

WISCONSIN COURT OF APPEALS
DISTRICT IV

In re the Paternity of K.J.P.:

Jerome E. Parrish,

Petitioner-Respondent,

v.

Diana Romfeldt-Mendoza,

Respondent-Appellant.

Appeal No.
2006AP000243

Circuit Court Case No.
1992PA00001 1 A

APPEAL FROM THE CIRCUIT COURT FOR RICHLAND COUNTY,
HONORABLE EDWARD E. LEINWEBER, PRESIDING

BRIEF OF THE LEGAL AID SOCIETY OF MILWAUKEE,
AMICUS CURIAE

THOMAS G. CANNON
State Bar No. 1014231

LEGAL AID SOCIETY OF MILWAUKEE
521 North 8th Street
Milwaukee, WI 53233
Tel: 414/727-5323

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i> , LEGAL AID SOCIETY OF MILWAUKEE	1
ARGUMENT.....	5
I. POVERTY BARS HUNDREDS OF THOUSANDS FROM MEANINGFUL ACCESS TO JUSTICE	5
A. MASSIVE POVERTY IS CAUSING MILWAUKEE TO IMplode.....	6
B. CIVIL LEGAL NEEDS OF MILWAUKEE'S POOR ARE UNMET	15
II. TAXING THE POOR TO SUPPORT AN EXCLUSIONARY COURT SYSTEM VIOLATES PRECEPTS OF NATURAL LAW	17
III. CONCLUSION	19

TABLE OF AUTHORITIES

CASES

Wisconsin Auto Title Loans v. Jones, 2006 WI 53, ___ Wis.2d ___,
___ N.W.2d ___17

WISCONSIN CONSTITUTION

Art. I, § 917, 19
Art. VII, § 2.....18

LEGISLATIVE MATERIALS

45 C.F.R. § 1611.3 (2006)5

THE BIBLE

BOOK OF EXODUS (23:7-8)1
BOOK OF ISAIAH (1:17)2
BOOK OF PSALMS (82: 2-4)2

OTHER AUTHORITIES

Brownell, Emery A. LEGAL AID IN THE UNITED STATES (Rochester,
NY: Lawyer’s Co-operative Publishing Co. 1951).....15
City of Milwaukee Health Department. 2003 INFANT MORTALITY DISPARITY
FACT SHEET.8, 12
City of Milwaukee, PUBLIC SAFETY REPORT (2004).....11, 13

De Parla, Jason. AMERICAN DREAM: THREE WOMEN, TEN KIDS, AND A NATION'S DRIVE TO END WELFARE (New York: Viking/Penguin, 2004)	6-7
Diedrich, John. <i>Shop Tops List For Traced Guns</i> , MILWAUKEE JOURNAL SENTINEL, May 31, 2006, 1A	17
Dolan, Julia B. THE POOR MAN AND THE ROLE OF ATTORNEYS (1966).....	18
Ebbott, John F. et al. TOWARD A CIVIL <i>GRIFFIN</i> IN WISCONSIN: EQUAL JUSTICE UNDER THE WISCONSIN CONSTITUTION (Milwaukee: Legal Action Press, 2005)	15, 16
Farrell, Walter C., Jr. <i>Milwaukee Must Face Up to Its Nightmare</i> , MILWAUKEE JOURNAL SENTINEL, January 8, 2006, 1J	7
Fillmore, Capri-Mara et al. TEEN RISKY SEXUAL BEHAVIOR IN MILWAUKEE – DATA SECTION (City of Milwaukee Health Department, 2006)	7
Gores, Paul. <i>Lenders Who Prey On The Vulnerable</i> , MILWAUKEE JOURNAL SENTINEL, May 29, 2005, 1D	17
Greater Milwaukee Foundation. REALITIES, CHALLENGES AND POSSIBILITIES: POVERTY IN MILWAUKEE (2003)	7, 8, 9, 10, 13
Greene, Jay. HIGH SCHOOL GRADUATION RATES IN THE UNITED STATES (2002), www.manhattan-institute.org	13
Hand, Learned. <i>Thou Shalt Not Ration Justice</i> , LEGAL AID BRIEF CASE, IX, no. 4 (1951) 3-5	2
Held, Tom. <i>State's Poverty Level Rises Fastest In Nation</i> , MILWAUKEE JOURNAL SENTINEL, August 31, 2005, 3A	5, 6, 7, 11
Hunger Task Force. HUNGER & POVERTY FACT SHEET (2006)	9
Kertscher, Tom. <i>Population Disparity Clouds Jail Plan</i> , MILWAUKEE JOURNAL SENTINEL, January 16, 2004, 1B.....	13

LEGAL AID SOCIETY HISTORICAL BOOKLET (2006).....	1, 4
Legal Services Corporation. DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2005)	15, 16
Legislative Reference Bureau. STATE OF WISCONSIN 2005-2006 BLUE BOOK	6
Legislative Reference Bureau. STATE OF WISCONSIN 2003-2004 BLUE BOOK	12-13
<i>Mapping the Court System for Self-Represented Litigants</i> , THE THIRD BRANCH (Winter, 2001) 3.	16
Medical College of Wisconsin, STATEWIDE FIREARM FATALITY REPORT (2001), www.mcw.edu/fic	12
Milwaukee Continuum of Care Homeless Coalition. UNDER THE RADAR: A SURVEY OF HOMELESS ADULTS IN MILWAUKEE (2004)	14
Murphy, Bruce. <i>No. 1 in Birth Rate for Black Teens</i> . MILWAUKEE JOURNAL SENTINEL. February 21, 2004, 1A	13
National Institute for Literacy. THE STATE OF LITERACY IN AMERICA (1998)	8
Pate, David J., Jr., <i>An Ethnographic Inquiry into the Life Experiences of African American Fathers with Children on W-2</i> . W-2 CHILD SUPPORT DEMONSTRATION EVALUATION: REPORT ON NONEXPERIMENTAL ANALYSES (Madison: Institute for Research on Poverty, 2002)	14-15
Powell, Lewis F., Jr. LEGAL SERVICES CORPORATION REVISITED (Address to the American Bar Association, 1976)	18-19
Pribek, Jane. <i>Catherine M. Doyle Takes on Predatory Lenders</i> , WISCONSIN LAW JOURNAL (Spring 2006) 15	17

Romell, Rick. <i>Hospital Losses Hit City Heart: Eroding Access Raises Concern About Health Care of Poor</i> , MILWAUKEE JOURNAL SENTINEL, May 15, 2006, 1A	10
Schmid, John. <i>Hit By A Global Train: Job Loss Worse Than The Great Depression In Milwaukee's Urban Center</i> , MILWAUKEE JOURNAL SENTINEL, December 4, 2004, 1A	14
Soika, Michael, and Steven J. Schultz. HOMELESS & UNSHELTERED IN MILWAUKEE 2006: A REPORT ON THE ANNUAL STREET COUNT CENSUS OF HOMELESS PERSONS IN MILWAUKEE (2006).	9
Spice, Linda et al. <i>Attack Ends Violent Memorial Day Weekend In City</i> , MILWAUKEE JOURNAL SENTINEL, May 30, 2006, 1A	11
Sykes, Charles. <i>Milwaukee's Murder Rate</i> , December 5, 2002 at www.620wtmj.com	11
TWELFTH ANNUAL REPORT OF THE LEGAL AID SOCIETY OF MILWAUKEE (1928)	2-3
United Way of Greater Milwaukee. IF TRUTH BE TOLD: TEEN PREGNANCY, PUBLIC HEALTH, AND THE CYCLE OF POVERTY (2006)	7
U.S. Census Bureau, RACIAL AND ETHNIC SEGREGATION IN THE UNITED STATES: 1980—2000. Table 5-4, p. 69.	12
UW—Milwaukee Center for Economic Development. "STEALTH DEPRESSION" JOBLESSNESS IN THE CITY OF MILWAUKEE SINCE 1990 (2003)	11, 14
White, Sammis B. <i>Jobs in the New Millennium: Wisconsin's Regional Economies 1999-2003</i> , WISCONSIN POLICY RESEARCH INSTITUTE JOURNAL, vol. 17, no. 4 (2004)	10
Wisconsin Department of Health & Family Services. FACT SHEET: POVERTY AND HEALTH IN WISCONSIN (2006)	6

Wisconsin Department of Health & Family Services. FOODSHARE
WISCONSIN PROGRAM AT A GLANCE (2006)8

Wisconsin Department of Health & Family Services. WISCONSIN
MEDICAID (2006)9

Zernike, Kate. *Violent Crime Rising Sharply in Some Cities*,
NEW YORK TIMES, February 12, 2006, A112

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Legal Aid Society of Milwaukee is one of the nation's oldest, continuously operating, public interest law firms. It was established in 1916 by representatives from the Milwaukee Bar Association, the City Club, and the Central Council of Social Agencies (forerunner of today's United Way). The articles of incorporation provided a broad mandate: "The purpose of this organization shall be to furnish legal aid to those financially unable to obtain legal counsel, to promote laws and measures, and to do all things necessary for the prevention of injustice." LEGAL AID SOCIETY OF MILWAUKEE HISTORICAL BOOKLET 11 (2006). Each year, the Society provides free legal services to 8,000 of Milwaukee's most vulnerable residents: abused and neglected children, developmentally disabled adults, persons living with HIV/AIDS, battered women, immigrants, elderly, prisoners, mentally ill, physically impaired, unemployed, and homeless — all of whom are too poor to afford legal counsel.

Our mission is equal justice for the poor, a moral imperative as ancient as the Hebrew scripture. The BOOK OF EXODUS (23:7-8) proclaims: "You must not cheat any poor man of his right at law." That

command is repeated in the BOOK OF PSALMS (82: 2-4): "No more mockery of justice, no more favoring the wicked! Let the weak and the orphan have justice, be fair to the wretched and destitute; rescue the weak and the needy, save them from the clutches of the wicked." An identical value is found in the BOOK OF ISAIAH (1:17): "Search for justice, help the oppressed, be just to the orphan, plead for the widow." The concept's biblical origin is evoked in Judge Learned Hand's famous dictum, delivered on the seventy-fifth anniversary of the Legal Aid Society of New York: "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice." LEGAL AID BRIEF CASE, IX, no. 4 (1951) 3.

For nearly a century, the Legal Aid Society of Milwaukee has served as the premier advocate for the state's most fragile residents. In this role, attorneys for the Society have appeared as counsel of record or as *amicus curiae* in more than 130 reported decisions in state and federal court. These opinions have established an important body of case law on the rights of children, prisoners, consumers, and mental patients. Paramount among all, of course, is the threshold right of equal access to justice. Nearly eighty years ago, the Society declared:

The concern of the Legal Aid Society of Milwaukee is with the administration of justice

as it affects the poor. Our constitution has provided for the equal protection of the law to all persons regardless of nationality, color, sex, or creed. But if the individual seeking to protect himself is without money to avail himself of the judicial procedure to protect his rights, justice according to law may be practically denied to him. The poor man is taught that he is entitled to justice, but he finds that to get it he must pay for legal services for which he has no money. The fundamental purpose of the Legal Aid Society, therefore, is to see that persons who are poor and oppressed shall get justice according to law.

TWELFTH ANNUAL REPORT OF THE LEGAL AID SOCIETY OF MILWAUKEE
(1928).

The Society has been an innovator in many fields of law. In 1921, it was instrumental in creating the state's first Small Claims Court in Milwaukee. In 1923, the Society co-founded the organization now known as the National Legal Aid & Defender Association, a powerful voice for equal justice. In 1939, in collaboration with the University of Wisconsin Law School, the Society established one of the first law school clinical placements in the country. In 1942, in conjunction with the Milwaukee Bar Association, the Society inaugurated the state's first Lawyer Referral Service. In 1950, the Society became Wisconsin's first all-female law firm. In 1957, well before the United States Supreme Court recognized the right

to counsel in criminal cases, the Legal Aid Society of Milwaukee began the state's first public defender program. In 1988, the Society established one of the nation's first anti-discrimination projects devoted to advocacy for persons living with HIV/AIDS. HISTORICAL BOOKLET at 39, 42.

Throughout its history, the Legal Aid Society of Milwaukee has been honored for exemplary public service. In 1944, the Army and the Navy awarded citations to the Society for its representation of servicemen and women during World War II. In more recent years, the Society received a Recognition Award from the Episcopal Diocese of Milwaukee for its work with the homeless, the Benedict Center's Justice Award for litigation on behalf of prisoners aimed at improving jail conditions, the J.C. Penny Golden Rule Award for advocacy of abused children, a Distinguished Service Award from the Milwaukee Bar Association for serving those who cannot afford to hire lawyers, another J.C. Penny Golden Rule Award for representing individuals with severe cognitive impairments, and a special Pro Bono Publico Award from the State Bar of Wisconsin for advocating on behalf of the state's poor for ninety years. *Id.* at 50-65.

ARGUMENT

I.

POVERTY BARS HUNDREDS OF THOUSANDS FROM MEANINGFUL ACCESS TO JUSTICE

According to the United States Census Bureau, the population living below the government's official poverty level increased faster in Wisconsin during 2003 and 2004 than it did in any other state in the country. In raw numbers, this group accounts for 571,429 state residents. Tom Held, *State's Poverty Level Rises Fastest In Nation*, MILWAUKEE JOURNAL SENTINEL, August 31, 2005, at 3A. Applicable federal regulations confer eligibility for free legal services on all those whose income falls beneath 125% of federal poverty guidelines. 45 C.F.R. § 1611.3 (2006). Consequently, the Legal Aid Society estimates that approximately 750,000 Wisconsinites are eligible for such services, nearly one-third of them residing in Milwaukee County.

Individuals and families existing below the poverty line cannot afford the basic necessities of life: food, shelter, clothing, and healthcare. Many are illiterate. They cannot prod uncaring government agencies to render adequate service, nor can they protect themselves from unscrupulous slumlords and predatory lenders who exploit their

vulnerability. Access to the courts, meaningfully available through legal counsel, is frequently the only way to vindicate their essential human dignity. Unfortunately for the poor, justice is another basic right they cannot afford.

A. MASSIVE POVERTY IS CAUSING MILWAUKEE TO IMplode

By any statistical measure, Milwaukee County contains the largest concentration of poor in Wisconsin, and one of the largest concentrations of poor in the United States. The county represents 16.9% of the state's estimated 2004 population. Legislative Reference Bureau, STATE OF WISCONSIN 2005-2006 BLUE BOOK 747. However, a disproportionate 29.1% of the state's poverty population resides in Milwaukee County. Held, *supra*, at 3A. More than one-third of Wisconsin's poor children live in the city of Milwaukee. Wisconsin Department of Health and Family Services, FACT SHEET: POVERTY AND HEALTH IN WISCONSIN (2006). According to the Census Bureau, 166,384 Milwaukee County residents live below the poverty line. Milwaukee is the seventh poorest city in the United States. Fully 26% of its residents live in poverty. Held, *supra*, at 3A. In the 1990s, "Milwaukee had the nation's fastest-growing ghetto." Jason DeParle, AMERICAN DREAM: THREE

WOMEN, TEN KIDS, AND A NATION'S DRIVE TO END WELFARE 61. Large swaths of the city have the look and feel of a Third World country.

Milwaukee has the fourth highest number of children living in poverty (41.3% or 62,419) of any city in the country. Held, *supra*, at 3A. Milwaukee ranks second in the nation in overall teen birth rate (26% of all births in the city). United Way of Greater Milwaukee, *IF TRUTH BE TOLD: TEEN PREGNANCY, PUBLIC HEALTH, AND THE CYCLE OF POVERTY* (2006). The city also ranks second in percent of births to teens who are already mothers. Greater Milwaukee Foundation, *REALITIES, CHALLENGES AND POSSIBILITIES: POVERTY IN MILWAUKEE* 24 (2003). This has spawned a new biological phenomenon: children bearing and raising children. Walter C. Farrell, Jr., *Milwaukee Must Face Up To Its Nightmare*, *MILWAUKEE JOURNAL SENTINEL*, January 8, 2006, 1J.

Shockingly, the city health department reports that 1 of every 8 Milwaukee Public School students (12.2%) first have sexual intercourse by age 12. Capri-Mara Fillmore et al., *TEEN RISKY SEXUAL BEHAVIOR IN MILWAUKEE – DATA SECTION 5* (2006). The same study reports that 36.6% of Milwaukee's teen mothers receive absolutely no prenatal medical care. Fillmore, *supra*. Milwaukee's infant mortality rate of 11.3 per

thousand live births is nearly double the national average, and higher than some Third World countries like Costa Rica. City of Milwaukee Health Department, 2003 INFANT MORTALITY DISPARITY FACT SHEET. The rate among African Americans gives Milwaukee the fourth highest comparative infant mortality rate in the United States. *Id.*

More than 127,000 city of Milwaukee residents (27% of the total adult population) are functionally illiterate. National Institute For Literacy, THE STATE OF LITERACY IN AMERICA (1998), Appendix. Part of the reason for this is that 40% of all MPS students are habitually truant. REALITIES, CHALLENGES at 20, 25. Another reason, though, is that many residents of Milwaukee's large immigrant community do not have sufficient command of English to be functionally literate. Regardless of the cause, more than one in four city residents are unable to read a summons, understand a civil complaint, or even recognize the need for action within the specified legal time period due to functional illiteracy.

Hunger is an ever-present problem for the poor. More than 150,000 Milwaukee County residents, 41% of the total statewide caseload, receive food stamps. Wisconsin Department of Health & Family Services, FOODSHARE WISCONSIN PROGRAMS AT A GLANCE (2006). Each month,

the Hunger Task Force provides emergency food to more than 34,000 individuals through the city's food pantries, *and* delivers 58,000 meals to area soup kitchens, *and* sends 5,000 boxed lunches to needy senior citizens. Hunger Task Force, HUNGER & POVERTY FACT SHEET 1 (2006). More than 85,000 students in the Milwaukee Public School system (89% of total enrollment) qualify for free or reduced-price lunches. REALITIES, CHALLENGES at 26.

Homelessness is another significant problem in Milwaukee. The city's network of shelters is overwhelmed. Consequently, more than one thousand people sleep in the city's streets, parks, alleys, and outdoor venues every night of the year. Michael J. Soika and Steven J. Schultz, HOMELESS & UNSHELTERED IN MILWAUKEE 2006: A REPORT ON THE ANNUAL STREET COUNT CENSUS OF HOMELESS PERSONS IN MILWAUKEE 3 (2006). Last year, the city's "211-Milwaukee" community information hotline received 16,333 calls for emergency shelter. *Id.* at 6. The largest category of callers (52.9%) sought shelter for a family. *Id.* at 7.

Milwaukee County has 210,138 residents on Medicaid. Wisconsin Department of Health & Family Services, WISCONSIN MEDICAID (2006). Only two hospitals in the inner city still serve this huge

clientele. Eight inner-city hospitals have shut down in Milwaukee in the last thirty years. A local newspaper explained:

A rising tide of poverty in Milwaukee helped propel the trend, as hospitals near low-income neighborhoods found themselves seeing more and more patients who lacked insurance or who were covered by only government programs, such as Medicaid, that pay nowhere near the full costs of treatment.

As these hospitals have closed, it has raised questions about access to health care for the poor – the same people whose circumstances undercut the hospitals' financial viability in the first place.

Rick Romell, *Hospital Losses Hit City Heart: Eroding Access Raises Concern About Health Care of Poor*, MILWAUKEE JOURNAL SENTINEL, May 15, 2006, at 1A.

During the economic boom of the 1990s, the Milwaukee metropolitan area saw the creation of 105,000 new jobs, but 101,000 of these were added in suburban areas. REALITIES, CHALLENGES at 19. Moreover, 30,000 manufacturing jobs in Milwaukee County were lost between 1999-2003. Sammis B. White, *Jobs in the New Millennium: Wisconsin Regional Economies 1999-2003*, WISCONSIN POLICY RESEARCH INSTITUTE JOURNAL, vol. 17, no. 4 (2004) 12. Since 1990, Milwaukee has

lost 21% of its manufacturing jobs. UW-Milwaukee Center for Economic Development, "STEALTH DEPRESSION" JOBLESSNESS IN THE CITY OF MILWAUKEE SINCE 1990 (2003). By 2000, over half of the working age male population in nearly one-third of the city's census tracts was unemployed. *Id.* A generation ago, 1 of 7 Milwaukee residents lived in poverty; today, that number has increased to more than 1 in 4. Romell, *supra*, at 9A. According to the Census Bureau, the median city household income declined 16% in the last five years. Held, *supra*, at 3A.

Violence and crime are endemic in the city. In 2004, more than 65,000 crimes were reported to the Milwaukee Police Department. CITY OF MILWAUKEE PUBLIC SAFETY REPORT 2 (2004). Two weekends ago, 28 people were shot in the city, four of them fatally, in eleven separate incidents. Linda Spice et al., *Attack Ends Violent Memorial Day Weekend In City*, MILWAUKEE JOURNAL SENTINEL, May 30, 2006, at 1A. On the same weekend, three Milwaukee police officers were shot at in separate incidents; fortunately, none were hit. In recent years, Milwaukee's high murder rate has resulted in the city ranking sixth most deadly urban community in the nation. Charles Sykes, *Milwaukee's Murder Rate*, December 5, 2002, at www.620wtmj.com.

Milwaukee had 122 homicides last year and, as local epidemiologist Mallory O'Brien recently noted, both "suspects and victims tend to have been born to teenage mothers." Kate Zernike, *Violent Crime Rising Sharply in Some Cities*, NEW YORK TIMES, February 12, 2006, A1. According to the City Health Department, one of the major contributors to Milwaukee's high infant mortality rate is homicide. 2003 INFANT MORTALITY DISPARITY FACT SHEET. Exactly 50% of all homicides in the entire state of Wisconsin occur in just four Milwaukee zip codes: 53204, 53206, 53208, 53210. Medical College of Wisconsin, STATEWIDE FIREARM FATALITY REPORT (2001). Not coincidentally, these are four of the poorest districts in the state.

Milwaukee is the most racially segregated city in the United States. U.S. Census Bureau, RACIAL AND ETHNIC SEGREGATION IN THE UNITED STATES: 1980-2000, Table 5-4, p. 69. That fact is significant because the burden of poverty falls most heavily on racial and ethnic minorities. Milwaukee County has 231,000 African American residents, 82,000 Hispanic/Latinos, 24,000 Asian Americans, and 7,000 Native Americans according to the latest census. Legislative Reference Bureau, STATE OF WISCONSIN 2003-2004 BLUE BOOK 121-25. Milwaukee has

been a "majority minority" city since the 2000 enumeration, with 55% of its residents belonging to racial or ethnic minorities. *Id.* at 120.

Disparity between the communities is stark. For example, 33% of the city's African American households exist beneath the federal poverty level, while only 4% of white households do. REALITIES, CHALLENGES at 12. Although African Americans constitute 24.2% of the county's total population, they account for more than two-thirds of the asthma hospitalizations in local facilities, and they represent 67.2% of the Milwaukee County Jail admissions. *Id.* at 24; Tom Kertscher, *Population Disparity Clouds Jail Plan*, MILWAUKEE JOURNAL SENTINEL, January 16, 2004 at 1B. The city ranks first in the nation in number of births to African American teenage mothers. Bruce Murphy, *No. 1 in Birth Rate for Black Teens*. MILWAUKEE JOURNAL SENTINEL, February 21, 2004, 1A.

Milwaukee has the second lowest graduation rate (34%) for African American students in the nation. Jay Greene, HIGH SCHOOL GRADUATION RATES IN THE UNITED STATES (2002). The homicide rate for African American males in Milwaukee (43.4 per 100,000) is four times higher than the comparable rate for white males in the city. MILWAUKEE PUBLIC SAFETY REPORT 6 (2004). A grossly disproportionate 71% of the

thousands of homeless in Milwaukee are African American. Milwaukee Continuum of Care Homeless Coalition, *UNDER THE RADAR: A SURVEY OF HOMELESS ADULTS IN MILWAUKEE 6* (2004).

A stunning 59% of adult African American males in Milwaukee are unemployed – a higher jobless rate than during the Great Depression. John Schmid, *Hit By A Global Train: Job Loss Worse Than The Great Depression In Milwaukee's Urban Center*, MILWAUKEE JOURNAL SENTINEL, December 5, 2004, 1A. An African American male in Milwaukee is more than four times as likely to be unemployed as his white male neighbor. “STEALTH DEPRESSION.” The U.S. Bureau of Labor Statistics reported that Milwaukee had the highest rate of African American unemployment in the country and the largest gap between black and white unemployment in the country. *Id.* A recent study tracked African American men with children receiving welfare in Milwaukee for two years.

It found:

On average they earned \$8,800 a year and owed \$6,500 in back [child] support. Three-quarters had a high school diploma or less. Two-thirds had criminal convictions. Though their average age was thirty-four, many couldn't secure a badge of adulthood as basic as a driver's license or an apartment – a quarter still lived with their mothers.

David J. Pate, Jr., *An Ethnographic Inquiry into the Life Experiences of African American Fathers with Children on W-2*, INSTITUTE FOR RESEARCH ON POVERTY (2002) 2:29-118.

B. THE CIVIL LEGAL NEEDS OF MILWAUKEE'S POOR ARE UNMET

More than half a century ago, the Legal Aid Society of Milwaukee estimated that it could meet only 50% of the county's indigent legal needs. Emery A. Brownell, *LEGAL AID IN THE UNITED STATES* 81 (1951). That gap has grown substantially over time. The most recent national estimate, conservatively stated, is that more than 80% of those eligible for free legal aid cannot obtain such services. Legal Services Corporation, *DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 18 (2005). Wisconsin has a ratio of one lawyer for every 363 residents. For the state's low-income population, however, that ratio rises nearly tenfold to one lawyer for every 3,272 residents. John F. Ebbott et al., *TOWARD A CIVIL GRIFFIN IN WISCONSIN: EQUAL JUSTICE UNDER THE WISCONSIN CONSTITUTION* 5 (2005). Moreover, it is estimated that each low-income

household experiences three problems per year that require some legal advice. DOCUMENTING THE JUSTICE GAP 9.

Based on its institutional experience, the Legal Aid Society of Milwaukee estimates that as many as 95% of local residents eligible for free legal services are denied them due to inadequate funding for currently existing legal aid programs. The lack of lawyers for low-income clients is reflected in the fact that 72% of Family Court cases in Milwaukee County currently proceed on a *pro se* basis because the litigants cannot afford to retain counsel. *Mapping the Court System for Self-Represented Litigants*, THE THIRD BRANCH (WINTER 2001) 3. Legal aid programs in the county are overwhelmed with unmet requests for service. Legal Action of Wisconsin, a federally-funded program, turns away more than 8,000 potential clients every year. Ebbott, *supra*, 5. The community's legal aid programs operate in a triage situation, trying to address an overwhelming need for help with limited resources.

The enormous number of unserved individuals is only one aspect of the problem. Systemic legal problems also go largely unaddressed. For example, a single retail outlet on Milwaukee's south side sells more handguns later used in crimes than any other store in the United

States: 537 weapons, most of them purchased by illegal straw buyers, in 2005 alone. John Diedrich, *Shop Tops List For Traced Guns*, MILWAUKEE JOURNAL SENTINEL, May 31, 2006, 1A. The situation cries out for injunctive relief under public nuisance principles, but the city's legal aid programs lack the staff to undertake such litigation. Milwaukee's poor are also being gouged by predatory lenders who charge annual percentage rates from 300% to more than 1,200%. *Wisconsin Auto Title Loans v. Jones*, 2006 WI 53, ___ Wis. 2d ___, ___ N.W.2d ___. The Legal Aid Society does its best to attack illegal practices in this industry, but it lacks the resources to provide counsel in many meritorious cases. Jane Pribek, *Catherine M. Doyle Takes on Predatory Lenders*, WISCONSIN LAW JOURNAL, Spring 2006, at 15; Paul Gores, *Lenders Who Prey On The Vulnerable*, MILWAUKEE JOURNAL SENTINEL, May 29, 2005, at 1D.

II.

TAXING THE POOR TO SUPPORT AN EXCLUSIONARY COURT SYSTEM VIOLATES FUNDAMENTAL FAIRNESS

Wisconsin's pioneer generation, in framing our Constitution (1848), enshrined the ideal of equal justice for the poor when it wisely provided: "Every person . . . ought to obtain justice freely, and without being obliged to purchase it." Art. I, § 9. By establishing a court system.

(Art. VII, § 2) with tax monies, the framers intended that access to public tribunals be available to all Wisconsin citizens regardless of financial ability. Milwaukee's poorest citizens subsidize that court system. Each time an indigent mother purchases school supplies or clothing for her children, 5.85% of the price goes into the state or local treasury via the sales tax. The poor are thus taxed to support a court system that they cannot meaningfully employ for themselves or their families.

Exactly half a century ago, Julia B. Dolan, then Executive Director of the Legal Aid Society of Milwaukee, spoke at a Law and Poverty Conference in Milwaukee. Highlighting the gulf between ideals and reality, she said:

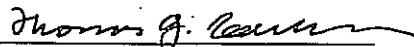
Our system of justice is based in large part on advocacy. However, when there is no one to provide representation for an individual, his chances of obtaining justice are greatly lessened. And if many of our fellow citizens are denied justice because of poverty, it may well be questioned how long the adversary system can survive.

THE POOR MAN AND THE ROLE OF ATTORNEYS 1 (1966). Supreme Court Justice Lewis F. Powell, Jr. concurred: "Equal justice under law is not merely a caption on the façade of the Supreme Court building . . . it is also fundamental that justice should be the same, in substance and availability,

without regard to economic status.” LEGAL SERVICES CORPORATION REVISITED (Address to the American Bar Association, 1976). That cornerstone principle cannot become a reality, however, until all Wisconsinites “obtain justice freely, and without being obliged to purchase it.” WIS. CONST. Art I, § 9.

CONCLUSION

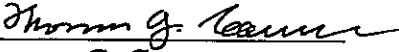
Liberty, Justice, Equality — without lawyers, they’re mere words.


THOMAS G. CANNON
State Bar no. 1014231
Amicus Curiae

LEGAL AID SOCIETY OF MILWAUKEE
521 North 8th Street
Milwaukee, WI 53233
Tel: 414/727-5323

CERTIFICATION

I hereby certify that this *amicus curiae* brief conforms to the rules contained in Wis. Stat. §809.19(b)(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 3,638 words.


Thomas G. Cannon
State Bar no. 1014231