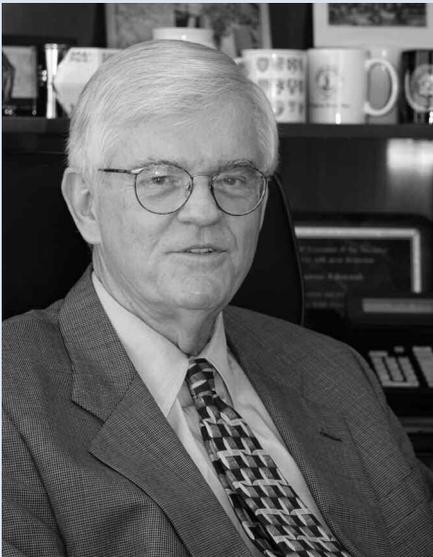


Recent issues of *Virginia Lawyer* have described initiatives to increase funding for indigent criminal defense in Virginia. The articles that follow in this issue summarize the history of civil legal services for the poor in the commonwealth. The special section includes an overview of this work by comprehensive legal aid providers and independent, special-niche nonprofits. It is presented through recollections of some of the leaders of the movement to establish services for the poor.

In the interview that follows, Virginia State Bar Executive Director Thomas A. Edmonds reflects on the history of legal services in the state, his service on the board of Legal Services Corporation of Virginia and the VSB's commitment to the legal needs of the underserved.



Thomas A. Edmonds received his bachelor's degree from Mississippi College and his law degree from Duke University. He was dean, director of the law center, and professor of law at The University of Mississippi; and dean and professor of law at the University of Richmond Law School. He serves on the boards of directors in Richmond of Assisting Families of Inmates, a nonprofit that provides visiting-day transportation and other services to families of state prison inmates, and Boaz and Ruth, a program that teaches job and life skills to former prisoners. He has been the executive director and chief operating officer of the VSB since 1989. He will retire from the post in 2007.

“If you go back into the pre-1960s era in Richmond—and Orlando, where I practiced law—there was a history of local bar associations operating legal aid programs. Volunteer lawyers from the firms around town would go and staff an office in the courthouse or someplace where people could come to receive counseling, but the only service they could receive had to be provided by the lawyer and his or her firm—and many did. Volunteer lawyers did good work, but such a system could, of course, never meet much of the need. It was all volunteer and pretty spotty, until the 1960s, when we made a national commitment.

“In the Lyndon Johnson era, in the 1960s, during the so-called War on Poverty, the U.S. Office of Economic Opportunity was the first federal agency to provide federal money for civil legal services delivered by full-time staff attorneys at legal offices.

“Part of the War on Poverty included a legal services component. Grants were made around the country to experiment with

setting up these kinds of legal aid programs. I was involved with one in Mississippi. I was teaching at Ole Miss at the time—1966—and we got a grant that year to set up a rural legal services program that covered the Northern half of the state of Mississippi, focusing on the problems of low-income agricultural workers. There was resistance to concept—by other lawyers and politicians, primarily. Certainly, many volunteer lawyers were representing poor people for free in those days, and not worrying about a fee. But a lot [of lawyers] didn't. And certainly the needs of the poor were not being met to any significant degree.

“In 1964, Lewis F. Powell Jr. served as president of the American Bar Association. He led the ABA in lobbying for federal support for legal services. That Lewis Powell and the ABA pushed for this meant that the organized bar at the national level for the first time worked to achieve the notion of a public responsibility to help address the legal problems of the poor—it was not just the responsibility of the bar.

Blue-Ribbon Committee Appointed

“In Virginia, the Virginia State Bar and The Virginia Bar Association appointed a blue-ribbon committee in 1991. The ten-member Joint Committee to Study Legal Services in Virginia began its work just after publication of an independent survey of poor citizens in the state. The survey found that there was a widespread unmet need for legal services for the poor, that many individuals who sought aid were turned away, that many individuals were unaware of legal aid, and that legal services were vastly underfunded. Gail S. Marshall and Phillip B. Morris were cochairs of the committee. Membership was comprised of some of the top lawyers in the state.

“This legal needs assessment, paid for with a grant from the Virginia Law Foundation, confirmed our suspicion that only about 20 percent of the legal needs of the poor are addressed in any formal way with the assistance of a lawyer. That created quite a push for increased support for legal aid for the poor in Virginia. The bar instituted the Interest on Lawyers’ Trust Accounts program (IOLTA), for example, to help fund legal aid. The program was initially administered by the Virginia Law Foundation, with a good part of the income going to legal aid programs.

Legal Services Corporation of Virginia

“There was more interest in the work of the Legal Services Corporation of Virginia, which predated the legal needs study of the joint committee, but I don’t think a lot had been accomplished up to that point on the state level in terms of support for legal aid in Virginia. Once that study was done, and the legal community became more aware of the shortcomings of the system, there was quite a lot of interest in getting the bar to do more, in getting lawyers to do more pro bono—a combination of things that might address the problem. At that time we added our pro bono coordinator position. Sarah Jane Wyatt was our first pro bono coordinator. Maureen K. Petrini was our second. So, the state bar began to do more, particularly in lining up pro bono help.

“We have always supported Legal Services Corporation of Virginia’s efforts to get more public funding through the General Assembly. Ultimately, LSCV did achieve both a filing fee add-on that was dedicated to legal aid and a general-fund appropriation that runs almost \$2 million per year now. We now get \$3 million to \$3.5 million in public monies per year though a filing fee and the general appropriation. LSC receives another \$2.5–\$3 million from the interest from the IOLTA program. So, that total—\$6 or \$7 million at least per year—is distributed to the field programs in Virginia and represents state support that did not exist before the early 1990s. So we’ve made some progress, but we have a long way to go.

“The LSCV-supported network of programs in each area of the state is the official bar-sponsored effort, because it is comprehensive and covers the whole state. It is funded partially by the federal government through grants directly to individual programs and partially through state grants from LSCV.

“Each program also raises local money—some more successfully than others. Some of these participate through their local United Way campaign, and some of them have independent campaigns. Altogether, federal, state and local money probably exceeds \$20 million.

“So, we’ve committed more resources and we’re doing a lot more than ever, but the question is, what remains to be done and how might we do it? That always is an issue for the bar, because access to legal services is one of the three prongs of our mission statement—providing access for all citizens to the system—on both the criminal and civil side. This is part of what we work for, and why we have worked so hard to increase fees for court-appointed attorneys fees and funding of the public defender system.

Independent Network

“In addition to LSCV, there is this network of mainly grant-supported, sometimes government-supported, sometimes volunteer-supported enterprises that are usually

organized around some particular social problem, like domestic violence, the problems of the elderly or problems in particular areas of the law—Virginia Tax Law Project, for example. They are organized around some area of the law or some target population, and they often are not just providing legal services. They may promote social services and financial support, or operate shelters, but legal services are a part of it.

“I think these independent providers are an important part of the picture, and they deserve our interest and our support. The Community Tax Law Project went to the General Assembly and got their own public support—which comes through the bar’s budget, just as LSCV’s does). We have supported its budget renewal every time we put a budget request in. So, we’re not solely focused on LSCV. The bar’s interest is in helping to meet the legal needs of all Virginians who do not have access to the system. Whether that is military dependents of lower-level personnel, or whether it’s the elderly whose incomes drop off to a low level when they retire, or the infirm—all of those needs would be of equal interest to the bar. But it is only the comprehensive providers that operate statewide and undertake to address generally the needs of the poor—like landlord/tenant issues, consumer protection, domestic relations—only the LSCV network comes close to responding to the bulk of the need. Both [kinds of programs] are good, but the bar’s interest has to be in providing the greatest amount of service with the limited funds available. I serve on the LSCV board, because I think that is where the greatest amount of the need can be met.

Virginia Compared

“The blue-ribbon joint committee got the attention of a lot of people who had no idea what the legal needs of the poor were and no idea what the deficiencies were. It got us moving, and LSCV and many of the independent providers have continued to move in the right direction. Many other states had a substantial lead on us in terms of interest and commitment on the part of their bars, but in the last twenty years we

have gained a leadership role—in terms of our attitude in trying to address this problem. Certainly, the General Assembly has done more than most state legislatures. They have been receptive, and LSCV has done a fine job of educating members of the Assembly about the needs and the public nature of the responsibility to meet those needs.

Retirement

“I would certainly be willing to be involved in the legal aid community in the future—in volunteer time and commitment to the enterprise. I have always been interested in the welfare of the community and in folks who seem to need a helping hand. I did start the Assisting Families of Inmates program that has been operating in Richmond now for about thirty years. It provides transportation for families of prisoners on visiting days, social service referrals and the like. I am also involved with Boaz & Ruth in Richmond, which I think holds the promise of really doing some good in a part of town that needs all the help it can get. It is helping turn lives around for some persons who are just coming out of prison.

“On the legal services front, I have been a volunteer at Central Virginia Legal Aid—helped to staff the hotline calls and gave advice—and that’s about all I have had time to do while serving on the bar staff.

“I’ve always admired past VSB President John A.C. Keith’s father—Judge James Keith—who was one of the early recipients of our Powell Pro Bono award. When he left the bench, he became almost a full-time volunteer at Legal Services of Northern Virginia. I don’t know that I will follow suit to that degree, but I will remain involved after I retire.

“One of the reasons we passed the Emeritus Rule was in the hope that we would have lawyers retiring and that it would encourage them to devote their skills acquired representing clients to pro bono clients through legal aid programs in their areas.” ♪

Lewis F. Powell, Jr. and the Birth of Legal Services

by John C. Jeffries Jr.

Reprinted from the December 1998 issue of *Virginia Lawyer*.

In the days before his appointment to the Supreme Court, Lewis F. Powell Jr. was known as the quintessential establishment lawyer. He had the largest clients, the best connections, and the greatest national reputation of any lawyer in Virginia. Yet Powell was also deeply involved in the provision of legal services to the poor. His leadership in that field was crucial to the birth of the private-public partnership that eventually became the Legal Services Corporation.

As a young lawyer in the 1930s, Powell devoted many hours to the Family Service Society of Richmond. That organization was typical of legal aid societies of the era. It was led by establishment lawyers, largely staffed by volunteers, and closely allied to the local bar. The goal of the Family Service Society of Richmond and of others like it was not to attack poverty as such but to provide legal representation to those who happened to be poor.

This approach was at once progressive and conservative. By furnishing competent counsel at reasonable cost, legal aid societies not only gave indigents a better shot at obtaining equal justice under law; they also sought to maintain the allegiance of the poor to a legal system that did not always seem to be on their side. As Powell told the American Bar Association in 1964, “[R]espect for law is at its lowest with underprivileged persons. There is a natural tendency for such persons to think of the courts as symbols of trouble and of lawyers as representatives of creditors or other sources of ‘harassment.’” Powell wanted to assure that competent lawyers were available to “provide the advice and assure the just treatment that will engender increased respect for the law.”

Federal involvement came from an entirely different direction. Lyndon Johnson’s “War on Poverty” put Peace Corps director Sargent Shriver in charge of a newly created federal agency, the Office of Economic Opportunity. The OEO functioned as an umbrella agency for a wide variety of anti-poverty programs, aimed not at protecting the legal rights of the poor but at correcting the underlying economic deprivation of poverty itself. The idea of including a legal services program in OEO originated with Jean Camper Cahn, an African-American graduate of Yale Law School and dedicated anti-poverty activist. The backbone of the OEO was the Community Action Program, consisting of a collection of local community action agencies. Cahn had served under such an agency in New Haven, only to have it

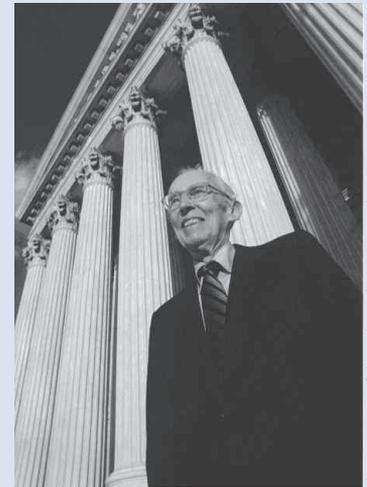


Photo Courtesy of the Richmond Times-Dispatch

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How I Got Here

by John Levy

“To no one will we sell, to no one refuse, delay, right or justice.” —Magna Carta, 1215

“The law in all its majesty prohibits the rich as well as the poor from sleeping under the bridges of the river Seine.” —Anatole France

“I was in a pretrial conference in the chambers of a judge of the United States District Court for the Western District of Virginia. The year was 1969 or '70. The lawyer for the other side and I had begun to discuss the upcoming trial with the judge. My cocounsel from the Legal Aid Society of the Roanoke Valley was the only woman lawyer in Roanoke who did trial work at that time. She had been detained and we had started without her.

“When she arrived, the judge and the lawyer for the other side started doing a little ‘dance.’ A woman entered the room, they started to rise. No, it is a lawyer for the other side; no, it’s a woman. Up down, up down. Finally, tradition won out and they both stood up and I introduced Meg. This was clearly a transitional time in the practice of law in Virginia. How I got there and some of my experiences in legal aid in Virginia are the subject of this article.

“I was born in Washington, D.C. My father was a lawyer and my mother a teacher—two things I thought I’d never be. After graduating from New York University I joined the Peace Corps and taught in Nigeria, West Africa, where I met my wife. We married there and our first child, Shanti, was born there. I took my Law School Admission Test in Enugu, Nigeria, in a thatch-roofed building with goats running in and out. I’ve always blamed this distraction for my unimpressive score.

“I graduated from Syracuse University Law School in 1968 and received a Reginald Heber Smith Fellowship, which paid one’s salary to work for a legal aid program. My wife and I looked at the list of existing

programs and selected our top three choices in order of preference: Seattle, Portland and Roanoke. At the time Roanoke was the only federally funded program in Virginia. Slots in the first two programs were filled, so we ended up in Roanoke. This stroke of luck proved to be a very rewarding and exciting three years.

“The Legal Aid Society of Roanoke Valley was established in 1966 at the Total Action Against Poverty (TAP), Community Action Agency, Office of Economic Opportunity, with the support of the Roanoke Bar Association. My remembrance is that the support was far from unanimous. TAP was fully engaged in the War on Poverty: organizing, lobbying, etc. I got involved in welfare rights. One of the reasons for the Reggie Program, in addition to recruitment of legal aid lawyers, was to have lawyers whose salaries were not at the mercy of local boards and who would be able to bring about changes in the law that would benefit poor people in general, not just an individual client. This meant “impact litigation”; class actions; lobbying for law reform and working with organizations of poor people who were “fighting the war.” The tension between representing as many individual clients as possible and doing time-consuming cases that affect numbers of people over time has been a recurring debate, and still goes on.

“In Roanoke with TAP helping to organize women on welfare (Welfare Rights Organization), I started to litigate welfare issues. For example, a client was applying for Aid to the Permanent and Totally Disabled (APTD), the predecessor to Supplemental Security Income (SSI). The

client was told that a lien would be put on the client’s house, and the lien would grow with the amount of assistance the client received. I had never heard of such and researched the law. I found that there was a statute that allowed such a lien for Old Age Assistance but not APTD. I sued and the state eventually removed all these liens. I filed suit in Roanoke and had a “Plea in Abatement” filed against me. I had never heard of such a pleading. (It was to challenge venue because I was suing the state, which had to be done in Richmond.)

“Other cases dealt with issues such as getting access to the Welfare Manual; having Virginia implement the right to a hearing prior to terminating benefits as required by the U.S. Supreme Court (*Goldberg v. Kelly*, *See also Dillard v. Industrial Commission*, S.Ct.) dealing with the paternity laws and proposed changes; the work requirement for mothers receiving benefits (*Woolfolk v. Brown*, 325 F.S. 1162, 456 F2d 652 (1972)); and localities deciding on whether or not to have federally funded food programs.

“One case that gives a feeling of the times was in Botetourt County. I was representing a woman whose child had been taken into custody by the welfare department. It was being appealed to circuit court and at docket call, when I stood up as the case was called, the judge announced that legal aid lawyers could not represent clients in his court. We brought a case in federal court to force the judge to let us practice in his court. Our board of directors was not happy with us taking a Virginia judge into a federal court; they brought an

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Reflections on the History of Legal Aid in Virginia

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Original Writ of Mandamus in the Supreme Court of Virginia and the judge relented.

"I became the deputy director of Roanoke Legal Aid and after some time applied for the directorship of a new federally funded program opening in Charlottesville. My reputation as a 'troublemaker' may have followed me, as I didn't get that position. Soon after that, Richmond got an OED grant to start a legal aid program and I was hired to be its director. Neighborhood Legal Aid was originally housed in the Richmond Community Action Program (RCAP) and its first hurdle was to get licensed by the Virginia State Bar.

"When the Richmond Bar Association heard that the Office of Economic Opportunity was going to fund a legal aid program, they started the Metropolitan Legal Aid Society. When I applied for the license I was told that there could only be one legal aid in a jurisdiction, and Metropolitan had been licensed to serve Richmond. I have always believed that was the reason behind the bar's establishing Metropolitan. I let it be known that I was preparing a federal case (before Judge Robert R. Merhige Jr., the only federal district judge in Richmond at that time), challenging the VSB's refusal to license Neighborhood Legal Aid. Very soon thereafter a license was given.

"In Richmond I continued to litigate issues that I believed would impact the lives of poor people. Some welfare cases were brought, although the Welfare Rights organizing had almost ended. The issues I remember at that time were more about women's rights such as marital rape, which was not a crime. I worked with others in the General Assembly to get the first marital rape law passed. We also successfully challenged in federal court the law that required a married woman to get her husband's consent before she could be sterilized. A vivid memory of a moment in the oral argument was when I was discussing the legal changes that do occur when someone gets married, and one of the judges interjected, 'Yes, when a

woman gets married she can no longer go to the movies with a strange man. Can she?' Not knowing how to make a coherent response, I just ignored it.

"In 1976, after five years of running Neighborhood Legal Aid in Richmond, the College of William and Mary Law School advertised for a one-year visiting professor to start their clinical law program, which the American Bar Association had recently required of law schools. I had worked with University of Richmond law students and found it rewarding and I felt that I was 'burning out' as a program director. A year in academe sounded like a nice break. I was offered the job and remained at W&M until retirement in 2002.

"Williamsburg did not have a legal aid program when I came. Having spent my whole career in legal aid, that was the only clinical model I could envision. Together with Robert C. 'Bobby' Scott (who was not a congressman at the time), we organized and got funding for the Peninsula Legal Aid Center. Much of the local bar was supportive, but a significant number pushed for a 'Judicare' Program. For the next twenty-five years, third-year law students under my supervision represented legal aid clients in the Williamsburg area. We represented individual clients. A few years

after I retired from teaching, I went back to legal aid as the acting director of the Peninsula program while it and the Tidewater program merged.

"My almost forty years in legal aid in Virginia have been rewarding and fulfilling. One of the most gratifying changes I have seen has been with the attitude of the bar toward legal aid. At the local level support such as pro bono representation by local lawyers has grown steadily. From the Virginia State Bar, with Thomas A. Edmonds leading the way, legal aid could have not asked for more support. Also, the Virginia Law Foundation has been a great source of financial support.

"However, even with such support and progress, the legal needs of Virginia's poor are still largely unmet. The latest study showed that only 20 percent of those needs are presently being met. The restrictions on what types of cases federally funded programs can bring (e.g., no class actions) and what relief can be requested in cases which are brought (e.g., no request for attorney's fees) make the quotations at the beginning of this article still relevant." ☪



John Levy is Chancellor Professor of Law, Emeritus, at the College of William and Mary Marshall-Wythe School of Law. Levy has spent a lifetime in the law and public service. After two years in the Peace Corps teaching English and African history in a secondary school in Nigeria, a stint in the U.S. Department of Health, Education and Welfare's education office, and work as director for Richmond's Legal Aid Society, he moved to the W&M law school, where he became a mainstay of its Legal Skills Program as well as director of clinical education, the summer program abroad, and the graduate master of laws program. The law school has a loan repayment assistance program that honors Levy by helping graduates who work at low pay in public service.

Service in the Public Interest: *Employment, Pro Bono and Nominal Compensation Options*

A Report from the Virginia State Bar Pro Bono/Access to Legal Services Office, by Maureen K. Petrini, Director

Virginia is home to a complex array of programs that directly provide free and reduced-fee alternative dispute resolution and legal services to vulnerable individuals and those on the economic margins of society. Ideally, through public law libraries and other venues, Virginians also have access to affordable real-time multilingual translation services, pro se court forms with procedural instructions, and user-friendly kiosks in cyberspace, as well as adaptive technology such as new Federal Communications Commission-sponsored video relay systems for the hearing impaired.

This tapestry of law-related programs tied to the civil and criminal justice systems offers service opportunities to attorneys and affiliated professionals—opportunities intended to be compatible with the scheduling preferences and philosophical sensibilities of individual volunteers. Heightened awareness of other providers and resources help lawyers refer questions they are not comfortable answering.

Projects range from “big-box” endeavors—such as the federal government-sponsored military Legal Assistance Offices (LAOs)—to boutique operations with very limited resources that target narrowly-defined needs.

Military LAOs provide free legal assistance to all active duty and retired service members and their dependents under federal law 10 USC 1044. There is no means test. Enlistees are increasingly atypical in comparison to their peers in the general population.* In the wider District of Columbia-Northern Virginia area, this translates to more than 155,000 potential clients annually, including numerous individuals who qualify as 100 percent disabled, low-income and/or modest-means.

Certified mediators who participate in Virginia’s Coalition of Community Mediation Centers offer sliding-fee programs to thousands of low-income and modest-means individuals, many at or below 200 percent of the federal poverty level. These programs operate under the auspices of the Supreme Court of Virginia and serve citizens who would not otherwise be able to afford access to private mediation services. In fiscal year 2002–2003, they conducted seven thousand custody, visitation and support mediations. The average extrapolated income of parties served under Virginia Code Section 20-124.4 was \$20,000 to \$22,000, and the average family size was three. Almost a quarter of the mediators certified to accept referrals from juvenile and domestic relations courts under the program were attorneys.

Functioning as the centerpiece of this virtual network on the civil side are the Virginia State Bar-licensed legal aid societies. These programs collectively log more than thirty thousand cases annually and touch the lives of thousands of other Virginians every year when family size is added to the equation. Although funded primarily by the state and federal governments, the programs operate without any centralized viable pension plan for their employees—some of whom routinely tithe or give back part of their modest salaries to help underwrite program operations. The programs deliver basic civil legal services. They make training and legal malpractice insurance available to attorneys who participate in private bar initiatives, such as pro bono, Judicare and Neighborhood Assistance Program state tax credit projects. A few legal aid programs sponsor tuition loan forgiveness plans for new hires who commit to extended years of service.

Undercompensated public service opportunities also worthy of attention from new and experienced lawyers include alliances, especially in remote areas, with overburdened public defender offices overseen by the Virginia Indigent Defense Commission; commonwealth attorney’s offices; and hundreds of court-appointed counsel opportunities to represent indigents accused of crimes, incapacitated adults, and parents in child-removal proceedings.

Supplementing the aforementioned work are law school clinics; corporate, voluntary bar association, and law firm signature projects; Employer Support of the [National] Guard & Reserve; the Virginia Office of Protection and Advocacy, an independent state government agency that represents persons with disabilities; and independent legal services providers, some of which do public interest work seed-funded by the Virginia Law Foundation. Collectively, these programs’ substantive law concentrations span a spectrum from faith-based efforts on behalf of victims of domestic violence and human trafficking and the prison reentry population to programs that focus on constitutional rights, low-income taxpayers, children with special education needs, and health law for cancer and AIDS/HIV patients.

Other important components include lawyer referral services sponsored by the VSB and several voluntary bar associations that, for a nominal fee, provide panel attorneys to advise members of the public about their legal rights; legal insurance programs run by trade unions and other entities; and speakers bureaus and emergency legal services initiatives, including those sponsored or cosponsored by the VSB and the Supreme Court of Virginia.

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Legal Aid in the 1980s: Moving Government, Building Support, Paying the Bills

by Dawn Chase



Jack L. Harris came to Virginia legal aid after four years in the Air Force, college, law school, and brief jobs practicing in Florida.

Legal aid had been operating in urban pockets of Virginia—Richmond, Roanoke and Charlottesville among them—for many years, nurtured initially by the federal Great Society programs of the 1960s and supplemented by local governments, local bars, United Way and other community resources.

But in the mid-1970s, after the establishment of the national Legal Services Corporation, an additional infusion of federal funds, funneled through the Virginia Department of Social Services, was used to create legal aid programs in every area of the commonwealth. That money also was the impetus to establish Legal Services Corporation of Virginia (LSCV), which has become the central clearinghouse for money and, with the Virginia Poverty Law Center, for support services such as training to assist all the local programs.

Bright young lawyers were migrating to Virginia and joining the legal aid pioneers. Many took up the challenge of helping poor people case-by-case with their legal problems. But the lawyers also dreamed of solving those problems systemically, by changing law and forcing compliance with existing laws, to benefit many people, instead of just one at a time.

Harris came to legal aid in 1978, at age thirty-one. “I was one of the older ones,” he said. Virginia’s poor faced many challenges—for example, “A surprising percentage of Virginia homes didn’t even have indoor plumbing.”

He started as director of LSCV, and soon took a second job as well—as director of the Virginia Poverty Law Center, which was formed in 1978 to bring about systemic change.

Harris describes LSCV as traditional and conservative, and the Poverty Law Center as aggressive, committed to forcing change where necessary. “As strange as it seems, I was director of both the conservative and aggressive organizations at the same time,” he said.

While legal aid programs funded by LSCV met the immediate needs of the poor, the Poverty Law Center lawyers went to the housing projects, community action programs, area agencies on aging and other venues where the people were. They organized task forces around the state—on public benefits, food law, healthcare, housing and child support.

They also organized buses and clients to fill those buses, to attend rallies in Washington.

They went to state government, to the General Assembly and to court to make needs known and to insist that government meet those needs where law required.

“We were one fired-up group,” Harris said. “We were very excited about what we were doing. At that time we thought we had an ability—and we did—to move things forward.”

In 1980, Ronald Reagan became president. In his first year, the federal support of legal aid was cut by 25 percent. Virginia legal aid programs laid off attorneys and support staff and closed satellite offices.

Ensuing years saw further cuts, as well as increasing limitations on what types of causes legal aid could undertake with fed-

eral funds. Declared off-limits were many cases involving class-action suits, reproductive rights, undocumented aliens and political redistricting.

Then LSCV and the Poverty Law Center faced a new challenge that required as much commitment and persuasive power as their legal advocacy did. They had to convince the conservative legislators of Virginia that the state needed to step in and pay lawyers to help the poor.

“We began the process of seeking state funding for legal aid from the General Assembly,” Harris said. Legal Aid’s first legislative advocate was then-Delegate William P. Robinson Jr., who had just been elected to his deceased father’s seat in Norfolk. Robinson worked the issue hard, and the Byrd Democrat stalwarts who led the legislature supported it. Legal aid received strong support from William L. Lukhard, a longtime commissioner of social services. In its first attempt, Legal Aid’s advocates won an appropriation of five hundred thousand dollars, awarded without restrictions.

Meanwhile, individual legal aid programs turned to their communities for additional help—in some cases tapping sources developed two decades before by the programs in their infancy. The communities responded, and LSCV realized the programs had established trust—that they would use money wisely and that they offered valued services.

State legislators accepted legal aid’s arguments that investment in legal services would save state money that would otherwise be paid out in social services benefits.

“Lawyers around the state really helped us out,” Harris said. “The General Assembly had many many more lawyers than it has today, and there was a recognition that

pro bono services alone would never meet this need.

“The Virginia State Bar and its leadership, especially its executive directors N. Samuel Clifton and Thomas A. Edmonds, were key supporters of legal aid, then and now.”

A little more than a decade after he arrived, Harris left both his legal aid jobs, and eventually landed at the Virginia Trial Lawyers Association, where he is executive director. He continues to serve on the boards of LSCV and the Virginia Poverty Law Center.

He listed some accomplishments of the 1980s which continue to play a role today: Child support enforcement was improved. Nutrition benefits, such as food stamps, became more widely available because outreach and distribution are in compliance with law and regulation. Utilities regulators have a seat reserved for consumers. Health and disability benefits keep people

off welfare. A Landlord-Tenant Act requires at least minimal standards for rental housing. Consumer laws now provide improved protection from fraud.

There were failures, too. In the first years of the Poverty Law Center, “The primary issue, believe it or not, was removal of the tax on food.”

Now, legal aid “may not be storming the ramparts,” Harris said. “But it has accomplished something more important than that, in my view: It has withstood the test of time and is still there to serve those in need.”

Today the legal aid system enjoys broad support that includes religious institutions, established bar groups, community foundations and social services organizations, in addition to local government.

“Without community leaders who are informed of and a part of what you’re

doing, a small organization like a legal aid office can’t succeed,” Harris said.

Virginia made legal aid history in the 1980s. It was one of the first ten states in the country to appropriate funding for civil legal aid. It was also one of the first ten to adopt an interest on lawyer trust accounts program; the interest was paid over to the Virginia Law Foundation, with a primary purpose to support legal services to the poor.

Harris treasures the memory of “an outstanding migration of young lawyers” who came out of the 1960s and ’70s committed to testing their perception “that you could actually get into those programs and make a difference—not with words like ‘love’ and ‘freedom,’ but actually moving the government to do what we believed it had the constitutional responsibility to do.” ☪

The 1980s: Legal Aid Challenged the System, Brought Change



When Gregory E. Lucyk received an invitation to come to Virginia and advocate for the poor, he was a Philadelphia lawyer working at a legal aid program called C o m m u n i t y

Legal Services, in its Center City “impact office.” He had made a name for himself litigating class actions to make government nutrition programs more available to people who needed them.

Jack L. Harris, then director of the Legal Services Corporation of Virginia and the Virginia Poverty Law Center, hired Lucyk in January 1979. “I was hired to provide legal support and training for legal aid staff and, let’s say, ignite some excitement into the programs in the commonwealth,” Lucyk said. His objective was to “enhance the ability of local

programs to have a broader impact on a greater number of people.”

He started out with the Poverty Law Center’s Food Law Project. There he found that many of Virginia’s social services offices were lax in implementing the federal requirements for providing supplemental nutrition through food stamps, Women Infants and Children (WIC) and other programs. The programs weren’t doing outreach to identify eligible recipients, and they weren’t employing enough staff to meet demands for service in a timely fashion. Indigent people, some in emergency situations, were being turned away. Harris called it a “horrendous situation.”

Lucyk took the problem on, with the help of legal aid clients and testers who checked compliance in offices statewide. Eventually, he won a favorable settlement in a large class-action suit against the city of Richmond. The tide began to turn.

Along the way, he learned a different style.

In Philadelphia, “The way I learned to do business was to come out swinging,” he said. In Virginia, “What changed over time for me was that I became less confrontational. While I still used the tools of the law to accomplish the purposes we were attempting to achieve, I think that I acted with a greater level of courtesy and civility in how I dealt with program officials and governmental lawyers and others.

“I softened my approach.”

While Lucyk and his legal aid colleagues were waging the larger battles, the community experienced peripheral benefits. For example, legal aid community organizer Deborah D. Oswalt focused on bringing together the people and

See Lucyk continued on page 25

Legal Aid in the 2000s: Tens of Thousands Benefit, But Still a Need

by Dawn Chase

Now in its fifth decade, legal aid in Virginia has evolved in ways unforeseen by the lawyers who started it in the 1960s.

Once, it was made up of a handful of urban clinics. Now, the network funded by the Legal Services Corporation of Virginia (LSCV) comprises ten field programs that oversee thirty-five offices and penetrate every area of the commonwealth.

Money for the system comes from a broad base: Interest on Lawyer Trust Accounts (IOLTA) (\$1.7 million in 2004–2005); state appropriations (\$1.6 million in general revenue and \$3.4 million from court filing fees); the federal Legal Services Corporation (\$5.4 million; cities and counties (\$1.8 million); foundations (\$900,000) other federal programs (\$700,000); and other sources, including the United Way and donations from the private bar (\$550,000 in cash donations and \$2.5 million in donated volunteer time).

Virginia legal aid programs are governed by volunteer boards of community leaders, clients and others who offer insight into how best to help low-income people meet legal needs.

The programs employ about 125 attorneys and about 150 nonlawyer staff, a majority of whom are paralegals.

The programs have drawn in pro bono lawyers, who in 2004–2005 completed 3,356 cases involving 16,846 hours. At \$150 per hour, the commitment represented a donation of \$2.5 million.

During the same year, Legal Aid directly closed 31,500 cases benefiting 114,535 people, most in cases that included consumer, family, and housing law. They prevented unlawful evictions and foreclosures, advocated in child support and

custody cases, obtained protective orders and intervened in cases of fraud, wage garnishments and credit denial.

The legal aid staffs helped people obtain benefits—\$27.5 million worth in 2004–2005. That amount included \$12.5 million in Social Security and Supplemental Security Income benefits; \$9.9 million in child support; and \$2.6 million in affirmative judgments.

The staffs also helped teach another 127,544 people to represent their own interests. The programs distributed newsletters and other written materials, sponsored community workshops and directly assisted self-represented litigants.

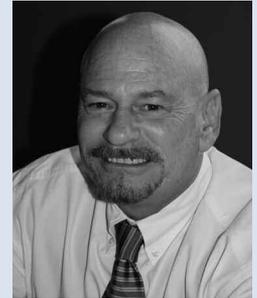
Based on funding sources alone, Mark Braley, executive director of LSCV, reported to the General Assembly this year, “What the state gets is basically a \$20 million Legal Aid system for about \$5.5 million.”

In his office in downtown Richmond, Braley sits at command central for this system, as LSCV allocates money, provides technical assistance and support to the programs, reviews program financial audits, conducts grantee performance evaluations, lobbies the General Assembly to maintain and increase funding and collects and analyzes statistics that document legal aid activities throughout the commonwealth.

Braley came to the program in 1992, after a stint as a prosecutor in Petersburg and a private practice. He, like many in legal aid, was influenced by the civil rights movement. “It brought a lot of focus on the general problems of poverty,” and law offered a way to address those problems, he said.

In the past fourteen years, Braley has seen many skirmishes and a few outright wars over funding and other issues.

Despite the ongoing challenges, the LSCV network of programs is healthy, Braley said.



Mark Braley

The funding is broad-based and able to provide some cushion

for changes. “While we encourage our grantees to create small reserves to weather through tough times, the viability of legal aid is always tenuous,” he said. “It only takes one significant cut in funding from a major source like the federal government, or like recent downturns in IOLTA funding, to put legal aid programs into retrenchment mode.”

The program boards of directors are for the most part strong. Relations with legislators and community groups have remained stable through changes in leadership. Local officials and community leaders recognize the good work that their local legal aid offices do and communicate that to state and federal legislators. Clients are being served.

Legal aid is not what its founders envisioned in the 1960s. Efforts toward systemic change are generally confined to legislative advocacy. In helping clients, legal aid programs heavily rely on telephone advice—often provided by paralegals and pro bono lawyers—instead of direct representation.

The founders of legal services dreamt that, eventually, full legal representation would be available to every low-income person.

“The reality is that resources have never come close to allowing that,” Braley said. “As a result, only about 30 percent of those we serve receive extended repre-

sentation, while 70 percent receive only brief advice and services. Until appropriate resources are provided, this will continue to be the case.”

More than 650,000 Virginia residents live below the poverty level, and another 150,000 have incomes less than 125 percent of the federal poverty guideline (legal aid’s cut-off). Roughly one in eight Virginians are eligible for free civil legal services from LSCV-funded programs.

National estimates conclude that 80 percent of legal needs are unmet. This has been confirmed in Virginia recently by a new legal needs survey conducted by LSCV and the Virginia Law Foundation. Legal aid turns away more than twenty thousand Virginians each year. The system does not yet offer the “justice for all” that legal aid’s founders worked for.

And the system has not been able to address problems with recruitment and retention of attorneys. Salaries—for lawyers faced with tens of thousands in school loans—start at about \$30,000, less than public defenders and other public sector attorneys. The growth potential is minimal, and pension benefits are limited or nonexistent. Programs every year must balance compensation for attorneys against the always daunting unmet legal needs of clients.

“It’s one thing to commit yourself to poverty law. It’s another to commit yourself and your family to poverty, and that’s what we

are basically asking a new attorney, just out of law school with \$80,000 in school loans, to do,” Braley said.

Jack L. Harris, who remains on the LCSV board after serving in Braley’s job in the 1980s, said Virginia legal aid must respond to the resources and political climate of the times.

The reality its leaders face is that, with inflation adjusted, the programs have never regained the funding levels achieved in the late 1970s by the Great Society infusion of federal legal services money, he said.

Legal aid has adapted by offering telephone advice, legal information hotlines and Web-based legal information as the best way to reach the maximum number of people. And the system has supplemented that advice with a pro bono initiative, which has recruited lawyers in private practice to take representations, even of complex cases.

Participants in the effort have included local bar associations, the Virginia State Bar and its Access to Legal Services Committee, The Virginia Bar Association and private law firms. “In an organized way, the bar has stepped up,” Harris said.

“We could wish that legal aid would be better supported and therefore able to provide more of the legal representation needed by low-income Virginians. But we should all feel very proud of legal aid in

Virginia and all that it, and all those who work in it, have accomplished. I know I am,” Harris said.

“Access involves more than being able to enter a courthouse,” Braley said. “It involves being able to state one’s case and being assured that one’s case is presented and deliberated on fairly. An individual without resources, appropriate education and an ability to articulate one’s legal position faces losing all of those things necessary to being a contributing member of society—a roof over one’s head, food on the table, education for one’s children.”

A legal aid lawyer can make the difference, so the individual can maintain a standard of living.

“Legal aid programs create a return on the investment made by the state in its services. Besides the incalculable benefit to the courts of having litigants represented, the dollar benefits achieved by legal aid programs for their clients represent a five-fold return on the commonwealth’s investment.”

Braley said he is gratified by the combination of financial assistance and pro bono services that ensure that Virginia’s poor have access to legal services. “But we can do more, and we need to do more as long as we are turning away more than twenty thousand applicants a year,” he said. “It’s my job to convince everyone of that.” ☞

Lucyk *continued from page 23*

resources instrumental in founding the Central Virginia Food Bank.

Lucyk is the grandson of Ukrainian immigrants. “I was very blessed and very fortunate because I had opportunities in my life,” he said. He chose to work in legal aid to try to make opportunities available to others.

After seven years, frustrated by funding cuts and limitations on the ability of programs to effect systemic change, he moved on. After serving eighteen years in the office of the Virginia Attorney General, he now is chief staff attorney for the Supreme Court of Virginia.

He salutes his former colleagues who carry on in legal aid, still trying to achieve civil justice for the indigent, case by case.

“Every lawyer and every state bar has an obligation to insure that legal services are available to those who are unable to hire a lawyer, and particularly those in our society who are unempowered or have no voice in the process,” he said. “Legal aid fulfills some of that responsibility, but more needs to be done.”

“Attorneys who work in legal services are heroes, and I am thankful for their commitment to this critically important public service.” ☞

Half My Life

by Larry T. Harley

The “Theory of Relativity”—that’s what I call it. I don’t mean Einstein’s version, although it shares some similarities. I mean the one about gaining perspective in life. It bumped up against my comfort zone just recently. My good friend John J. Gifford, a private attorney in Abingdon, had just turned fifty. John and I met when he interviewed for an attorney position with our legal aid program in 1981. At the time I was our thirty-year-old senior attorney, and John... well he was just a twenty-five year old law school graduate. I felt seasoned; he seemed so young. Now, that five-year age difference seems so small; so relative. In perspective, that is.

John’s birthday had me looking back. Could it really have been a quarter of a century ago that he interviewed for that staff attorney position? In twenty-five years John has grown from an eager young attorney looking for that first professional opportunity into a very highly regarded bankruptcy attorney. When John started with legal aid he used to frequently ask me for advice; he counted on me for years. Now it’s me calling him for advice and asking him to accept yet again another pro bono referral; I’ve counted on him for years.

Of course, it wasn’t just John coming of age in this quarter century; Virginia’s legal aid programs were finding their legs during this same period. Virginia’s first legal aid program was founded during the 1960s. In the 1970s, legal aid programs expanded into most of the commonwealth. It was not until the early 1980s, however, that a legal aid program served every county and city in Virginia.

Legal aid is now a well established part of the legal landscape, but this wasn’t always the case. It was forward-thinking community groups and bar associations that led the formation of Virginia’s legal aid pro-

grams. My own legal aid program now serves seventeen southwestern Virginia counties and four cities. We served only two rural counties when the Smyth County Bar Association established our program in 1972. That was, if you are old enough to recall, a turbulent time; we were a greatly divided nation. It might have been an inauspicious time to begin such a challenging venture had it not been for the dedication of our founders and the dedication of those first legal aid lawyers. Our first board president was John H. Tate Jr., who later served in the Virginia House of Delegates. Our first two attorneys were Joseph H. Tate and Eugene E. Lohman. Each is now a district court judge with an encyclopedic knowledge of the law. These attorneys were our pioneers. They blazed trails of legitimacy for our infant program by earning respect for their excellence in representation of low-income clients.

Of course, there have been many pioneers for Virginia’s legal aid programs. Many of these pioneer attorneys still work in Virginia legal aid offices. Our current numbers include several project directors who have guided outstanding programs longer than our newest attorneys have been alive. Among these seasoned (not old, mind you) are William L. Botts III of Rappahannock Legal Services in Fredericksburg, Henry W. McLaughlin III of Central Virginia Legal Aid in Richmond and Henry L. Woodward of Legal Aid Society in Roanoke. Legal aid attorneys who have argued or cocounseled cases before the U.S. Supreme Court include Jill A. Hanken and James W. “Jay” Speer of the Virginia Poverty Law Center in Richmond, Katheryn L. Pryor in Richmond, Henry Woodward, and Martin D. “Marty” Wegbreit of the Central Virginia Legal Aid Society in Richmond.

Many others make up our colorful legal aid history. There are those who are lead-

ers in state and local bar associations. There are those who are recognized as among Virginia’s best in their fields of concentration. There are those who have helped to craft many of our laws impacting low-income people. There are those who are leaders on the national legal aid scene. There are those who have helped to energize low-income communities.

Think of the best legal aid attorneys you have known. My colleagues around the commonwealth could have worked anywhere and earned far more. Why do some of Virginia’s best work at legal aid? I think it’s that relativity thing again; perspective.

Marty Wegbreit, currently a senior staff attorney at Central Virginia Legal Aid and the first recipient of the Virginia State Bar Legal Aid Attorney Award, espouses the “Add a Zero” Rule. To understand what a legal dispute feels like to a low-income person add a zero to every dollar amount. So, the client needs only \$300 to catch up on that rent? How does \$3,000 feel to you? She only needs \$430 to fix that car? How would \$4,300 feel to you? It’s all relative; It depends on your perspective.

Almost half my life. I’ve worked for legal aid almost exactly half my life and I am in awe of my legal aid colleagues—the ones with gray hair and the ones right out of law school. They “get” the relativity thing. They are changing the world... one client at a time. ☺



Larry T. Harley is executive director of Southwest Virginia Legal Aid Society, based in Marion.

Powell *continued from page 18*

collapse in the face of political opposition to her decision to defend a young black man accused of raping a white girl. From this experience, Cahn concluded that neighborhood law offices should be free to serve their clients without regard to the views of welfare bureaucrats or local politicians. Cahn was therefore eager to take advantage of the traditional independence of lawyers and willing to cooperate with the organized bar.

Other anti-poverty activists disagreed. In November 1964, organizers of a federal conference on experimental legal services programs in New Haven, Boston, and New York failed to invite anyone from the ABA or from the National Legal Aid and Defender Association. Indeed, they actually refused a request that ABA and Legal Aid representatives be allowed to attend. Fortunately, that intransigence was circumvented, and two observers were eventually permitted to attend the conference. There they heard searing criticism of the traditional legal aid societies, thinly veiled contempt for the mostly white, middle-aged volunteers who staffed them, and deep suspicion of the establishment bar. On the last day of the conference, they also heard that OEO had decided to launch a federally-funded national legal assistance program and that Shriver had appointed Jean Cahn to head a task force for that purpose.

The suspicion and hostility with which most anti-poverty activists treated the organized bar were returned in kind. On November 17, 1964, Sargent Shriver gave a speech proposing the creation of “supermarkets of social service” that would include, among a variety of other services, legal assistance for the poor. This formulation raised the fear that the vaunted independence of lawyers and their freedom to represent clients as they thought best would be subordinated to the demands of bureaucrats and politicians. Moreover, Shriver spoke of training lay persons to act as “legal advocates for the poor,” performing many functions traditionally thought to require lawyers. The organized bar now

saw the fledgling federal program not only as the long arm of big government but also as publicly funded competition for the struggling neighborhood lawyer. Letters poured into the ABA’s Chicago headquarters demanding that the organization mobilize its resources to kill the federal program.

Powell refused. In his inaugural speech as ABA president in August, 1964, Powell had announced expansion of legal services to the poor as one of three priorities for the coming year. Now he held off the demands for a declaration of war, ordered a detailed study of the federal proposal, and opened negotiations with its backers. In retrospect, it seems clear that both sides had much to gain from compromise. The “Feds” had money and good relations with the urban poor. The legal aid movement had existing organizations and good relations with local lawyers. Perhaps most important, the organized bar, unlike local community action agencies, supported representation even for the most unpopular clients. In essence, alliance with the establishment bar would help legal services lawyers assert their independence within the anti-poverty movement.

However clear these advantages seem in hindsight, at the time differences in politics, background, and outlook threatened to preclude agreement. The problem was not so much disagreement over policy as it was the gulf of estrangement and mutual suspicion that separated the two sides. As Jean Cahn later recalled, the “distance to be bridged could hardly have been cast more symbolically than to ask a white lawyer from the ranks of Southern aristocracy leading the then lily-white ABA and a black woman lawyer representing the ‘feds’ to hammer out a relationship of trust and cooperation.” But Powell and Cahn succeeded in doing just that. The ABA agreed to endorse and support the federal program, and the OEO agreed not to deny federal funding to existing legal aid societies and to accept shared control of some local organizations. The traditional independence and professional standards of lawyers were guaranteed, and their ener-

gies were now to be harnessed in the federal program.

For Powell, forging an alliance with the OEO proved easier than selling the deal to the ABA’s House of Delegates. Powell labored tirelessly in the small-group politics of which he was master to secure delegates’ support. He drafted a resolution to be presented to the House of Delegates, secured the advance endorsement of leading figures, arranged who would speak on behalf of the proposal, and sketched what they would say. On February 7, 1964, the ABA endorsement that many OEO officials thought impossible to obtain was passed without a single dissenting vote.

In the ensuing months, additional difficulties arose, especially over the degree of local political control over federally-funded legal aid societies. Behind the scenes, Powell negotiated successful concessions from OEO; in public he sponsored a “symbolic handshake” between the traditional legal aid movement and the new government program. At the ABA’s annual meeting that August, Powell chaired a special session at which Sargent Shriver addressed the assembled delegates, apologized for certain missteps, and announced that he had created a National Advisory Committee on which Powell and other ABA leaders had agreed to serve.

Powell’s role in forging the public-private partnership that became the Legal Services Program was crucial to its success and was seen as such by the other participants. Seven years later, Powell found himself before the Senate Committee on the Judiciary as President Nixon’s nominee to the Supreme Court. As a politically conservative white Southerner who had been head of the Richmond School Board during the painful early days of desegregation, Powell was naturally subject to questioning about civil rights. Eloquent support for his confirmation came from an extraordinary eighteen-page letter from Jean Cahn. In her letter, Cahn told the story of the tortured birth of the Legal Services Program and of Powell’s role in

See Powell continued on page 28

Reflections on the History of Legal Aid in Virginia

Powell continued from page 27

steering it through the ABA, how he committed his personal prestige to the project and persuaded those who opposed federal funding. She also told how Powell had worked closely with the all-black National Bar Association and how he had arranged her opportunity to become the first African-American lawyer, male or female, to address a plenary session of the ABA. Powell, she predicted, would “go down in history as one of the great statesmen of our profession.”

* * * * *

In a sense, Lewis Powell’s contribution to legal services was the more exemplary because he was not a “public interest lawyer.” He was not one of those extraordinary individuals who devote their lives

and talents to serving the less fortunate. On the contrary, Powell practiced law in a large law firm, represented corporate clients, made money, and lived well. He was in fact, as well as reputation, the quintessential establishment lawyer. Yet Powell believed that the obligation of public service fell on all lawyers, not just on the committed few. Powell believed that every lawyer owed something to the community. Lawyers not only were economically and socially privileged; they were also offi-

cers of the court and custodians of the rule of law. Powell believed that lawyers were leaders by aptitude and training and that with the opportunity of leadership came responsibility to match. Powell demonstrated these beliefs in his own life, and he structured his firm to allow and reward public service by others. ❧



John C. Jeffries Jr. is Emerson Spies Professor of Law, Arnold H. Leon Professor of Law, and Dean of the University of Virginia School of Law. The material for this essay comes from John C. Jeffries Jr., *Justice Lewis F. Powell Jr.* (Charles Scribner’s Sons, 1994), and the sources cited therein, especially Earl Johnson Jr., *Justice and Reform: The Formative Years of the American Legal Services Program* (Transaction Books, 1978). It first published in *Virginia Lawyer*, December 1998.

Service continued from page 21

The primary entity at the Virginia State Bar with an overriding interest in this delivery system is the Special Committee on Access to Legal Services. Its sister entity, the VSB Indigent Defense Task Force, is charged with making policy recommendations related to indigent criminal defense reform. The Access Committee was formed during the 1992-93 fiscal year as a merger of the pro bono and legal aid committees. Since that time, the committee’s mission has evolved under actions taken directly by the VSB Council and the Supreme Court of Virginia.

These developments include the council’s approval of new Rules of Professional Conduct, particularly Public Service Rules 6.1, 6.2, etc.; a Resolution to Enhance Pro Bono Publico in Virginia; a resolution adopting the American Bar Association’s “Ten Principles for a Public Defense Delivery System”; and the Emeritus Rule of Court, which acknowledges, in promoting service options for retiring attorneys, the

broad-based network of providers that receives Virginia Law Foundation and government grant funds.

The Access Committee’s goal is to improve access to the legal system for all Virginians and for the nonprofit charitable and civic groups that serve the public good. The committee promotes pro bono *publico* services by Virginia lawyers and encourages the integrated development of like contributions from law school faculty and students and members of related professions. It also supports efforts to reform the criminal justice system that fall under the recommendations of the bar’s Indigent Defense Task Force.

In preparation to meet future challenges, the committee is currently considering

amendments to certain rules and regulations. For more information about these developments or related public service opportunities (paid and unpaid) contact me, or see the program Web site at http://www.vsb.org/site/pro_bono/.

*According to the *Atlantic Monthly*, 42 percent of today’s Army enlistees are ethnic or racial minorities. While nearly 50 percent of 18- to 24-year-olds in the general population have some exposure to college education, in the U.S. military today, only 6.5 percent of U.S. military members of this age have had such exposure.



Maureen K. Petrini is director of the Virginia State Bar Pro Bono/Access to Legal Services Office.

Pro Bono for Young Lawyers in Virginia

by Michael Signer and Samantha Ahuja

Goals and Background of the Commission

The young family about to be evicted. The domestic violence victim with nowhere to go. The immigrant about to be deported. Through pro bono representation, thousands of Virginians who cannot afford the fees many lawyers charge still require legal representation each year. As many Virginia lawyers know, pro bono representation can be one of the most rewarding ways to practice law; it is also one of the best ways to improve legal skills, increase the professional reputation of lawyers and law firms and forge connections with judges and other members of the bar.

The Pro Bono Commission of the Young Lawyers Conference (YLC) of the Virginia State Bar was created to provide overarching guidance to the pro bono efforts of the YLC. The commission's mission is to "assess current pro bono programs and to develop programs designed to improve the quantity and quality of pro bono activities of young lawyers."

The Pro Bono Commission began its activities in earnest in August of 2006 when it named a steering committee, which comprises Michael Signer of Wilmer Cutler Pickering Hale & Dorr LLP in Washington, D.C., chair; Samantha Ahuja of Womble Carlyle Sandridge & Rice PLLC in Washington D.C., vice-chair; Robert M. Byrne of Martin & Raynor PC in Charlottesville; Meghan M. Cloud of McGuireWoods LLP in Charlottesville; J.P. Cooney of Jones Day in Washington, D.C.; Tyler Kidd of Williams Mullen in Richmond; Bryan M. Rhode of the Richmond commonwealth's attorney's office; Samuel T. Towell of Williams Mullen in Richmond; and Nathan J.D. Veldhuis of Tremblay & Smith LLP in Charlottesville.

The steering committee plans to increase awareness among the Virginia legal com-

munity of the importance of pro bono representation, to improve understanding of the state of pro bono representation at Virginia law firms and to advocate for greater emphasis on pro bono representation in Virginia law firms.

The commission has now surveyed Virginia law firms that responded to a National Association of Legal Professionals request for information on pro bono. The results of this survey are described below.

Pro Bono: A Work in Progress

In the past thirty years, the American Bar Association has advanced the commitment of the legal community to effective pro bono service. These steps include ABA Model Rule 6.1, which provides that every lawyer should aspire to provide fifty hours of pro bono legal services per year, and the ABA's formal pro bono challenge, which encourages law firms to commit to a goal of either 3 percent or 5 percent of their total yearly billables dedicated to pro bono services. Many, if not all, state bar associations have followed the ABA's example, and encouraged their members to provide legal services to persons of limited means, as well as to the organizations that serve those in need.

Everybody Wins

There is some tension between pro bono work and law firms' bottom lines. Some firms are reluctant to invest time and resources in pro bono cases or to allow associates billable credit for their pro bono cases, assuming a zero-sum relationship between a pro bono and a billable hour. On the other hand, many other firms recognize there is more than meets the eye to pro bono work.

Altruistic arguments for pro bono representation are self-evident. There are also pragmatic arguments for a commitment to pro bono by Virginia law firms: Pro bono provides training for young lawyers in

legal skills that will benefit the firm and its clients. Through pro bono, young lawyers frequently gain their first trial experience, draft original legal documents and interact with clients, thus acquiring the practical skills of client interaction. Pro bono helps young lawyers build relationships and a reputation within the bar, allows lawyers the opportunity to interact with judges and other lawyers and confers lawyers' good reputations in the bar. Finally, pro bono is economically beneficial for firms. Pro bono cases frequently lead to "impact litigation," as pro bono cases often touch on novel issues or service clients whose stories are compelling to a wide audience. Law firms can increase their profiles by working on pro bono cases that raise singular or galvanizing issues.

The Virginia State Bar and YLC Pro Bono Programs

The Virginia State Bar has a special Access to Legal Services Committee that focuses on promoting and facilitating support for free and reduced-fee legal services for individuals and nonprofit charitable and civic groups in Virginia. The committee also works with the Supreme Court of Virginia and bar organizations to address ethical, financial and other issues related to pro bono services. The Virginia State Bar Web site (www.vsb.org) provides a comprehensive listing of the services offered, resources for attorneys and individuals seeking help, as well as other information needed to promote pro bono services.

Other YLC programs include the Voter Education Program, the Emergency Legal Services Response Plan, the Wills for Heroes Program, and the Oliver Hill/Samuel Tucker Pre-Law Institute. The YLC trains Virginia attorneys to represent and protect the rights of domestic violence victims. As part of this effort, the YLC has distributed more than two hundred thousand safety and legal brochures.

Taking Stock

The Pro Bono Commission's first project this year was to survey Virginia firms that had responded to the annual survey of the National Association of Legal Professionals. The survey included queries on pro bono activities. We wanted to contact firms to supply greater detail on pro bono by Virginia law firms than is available in the NALP report, including the average hours of pro bono representation per associate and whether pro bono hours count toward yearly billable requirements and toward bonuses.

Difficulty Gathering Data

It was difficult to gather data from Virginia firms. Of the twenty-six firms we contacted, we received completed surveys from ten. Even after leaving voice messages and emails with each firm, the response rate was less than 50 percent. The difficulty we had gathering data is related to systemic problems. Pro bono may not have a sufficiently prominent place in the culture of many firms, and some firms may be self-conscious about disclosing the data. As the chart shows, we had the most difficult time gathering data from firms with fifty to seventy-five lawyers—of eight firms, six did not provide data.

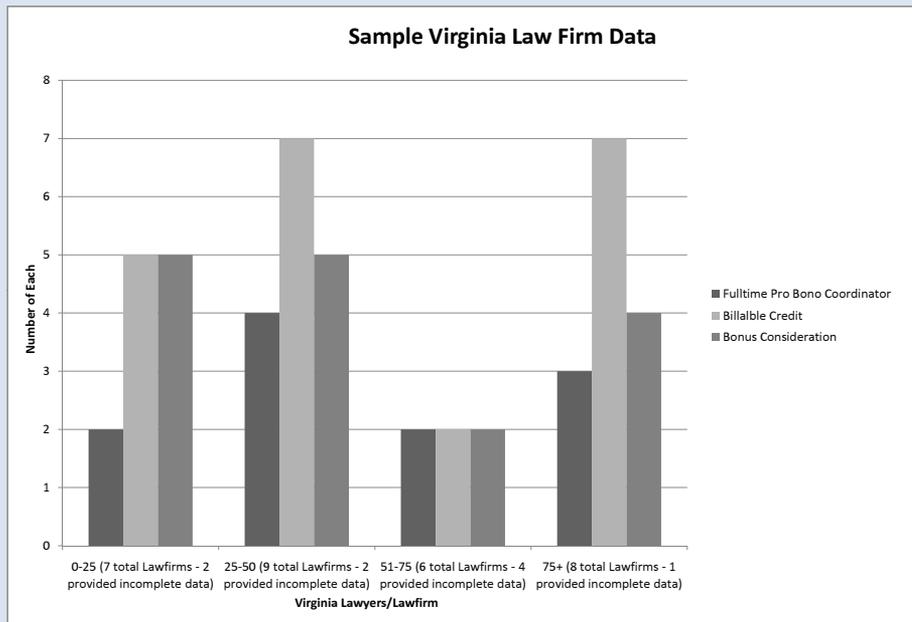
Definitions Vary

The definition of pro bono varies widely at Virginia law firms. Some firms credit only direct client services and legal representation to indigent clients. Others will count a broader range of activities, such as research, representation to organizations or service groups, or assistance to advocacy groups.

A Wide Range

We found a wide range in minimum suggested pro bono hours, from twenty to two hundred, with the majority of firms recommending approximately fifty hours—the ABA suggested minimum.

Most Virginia firms that responded to the NALP survey allow associates to claim a certain amount of billable hours toward their yearly requirements. Of twenty-six firms that answered the NALP survey, only



five do not count pro bono toward billable requirements. The size of a law firm did not necessarily determine its commitment to pro bono. As the chart shows, five of seven small firms gave billable credit, whereas seven of nine of the firms with more than seventy-five lawyers gave billable credit.

Seven firms do not allow pro bono work to count toward a bonus. Of the seven firms, two are major Virginia law firms with over one hundred lawyers. Also, the largest firms—those with more than sev-

enty-five lawyers—were less likely to give bonus credit than those with fewer than fifty lawyers. Many Virginia firms credit the fifty hours per year required by ABA Model Rule 6.1. Three firms—Buchanan Ingersoll, DLA Piper, and Hogan and Hartson—credit one hundred hours. Five firms—Greenberg Traurig, Holland & Knight, Latham & Watkins, Sands Anderson Marks & Miller, and WilmerHale—grant bonus consideration to 100 percent of pro bono hours. (Notably, all but two of the firms in these two groups are large international firms.)



YLC Pro Bono Commission Chair Michael Signer of Wilmer Cutler Pickering Hale & Dorr LLP in Washington, D.C.; michael signer@gmail.com



YLC Pro Bono Commission Vice-Chair Samantha Ahuja of Womble Carlyle Sandridge & Rice PLLC in Washington D.C.; sahuja@wcsr.com

**Average Pro Bono Hours
per Associate**

There was a wide range in the average pro bono hours per associate, a finding unexplained by the size of a law firm. The average hours for law firms surveyed ranged from a low of twenty-nine hours (at one of Virginia's largest firms) to ninety-five (again, at one of Virginia's largest firms.)

Total Pro Bono Percent of Billable Hours

The ABA offers firms two levels of pro bono commitment—3 percent and 5 per-

cent. From our survey and the NALP results, it appears that many Virginia firms are not providing data, are not participating in or are below even the 3 percent target. One of the largest Virginia firms declined to provide us with a figure. Two other major law firms were at 2.3 percent and 1 percent.

Next Steps

As the Pro Bono Commission proceeds with this research project, we plan to contact more firms in an effort to learn what

factors shape a firms' approach to pro bono. We encourage lawyers or law firms with advice, feedback or questions to contact either Michael Signer at michael-signer@gmail.com, Samantha Ahuja at sahuja@wcsr.com, or any of the members of the steering committee. ☺

*The Special Committee on Access to Legal Services of the Virginia State Bar
invites you to mark your calendar for the*



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University of Richmond T.C. Williams School of Law**

Including

A Thursday Afternoon (May 17th) *Forum on Pro Bono Best Practices*

And a Thursday Evening Pro Bono Award Ceremony and Reception
moderated by VSB President Karen Gould
at the same location from 7:30 to 9:30 P.M.

and featuring

**Friday, May 18th Daytime CLE Training on
*Effectively Expanding Access to the Court: Resources and Remedies***

with

Friday Lunchtime Networking Discussions on Select Public Interest Law Opportunities

Look for updates online at www.vsb.org.