

Heroes of Our Profession: Virginia's Legal Aid Lawyers

They need and deserve the priority support of every Virginia lawyer

by **E. Tazewell Ellett**

Many Virginia lawyers of all types engage in work that serves the public good, and they all are worthy of our sincere thanks and commendation. In this President's Page I want to focus on one group of such lawyers whom I view as true heroes of our profession — Virginia's Legal Aid lawyers.

The Need for Legal Aid

Legal Aid organizations and Legal Aid lawyers serve a critically important need in our state. While the use of legal services is generally discretionary, that is not always the case. In our legal system there are numerous occasions when low-income individuals are forced to seek legal help even though they really would prefer not to have to. They do this because they are threatened—threatened with deprivation of their rights or their property, or even their family stability or personal safety. In short, they are on the defensive. The availability of legal services to low-income individuals in these “non-discretionary” circumstances is critical, because access to these services is often essential to their ability to meet basic human needs. In my view, one of the most important issues facing our profession in this generation is meeting the serious need for “non-discretionary” legal services by low-income Virginians.

In Virginia, as in many states, the state government (in addition to the federal government) has enacted laws which provide rights



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to low-income citizens aimed at ensuring that their most basic human needs are met. These needs include food, shelter, health care, income, family stability, freedom from domestic violence, and education for one's children. Unfortunately, in our legal system these rights are not self-executing, and there are plenty of individuals and organizations with opposing interests who are more than willing to ignore or deny these rights if permitted to do so. This results in disputes over such things as child custody and support; domestic violence; wrongful eviction or foreclosure; denial of access to public housing; wage garnishment; special education rights; and denial of unemployment, disability, medical, Social Security, and Supplemental Security benefits. In these circumstances, unless the low-income individual has access to legal services to protect his or her rights, there is a strong likelihood that those rights will be denied, especially if the opposing party is powerful or wealthy.

As Supreme Court of Virginia Chief Justice Hassell has so aptly put it:

Our form of government is truly remarkable and unique. Our federal and state constitutions confer rights upon citizens and those rights create and preserve our freedoms and liberties. These constitutions are also intended to protect us from the encroachments of the very governments that were designed to provide numerous benefits to all citizens.

A strong, vibrant, and independent judiciary is essential for the protection of our constitutional rights and property rights. However, those rights that we cherish are meaningless, they are of no importance, if people lack access to the courts or if people lack the assistance of lawyers who are willing to ensure that those rights are not abridged. Without the help of lawyers, most people, rich and poor, are unable to navigate through the often times perplexing procedural and

evidentiary rules that courts must apply.

This is also true of legal proceedings that do not involve the courts, such as administrative proceedings involving federal or state agencies. Access to lawyers is often critical in these proceedings as well.

Individuals of means are able to hire and pay lawyers to provide the necessary guidance in such situations. Low-income individuals typically are not. Thus, in order to maintain a just legal system, states need to ensure that low-income individuals have access to adequate legal services to assist them in protecting their rights and property in circumstances where these non-discretionary legal needs arise. Otherwise, these rights will likely be abridged, and justice will not be achieved. A system which, on the one hand, provides rights to low-income individuals to ensure that their most basic human needs are met, and, on the other hand, fails to provide them the tools to protect those rights, is, at best, ineffective. At worst, it is callous, unjust, and hypocritical.

As noted by Chief Justice Hassell:

[P]oor people who cannot afford the services of attorneys may be unaware of their legal rights and may be denied justice. This consequence, my friends, is wrong. This consequence, my friends, is unacceptable.

Equally importantly, our fundamental principle of "Equal Justice Under Law" is defeated in such a system. Again quoting Chief Justice Hassell:

The availability of justice must not be predicated upon the wealth or financial status of the litigants. As lawyers and judges, we must take the necessary actions to ensure that . . . justice is dispensed impartially without regard to economic considerations.

Facts About Legal Aid

In Virginia, Legal Aid organizations and Legal Aid lawyers are the front lines of the Commonwealth's efforts to respond to the need for non-discretionary civil legal services for low-income individuals to help them with problems affecting their most basic human needs. Legal Aid in Virginia is set up as a statewide network of community-based organizations that provide civil legal assistance for this category of Virginians. The Legal Services Corporation of Virginia (LSCV) provides funding, oversight, and coordination for this network. In FY 2002-03, LSCV grants supported 10 regional Legal Aid programs and a statewide support center that collectively serve every community in Virginia. LSCV funding comes from the Virginia General Assembly (general revenue and special filing fee appropriations) and from the Virginia Interest on Lawyers Trust Accounts (IOLTA) program that LSCV administers. LSCV also accepts private donations. Virginia Legal Aid programs also receive funding from the Legal Services Corporation (which operates at the national level), city and county grants, and federal government sources other than the Legal Services Corporation.

For low-income Virginians, Virginia Legal Aid organizations:

- (1) provide direct legal representation;
- (2) provide community legal education and assistance with self-representation and other essential legal services; and
- (3) coordinate with private lawyers who volunteer their time to handle cases on a pro bono publico basis.

In FY 2002-03, 79,111 low-income Virginians received direct Legal Aid lawyer representation, 54,838 received community legal education and assistance with self-representation and other legal services from Legal Aid, and 4,359 individuals and their families

received private lawyer pro bono publico representation through pro bono programs operated by Legal Aid organizations in partnership with local bar associations. These private Virginia lawyers donated over 20,400 hours worth at least \$3.1 million.

The basic Legal Aid process works this way. Legal Aid advocates perform screening and intake services and provide free advice and brief legal assistance. In some parts of the state this is performed on a centralized, regional basis with the assistance of sophisticated telephone systems and database technology. Clients that need more in-depth assistance are referred to Legal Aid attorneys and paralegals working out of Legal Aid organization offices located throughout the state, or to private attorneys who serve these clients on a pro bono publico basis out of their own law offices.

Most of the Legal Aid cases relate to problems in the following areas of the law: family (domestic violence, child support, divorce, child custody, parental rights, guardianships), consumer (illegal taking of property, wage garnishment, denial of credit, fraudulent consumer practices), housing (unlawful eviction, denial of access to public or government-subsidized housing, illegal mortgage foreclosure), and income maintenance (eligibility for, or termination of, disability, Social Security, Supplemental Security, unemployment compensation, or public benefits), as well as other miscellaneous areas (education, employment, juvenile, health, and individual rights). The priority is to help families who, without Legal Aid assistance, would lose a critical human need, such as food, shelter, income, family stability, medical care, or personal safety. In most cases, Virginia Legal Aid programs resolve legal problems without litigation.

As of the end of FY 2002-03, the staffs of the Legal Aid

organizations in Virginia funded by LSCV included 134 attorneys, 55 paralegals, and 103 other management, professional, and support staff.

Legal Aid Lawyers

Why do I view Virginia's Legal Aid lawyers as heroes of our profession? While the responsibility of providing "non-discretionary" legal services to low-income Virginians is a responsibility of the Commonwealth, Virginia's Legal Aid lawyers are the ones who have stepped up to the plate and truly committed themselves to addressing this need. They are bearing on their shoulders a disproportionate amount of this responsibility, which really belongs to all Virginia lawyers and Virginia citizens.

Now I know that there are many lawyers in private practice in Virginia who are volunteering to assist Legal Aid through taking on pro bono publico representation of low-income Virginians in need (as well as lawyers who are accepting court appointments to represent indigent criminal defendants). I sincerely thank them and appreciate their efforts, and want to encourage other private practitioners to do the same. But I am reserving my highest accolades for the full-time Legal Aid lawyers.

It is one thing to provide legal services to assist the poor and needy on occasion, while spending the bulk of one's professional time on paid legal work which permits a relatively healthy income. It is quite another to dedicate one's entire professional efforts to serving this segment of Virginians, while earning the limited salaries which Legal Aid lawyers are paid. In my view, this requires a level of professionalism, dedication, and idealism which is rare and truly noble.

Legal Aid lawyers in Virginia are the classic example of professionals who are overworked,

underpaid, and, at least by some people, underappreciated. They carry heavy case loads and do so without the staff support and equipment and other amenities that many private practitioners take for granted. They are paid far less than they should be, given the contribution they are making. They are dedicated, professional, and hard-working, and amazingly, if they complain at all, it is not about their own situation, but rather about their concern that funding and staffing constraints might lead to justice not being achieved for their needy and vulnerable clients.

Virginia's Legal Aid lawyers are indeed heroes of our profession, but they are not supermen and superwomen. They need the help of our state and of every one of us. They too long have borne a burden that should be more equally shared by all of us. The rest of us need to start doing our fair share.

How You Can Help

What can other Virginia lawyers do to help these Legal Aid lawyers provide non-discretionary legal services to our neediest citizens? Plenty!

Let me suggest five ways in which you can do your part. Every lawyer in Virginia can, and should, take action in *at least* one of the following categories, and many of us are in a position to do even more.

1. Financial Contributions.

Make a tax-deductible financial contribution to the Legal Services Corporation of Virginia and other organizations supporting Legal Aid. In my view, when Virginia lawyers are considering making their annual financial contributions to worthy charities, organizations that provide legal services to the poor, such as LSCV, should be given one of the highest priorities. Please remember two things. First, Rule 6.1(a) of the *Virginia Rules of Professional Conduct* sets an aspirational goal for Virginia

lawyers to contribute at least two percent of their professional time to pro bono publico legal services, and states that direct financial support is an alternative to donating time. Thus, unlike the mission of many worthy charities, the mission of LSCV and other organizations focused on providing legal services to the poor is directly related to a professional obligation of all Virginia lawyers. Second, non-lawyers are much less likely than lawyers to contribute to organizations focused on providing legal services, so lawyers really need to take the lead with generous annual financial contributions to these organizations. The Virginia Bar Association this past Spring joined with the other statewide bar organizations in Virginia to send a joint letter to all Virginia lawyers encouraging them to make such a generous contribution to LSCV. I hope all Virginia lawyers will do so before the end of this calendar year, and each calendar year thereafter. If you need any information on making a contribution, please simply contact LSCV or The Virginia Bar Association.

2. Education and Awareness.

Help to educate Virginia citizens and Virginia lawmakers about the critical importance of Virginia Legal Aid and Legal Aid lawyers, and the services they provide to help low-income Virginians meet their basic human needs.

Facts that you should pass on include the following:

- More than 800,000 residents of Virginia are living in poverty. 246,000 of them are children, and 78,000 are senior citizens.
- According to the most recent data from the U.S. Census Bureau, *9.9 percent of Virginia's population lives in poverty.*

- According to the American Bar Association, 48 percent of low-income and moderate-income households experience a legal problem each year. That translates

to 400,000 legal problems annually for this segment of Virginia's population.

3. Support Adequate Funding for LSCV in the General Assembly.

Call or write your representatives in the General Assembly to tell them that you support greater funding for LSCV. Legal Aid in Virginia is in a financial crisis because over the last several years, federal funding is down and revenue from IOLTA (which provides 40 percent of the LSCV funds for grants to Virginia Legal Aid organizations) is down dramatically on account of lower interest rates. This has resulted in significant budget cuts and staffing reductions for Virginia Legal Aid organizations. For example, Central Virginia Legal Aid Society has lost one-third of its support staff and one-quarter of its attorneys over the last three years. As a consequence, waiting lists of low-income Virginians whom Virginia Legal Aid organizations are unable to serve are growing, and critical needs for legal services are going unmet. Even before these recent funding reductions, the funding sources available to Virginia Legal Aid organizations were woefully inadequate to meet the critical needs. The American Bar Association estimates that, nationwide, Legal Aid organizations currently are able to meet only 20 percent of the legal needs of low-income people.

It is critically important for the Commonwealth to put substantially more state funding into LSCV on a continuous and stable basis, and Virginia lawyers can help by carrying that message to their General Assembly representatives.

4. Screening and Pro Bono Hotline Assistance.

Volunteer to assist your local Legal Aid organization by performing screening and intake

services and providing advice and brief legal assistance to those seeking Legal Aid assistance. This does not have to be time-consuming, and it can be very rewarding. In several areas of the state there are Pro Bono Hotlines through which you can provide these services. These Pro Bono Hotlines were created by The Virginia Bar Association in partnership with various Legal Aid organizations. They operate in Central Virginia, Northern Virginia, Roanoke, and Tidewater. The Virginia Bar Association Young Lawyers Division actively recruits lawyer volunteers to staff the hotlines at Legal Aid organization offices in these areas of the state. These volunteer lawyers, who receive training for this task and do not have to be young lawyers or members of the VBA, provide telephone advice on a rotating basis to callers meeting Legal Aid eligibility requirements, and thereby ease the caseload of Legal Aid attorneys. Contact your local Legal Aid organization or the VBA, or log onto the VBA's website, to learn how to volunteer. The VBA's website has links to the websites of Legal Aid and other public service organizations with lawyer pro bono publico legal service opportunities. *(Editor's note: See the Community Service Program page, easily accessed by a link on the VBA home page at www.vba.org.)*

5. Pro Bono Publico Representation of a Legal Aid Client.

Volunteer to assist by representing a Legal Aid client on a pro bono publico basis. This would provide the opportunity to work with the local Legal Aid organization and Legal Aid lawyers and to assist each other in ensuring that the client's needs are met. As noted above, the pro bono involvement of private lawyers is a crucial element of the Legal Aid delivery system, and private Virginia lawyers volunteered 20,402 hours of such pro bono service in FY 2002-

03.

One such pro bono publico volunteer opportunity which could be considered is Chief Justice Hassell's new "Virginia's Lawyers Helping Families" program, which is implementing pilot programs in Harrisonburg and the greater Richmond area aimed at encouraging lawyers to volunteer to help poor families who are involved in child custody and visitation disputes.

As Virginia lawyers, we all have a solemn professional obligation to do what we can to ensure that justice is delivered fairly, equally, and completely in the Commonwealth. I urge each of you to take action in one, and hopefully more, of these five categories. Working together, we can take some of the load off of our distinguished, but overburdened, Legal Aid brethren. By volunteering our time, talents, and resources in this way, we can further one of the most honorable traditions of our profession, while helping to provide Virginia's most vulnerable individuals and families with tools they desperately need to preserve their rights and meet their most basic human needs. A worthy cause indeed! **VBA**

See these Legal Aid websites for more details:

www.VaLegalAid.org (general)

www.brfs.org (Blue Ridge)

www.cvlas.org (Central Virginia)

www.justice4all.org (Legal Aid Justice Center)

www.lsnv.org (Northern Virginia)

www.potomaclegalaid.info
(Potomac Legal Aid)

www.erols.com/rlsfred and

www.erols.com/tapp
(Rappahannock Legal Services)

www.svlas.org (Southwest Virginia)

www.vlas.org (Va. Legal Aid Socy.)

www.vplc.org (Va. Poverty Law Ctr.)

Eastern Virginia Legal Aid Society may be contacted at: (757) 627-5423.