



Legal Aid Society of Roanoke Valley — A Half-Century Quest for Justice

IN 1966, the Legal Aid Society of Roanoke Valley (LASRV) became Virginia's first staff-model legal aid licensed by the Virginia State Bar and Virginia's first program to receive Office of Economic Opportunity funding. It fell to the society's board and staff to resolve, for the ultimate benefit of all legal aid programs, many of a broad range of legal controversies over control, purpose, and accountability for this new instrument of justice. Within a few turbulent years, however, the persistence of dedicated bar members and the achievements of LASRV attorneys combined to make the LASRV board of directors a model of support for its staff attorneys and a bulwark against impairment of their effective assistance to clients.

Beginning in 1996, LASRV faced a hostile battery of Congressional restrictions on use of its funding, including prohibitions against class actions, lobbying for favorable legislation, challenges to public benefit administration, and seeking court-awarded fees under statutory authorization. The LASRV Board believed the impact on effective LASRV representation would be severe and in 1998 gave up its federal funding to restore access — with state and local support — to the full range of representation for the benefit of its clients. The history which follows puts that decision in perspective.

A Constitution for All

From the very beginning, LASRV attorneys took on some of the major impediments that prevented the poor

from accessing the legal system. At the outset, LASRV attorneys participated in the rotation of lawyers accepting appointment in misdemeanor criminal cases. LASRV's constitutional challenge to imprisonment of those unable to pay criminal fines forced legislative changes that allowed payment plans. In another successful LASRV suit, the Fourth Circuit ruled that the Supreme Court *Argersinger* decision mandating court-appointed counsel for indigents in misdemeanor cases facing jail was to be applied retroactively.

On the civil side, LASRV attorneys successfully challenged state child removal from parents without a hearing. A constitutional challenge to the secured bond required for appeal from general district to circuit court failed, but another federal suit successfully enabled a poor homeowner to use real estate for security. A Fourth Circuit decision required Virginia divorce courts to accommodate the Supreme Court's *Boddie v. Connecticut* decision, which found economic barriers to divorce a violation of due process, regarding the publication requirement against nonresident defendants. In a case challenging the common law necessities doctrine, the Supreme Court of Virginia agreed on the equal protection analysis urged by LASRV attorneys and struck down the doctrine as gender discrimination under Article I § 11 of the Constitution of Virginia and the Equal Protection Clause.

The most literal LASRV achievement in access to the courts may be its 1997 suit filed to force renovation

of the Bedford County Courthouse. Because that courthouse had no ground-level access to the entry floor and no public elevator to the courtrooms on an upper floor, disabled parties and witnesses attending court had to endure the humiliation of being carried up the stairs by a bailiff. After years of complaints, LASRV brought federal suit under the Americans with Disabilities Act requesting that the county be required to modify the facility to provide access. That suit and its quick settlement may have been greeted with a smile by the state court personnel, and it motivated Bedford County to undertake, by consent and at substantial expense, both temporary accommodation and long-term renovation to modernize the historic courthouse.

The lifeline income-support and medical programs affecting so many legal aid clients have often been improved by LASRV objections to their unconstitutionality or noncompliance with federal law. The late John Levy, founding sparkplug of legal aid programs in Richmond and eastern Virginia, and later an inspiring law professor, began his legal aid career as a Reginald Heber Smith fellow at LASRV. His early litigation challenges to unauthorized welfare liens and work requirements set a model for the program's future successes in:

- attacking denial of benefits to 16–18-year olds in Aid to Dependent Children;
- refusal of social services departments to release medical records of clients;

- access to hospitals under the Hill-Burton Act;
- overbroad transfer-of-asset rules in Medicaid; and
- denial of transportation expenses in Medicaid.

Several of these cases were certified as class actions and brought relief to thousands of benefit recipients.

A Roof Overhead

The housing of low income families is precarious at best; intolerable for health, safety, and security at worst. LASRV maintains a near-monopoly of expertise within its service area on the arcane law of public and subsidized housing rights.

An early LASRV federal class action required the local housing authority to follow federal law on lease and hearing procedures. Another federal class action against the Virginia Housing Development Authority resulted in statewide revision of their leases to impose a federal limitation of evictions to those for good cause. A highlight of LASRV's litigation history is *Wright v. Roanoke Redel. & Hsg. Auth.*, a federal class action that challenged utility bill overcharges to 1,400 public housing families as a violation of the Brooke Amendment to the U.S. Housing Act. After losing in the federal district and circuit courts, LASRV attorneys won a precedential 1986 reversal in the Supreme Court that remains among the high-water marks of Section 1983 litigation, and charts a course still followed by other Virginia legal aid societies in obtaining fair utility allowances for public housing clients.

In private rental housing, LASRV attorneys have become expert at using the tools provided by the Virginia Residential Landlord and Tenant Act adopted in 1974. That statute dramatically revised the common law doctrine of independent covenants for rent and conditions, while adding court-awarded attorney fees to offset omnipresent lease

provisions for landlord attorney fees. LASRV attorneys consulted with the City of Roanoke on its adoption of a rental inspection program (and later improvements thereon), which has been a major force in rehabilitation of the city's older housing. Code inspectors and their reports are now a prime source of objective evidence in landlord-tenant cases, and for code enforcement, LASRV is often the hammer to achieve landlord compliance for the benefit of its tenant clients. Common issues, in addition to condition problems, include: lockouts, utility shutoffs, excessive fees, refusal of accommodation to the disabled, and refusal to return security deposits.

LASRV litigation in *Wohlford v. Quesenberry* resulted in a subsequent advance in landlord tenant law. In that case the LASRV tenant's rental was not covered by the VRLTA, but she sought damage recovery for landlord's non-compliance with the Statewide Building Maintenance Code. The Supreme Court of Virginia held that without VRLTA coverage, the landlord under the common law was not liable for conditions. This highlighted coverage gap was then presented to the General Assembly, which added a tenant remedy to statutes which cover non-VRLTA rentals.

Defense of low-income homeowners from predatory schemes is reflected in the program's Supreme Court of Virginia victories in *Valley Acceptance Corp. v. Glasby*, where a small loan company exceeded its authority by taking home mortgages to secure small loans — one of the first reported cases under the Virginia Consumer Protection Act; and *Garrison v. First Fed. Sav. & Loan of SC*, which reversed a circuit court ruling to declare a second mortgage illegal under Virginia's usury statutes. During the housing foreclosure crisis of the last decade, LASRV also developed expertise in court actions to enjoin foreclosure, modify loans, and moderate displacement. An LASRV staff attorney net-

working with the statewide Advocates for Credit, Employment and Shelter task force continues that intensive effort.

Pocketbook Justice

Poverty may be relieved by increasing income or by reducing outflow. LASRV's practice of consumer law is focused on reducing the loss of scarce client resources to exploitative and predatory sales and collection practices. While consumer protection statutes often authorize court-awarded attorney fees to incentivize private attorneys, there are no private bar consumer specialists in LASRV's service area.

In 1979, LASRV brought one of the earliest class actions under the federal Fair Debt Collection Practices Act (FDCPA), *West v. Costen*. The reported decision remains a much-cited interpretation of the Act, and the case closed a collection agency that used strong-arm tactics. A 1995 LASRV class action accused a complex forum abuse collection scheme of violation of the FDCPA, the Racketeering Influenced and Corrupt Organizations Act (RICO), and the Virginia Consumer Protection Act. Its class action settlement vacated 346 judgments against consumer victims and returned their payments. A 2001 class action against a furniture store chain resulted in a statewide audit of credit insurance practices by the Bureau of Insurance, and a settlement order which benefited some 30,000 class members.

Three of LASRV's notable achievements in protection of poor debtors reflect active participation in legislative and administrative advocacy. When the Poor Debtor's Exemption was finally modernized to get beyond the spinning wheel and other apparatus of frontier days, LASRV was consulted in developing the revisions and prompted several additional exemptions including, for the first time, the family motor vehicle. An instance of interrogatory proceedings dragging a Valley resident to an

Eastern Shore court prompted not only a Federal Trade Commission finding of Unfair Trade Practice, but also LASRV testimony that led the General Assembly to allow transfer of any such proceeding to a court near the debtor's residence. Finally, in the long struggle to protect social security benefits from bank account garnishment, LASRV lobbied both for Congressional change and toward the eventual solution of Treasury Regulation. Program collaboration with the *Washington & Lee Law Review* produced a timely student note that was the major academic commentary on that problem.

Within the last decade, the massive sale of bundled consumer accounts to debt buying companies created substantial pressure upon courts as well as debtors. LASRV initiated a legal aid network to understand and cope with these cases: the shared knowledge has helped debtor counsel to sort out which cases are defensible and has improved debt buyer practice and court disposition, as well as defense. Among the cases defended by LASRV, the high point thus far has been

the dismissal of a debt buyer claim for \$44,000, with payment of \$4500 to the client on LASRV counterclaim.

Court award of attorney fees, as authorized by many consumer statutes, makes the threatened enforcement of those statutes potent in an individual case as well as in a class action. Where private counsel could not be found, LASRV has filed suit and obtained appropriate judgments or settlements in many cases of car title loan violation; improper mobile home and vehicle and repossession; illegal used car sales; financing with improper disclosure of credit terms; and collection overreaching in both local and interstate cases.

More Bread and Butter Issues for Legal Aid Clients.

There are so many areas of the law that touch legal aid clients and demand frequent and recurring lawyer help. Specialized LASRV attorneys address directly the range of domestic violence issues and their causes among our client community. Enforcement of wage laws and preserving vocational licenses has

taken on increased significance in a changing economy. Access to unemployment benefits, nutrition and medical care are constant demands. LASRV continues to address this range of need in partnership with its federally funded sister program Blue Ridge Legal Services and the excellent pro bono work of private attorneys in our service area.

Whither Legal Aid?

Times of uncertainty in our constitutional order are particularly precarious for people living at the margins of the economy. The funding of viable legal services for the poor may be one of the litmus tests of whether our common ideals of justice still hold us together. As always, the support of the Virginia bar and lawyers everywhere will be determinative in our future.

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to the most arcane legal question and could always tell me exactly what to do and, most importantly, what not to do.

If you are a senior lawyer interested in pro bono, the new VSB emeritus rule allows retired attorneys to do pro bono work without the need of a supervising attorney. Emeritus status attorneys do not pay bar dues and can now do pro bono work without supervision. This rule went into effect on March 1, 2018.

As this is my last president's message, allow me to say that it has been an honor to serve as the 79th president of the Virginia State Bar. I would like to thank everyone for their support and kindness shown during my presidency. I hope that I have brought more attention to the needs of low-income Virginians and the need of all legal aid programs. Additionally, I am hopeful that the need for diversity and inclusion has gained some momentum within the profession.

It has truly been my honor to serve as the first African-American and the first legal aid attorney to be president of this historic organization. Hopefully, it will not be another 79 years before we elect someone else like me to serve as president. Thank you to those that took my challenge and volunteered to serve on committees and run for council. It's you that make the difference in the lives of the citizens of Virginia and the legal profession.