

AN INSPIRATION FOR POLITICAL LAWYERING:

WELFARE REFORM ACTIVISM IN THE DISTRICT OF COLUMBIA

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Peter Cicchino set an example for all of us about what it really means to be a political lawyer. I am very honored to be able to share in the celebration of Peter's ideas and his life. I hope that throughout my career I can live up to the ideal that Peter set about what it means to be a political lawyer.

Peter was a true intellectual, as well as an activist. While I hope that someone might call me an intellectual at some point, I am much more comfortable with my role as an activist. I think this is because any of us can be activists. You merely have to put yourself out there, work for the greater good, and care about the work you are doing — I think that is part of the essence of what it really is to be a political lawyer.

In this piece, I am going to discuss several issues surrounding welfare reform in the District of Columbia, and the political lawyering that many of us are working on to help people who are dealing and struggling with the issues imposed on them by the Welfare Reform Law of 1996.¹ However, before I do that I want to say a few words about my experiences here at the Washington College of Law ("WCL").

I am so proud to be a graduate of the Washington College of Law. I loved law school and I loved my experiences here. I chose to go to WCL because of its feminist founding,² because of the faculty, who

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1. See Personal Responsibility and Work Opportunity Act of 1996, Pub. L. No. 104-193, § 408, 110 Stat. 2105 (1996).

2. See JEAN S. SCHADE, *THE WASHINGTON COLLEGE OF LAW — A HISTORY, 1896-1949* 4-11 (1978) (documenting the background and careers of the two women who founded the Washington College of Law, Ellen Spencer Mussey and Emma M. Gillett).

were so supportive of doing public interest work, and because the school nurtures and creates the next generation of public interest lawyers.³ These ideals meant a lot to me, and a lot to my experiences here. All of which have helped shape the work that I do.

I hope the picture that I paint of what is going on in the District of Columbia—which is just one example of what welfare reform looks like, because it has been implemented differently in every state⁴—motivates some students to want to come out and work on some of these issues. Due to the federal time limits, which will hit the District in 2002,⁵ the need for your talents and legal skills is really great. The work we do helping people deal with welfare issues is very important.

I work on welfare reform issues in the context of disabilities: some of the barriers that people on welfare face, and some of the ways in which cities and states can actually help people overcome those barriers to help them move from welfare to work. I believe that there has to be a safety net—a safety net like Peter Cicchino described in his article *The Problem Child: An Empirical Survey & Rhetorical Analysis of Child Poverty in the United States*.⁶ I quote him specifically, because his words are so eloquent:

None of the programs that constitute the current system of poor relief in the U.S. were designed to lift people out of poverty. The popular metaphor of a safety net is useful in this respect. A safety net does not keep one on one's feet, or prevent one from falling. It merely sets the lower, non-lethal limit to the depth of one's descent, and I think that is such an important thing.⁷

The fact that welfare reform changed in 1996,⁸ and that entitlement to welfare benefits was essentially eliminated,⁹ is almost unbelievable.

3. Compare NATIONAL DIRECTORY OF LAW SCHOOLS 6 (Nat'l Ass'n for Law Placement 2000) (providing that eight percent of the students from the WCL class of 1999 were employed by a public interest organization upon graduation), with JOBS & J.D.'S: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 1999 (Nat'l Ass'n for Law Placement 2000) (providing that only 2.8% of all 1999 law school graduates were initially employed in the public interest sector).

4. See U.S. DEP'T OF HEALTH & HUMAN SERVS., TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROGRAM, THIRD ANN. REP. TO CONG. 187-94 (2000) (concluding that state TANF plans show wide diversity).

5. See *id.* at 222-23 (noting that in March 2002 time limits for families receiving assistance will begin to expire).

6. See Peter Cicchino, *The Problem Child: An Empirical Survey and Rhetorical Analysis of Child Poverty in the United States*, 5 J.L. & POL'Y 5, 52 (1996) (discussing that current poor relief programs in the United States were never meant to "lift people out of poverty," but instead were designed to be safety nets).

7. *Id.*

8. See Personal Responsibility and Work Opportunity Act of 1996, Pub. L. No. 104-193, § 408, 110 Stat. 2105, 2105 (1996).

9. See *id.* at 2135 (outlining the prohibitions and requirements that must be met in order

There has to be a safety net for people, and the fact that there really is not one with the elimination of the right to welfare, makes doing my type of work so difficult. Thus, my focus is to provide a perspective on what the Welfare Reform Law of 1996¹⁰ imposed, using the District of Columbia as a case example. Then I want to share with you some of the advocacy efforts that lawyers are making on behalf of clients in this area.

One of the major issues with the way welfare reform is structured in the District of Columbia is that welfare recipients do not receive a comprehensive assessment when they apply for welfare benefits, nor at any point while they are on welfare.¹¹ The Department of Health and Human Services is supposed to create an Individual Responsibility Plan¹² with each applicant for welfare benefits. that they sign. The plan includes assessment of how the welfare recipient is going to move from welfare to work.¹⁴ However, in creating this plan there is an inherent assumption made that the Department of Health and Human Services worker knows the individual's needs, and in assessing the individual, what she will need to move from welfare to work.

Despite a District of Columbia law requiring an individual assessment to be performed to identify personal barriers, the Department of Human Services has not implemented any structure to identify these barriers or to conduct comprehensive assessments

to qualify for assistance).

10. See *id.* at 2105.

11. See, e.g., D.C. CODE ANN. § 4-205.19d(a) (1999) (“[T]he mayor *may* make an assessment of the skills, prior work experience, employability, and barriers to employment of each TANF recipient . . .”) (emphasis added).

12. See Personal Responsibility and Work Opportunity Act of 1996, § 408, 110 Stat. at 2140. (dictating the responsibilities that agencies in the fifty states and the District of Columbia have in administering Temporary Assistance for Needy Families (“TANF”) benefits, including the creation of Individual Responsibility Plans with program recipients); see also D.C. CODE ANN. § 4-205.19d(b) (1999) (explaining that federal TANF recipients are required to sign an Individual Responsibility Plan that outlines steps for the recipient to acquire permanent private sector employment). Individual Responsibility Plans include an assessment of skills, work experience and training of each TANF recipient. See Personal Responsibility and Work Opportunity Act of 1996, § 408, 110 Stat. at 2140.

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14. See D.C. CODE ANN. § 4-205.19d(b) (1999) (describing the plan as a way to “achieve self-sufficiency”).

during the application process.¹⁵ Many welfare recipients face barriers to work.¹⁶ These barriers include physical and mental health barriers, substance abuse problems, domestic violence, language barriers, and limited English skills.¹⁷ As these barriers increase, the likelihood of employment certainly decreases.¹⁸ As we witness the barriers that people face, the likelihood that they will be able to secure and maintain employment becomes very slim.

National estimates of the Temporary Assistance for Needy Families ("TANF"), or welfare population, is that one-fifth have a physical disability,¹⁹ one-fourth have some serious mental health problem,²⁰ and twenty-percent have substance abuse problems.²¹ In addition,

15. See D.C. CODE ANN. § 3-205.31 (explaining that welfare applicants must apply for benefits and the Mayor may then make a determination that they have barriers to employment due to physical or mental handicap); see also D.C. CODE ANN. § 4-205.19d(b) (providing only minimal procedures which the Mayor may follow in assessing welfare recipients, and lacking any comprehensive assessment steps).

The author would like to note that during the summer of 2001, the Department of Health and Human Services did create a pilot program that assesses new applicants for learning disabilities. However, currently this "assessment" amounts only to a simple questionnaire given only to new applicants at two locations in the District. This pilot program does not address barriers to employment faced by persons already on welfare in the District, the majority of whom were never assessed.

16. See SHEILA R. ZEDLEWSKI, THE URBAN INST., WORK-RELATED ACTIVITIES AND LIMITATIONS OF CURRENT WELFARE RECIPIENTS 3 (1999) (stating that some TANF recipients have difficulty transitioning into work because of physical disabilities, mental problems and substance abuse); see also GREGORY ACS & PAMELA LOPREST, THE URBAN INST., THE STATUS OF TANF LEAVERS IN THE DISTRICT OF COLUMBIA: FINAL REPORT 3 (2001) (concluding that former TANF recipients in the District of Columbia have difficulty finding jobs due to a lack of education and training).

17. See ZEDLEWSKI, *supra* note 15, at 3 (citing a study which concluded that nearly ninety percent of welfare recipients between the ages of twenty-seven and thirty-six exhibited one of the following barriers to employment: "low basic skills, substance abuse, a health limitation, depression, or a child with a chronic medical condition or serious disability."). See generally SANDRA DANZIGER ET AL., POVERTY & RESEARCH TRAINING CENTER, BARRIERS TO THE EMPLOYMENT OF WELFARE RECIPIENTS (analyzing employment barriers that impeded welfare recipients from complying with state agency work requirements, and providing empirical data on the barriers welfare recipients face), at <http://www.ssw.umich.edu/poverty/wesappam.pdf> (last visited Sept. 26, 2001).

18. See DANZIGER, *supra* note 16 (stating that the goals of the work participation program may not be met due to the difficulties caused by the existence of barriers to employment).

19. See EILEEN P. SWEENEY, CTR. ON BUDGET & POL'Y PRIORITIES, RECENT STUDIES INDICATE THAT MANY PARENTS WHO ARE CURRENT OR FORMER WELFARE RECIPIENTS HAVE DISABILITIES OR OTHER MEDICAL CONDITIONS 3 (2000) (stating that one-fifth of TANF recipients are limited in their ability to work due to physical disabilities).

20. See *id.* at 2 (noting that one-quarter to one-third of current TANF recipients have a serious mental impairment); see also U.S. DEP'T OF LABOR, RE-CHARTING THE COURSE: THE FIRST REPORT OF THE PRESIDENTIAL TASK FORCE ON EMPLOYMENT OF ADULTS WITH DISABILITIES (noting that upwards of twenty-eight percent of former welfare recipients suffer from a mental illness), available at http://www.dol.gov/dol/_sec/public/programs/ptfead/1998rpt/1998rpt.txt (Nov. 15, 1998).

21. See SWEENEY, *supra* note 18, at 3 (stating that research suggests that anywhere from two to twenty percent of TANF recipients have substance abuse problems); see also AM. PUB. HUMAN SVCS. ASS'N, BUILDING BRIDGES: STATES RESPOND TO SUBSTANCE ABUSE AND WELFARE REFORM 7

two-thirds of the District of Columbia population read between a third and fifth-grade level.²² Most of the jobs in the District area are actually highly technical jobs, and require a significant number of skills and a higher education.²³

In the District of Columbia, the lower-skilled jobs are mainly retail jobs.²⁴ Even a retail job requires an employee to have some basic math and reading skills.²⁵ So if you are reading at a third or fifth-grade level, you are certainly not going to be able to maintain that type of job. Similarly, a few more national statistics provide critical information to illustrate the issues facing welfare recipients returning to the workforce. For example, workers who lack a high school diploma earn a mean monthly income of approximately \$452, while workers who have a college degree earn roughly \$1,800.²⁶ A monthly income of \$452 does not come close to providing a safety net, and alone is certainly not capable of moving someone from welfare to work.

Returning to the time limit issue; the District of Columbia Department of Human Services says that approximately 2,400 families are going to lose federal cash assistance in March of 2002.²⁷ This

(1999) (indicating that many studies have estimated that “fewer than twenty percent of TANF participants [need] to address their substance abuse problems.”).

22. Compare U.S. DEP’T OF LABOR, *supra* note 19 (indicating that up to forty-percent of welfare recipients may have learning disabilities), with STEPHEN REDER, NAT’L INST. FOR LITERACY, THE STATE OF LITERACY IN AMERICA: SYNTHETIC ESTIMATES OF ADULT LITERACY PROFICIENCY AT THE LOCAL, STATE & NAT’L LEVELS (1992) (reporting that sixty-one-percent of the District of Columbia population falls into the two lowest levels of reading proficiency), available at <http://www.nifl.gov/reders/reder.htm> (last visited Feb. 9, 2002). Adults in Level 1 can read but are unable to complete an application or read a simple story to a child. See *id.* Adults in level two can perform more complex tasks such as comparing, contrasting, or integrating pieces of information, but cannot perform higher level reading and problem-solving skills. See *id.* Adults in levels three through five usually can perform the same types of more complex tasks on more lengthy texts. See *id.*

23. Cf. Press Release, Office of Mayor Anthony Williams, *Mayor Announces Plunge in Unemployment Rate to 4.9 Percent in April* (June 2, 2000) (noting that close to half of the new jobs created from April 1999 to April 2000 occurred in highly-skilled industries, including finance, insurance, legal services, and real estate), available at <http://dc.gov/mayor/news/release.asp> (last visited Sept. 26, 2001).

24. See *id.* (noting that job expansion in the District of Columbia from April 1999 to April 2000 was largely in the retail industry) Between April 1999 and April 2000, the trade industry in the District of Columbia grew by nine hundred jobs, all in retail. *Id.*

25. See, e.g., Kristin Grimsley, *Applicants Not Making the Grade Skills Shortage Plagues Firms Digging Deeper into the Labor Pool*, WASH. POST, Apr. 13, 1999, at E1 (noting that “[m]ore than a third of job applicants nationwide lack the basic math and reading skills to do the jobs they are seeking, up from 19% in 1996, according to a new survey of more than 1,000 personnel.”).

26. Cf. U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, P60-209, MONEY INCOME IN THE UNITED STATES: 1999 36 (2000) (reporting that total mean earnings for a male individual without a high school diploma is \$18,908, while the mean earnings for a male college graduate is \$57,706).

27. See CITY OF WASHINGTON, D.C., *Transitioning Families From Welfare to Work*, in 2001-2002

means that these families have exhausted their sixty-month right to welfare in this country.²⁸ These families cannot go to another state and get welfare and they cannot continue federal cash benefits.²⁹ Moreover, an additional 2,700 families will lose cash assistance sometime during that year.³⁰

District of Columbia Mayor Anthony Williams has decided that the District is going to use local funds for people who are approaching the federal time limits, but do not deserve to be sanctioned because they are actually complying with program requirements.³¹ The Williams Administration has expressed an overall commitment to preserving the “human service safety net for families with children.”³¹

I am part of a coalition of District of Columbia advocates called the Welfare Advocates Group.³³ While we support the District’s plan to continue cash assistance, we have some concerns. We believe that the District has not done a very good job of trying to make its Welfare-to-Work Program work. The program does not give people the tools that they need or were promised: like job training and assistance in overcoming some of the barriers that they may actually be facing.

Therefore, my concern is that, while I want the District of Columbia to provide a safety net, I worry that the Mayor’s proposal has in some ways eliminated the pressure to make the Welfare-to-Work Program itself operate better. In order to make the District’s Welfare-to-Work Program work, we need to examine what it takes to help people get the skills, training, and services that will actually help them move from welfare to work.

Other jurisdictions have raised these issues by challenging the use

POLICY AGENDA 10-1, 10-3-4 (2001) (noting that approximately twenty-five percent of current TANF recipients in District of Columbia, or 2,734 cases, have received TANF consistently since March 1997 and will face the March 2002 time limit), *available at* http://www.washingtondc.gov/mayor/policy_agenda/index.shtm (last visited Sept. 26, 2001).

28. See Personal Responsibility and Work Opportunity Act of 1996, Pub. L. No. 104-193, § 408, 110 Stat. 2105, 2137 (1996) (explaining that federal TANF benefits will cease after sixty months of receipt); D.C. CODE ANN. § 4-205.11a(a) (1999) (indicating that TANF recipients will not receive federal assistance after having received TANF benefits for sixty months).

29. See Personal Responsibility and Work Opportunity Act of 1996, § 408, 110 Stat. at 2137 (capping federal TANF benefits at sixty months, regardless of the recipient’s location).

30. See CITY OF WASHINGTON, D.C., *supra* note 26. March 2002 marks the end of the sixty-month receipt of federal TANF benefits for some families in the District of Columbia. See *id.*

31. *Id.* at 10-4 (indicating that the District of Columbia will not revoke all financial assistance from TANF recipients who have not yet found adequate employment in the private sector because it may hurt poor families).

32. See *id.*

33. Welfare Advocates Group is a local coalition of family and child welfare agencies located in the District of Columbia. They assist District of Columbia residents with job placement and legal assistance.

of signed Individual Responsibility Plans as creating a contractual right to the services promised to the welfare recipients.³⁴ Thus, welfare recipients could potentially sue the District of Columbia by saying; “You did not adequately assess my barriers, so you have had me in an inappropriate work placement for four or five years.” They could sue and say the District did not provide to them what it said it was going to provide to them when they signed their Individual Responsibility Plans. The argument would be that the welfare recipients should be entitled to continued cash assistance, while the District then provides the recipient what it said it was going to provide initially.

In sum, I hope that my remarks have provided some context and detail on the issues facing advocates and recipients in the District of Columbia, and have provided a perspective on what welfare reform has meant to real life recipients.

34. Cf. U.S. DEP’T OF HEALTH & HUMAN SVCS., *supra* note 3, at 214 (explaining that refusal by TANF recipients to engage in the work required by their Individual Responsibility Plans can result in various types of sanctions at the discretion of the state in which the participant lives, and the Individual Responsibility Plan in which they participate).