

Raising the Bar in DC
Washington, D.C.
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REMARKS OF THE HONORABLE DAVID S. TATEL

I am very pleased to be here to add my thanks and congratulations to all of you for your law firms' impressive contributions to legal services in the District of Columbia. What you have achieved through the Raising the Bar Campaign is a superb illustration of the legal profession at its very best. But I am also here to say that we still face a serious problem and that there is far more that lawyers need to do.

Edna Saint Vincent Milay once said, "It's not true that life is one damn thing after another. It's one damn thing over and over again." For decades we have known that most poor people in this country have no real access to the legal system. Seeking to solve this problem, we've created federal, state, and local legal services programs, and many law firms throughout the nation have committed themselves to pro bono service. But despite these efforts, the problem is only getting worse. Today, over 80 percent of poor people nationwide have no access to the legal system. In the District, that number is over 90 percent. Depending on the particular legal need in question, it's as high as 98 percent.

Why is this problem so persistent? In my view, one reason our efforts to satisfy the legal needs of the poor have fallen short is that the Model Rules of Professional Conduct define a lawyer's responsibility to "provide legal services to those unable to pay" as an individual obligation. The Model Rules call on every lawyer to perform a specified amount of pro bono services each year and to contribute a specified amount of money to legal aid. But until the legal profession—as a whole—accepts responsibility for ensuring that all people who need legal help can actually get a lawyer, I fear we will never make significant progress towards that goal.

Of course, the responsibility for meeting the legal needs of the poor is shared by everyone in our society. As citizens, we are all responsible for our government's failures. But it falls to the legal profession to lead the way. Because unlike people who run airlines, deliver packages, sell iPods, or operate virtually any commercial business, lawyers should not measure their success merely by how well they serve those able to pay their bills. As officers of the court, we lawyers have a broader responsibility to ensure that the legal system, society's mechanism for resolving disputes and protecting the rule of law, functions effectively—something it cannot do when a vast number of people lack access to it because they cannot afford a lawyer.

The legal profession has this obligation for yet another reason: lawyers enjoy a monopoly on the practice of law. No one can practice law who does not pass the examinations we administer and obey the ethical standards we write. With this privilege, along with the enormous profits it yields, comes a weighty responsibility. As gatekeeper to the legal system, our profession has an obligation to ensure that the gates are open not just to those who can pay our fees, but also to everyone entitled to the law's protection.

To fulfill this obligation we must rethink the benchmarks by which we assess our achievements. If we continue to measure our success merely by the number of pro bono hours we log or dollars we contribute to legal aid, we will never be able to ensure that everyone who needs legal help is actually getting it. To reach this goal, we will need renewed efforts to persuade government at all levels to increase funding for legal services. Spurred by Mayor Gray, the District has been a leader on this front but it is also the exception that proves the rule. In these days of budget cuts and sequesters, it is simply unrealistic to expect significantly more support from government. We will need more- and better-coordinated pro bono services: forty hours per lawyer per year, the current national average, is far too low. But pro bono services,

critical as they are, cannot possibly deliver the vast amount of legal assistance needed to serve the poor. Given all this, what we need most of all is dramatically increased lawyer and law firm funding for state and local legal aid programs. As my colleague Judge Harry Edwards wrote several years ago, “If firms want to pursue big money, so be it; but they should return some of it to care for disadvantaged members of our society.” And “big money” is an understatement: last year, the legal profession generated \$280 billion in revenues, and that figure is only growing. According to the American Lawyer survey, the top 100 law firms alone grossed almost \$71 billion. Annual profits per partner at the top 50 law firms were \$1.6 million. Given these earnings, no one in this country should be denied access to the courts simply because he or she cannot afford a lawyer. Our task now is to take a step back and determine what combination of private and public funding and pro bono services are necessary to ensure that goal becomes a reality for everyone.

How much should lawyers contribute to legal aid? I don’t know, but I know how to figure it out. Calculate how much it will cost to serve all low-income people in the community who still need legal services, divide that by the number of practicing lawyers, and write a check. This is surely within reach. According to yesterday’s Legal Times, the top twelve firms in Washington have gross annual revenues of more than \$7.5 billion, one-quarter percent of these revenues would more than double the capacity of D.C.’s legal services organizations. Combined with expanded and coordinated pro bono services, such financial support would enable the legal profession to move toward providing legal representation to every low-income person in this city who needs it.

At the end of the day, what you have achieved thus far is impressive. The more than \$3 million dollars you pledged in the past year will go a long way towards improving access to the

legal system for the District's poor. But we cannot lose sight of how much further there is to go. To put it in perspective, your contributions will recover only 75% of the funding cuts District legal services have suffered in the past year. We are, in other words, well on our way back to square one but that is just the start. The District's legal community can and must do more. And, if your efforts are any indication, I have no doubt it will.