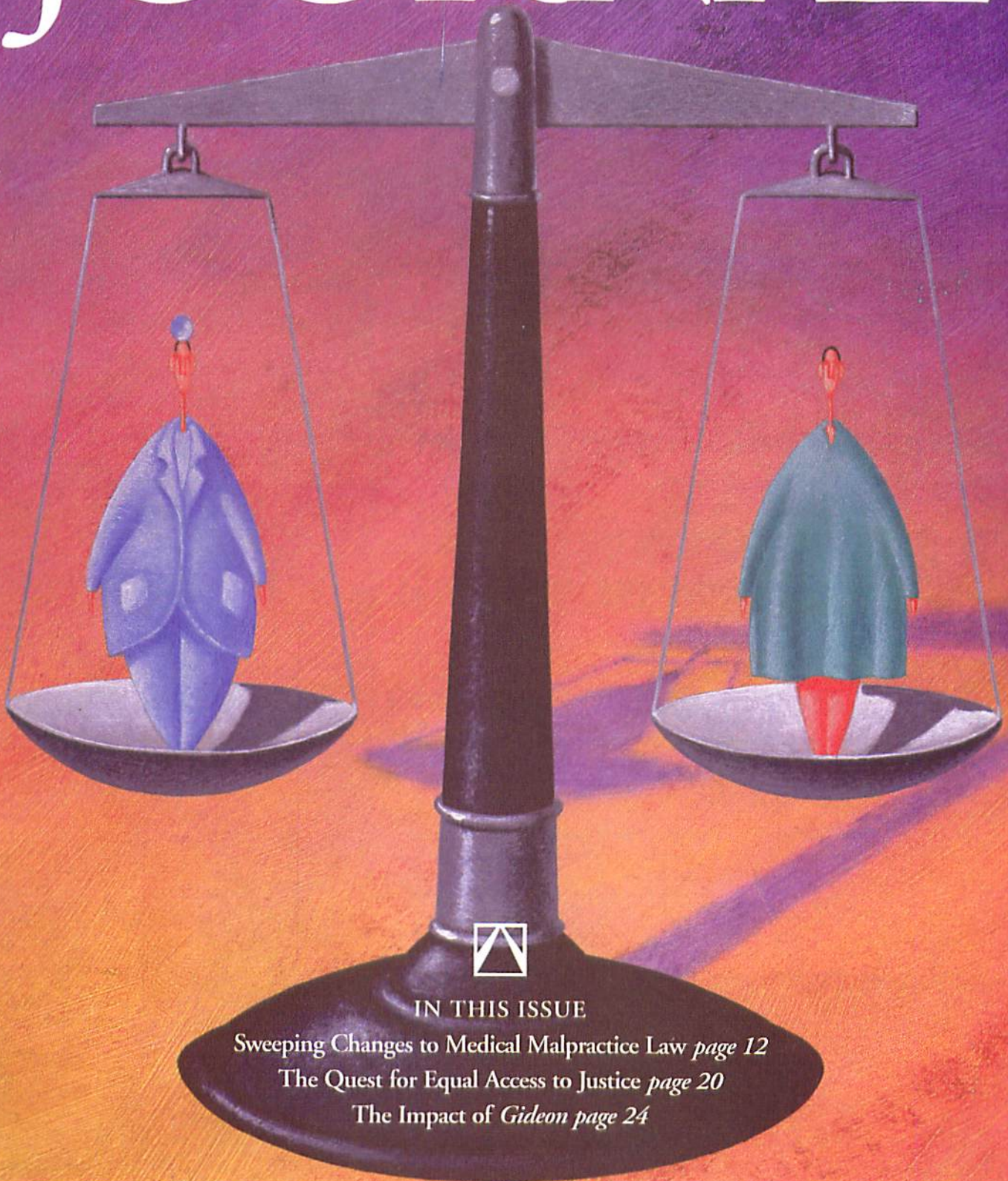


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The Quest for Equal Access to Justice in North Carolina

BY CELESTE HARRIS

Consider that only 10% of North

Carolina attorneys provide *pro bono* legal services each year and you can imagine the impact our profession would have on the fight for equal justice if 100% of attorneys are providing some form of *pro bono* legal service.



There are approximately 21,500 licensed attorneys in North Carolina, of which at least 15,000 are members of the North Carolina Bar Association.¹ Attorneys who signed up to provide direct, free legal services to qualified low-income North Carolina residents through the private attorney involvement (PAI) program offered by Legal Aid of North Carolina, Inc. (LANC) in 2011 numbered 2,565. The actual number of attorneys who provided direct service was 914.

According to *American Lawyer's* 2010 *pro bono* rankings, the nationwide average *pro bono* hours for lawyers at the 200 largest firms plummeted 8% in 2010 to their low-

est level in three years, reversing a decade of steady growth. The overall average percentage of lawyers who did more than 20 hours of *pro bono* work annually dropped 5.2%.

Across the country and at every governmental level, funding for programs that serve the poor and which provide a basic economic safety net is being slashed with devastating consequences for those who survive at or below the poverty line. These individuals, families, and children need legal advocates and the services that Legal Aid provides now more than ever.

To put the need into perspective, the 2011 poverty guidelines establish poverty for a family of four at annual income of \$22,350 or less.² Obviously, these individuals are unable to afford the services of an

attorney, yet their need for legal assistance is oftentimes critical.

A little history here will provide insight into how and why the government became involved in the funding of legal services for the poor and the subsequent formation of Legal Aid of North Carolina, Inc.

The first legal aid society in the United States emerged in New York in 1876, when the city's German Society created the Deutscher Rechtsschutz-Verein—or German Legal Protection Society—to provide legal counsel to the wave of German immigrants arriving in the United States during the late nineteenth century. One part-time attorney was hired to help protect his clients from exploitation from “the rapacity of runners, boarding-house keepers, and miscellaneous coterie of sharpers”—translated as unscrupulous employers, landlords, and shopkeepers—“who found that the trustful and bewildered newcomers offered an easy prey.”³

In 1919 the concept of free legal assistance for the poor was promoted in Reginald Heber Smith's publication *Justice and the Poor*. Smith challenged the legal profession to consider it an obligation to see to it that access to justice was available to all, without regard to ability to pay. “Without equal access to the law,” he wrote, “the system not only robs the poor of their only protection, but it also places in the hands of their oppressors the most powerful and ruthless weapon ever invented.”

Congress passed the Economic Opportunity Act of 1964 to “mobilize the human and financial resources of the nation to combat poverty in the United States,” by providing federal funding for civil legal assistance for low-income people. Funds were granted through the Office of Economic Development to local legal aid offices throughout the country to fight the War on Poverty. As its designers had intended, major changes occurred for the legal circumstances of low-income Americans. Major Supreme Court and appellate court decisions in cases brought by legal services attorneys recognized the constitutional rights of the poor and interpreted statutes to protect their interests in the areas of government benefits, consumer law, landlord-tenant law, and access to health care, among others. Advocacy before administrative agencies assured effective implementation of state and federal laws and stimulated regulations and policies that helped shape programs that

affected the poor. Advocacy before legislative bodies helped the poor redress grievances that were otherwise not addressed by the courts. Equally important, representation before lower courts and administrative bodies helped individual poor clients enforce their legal rights and take advantage of opportunities to improve their employment, income support, education, housing, and working and living conditions.⁴

In response, Congress and members of the Office of Economic Development undertook to limit the activities of legal service programs. These efforts and the continuous political interference in the operation of local programs led to the idea within the organized bar, the Nixon administration, Congress, and the legal services community of an independent Legal Services Corporation. President Nixon introduced his version of legislation setting up such a corporation as a new direction to make legal services “immune to political pressures...and a permanent part of our system of justice.” A few months later, on July 25, 1974, The Legal Services Corporation Act was enacted and signed into law.⁵ The government has shown its commitment to “equal justice under the law” by funding the Legal Services Corporation every year since, financing poverty law offices across the country, and employing thousands of poverty lawyers to provide free legal services to the nation's poorest citizens. Unfortunately, the funding allocated for legal services has been shrinking over the decades while the population needing civil legal services continues to grow. It is now critical that local bar associations and big business take on more responsibility for providing legal services in local communities.

The value of legal aid to poor individual citizens is apparent and well recognized, but its value spreads throughout communities encompassing big business. In his research for his book, *Rationing Justice, Poverty Lawyers, and Poor People in the Deep South*, Kris Shepard writes that when work for the Deutscher Rechtsschutz-Verein subsided due to declining German immigration, the president of the group, Arthur von Briesen, sought to expand his client base and sources of funding. Capitalizing on the growing fears of the business elite about mass social unrest as a depression blanketed the middle years of the 19th century, Von Briesen advocated that legal aid eased unrest among the

The 2011 Poverty Guidelines for the 48 Contiguous States and the District of Columbia

Persons in family	Poverty guideline
1	\$10,890
2	14,710
3	18,530
4	22,350
5	26,170
6	29,990
7	33,810
8	37,630

For families with more than 8 persons, add \$3,820 for each additional person.

less affluent. “It keeps the poor satisfied because it establishes and protects their rights,” and “it is the best argument against the socialist who cries that the poor have no rights, which the rich are bound to respect.”⁶ His appeal was successful and with the support of the city's wealthy philanthropists, the New York Legal Aid Society was established. By 1910 legal aid societies existed in most of the larger cities of the East, and before World War I they emerged in the Midwest, Pacific Coast, Southwest, and slowly in the South. Emphasis of the legal services were domestic disputes; wage claims; contract, debt, and other financial claims; landlord tenant disputes; protection against loan sharks; and conflicts over personal property. Even today, although for a different reason, major clients ask large firms for information on the *pro bono* work they do as part of retention decision making. Most businesses want to know that there will be legal help for their employees who are in troublesome domestic, consumer, or housing situations, and they want to know that the attorneys they hire are doing their part.

Congress is appropriating \$348 million for Legal Services Corporation (LSC) in 2012.⁷ This is 14.8% less than the amount appropriated in 2010. Although LSC is the largest funding source of Legal Aid of North Carolina, other funding sources include state and local governments, the Interest on Lawyer Trust Account (IOLTA) program, foundations, attorney fees, and private attor-

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ney resources. Unfortunately, the state's dedicated funding for legal services has been cut 33% and IOLTA funding has been cut 30% over the last two years.

Our profession must be reminded of then US Attorney General Robert F. Kennedy's admonition during a Law Day address at the University of Chicago in the spring of 1964. Kennedy castigated his profession and admonished them to accept the responsibility for permitting the growth and continuance of two systems of law—one for the rich and one for the poor. He recognized that a "wealthy client can pay counsel to unravel—or to create—a complex angle" of legal questions, but less affluent persons did not have that luxury.⁸

As chair of the Board of Directors of Legal Aid of North Carolina (LANC), I encourage your participation in sharing your financial resources, legal knowledge, and skills with your neighbors. We can help fill the gap in funding left by federal budget cuts and decreasing state resources. Once a year attorneys are given the opportunity to participate in the Equal Access to Justice (EAJ) campaign. The EAJ campaign runs from November through March. Support equal justice for all by making your financial contribution to Legal Aid of North Carolina. Your response to the letters or emails you have received will make a difference in the ability of LANC to keep offices open and staffed so there will be minimal or, at best, no reduction in the services it provides.⁹ A law school professor from my alma mater recently wrote, "A life in the law is a call to leadership in the service of others." We are fortunate to be able to help our communities in ways that no other group can. Now is the time for the profession to step up and meet the challenge of assuring access to justice for all.

Legal Services Corporation requires that a grantee organization spend 12.5% of its funding on the provision of *pro bono* legal services by private attorneys. By adding this requirement for funding, Congress clearly envisioned that local attorneys would con-

tinue to provide legal services for the poor in their communities. Funding of legal services was never intended to be sufficient to meet the total demand for legal services by people of modest means who are unable to afford the assistance of a lawyer. I see the Legal Aid office as a conduit through which efficient and effective legal services flow; not as the sole source of legal service for the poor. In 1964 there was roughly one legal aid attorney for every 120,000 potential clients compared to one private attorney for every 560 paying clients.¹⁰ Although funding for legal aid has assured the availability of lawyers for those in our communities with low incomes, the disparity remains. The North Carolina Equal Access to Justice Commission estimates that there is one legal aid attorney for every 19,162 potential low-income clients and one private attorney for every 554 North Carolinians.¹¹ As a group we can narrow the gap of inequality even further.

In addition to our personal, moral, and ethical desire to give back to the community, the North Carolina Rules of Professional Conduct provide that "every lawyer has a professional responsibility to provide legal services to those unable to pay" and "should aspire to render at least 50 hours of *pro bono publico* legal services per year." The first step to reaching this goal is to contact your local Legal Aid office. Since the closing of the Asheville, Boone, Henderson, and Smithfield offices, there are now 21 regional legal aid offices that need your help. Despite staff reductions in the remaining offices, the number of eligible clients served has not decreased. Legal aid attorneys and their staff are working harder than ever to assure justice for all—and we can help.

Martin H. Brinkley, president of the North Carolina Bar Association, has spoken and written about his passion for civil justice. Under Mr. Brinkley's leadership, the NCBA has associated with LANC to sign up 500 attorneys for his inaugural program, Call4All. By November 2011, 250 lawyers had signed up to provide short phone advice to one or two pre-screened clients a month. According to LANC Executive Director George Hausen, LANC was able to assist more than 650 additional clients as a result of volunteer participation. Take up President Brinkley's cause by signing up for a case through our local legal aid office or register to provide brief phone service through

call4allnc.org. Who will be the 500 to set the example for the country to follow? ■

Celeste Harris is a member of Maynard & Harris, Attorneys at Law, PLLC, in Winston-Salem. She graduated from the University of Missouri - Columbia with a BS in nursing in 1983 and worked for the Veterans Administration before attending law school at St. Louis University. She completed her final year of law school at Wake Forest University in 1991. Since 1991 she has been representing injured and disabled workers in private practice, adding representation of Social Security disability claimants and mediation to her practice in 2005. Ms. Harris is active in pro bono activities, earning the Volunteer Attorney of the Year award in 2010 from the Forsyth County office of Legal Aid of North Carolina.

Endnotes

1. lawschooltuitionbubble.wordpress.com/original-research-updated/lawyers-per-capita-by-state/. According to this blog, North Carolina ranks 27th in attorneys per capita. The research shows that of the 20,226 active and resident attorneys in North Carolina, 14,310 attorneys are employed and 4,656 attorneys are not employed in the profession. Also, the October 2011 data obtained from the State Bar for the current Access to Justice Campaign listed 21,447 active attorneys, including judges and attorneys serving in the military.
2. Section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (42 U.S.C. 9902(2)) requires the secretary of the Department of Health and Human Services to update the poverty guidelines at least annually, adjusting them on the basis of the Consumer Price Index for All Urban Consumers (CPI-U). The poverty guidelines are used as an eligibility criterion by the Community Services Block Grant program and a number of other federal programs. The poverty guidelines issued here are a simplified version of the poverty thresholds that the Census Bureau uses to prepare its estimates of the number of individuals and families in poverty.
3. Kris Shepard, *Rationing Justice, Poverty Lawyers, and the Poor People in the Deep South*, p. 2 (2007).
4. National Legal Aid and Defender Association, nlada.org/About/About_HistoryCivil.
5. As an independent corporation created by Congress and charged with distributing government funds, LSC is governed by federal law. Federal law also applies to recipients of LSC grant funds. The LSC Act, LSC Appropriations Statutes, and LSC Regulations provide guidance on the operation and responsibilities of LSC and its grantees.
6. Shepard, *supra* note iii, at 3.
7. lsc.gov/local-programs/program-profiles.
8. Shepard, *supra* note iii, at 2.
9. Online contributions can be made at legallaidnc.org.
10. Shepard, *supra* note iii, at 3.
11. North Carolina Access to Justice Commission, ncequalaccesstojustice.com.