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The Chair's Corner

Matthew Probus, Chair

Dear Members: this year has been an exciting one! I have many new things to report.

We began the year by making plans to ensure poverty law attorneys could add educational input to the legislative process. The session has, as usual, proven crazy and hectic, but I think also productive for our members' clients' interests.

The Council decided to revamp its website. We hired a website designer and got busy. We have the finished product (finally) and will be unveiling it shortly before our Section's Annual Meeting in Austin at the Poverty Law Conference.

The Council also created a "Section

Happy Hour." Although we started with the idea of small happy hours across the State, we ultimately decided to consolidated one happy hour at the State Bar Annual Meeting. If you plan on being in San Antonio for the Annual Meeting, come by!

All in all, a great year for our Section. And of course, we cannot thank Brian McGiverin enough for his wonderful newsletter or Shelby Jean for her work coordinating First Fridays.

As I step down and hand the torch to my successor, Maria Luisa Mercado, I can only say that I am humbled that you trusted me to hold the reins of our Section for the short time I held them. I was honored.

2015 PLS Awards

The Poverty Law Section of the State Bar of Texas proudly announces the winners of its 2015 PLS Awards. Please join us in congratulating this year's honorees, whose awards will be presented at the Section's annual meeting on Wednesday, April 29, 2015, 5:30 pm, at the Omni Austin Hotel at Southpark.

NOBLE AWARD

Fred Fuchs Texas RioGrande Legal Aid

This award honors a Texas attorney for a lifetime of public service in promoting poverty law as a noble profession and significant lifetime professional accomplishments in expanding the provision of high-quality legal services to people of modest means or protecting clients' legal rights.

IMPACT AWARDS

Gene Rollins Legal Aid of NorthWest Texas
Verónica Carbajal Texas RioGrande Legal Aid

This award honors a Texas attorney or poverty law professional for a recent, significant poverty law case, including an appellate decision, court order, or agency decision; policy change; or other legal relief that had a broad impact on people of modest means in Texas or made a significant impact on the lives of indigent individuals in Texas by protecting, promoting, expanding, or vindicating their legal rights.

Tales from the Front

“You Don’t Know Where You’re Going Until You Know Where You’ve Been”

Rebecca G. Flanigan, Texas RioGrande Legal Aid, 2014 PLS “Noble Award” Recipient

A national network of legal services programs was formally created in 1974 when President Nixon signed the Legal Services Corporation (LSC) Act into law. The legislation was the culmination of an ever-growing recognition of the need to ensure “equal access to the system of justice” to those otherwise unable to afford it. What had been a predominantly urban model of delivering legal services evolved into a national undertaking that covered all counties in all 50 states.

In 1981, the Legal Services Corporation achieved its “minimum access” goal – funding sufficient to support two lawyers per 10,000 poor people across the country.

In part because of the tremendous advocacy that ensued, legal services programs (LSPs) had to withstand multiple attempts at defunding,¹ as well as various restrictions meant to rein in much of the activity that produced judicial and administrative success at the federal level.²

LSC began its shift from a national delivery model to a state-driven approach in the late 1990s. States were asked to develop a comprehensive, integrated statewide delivery system. LSC encouraged that transition by initiative a (*Continued on page 4*)

Editor’s Note:

“The Next 20 Years”

The articles in this volume of the Reporter were picked very deliberately: to spark reflection about where we have been and where we are going as a community of attorneys.

I hope these topics will be interesting, spark discussion, and offer food for thought.

– *Brian McGiverin*

¹ There have been three major LSC funding reductions in the last 30 years: 1982 (-25%), 1996 (-30.5%) and 2012 (-13.9%).

² The restrictions in 1996, for example, prohibited LSPs from using *any* funds to undertake activities that involved redistricting, welfare reform, most administrative and legislative advocacy, drug-related public housing eviction cases, class actions, seeking\claiming\collecting statutory attorney fees, and representing incarcerated persons or specified “aliens.” It was also in 1996 when LSC’s rules on priorities, timekeeping, and client identity\ statements of fact went into effect. It wasn’t until 2001 that “Matters” had to be reported. The attorney fees restriction was subsequently lifted in 2010.

Poverty Law Section Officers and Council 2014-15

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Schlumberger

*We want to share the glory?
Be a contributing writer!*

Contact Brian McGiverin at
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About the Poverty Law Section

The Poverty Law Section is the 43rd section authorized by the State Bar of Texas. Our section includes attorneys who practice or have an interest in poverty law, whether housing, family, benefits, healthcare access, consumer or the various other areas of law that affect the disadvantaged and low-income members of our communities.

Our attorneys include a diverse group ranging from private attorneys to legal services attorneys to the academic community.

Tales from the Front

(You Don't Know, continued)

competitive bidding process for LSC grants and encouraging a series of mergers that resulted in statewide and regional providers.

In 1987, there were eleven legal aid programs in Texas, three of which were helmed by women executive directors.

The perfect storm of restrictions, reductions in federal funding, and statewide planning initiatives resulted in tremendous changes in Texas. Traditional LSPs, local and state bar associations, the judiciary, community groups, law schools, the private bar, other advocacy groups, and private foundations today collaborate in the mission for equal access to justice. Led by extraordinary support from the Texas Supreme Court, new funding sources are available for LSPs. Today's delivery components include legal clinics, task forces, rural outreach, night court, self-help kiosks, and websites.

The drive to maximize limited resources coincided with innovations in technology that yielded additional tools: telephone intake systems, automated forms, videoconferencing, listservs, online CLE, cloud storage, and gadgetry for use in the courtroom. Work is underway to develop online portals which will allow clients to travel from intake to case acceptance by a pro bono attorney.

In part because of the tremendous advocacy that ensued, legal services programs... had to withstand multiple attempts at defunding.

Training, unfortunately, is an area still affected by strained resources. While attorneys have local courses and online CLE, more training is needed to allow staff (paralegals and support staff included) to develop the knowledge and skills to effectively represent clients.

In 1983, the first hand-held cellular telephone became commercially available. It weighed almost two pounds, took ten hours to recharge, and cost \$3,995.³

Texas legal aid advocates continue to obtain relief for their clients in housing, family, public benefits, and consumer cases, individually and on a grander scale. Recent litigation, the FEMA and FLDS cases, for example, honors the legal services tradition of championing due process. Emerging topics include human trafficking, health care, housing, immigration, and employment issues.

The Family Support Act of 1988 required states to use guidelines to set child support, genetic testing to determine paternity, and mandated automatic income withholding.

The demographics of poverty are changing. The new poor include seniors, baby boomers, and even the military. They are laid off workers, debt-ridden individuals, and those unable to afford child or home health care. Income inequity and poverty have received great press of late, but with new sheriffs in town, both here and on the east coast, hard-fought poverty eradication\defense measures⁴ are at risk. And there is only one legal aid lawyer available for every 11,512 Texans who qualify for services.⁵

³ Peter Ha, Time, "ALL-TIME 100 Gadgets," October 25, 2010.

⁴ E.g., early childhood and higher education, social safety net programs, health care, child care, wage protection

⁵ Texas Access to Justice Foundation.

The discussion about program priorities and individual representation vs. broader advocacy continues. It is not enough to respond to client demand; we need to identify clients' *needs* to help combat the war on poverty. Legal aid programs, after all, "marshal the forces of law and the powers of lawyers in the War on Poverty to defeat the causes and effects of poverty."⁶ As always, there is much to do.

Incubating "Pro Bono Minded" Private Practice Attorneys

Daphne Silverman, Silverman Law Group

Historically, most public interest lawyering has been done by attorneys in private practice. Today, much of it still is. Unfortunately, as a profession, we do not do enough to give young attorneys a vision for how they can build a private practice that will let them feed their souls by fighting for good causes. As a result, too many get lost in firms that do not share their heartfelt desire to make a difference.

If we want to change that, the key is to teach new attorneys how to build private practices with a balance between paying cases, and free time to pursue the good causes they are passionate about.

[W]e do not do enough to give young attorneys a vision for how they can build a private practice that will let them feed their souls by fighting for good causes.

This is obvious to anyone who sets out with a vision to save the world, but it can be an elusive balance to strike in reality. But my law office has created a system to help young lawyers build private practices that leave space for public interest work.

Three things are needed: autonomy, a cheap but effective office environment, and companionship.

Autonomy is necessary for a practice that permits good-cause work. A lawyer has to have the power to decide which cases to take and which to reject in order to be in control of the flow of money that the lawyer needs to cover family obligations while allowing time to pursue cases free or low bono.

My law office has created a space where lawyers can rent an office or a desk and have support staff and services without the burden of bosses and partners – a collaborative model of independence while caring for each other. This allows young lawyers to collaborate on cases and share clients but remain their own boss. Renting a desk keeps cost at a bare minimum while still having the essential services necessary to practice law: desk, phone, internet, conference room and staff.

The experienced lawyers mentor the young lawyers and give them work (briefing and appearances in court) which permits the new lawyers to survive and learn. Experienced lawyers benefit from the pool of new lawyers available for work without the necessity of hiring a full-time associate. Lawyers practice as they please but have advisors available for questions, as well as to celebrate their wins and commiserate defeats.

The end result has been a beautiful synergistic, inspiring energy. It is a space where new attorneys can cut their teeth, with low overhead costs, in a supportive environment. It is the best set of circumstances possible to help them build private practices from which they can pay their bills and fight for causes they care about.

⁶ E. Clinton Bamberger, first Director of the Office of Legal Services, Office of Economic Opportunity (predecessor to LSC), 1966.

Sowing Seeds of Justice

Acceptance Speech, Texas Appleseed 2014 "J. Chrys Dougherty Good Apple Award"
Wallace Jefferson, Alexander Dubose Jefferson & Townsend LLP

One year ago this week, I returned to the practice of law after nearly 13 years on the Supreme Court of Texas. I would be lying if I said I did not miss the Court. What I miss *the most* is related to Appleseed's transformational work – and that is serving others through the rule of law. Or, as Appleseed would say, "Sowing the Seeds of Justice." We sow the seeds when we ensure that every citizen has an effective legal remedy when wronged. We must ensure access to our courts.

I asked my friend Nathan Hecht to follow Harriet O'Neill's and Deborah Hankinson's lead, heading up the Court's access to justice initiative. I received letters criticizing the appointment, citing Hecht's conservative credentials. But let me quote from Justice

A society that denies access to the courts for the least among us denigrates the law for us all.

Hecht, in a letter he sent to Senator Royce West in 2011: "Some consider this Court conservative. Conservative principles do not call for the rule of law to be denied the most vulnerable members of our community. The civil justice system is where people can claim for themselves the benefits of the rule of law. It is where the promises of the rule of law become real. A society that denies access to the courts for the least among us denigrates the law for us all. For these reasons, securing funding for basic civil legal services has been a priority for the Supreme Court, one to which its members are unanimously committed." Well said, and true now more than ever under Chief Justice Hecht's leadership.

Maybe now you can see why I miss the Court. I miss the people who embraced the Court's work and who, themselves, made our state a better place. I am thinking of people like Jen Cafferty, who was the Court's general counsel and is now with the firm Vinson & Elkins. When I spoke about the need for reform in school discipline (an area in which Appleseed deserves enormous credit), Jen got to work setting up meetings with legislators, superintendents, police officers, teachers, judges. David Slayton, director of the Office of Court Administration, walked the Capital's halls *with* us to urge legislators to change a system that criminalized our kids for minor discipline violations. The result? A *change* in legislation. Between fiscal year 2013 and fiscal year 2014, the instances of school ticketing for non-violent education code offenses plummeted, get this, 80%. These kids are now in school, where they belong, rather than courts, where they feel like criminal defendants. I would ask David and Jen to stand and be recognized for their extraordinary public service.

And so I accept this award for Nathan, and Jen, and David, my former colleagues, and all the unnamed attorneys who work in legal aid offices and make a difference in the lives of people who have nowhere else to turn. I accept it on behalf of Rhonda and our son Michael, and other members of my family who were able to come tonight. My father, Bill Jefferson, taught us that we are all enriched when we attend to the service of others. Although we lost him last year, he would have been proud to see so many here, tonight, Sowing the Seeds of Justice.

Pursuit of an Ideal

Acceptance Speech, Poverty Law Section 2011 “Noble Award”
Brenda Willett, Lone Star Legal Aid

Five short years ago the State Bar created the Poverty Law Section. I am grateful to have this opportunity to thank the Poverty Law Section, its councilmembers, and the State Bar of Texas and its members for bringing recognition to “poverty law” as a specialized area of law. Poverty lawyers are a critical part of our legal system because providing legal representation to poor and powerless individuals is an essential for “equal justice for all”.

But equal access to justice does not just mean having someone to stand beside you in court, or to sign pleadings, or to write letters for you. Equal access to justice means having a lawyer who knows or has access to the specialized body of law related to your legal problems – and poverty law is one of those specialized areas.

Poverty lawyers help improve the public’s perception of lawyers and encourage bright young idealists to pursue this profession, because poverty law is the pursuit of an *ideal*. And providing poor and powerless people with the same quality of representation as the affluent and powerful is a noble ideal. It is not the lawyers who are noble; it is the ideal of fairness that is noble.

Poverty lawyers help improve the public’s perception of lawyers... because poverty law is the pursuit of an ideal.

Even at a very young age, children seem to have an innate sense of fairness and an innate human understanding that unfairness is bad and fairness is innately right. The role of the poverty lawyer is to promote fairness; and that is why the work you do is noble.

Now, as individuals, most of us may not be very noble. In fact, legal services lawyers, public interest lawyers, poverty lawyers – we tend to be a rather irreverent, raunchy, very *ignoble* group of individuals. I love poverty lawyers, my best friends are poverty lawyers, but when I think of them, noble is not the first thing that comes to mind. In fact, I usually think of a line from a song that says “I’ve got friends in LOW places”. I think most of us are happy with our low, ignoble, rabble-rousing, irreverent reputations. No, we are not a noble bunch, but we can do noble work sometimes.

Practicing law, and especially poverty law, is hard and draining. You take on impossible tasks and endure losses and keep on going. And sometimes you have to endure a loss to expose a problem. What I have learned is that it’s not about me. You can do this job and you do it with a passion because your clients need you. And I can tell you with absolute certainty that all of you are needed; your expertise is needed and your passion for fairness is needed.

I am honored to be one of the “old” poverty lawyers in Texas. And I am honored to be colleagues with such accomplished people. But there is so much more that needs to be done to achieve fairness for poor people and you have all the tools you need to do that. You have your law school education; the poverty law materials; access to experienced lawyers; and your brain to figure out what’s fair and how to pursue that within the legal system. There’s a lot of unfairness in the world of poor, powerless people that you will fix.

- We faced problems *in forma pauperis* (IFP) filings in Texas, and we solved some. Fortunately, the Texas Supreme Court has tried to make the rules of civil procedure more clear with respect to IFP filing, and that has helped a lot. But there are new twists and turns on the IFP issue every day that interfere with poor litigants' access to court. You poverty lawyers need to figure out how to fix that.

- Poor people in every county in Texas have a clear statutory right to health care from either a county or a hospital district, but there are all kinds of red tape, bureaucratic runarounds, and man-made barriers that prevent them from receiving it. You poverty lawyers need to figure out how to fix that.

- There are children raised in this country from the time they were small children but are denied access to jobs and education because they don't have legal documents, and who live with the daily fear of separation of their families and deportation to a country they do not know, even though they have done nothing wrong. You poverty lawyers need to fix that.

- There are people in nursing homes that are mistreated, misinformed, threatened, and tricked into paying for medical services and supplies that are included in the Medicaid payments the state makes to the nursing home. You poverty lawyers need to fix that.

- There are people with disabilities who cannot maneuver the mazes and barriers of the Social Security Administration. You poverty lawyers need to figure out how to fix that.

- There are a disproportionate number of poor black schoolchildren punished, humiliated, and expelled for subjective offenses, dragging their future away from opportunities for success and toward a prison pipeline, a well-oiled machine that is especially adept at derailing the lives of young black males. You poverty lawyers need to fix that.

There is an amazing legal system out there that holds out the possibility of fairness, but it cannot deliver without lawyers. Through the work that all you poverty lawyers do every day and the continuing growth of expertise in the ever-expanding development of poverty law, our legal system will deliver fairness.

To the Poverty Law Section of the State Bar of Texas, thank you; it is an honor to have this award given to me by my fellow poverty lawyers. And to the poverty lawyers, I am happy and proud to be your colleague.

The Current State of Access to Justice in Texas: A Glimpse Into Our Future

Betty Balli Torres, Texas Access to Justice Foundation

The state of access to justice in Texas is complex. In many ways, it is as good as it has ever been. The concept of access to justice is widely supported. The Supreme Court of Texas has taken a leadership role in ensuring that the courts are open to all. I humbly submit to you that we have one of the best statewide efforts in the country, which includes the Texas Access to Justice

Commission, Texas Legal Services Center and the Texas Access to Justice Foundation. In addition, Texas legal aid programs are doing some of the most important work in this country.

As a community, we have been able to educate legislators about the importance of access to justice and, for the first time, have a general state appropriation line item for basic civil legal services. The State Bar of Texas stands firmly with the access to justice community, and lawyers throughout the state donate funds and annually perform pro work valued at almost 500 million dollars. In addition, we have engaged banks and other foundations in this important work to form partnerships for the public.

And, although there is much to celebrate, we must recognize there is much work to be done. A look into the future inevitably results at a look into the present, along with the past. Despite the significant changes in our community, much remains the same since the start of my career in legal aid. The never-ending demand continues to increase as we see more people living in poverty in our state. As a result, throughout its history, Legal Aid has worked to find creative and efficient ways to try to meet those demands.

Simultaneously, Legal Aid funding has fallen woefully behind the ever-increasing need and demand for its services. Despite consistent efforts by a coordinated access to justice community, Texas currently ranks 50th in civil legal aid lawyers per poor people.

If the past tells us anything, it is that the need for civil legal aid will continue to grow and outpace Legal Aid's ability to meet even a portion of the demand.

The inability of most Americans, particularly the poor, to hire legal counsel for basic civil legal problems has resulted in people going to the courthouse without lawyers. People show up unrepresented in front of judges. Some are able to go it alone, but for the vast majority, representing themselves is a daunting and impossible task.

Law libraries are now where many Americans go to look for legal help. Today, law libraries have computers where the general public can access necessary forms and documents as they represent themselves. At home, people go to the internet in search of forms, some through legal aid websites, such as texaslawhelp.org, or through private vendors, some more reputable than others.

Judges are now on the front line of the crisis resulting from the lack of availability of legal services. Judges, who confront the overwhelming demand, are interfacing with legal aid providers, law libraries, and pro bono lawyers in an effort to ensure that the courthouse doors are open to everyone.

If the past tells us anything, it is that the need for civil legal aid will continue to grow and outpace Legal Aid's ability to meet even a portion of the demand. And despite Legal Aid's resourcefulness and its innovative approaches, it will continue to be unable to meet those demands. Thus, we will need to explore other successful strategies.

One of those strategies is unbundling, which has always been a part of legal aid work. "Unbundling" is when a lawyer and client agree that the lawyer will perform work involving only a certain part of a case. In the future, particularly with the good work of the Texas Access to

Justice Commission, more lawyers may make unbundling a part of their practice. Thus, we will see more consumers of legal services hiring lawyers for only those parts of the case in which they feel that they are unable to represent themselves. Judge, lawyers and clients will, out of necessity, grow accustomed to this model of service.

As more people represent themselves, it will become necessary for the courts to simplify processes and the legal system. The current structure does not work for persons representing themselves. Because of the recognition of this immense need and in order to be able to meet it, efforts are underway to help on the front end deal with matters so they do not require court intervention. The entire system needs to be reviewed to determine how best to ensure that it is able to best meet the needs of everyone who expects and demands access.

It will be no surprise to anyone that technology will continue to be an integral piece of the delivery of legal services. There is an expectation by the public that they are able to access information and conduct business through technology. Every component of the delivery system will need to be technology-friendly to meet the demands of consumers and lawyers.

Legal Aid will need to deal with the changing demographics of a state that is becoming increasingly Latino. Legal Aid's workforce should be able to culturally and linguistically meet those needs. It should strive to ensure that it has a diverse workforce, which includes its top leadership, reflecting the demographics of the clients it serves. In addition, Legal Aid will need to work in partnership with the entire legal system to help ensure that it is able to meet those needs to ensure that there is access.

The ABA created the *Commission on the Future of Legal Services*. Its work can be found at http://www.americanbar.org/groups/centers_commissions/commission-on-the-future-of-legal-services.html. The ABA recognizes that the profession itself will need to change to deal with our new reality. At the same time, we in the access to justice community should, as we always do, take the lead on ensuring that the needs of poor Texans are accounted for as we move into the future.