

July 27, 2016

Testimony of Daniel Idzikowski, Executive Director of Disability Rights Wisconsin, before the Wisconsin Legislative Council Study Committee on Access to Civil Legal Services

Dear Representative Horlacher (Chair), Senator Stroebel (Vice-Chair), and distinguished members of this Legislative Council Study Committee on Access to Civil Legal Services:

Thank you for the opportunity to speak to you today about the special challenges faced by people with disabilities in accessing the legal system and in enforcing their civil rights under the law. My name is Daniel Idzikowski, and I am the Executive Director of Disability Rights Wisconsin, the federally mandated Protection and Advocacy system for people with disabilities in Wisconsin.

I am especially pleased to be able to speak to you today – at the precise moment when, twenty-six years ago, President George W. Bush signed into law the Americans with Disabilities Act. That momentous occasion was a culmination – and a commencement – of a disability rights movement that has changed the face of our society and opened the path for the most excluded and denigrated citizens to become full participants in society – in their communities at home, work, and recreation. We have made tremendous progress, even since the founding of the Protection and Advocacy system for people with disabilities that I represent in 1975. At that time, a majority of individuals with significant physical, intellectual, developmental disabilities, and mental illness were literally locked away in subhuman conditions in institutions across this nation.

Fortunately, through the advocacy of so many, and the great awareness that was raised regarding the plight of these fellow citizens, these conditions by and large have been eradicated and replaced with community based systems of supports that help all people with disabilities achieve their full potential as people with equal rights and equality of opportunity.

But lest we forget the struggle that has brought us to this point, the stark reality remains that the greatest barrier for people with disabilities is not a sidewalk, or a door, or a voting booth – it is a lingering attitude of fear, suspicion, difference, and exclusion. Indeed, some would argue that the very term “disability” is as much about society’s structure, acceptance, and inclusion, as it is of an individual’s physical or mental condition. Unfortunately, this cruel reality played out this week in Japan, where just yesterday, in what is being billed as the country's worst mass murder since World War II, at least 19 were killed and another 26 seriously injured at a care center for people with disabilities.

A former employee at the center, is the prime suspect who reportedly told police: "I want to get rid of the disabled from this world." His goal is a world in which, people with severe disabilities can be euthanized with the consent of their guardians. It was also one of Hitler's goals in the Holocaust.

While this is a singularly egregious act, the reality remains that people with disabilities around the world continue to face significant prejudices, low expectations and are disproportionately victims of crime. I note that many of the shooting deaths we have heard so much about in the news, involve not only individuals of color, but individuals with disabilities, including the police shooting of Dontre Hamilton in Milwaukee two years ago.

I highlight these issues, because, for people with disabilities, legal representation is not an abstract concept, or an “extra” benefit that society might choose to award them, after other “needs” are addressed. For people with disabilities, the ability to be represented in the legal system, to have someone to fight for and defend their rights, is all too often, a matter of life and death.

People with disabilities, as we like to say, are people first. Thus, their needs for civil legal representation mirror the needs of others in society – particularly those who are poor or disenfranchised in other ways – that you are hearing about today. For example, here are the findings of contained in the most comprehensive survey of the literature on the civil legal needs of people with disabilities:

The present analyses not only supported the conclusion that people with a chronic illness or disability are more vulnerable to experiencing legal problems, but also that when they do experience legal problems, they tend to experience a greater number of legal problems. The present findings also indicated a similar propensity for experiencing multiple legal problems for all five disability type sub-groups. These findings add further weight to the conclusion from recent legal needs surveys that people with a chronic illness or disability constitute a vulnerable group who have increased likelihood of having multiple, complex and interconnected legal and non-legal needs. The increased propensity for experiencing multiple legal problems is even more alarming when it is remembered that people with a disability appear to have reduced success in resolving their legal problems.

Moreover,

Due to mental health-related issues such as problems with mental health care and involuntary psychiatric hospitalization, participants with a mental health problem were more likely than the other disability type sub-groups to report health legal events overall. . . . Recent qualitative research supports the notion that people with a mental illness are a financially and socially marginalized group who can face legal issues that reflect their symptoms and their marginalization. This qualitative research also suggested that people with a mental illness can face barriers in accessing legal assistance that are related to their individual circumstances and symptoms, such as their difficult behaviors, feelings of being overwhelmed, communication problems, disorganization, and mistrust of divulging personal information.

The report concludes:

In summary, the present findings further highlight the importance of ensuring that legal services meet the legal needs of people with a chronic illness or disability. People with all types of chronic illness or disability appear to have an increased propensity for experiencing multiple legal problems and a reduced ability for resolving these legal problems. Furthermore, given the health needs of this demographic group and their high use of non-legal advisers, the present findings add credence to the argument that the more effective coordination of legal services with non-legal services such as health services is likely to improve both health and justice outcomes for this group.

This leads me to my next point. Access to justice, and more specifically the provision of legal advocacy and representation is not only an issue of justice – it is also a grave health issue – particularly for people with disabilities. As the Committee considers what additional resources might be available to increase the availability of legal services for marginalized and underserved populations, I urge you all to consider the mental and physical health implications of NOT providing these resources – and how, down the road – or even right at the moment of eviction, for example – we are decreasing people’s quality of life and increasing the cost and utilization of health care.

Many studies in the now emerging field of legal and medical partnerships have documented this correlation. More than 60% of chronic illness and disease is driven not by physical maladies, but by social determinants of health. For example, a child diagnosed with asthma, no matter how compliant with medication prescribed by their doctor, will never overcome illness if they continue to live in an asbestos laden apartment that a landlord refuses to fix.

Indeed, most of these social determinants are the very issues of unmet legal need you are considering today – housing, employment and economic security, access to health care and community supports, family violence, physical and sexual assault, education, transportation, and social inclusion. Unfortunately, these are the same unmet needs we hear about at Disability Rights Wisconsin every day.

Our top requests for legal services are:

- 1) Education
- 2) Discrimination and rights violations
- 3) Healthcare
- 4) Abuse and Neglect, including caregiver assault
- 5) Housing
- 6) Employment
- 7) Access to Government and non-governmental benefits
- 8) Transportation
- 9) Domestic Violence; and
- 10) Child custody and Family law

When an individual without legal representation loses their home, their job, their car, or their health care, it is often the case of an avoidable tragedy that legal representation could have mitigated. When these same outcomes affect people with disabilities, the long term results are often far more consequential.

Disability Rights Wisconsin, and other protection and advocacy agencies across the country are trying to do our part. We cannot however, meet the need for civil legal services, particularly for individual representation that presents itself in Wisconsin. Demand for representation in special education cases alone, for example, could easily consume the resources of the entire agency – and then some – so we must set priorities and exclude thousands of worthy cases from representation each year.

Our work, as mandated by our federal and state funding sources, is to broadly protect the civil rights of people with disabilities, and to try to ensure their freedom from abuse, neglect, and exclusion. Thus, our priorities revolve around those mandates, and we are unable, due to lack of additional resources, to address many of the day-to-day legal needs of people with disabilities.

As you know, many of the sources of “additional support” are either entirely lacking or have decreased significantly in Wisconsin. I implore you to help us search for additional funding to meet these needs. By doing so, you will not only improve the sense of fairness of our justice system, you will decrease the societal costs of health care, and you will save lives. Legal representation for people with disabilities is that important.

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