it.