FOR A FEW DOLLARS MORE:  
As Legal Aid Providers Make Do,  
Missourians’ Legal Needs Go Unmet

By Gary Toohey

As a young legal aid lawyer, Richard F. Halliburton knew right away that he had his hands full.  
“When I first came to legal aid in 1970, we had just opened some neighborhood offices, and I was in one of them,” he said.  “We just opened the doors in the morning and scores of people would just pour in and sit there, waiting all day to see an attorney.  We finally had to develop a better system for that, obviously.  Every attorney was taking any kind of case that would walk in the door, but eventually we had to establish priorities.”

Some 38 years later, Halliburton continues to have his hands full.  As executive director of Legal Aid of Western Missouri, he knows all too well that his staff can’t possibly meet the needs of all those who seek that assistance.  Thus, his overworked and under funded staff must establish priorities based not only on financial eligibility, but on need — and, more specifically, the seriousness of that need.  Matters involving housing, employment, domestic abuse, immigration, consumer problems, and public benefits are priorities for the agency he directs.
It is much the same for the three other primary legal aid providers in Missouri – Legal Services of Eastern Missouri, Legal Services of Southern Missouri, and Mid-Missouri Legal Services Corporation – who must turn away many people with legal needs because they either don’t meet the eligibility requirements or don’t fit within the priorities established by each agency. As with so many issues in contemporary society, it all comes down to money – or, more accurately, the lack of money.

Since 1974, the primary source of that funding has been the Legal Services Corporation (LSC), an entity created by Congress to fulfill the dual mission of promoting equal access to justice and providing high-quality legal assistance to low-income Americans. LSC currently provides funding for 137 programs nationwide – including the four programs serving the low-income citizens of Missouri. On average, LSC provides about half the budget of the programs it funds.  

In fiscal year 2007, Congress appropriated $348.5 million for LSC, a $22 million increase over the previous fiscal year and the first LSC budget increase in four years. Yet, even with this increase, LSC is receiving $50 million less than it did in 1995 – and that is without any adjustment for inflation. LSC-funded programs completed almost 900,000 cases last year – a fraction of the need for civil legal aid among low-income Americans.

Indeed, legal aid providers have seen federal funding – once the primary source of their operating budgets – slashed dramatically since the early 1980s.

“Three out of four clients of LSC-funded programs are women – for the most part, mothers with children. Many are elderly or have disabilities. Some are veterans. Nearly all are below 125 percent of the federal poverty threshold, an income of approximately $25,000 a year for a family of four.”

In fact, a 2005 LSC report “documents that nationwide, for every person helped by LSC-funded programs, another is turned away. Fifty percent of those actually seeking help are turned away for one primary reason: lack of resources. If anything, this finding is an understatement. Many who are eligible for help never seek it – they do not know they have a legal problem, do not know help is available, or do not know where to go for help.”

In addition, recent national trends “have added a new sense of urgency to the need for civil legal assistance and made additional demands on many already-strained LSC-funded programs. These trends include the national epidemic of domestic violence, the ongoing impact of the 2005 Gulf Coast hurricanes, and, most recently, the national crisis in the mortgage and housing industries.”

While Missouri’s legal aid providers have worked hard to replace shrinking federal funds with other sources of income, the huge unmet legal demand among poor Missourians continues to grow at a rate that far outstrips the minimal growth in the number of legal aid employees and resources.

“We can’t possibly accept all the applications we get,” said Doug Kays, executive director of Legal Services of Southern Missouri. “We’re inundated.”

**The Early Days**

“Civil legal assistance for poor people in the United States began in 1876, when the German Society of New York founded an organization to protect recent German immigrants from exploitation. The agency’s protection was Equal justice under law is not merely a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society...it is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

--- Lewis Powell, U.S. Supreme Court Justice
philosophy that legal services should be a multi-service agencies, based on a philosophy that legal services should be a component of an overall anti-poverty effort.10

In 1964, passage of the Economic Opportunity Act launched the War on Poverty. As a result, “federal funds became available for the first time to fund legal services to the poor” through the newly-created Office of Economic Opportunity (OEO). “By the end of fiscal year 1966, OEO has made 130 legal services program grants. By 1968, the number had grown to 260 programs, covering at least part of every state except North Dakota.”12

“The new program soon resulted in major changes in 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 . . . . Inevitably, these successes led to efforts in Congress and within OEO to limit the activities of legal services programs.”13

Just as much of a challenge was continuous political interference in the operation of many local programs. “In addition, local political figures . . . often attempted to interfere with legal services proposals. Many of the OEO-funded programs were controversial because they had sued both government agencies and powerful private business interests. For the first time, social welfare agencies, public housing authorities, hospitals and mental health facilities, public utilities, large private landlords, banks, merchants, school districts, police departments, prisons and jails, and numerous other public and private institutions were subject to challenge by lawyers advocating on behalf of low-income people.”14

“Within the organized bar, the Nixon Administration, Congress, and the legal services community, the idea of an independent Legal Services Corporation began to take shape . . . . However, it would be another three years before the Legal Services Corporation Act was finally enacted and signed into law on July 25, 1974.”15

This legislation was the result of a compromise between two groups — those who favored a broad, unrestricted mandate for legal services and those who advocated restrictions on the types of cases and activities that legal services attorneys could undertake on behalf of their clients. This compromise — which led to confusion among members of Congress as to what was prohibited and what was permitted under the act — would be the basis of a number of controversies in the years that followed.

THE LSC TAKES ROOT — AND FACES SERIOUS CHALLENGES

The initial activities of the newly-created Legal Services Corporation were focused on obtaining increased funding from Congress to expand the reach of legal services programs around the nation. On the basis of a study indicating that more than 40 percent of the
nation’s poor lived in areas served by no legal services program (and many of the remainder had only token access), LSC developed a “minimum access” plan aimed at gaining funding in every corner of the nation that would support two lawyers per 10,000 poor persons.

The strategy provided successful. With rising funding levels from Congress, by 1981 LSC achieved that “minimum access” goal. At that time, “LSC was providing funding to 325 separate grantees covering every county in the United States, as well as Puerto Rico, the Virgin Islands, and Micronesia.”

But trouble was brewing on the horizon. “[T]wo issues had become lightning rods for congressional opponents of LSC: legislative advocacy and representation of illegal aliens. In 1978, a rider was added to LSC’s appropriations bill that prohibited the use of LSC funds ‘for publicity or propaganda purposes designed to support or defeat legislation pending before Congress or any state legislature.”

Meanwhile, another rider was added to the 1980 fiscal year (FY) appropriation. “This provision prohibited LSC and legal services programs from using LSC funding to undertake any activity or representation on behalf of known illegal aliens.”

The 1980 election of President Ronald Reagan, who was openly hostile to the legal services program and initially sought the complete elimination of LSC, was a turning point in federal funding for civil legal services. Pressured by the White House, Congress in 1982 reduced LSC funding by 25 percent. “The cut represented an enormous blow to legal services providers nationwide. Programs were forced to close offices, lay off staff, and reduce the level of services dramatically. In 1980, there were 1,406 local field program offices; by the end of 1982 that number had dropped to 1,121. . . . Programs also cut back on training, litigation support, community education, and a host of other efforts. All of these reductions coincided with a national economic recession and a marked reduction in federal support for income maintenance, disability, food stamps, and other programs affecting poor people, substantially increasing the eligible population and the demand for legal services.”

**THE GLIDE PATH TO ELIMINATION**

The early 1990s saw small but significant improvements in federal funding, with the LSC appropriation beginning to inch its way upward. However, the 104th Congress, which took office in 1995, dealt a series of body blows to LSC. A budget plan adopted by the House of Representatives assumed that LSC’s funding would be cut by one-third for FY 1997, and a third in FY 1998, and completely eliminated thereafter. Opponents went so far as to dub this plan “the guide path to elimination.”

“Final 1996 statistics revealed the staggering cost of the funding cuts: the number of cases that were closed fell from 1.7 million in 1995 to 1.4 million in 1996; during the same period, the number of attorneys working in LSC-funded programs nationwide fell by 900, and 300 local program offices closed.”

Congress likewise began to shift the focus of legal services advocacy through the imposition of restrictions on the activities of entities receiving federal funding through LSC. These restrictions applied to all of a recipient’s activities, regardless of the funding source used to support those activities. Thus, with certain limited exceptions, programs receiving any funds from LSC were prohibited from using even non-LSC funds to support the restricted activities.

For example, “Congress prohibited representation of certain categories of clients, including prisoners, specified groups of aliens, and public housing residents who were being evicted on drug-related charges. Perhaps even more damaging . . ., Congress limited the kinds of legal work that LSC-funded programs could undertake on behalf of eligible clients, prohibiting programs from participating in class actions, welfare reform advocacy, and most affirmative lobbying and rulemaking activities. In addition, programs were prohibited from claiming or collecting attorneys’ fees, [meaning] legal services programs were cut off from a significant source of funding and were limited in their ability to use an effective strategic tool.”

Those restrictions, coupled with the funding cuts, mean that dedicated legal aid lawyers are unable to utilize all the skills and resources available to them in many cases, according to many of those with an interest in the justice system.

“I think legal services attorneys are
very good attorneys, and they have found ways to serve their clients even with those restrictions,” said St. Louis practitioner Doreen D. Dodson, a former legal aid attorney who recently served as chair of the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants. “For example, the restriction on class actions doesn’t make sense from a legal point of view in that even if you have an issue that affects thousands of people, you have to do one case at a time. If there is a state statute, for example, that might violate part of the federal Medicaid law, to have to do one lawsuit because one person came to you is not judicially efficient.”

“Any time you take tools of the trade away from a practitioner, it creates a challenge,” agreed Dan Glazier, executive director of Legal Aid of Eastern Missouri. “Certainly, the restrictions on certain types of suits – such as class actions – have presented a challenge for us. The inability to collect attorney’s fees has also presented a challenge, because that could be a source of revenue for us.

“But we are advocates,” he added, “and as advocates we are charged with the responsibility to serve our clients the best way we can. We have done everything we can within the law and within the rules to serve our clients. Would we like to see those restrictions lifted? Yes, we would, because there are tools at our disposal that we are not permitted to use.”

Riding Out the Storm

The reductions in LSC funding during the early 1980s, and the subsequent cuts in the mid-1990s, had an immediate and dramatic impact on legal services providers nationwide. Indeed, “[s]ince 1996, the legal services landscape has undergone a dramatic transformation. Legal services has seen a reduction in the total number of LSC grantees from more than 325 programs in 1995 to 160 at the beginning of 2003, and the geographic areas served by many of the remaining programs have increased dramatically.”

By 2007, the number of programs receiving LSC funds was down to 138.

“There have been positions, such as staff attorney positions, that we have been unable to fill because of reductions [in funding],” said Kays, executive director of Legal Services of Southern Missouri (LSSM). “This year, for example, LSC was going to provide an increase, but Congress froze the funding level, and that is causing us a problem in giving staff an increase in salary. That then becomes a retention problem. Right now, we have six offices, and we had a seventh in Farmington. We had to close that office because of funding problems.”

“We had begun to expand in the late 1970s and establish a number of offices within our service area,” said Halliburton, executive director of Legal Aid of Western Missouri (LAWMo). “When the first cuts came in the early 1980s, we had to immediately close about nine of those offices and consolidate some offices in Kansas City that were basically serving as neighborhood offices.

“We have essentially been able to keep our structure at that same configuration since that time, primarily by developing other funding sources,” Halliburton added. “But there has definitely been a decrease in the number of clients served as a result of those cuts.”

As Halliburton noted, the growth of non-LSC funding for legal services was one of the few positive developments to take place as a result of the congressional cuts of the early 1980s. “In most areas of the country, programs had always received some limited funds from private donations, foundations, or state or local governments. However, prior to the 1980s, outside funding for most programs represented only an insignificant portion of their budgets. When faced with a major funding cut and the threat of losing all federal funding, legal services programs began aggressive efforts to obtain funding from other sources, including United Way agencies, foundations, bar associations, private donations, and state and local government contracts, as well as non-LSC federal funds, such as the Older Americans Act, Community Development Block Grants, and Revenue Sharing.”

Other potential revenue sources include: court filing fee surcharges; attorney registration fees or state bar dues assessments, check-offs or add-ons; state abandoned property funds; punitive damage awards; corporate gifts; donations from individual philanthropists; special fundraising events; cy pres awards; and awards from attorneys’ fees pursuant to fee-shifting statutes where permitted under the LSC restrictions.

For example, Kays said, Legal Services of Southern Missouri has excelled in obtaining grants that will allow it to improve its technological prowess – a
LEGAL SERVICES OF EASTERN MISSOURI
Service area: 20 counties, plus City of St. Louis
Population of service area: 2,136,881
Low-income persons within service area: 283,347 (13.25% of total population)
Office locations: St. Louis, Hannibal and Union
Staff: 75
Total income: $5,922,405 (2006 figure)
Primary funding sources: Legal Services Corporation (31.9%); State of Missouri (16.7%); United Way (11.3%); Department of Justice (7.2%); miscellaneous grants (7.2%); Missouri Lawyer Trust Account Foundation (5.2%); other programs, interest and miscellaneous income (6.0%); contributions (3.8%); fundraising-special events (3.6%); Missouri Bar dues allocation (3.1%); U.S. Department of Housing & Urban Development (0.9%)
Types of cases handled: Family/juvenile (46%); housing (22%); health (9%); miscellaneous (7%); consumer (6%); income maintenance/public benefits (5%); individual rights (3%); education (2%)

MID-MISSOURI LEGAL SERVICES CORPORATION
Service area: 11 counties
Population of service area: 402,608
Low-income persons within service area: 51,131 (12.6% of total population)
Office locations: Columbia and Jefferson City
Staff: 12 (full-time and part-time)
Total income: $723,677
Primary funding sources: Legal Services Corporation (52%); State of Missouri (29%); Missouri Lawyer Trust Account Foundation (7%); Missouri Bar dues allocation (5.5%); City of Columbia (3%); OVW grant funds (1.5%); Boone County (1%); United Way of Callaway County (0.8%); United Way of Audrain County (0.2%)
Types of cases handled: Family law (66%); consumer issues (15%); housing (10%); income maintenance (5%); health (2%); other (2%)

LEGAL AID OF WESTERN MISSOURI
Service area: 40 counties
Population of service area: 1,772,335
Low-income persons within service area: 194,710 (11% of total population)
Office locations: Kansas City, Warrensburg, St. Joseph and Joplin
Staff: 100 (includes six part-time employees)
Total income: $6,761,943
Primary funding sources: Legal Services Corporation (26%); State of Missouri (15%); City of Kansas City (13%); local grants (11%); federal grants (9%); fundraising (7%); United Way (6%); miscellaneous (3%); Missouri Bar dues allocation (3%); Jackson County (1%)
Types of cases handled: Municipal defense unit (53%); family law (14%); housing (10%); consumer issues (7%); health (6%); income maintenance (5%); individual rights (4%); education (0.5%); miscellaneous (0.5%); employment (0.5%); juvenile (0.05%)

LEGAL SERVICES OF SOUTHERN MISSOURI
Service area: 43 counties
Population of service area: 1,254,189
Low-income persons within service area: 185,545 (14.7% of total population)
Office locations: Springfield, Rolla, Charleston, Cape Girardeau and West Plains
Staff: 43
Total income: $3,281,394 (2006 figure)
Primary funding sources: Legal Services Corporation (51%); State of Missouri (33%); Missouri Lawyer Trust Account Foundation (8%); Missouri Bar dues allocation (6%); local grants (1%); AoA III-B (1%)
Types of cases handled: Family law (54%); consumer (15%); health (11%); housing (9%); other sources (7%); juvenile (4%); income maintenance (4%)
significant asset for a program whose service area covers more than 27,000 square miles. For example, LSSM has placed its file servers underground and is developing a system for videoconferencing, including providing CLE programs via videoconference. In addition, LSSM allows clients to access its office through a web-based application – the only such program in Missouri to do so, and one of the few in the nation.

“Our program is probably one of the top in the nation in terms of technology, and that comes back to efficiency,” he explained. “With these long distances, technology makes us more effective.”

“Since 1982, funding for civil legal aid derived from state and local governments has increased from a few million dollars to over $215 million per year.”

Significant sources of non-LSC funds for the state’s legal aid programs include:

State Funding

In response to the call for additional state funding for legal services, the Missouri General Assembly in 2003 passed a measure establishing a $20 filing fee on all civil and criminal filings in the state’s appellate courts, and a $10 fee on all filings in the state’s trial courts. Those funds are then collected by the Basic Civil Legal Services Fund, which distributes them to the state’s legal services providers. The fund provides approximately $3.3 million per year to the four legal aid agencies, or about 20 percent of their total funding.

In 2007, Missouri Governor Matt Blunt signed a bill extending the fund until December 31, 2012. “One provision of the bill prevents legal service organizations from filing lawsuits against the state or other political subdivisions. ‘Why should we as a Legislature be funding an entity that turns around the uses the money to file lawsuits against the state?’ said Rep. Bryan Pratt, R-Blue Springs.

“In 2005, Legal Services of Eastern Missouri joined a number of other groups in a federal lawsuit over the state’s Medicaid reforms. A judge [later] ordered the state to reinstate coverage for durable medical equipment, saying the cuts had not been done under a reasonable standard.”

IOLTA

“[D]uring the early 1980s, a completely new source of funding for civil legal assistance was created. Interest on Lawyer Trust Account (IOLTA) programs were first conceived in Florida, after changes were made in the federal banking laws permitting interest to be paid on certain kinds of bank accounts. . . . Throughout the 1980s and 1990s, more and more states adopted IOLTA programs, and by 2000 every state, plus the District of Columbia and Puerto Rico, had an IOLTA program. While resources created by IOLTA are used to fund a variety of public service legal and law-related activities, most IOLTA funding has gone to civil legal services programs, and IOLTA quickly became the second largest source of funding for LSC grantees.”

Missouri’s IOLTA program was created in 1984, when the Supreme Court of Missouri created the Missouri Lawyer Trust Account Foundation. The Court’s order cleared the way for client funds to be placed in interest-bearing accounts. Those interest earnings then go to the Foundation, which has, as one of its purposes, “providing legal assistance to the poor.” Originally an “opt in” program allowing voluntary participation by attorneys, IOLTA in 1990 became an “opt out” program by virtue of another Supreme Court order – thus increasing the number of participating attorneys and the revenues raised.

Each year, the bulk of the funds raised through the IOLTA program are allocated to the state’s four legal services providers. And while the amount provided has fluctuated from year to year based on attorney participation and interest rates, there is no doubt that Missouri’s IOLTA program has helped to fill the gap left by shrinking federal dollars. Indeed, as of 2005, IOLTA had delivered more than $11 million to the state’s legal aid entities since its creation.

Additional funds for legal aid providers are expected to be generated by virtue of a 2007 Supreme Court of Missouri order, effective January 1, 2008, that no longer allows Missouri lawyers to “opt out,” or formally decline to participate, in the IOLTA program.

Missouri Bar Dues

In 2002, the Board of Governors of The Missouri Bar voted to increase bar dues by $20 per every member eligible to practice law in Missouri. The additional funds raised through the dues increase is allocated to the state’s four legal aid providers. In 2007, this per-member allocation raised more than $430,000 for the provision of legal services to eligible low-income citizens.

The Board’s action came partly in response to a legal needs study completed by the University of Missouri in 2002, which reported that Missouri’s legal aid offices were able to help only 27% of qualifying households with one legal problem.

Pro Hac Vice Fees

In addition to the allocation from bar dues, The Missouri Bar Board of Governors in 2002 recommended, and the Supreme Court of Missouri affirmed, imposition of a fee on out-of-state
lawyers for admissions pro hac vice. Subdivision 6.01(m) of Supreme Court Rule 6 now requires “[a]n attorney seeking to appear pursuant to Rule 9.03 [to] pay a fee of $100 for each case in each court in which the attorney seeks to appear.” Revenues generated from these fees are allocated to the state’s legal aid agencies. Nearly $123,000 was raised from this fee in 2007.

**MAKING LEMONADE FROM LEMONS**

While all of the legal services agencies would undoubtedly prefer to receive additional funds from the Legal Services Corporation, the cuts in federal funding have created new opportunities for LSC-funded entities. Indeed, attempts to expand legal services agencies’ funding sources have led to two residual benefits: increased awareness of the services provided by legal aid and increased scrutiny by legal aid offices of their management of precious resources.

“If there is a silver lining in that cloud, it is that the population in our service area, including [funding sources] and governments, are more aware of the services we do provide,” said Stephen Pratte, litigation director for Mid-Missouri Legal Services (MMLS). “What I have observed is that it really makes us take a very close look at the needs of the population we’re serving, and how those needs change. If there is a need that is developing or emerging, we want to make sure that we’re trying to meet that need, not only with funding, but to make sure that our priorities take that need into account.”

“The LSC was set up in an effort to keep it politically independent, but I don’t think it’s very healthy for a program to depend entirely on the government,” said Ms. Dodson. “There are too many other needs, challenges, and politics out there, and I think the programs that have diversified [their funding] have been wise to do that.”

“I started at Legal Services of Eastern Missouri in 1981,” Glazier said. “When I started, I think the money we were getting from LSC was about 85 percent of our budget. Now, in 2008, LSC money is approximately 30 percent of our budget. We have made a very concerted effort to diversify our funding sources. Now, we get much more money in grants – about 50 percent of our funding – and luckily the legal community has responded by providing about 20 percent of our funding.

“There is no question that the mindset that we were going to be primarily funded by LSC had to change, and to our credit, it did,” Glazier added. “And the ramification of that is that it has made us more visible in the community. It has forged partnerships that perhaps wouldn’t have otherwise occurred. It has provided creative, out-of-the-box thinking that I think has been a positive thing. One could argue – and I will – that we took lemons and made lemonade out of it.”

**WITH A LITTLE HELP FROM THEIR FRIENDS**

Representatives of all four LSC-funded legal aid programs in Missouri say their efforts would be far less effective – and leave even more poor Missourians without legal assistance – were it not for the network of private attorneys that all four state programs have developed over the years. Some of these attorneys offer their services on a pro bono basis, while others provide help through a judicare arrangement, which offers them a set fee for handling a matter. Regardless of their method of involvement, these attorneys are indispensable in helping the state’s legal aid programs serve indigent citizens whose legal needs would otherwise remain unmet.

For example, across the southern portion of the state, the work of staff attorneys from Legal Services of Southern Missouri is supplemented by a network

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of hundreds of private attorneys spread across LSSM’s 43-county service area. These attorneys – part of LSSM’s Volunteer Lawyers Project – work under a judicature arrangement, which provides them with a flat fee of $50 per case.

“We have a huge geographic area that is very rural,” explained Kays. “It is very difficult for our [staff] attorneys to reach into that area. That where we utilize judicature. It’s very helpful when we have this panel of attorneys we can call.”

Likewise, help provided by Mid-Missouri Legal Services (MMLS) staff attorneys is also supplemented by a network of 35-40 private attorneys in the 11 central Missouri counties served by this agency. Similar to LSSM’s judicature program, MMLS uses a portion of its funds to pay private counsel to represent eligible clients in legal matters. However, the agency also makes use of pro bono attorneys.

“We have a good population of pro bono attorneys and government attorneys, since Jefferson City is in our service area,” said Pratte.

In addition, with the law school at the University of Missouri in Columbia, MMLS has “a lot of volunteer law students, as well,” Pratte added. “We are able to have them not only work on research and contact with clients, but, if they are certified under [Supreme Court] Rule 13, actually appear on behalf of a client.”

As might be expected, the largest number of private attorneys are involved in the two programs whose service areas include the state’s largest metropolitan areas, Kansas City and St. Louis.

Legal Aid of Western Missouri’s Volunteer Attorney Project (VAP) has been in place since 1982. Through this program, attorneys in private practice volunteer to accept case referrals from LAWMo on a pro bono basis. Approximately 900 attorneys from LAWMo’s 40-county service area are participating in this program, along with several law firms and corporate counsel from local businesses.

“While we tend to try to give them [volunteer attorneys] more routine cases, some of these people will put in 200-300 hours on a case,” said Halliburton. “It’s just incredible to me that they are willing to do that.”

In addition to handling individual cases, many of LAWMo’s volunteer attorneys teach pro se divorce clinics and conduct outreach visits at area homeless shelters and community senior centers. Volunteers also provide assistance through Project Consent, a program that helps non-parental caregivers of minor children to obtain power of attorney or legal guardianship so that health care can be provided through Children’s Mercy Hospital in Kansas City. In addition, in northwest Missouri, volunteer attorneys provide representation to financially distressed farmers through LAWMo’s Farm Project.

Similarly, Legal Services of Eastern Missouri also relies heavily on its Volunteer Lawyers Program (VLP). Developed some 30 years ago, the VLP matches eligible clients with attorneys who have agreed to sit on a panel of volunteers. Most volunteers have offered to accept between one and three cases every year in an area of law they individually designate. The VLP serves more than 500 clients and their families every year and enjoys the services of more than 1,400 volunteer panel attorneys.

Similar to the efforts of volunteer attorneys on the western side of the state, LSEM’s volunteers also serve as consultants, participate in outreach programs, make community education presentations, and co-counsel with other volunteers and staff attorneys.

Glazier, LSEM’s executive director, says volunteer involvement has brought additional benefits beyond the mere ability to handle more cases.

“Our Volunteer Lawyer Program has multiple benefits,” he said. “Number one, it has allowed more clients to be served, and that’s what it’s all about. Number two, it has allowed us to bring in some private attorneys who have skill sets that we may not automatically have here. Thirdly... it has given us the opportunity to more directly network with the legal community, so they can see what we do and they can understand the value and quality of what we produce, because they’re part of that team. It has helped us in a community outreach/education way, because it has strengthened the partnership between LSEM and the eastern Missouri legal community. It has also allowed our lawyers here to work with private attorneys, because whenever private attorneys take a case, they know that our attorneys here at LSEM are here to back them up and help them in whatever way they need.”

Alternatives Arise

In addition, a new type of legal services provider has sprung up in some locales. “[I]n many states, new legal services delivery systems have begun emerging that include both LSC-funded programs, operating within the constraints of Congressionally imposed restrictions, as well as separate non-LSC-funded legal services providers that operate unencumbered by the LSC restrictions. Many of these non-LSC-funded providers were created specifically in response to the imposition of
the restrictions, when LSC-funded programs either gave up their LSC grants or spun off new entities that were supported with non-LSC funds that formerly went to the LSC recipients. The non-LSC-funded providers are generally free to seek attorneys’ fees; engage in class actions, welfare reform advocacy, or representation before legislative and administrative bodies; and provide assistance to aliens and prisoners, as long as their public and private funders permit their resources to be used for those activities. In 16 states and more than 20 large- or medium-size cities, two or more parallel LSC- and non-LSC-funded legal service providers operate in the same or overlapping geographic service areas.330

A prime example of the above is Gateway Legal Services, a self-supporting, non-profit agency operating in the St. Louis metropolitan area. Since 1997, Gateway has provided help for low-income citizens in certain areas of consumer protection and benefit matters heard before Social Security Administration Law Judges. More importantly, it offers an alternative for low-income people who are not eligible for help from LSC-funded legal aid entities.

“Whenever you get funding from anywhere, there are always strings attached,” said Michael Ferry, executive director of Gateway. “As long as we operate as a non-profit, all we have to do is make our clients happy.”

Free of the restrictions imposed upon LSC-funded offices, Gateway is able to charge fees – albeit reduced fees – for the work it performs, according to Ferry. The agency’s general income guidelines allow it to accept cases from those whose income is up to 200 percent of the poverty level.

“By far, the biggest area for us is the benefits area,” Ferry said. “Many of those cases involve someone who has already applied for [benefits]. If they win, they’re likely to get back benefits. In those cases, we take a contingent fee which is less than the statutory maximum. In the other benefits cases, where there is going to be no back benefits award, we do those at no charge. Basically, we rely on the fees from the initial application cases to handle the other cases we take.

“By doing it this way, we’re not impinging on [the clients’] income stream.”

Ferry first became involved in fee-generating cases during his nearly 20 years in a variety of positions at Legal Services of Eastern Missouri.

“We first tried to do fee charging through LSEM, but eventually the LSC decided that programs would not be able to charge fees, at least not for the kind of work we were doing,” he explained. “I was really committed to the idea that legal aid programs ought to be able to charge fees in cases where that was appropriate – that is, cases where the client could afford to pay a fee without being substantially harmed.”

In the wake of the LSC’s refusal to allow programs to charge fees for their services, LSEM was a willing partner in the creation of Gateway Legal Services. In fact, Ferry said, the creation of Gateway has helped LSEM provide services to additional people.

“Basically, the idea was that by doing cases where we could charge fees in situations where the client could afford to pay fees without significant harm being done to them, we were able to expand the scope of what legal aid could do,” he said. “The main benefit of what we’ve done, by taking over an area that

LSEM used to do, is to allow LSEM to free up its resources that it used to put into this area, so they can put more resources into areas that could never be self-supporting. The fact that we can charge fees means that we can generate resources that can then be put back into the provision of services.”

Gateway’s 12 full-time and two part-time employees – including five attorneys – currently have more than 1,200 active, open cases, according to Ferry. That number is up slightly more than 10 percent when compared with last year – a statistic that Ferry attributes to visibility.

“We’re trying hard to let people know we’re here,” he said. “We’re trying to make connections with the kinds of agencies that also serve our clients. For example, we have a lot of clients who have mental health problems, so we try to make contact with agencies who serve the mentally ill. We also try to reach out to homeless shelters, and we get a lot of referrals from other attorneys.”

With an annual budget of approximately $750,000, Gateway Legal Services has its own limitations, however.

“The challenge of doing what we’re doing is that we kind of have to operate in the same way as a private law firm, because we have the same kind of financial concerns that a private firm has,” Ferry noted. “The things that we do for people basically need to have a reasonable prospect of making sense financially. Right now, we’re relatively limited in the scope of what we offer.

“If there is a need that is developing or emerging, we want to make sure that we’re trying to meet that need.”

— Stephen Pratte
In the future, if we are able to grow and become financially successful and generate more revenue, it would be nice to see if we could expand into areas that are now being served by legal aid programs. “It [Gateway] was always intended to be a supplement” to the services provided by LSEM, he said. “It was a way of expanding the overall legal aid presence. The latest needs study that we’ve done shows that about one out of five people who need help get it. With Gateway, we can cut into that number. That’s really sufficient purpose in itself.”

THE ROAD AHEAD

Despite significant cuts in federal funding, legal aid providers have been able to maintain services for a number of poor Missourians with pressing legal needs by utilizing creativity and resourcefulness. However, the nearly overwhelming demand for such assistance, and the limited funds available to provide it, forces these agencies to establish clear priorities for acceptance of cases. This leaves the huge majority of poor Missourians with legal needs unaided.

“We really pride ourselves in high quality, thorough and complete advocacy that we are able to provide to our clients,” said LSEM’s Glazier. “We would love to extend that to as many as we can, as long as we can continue to provide the high level of services that our clients deserve.”

Clearly, meeting that goal will require additional resources, which translates into money. However, it is unlikely that federal funding will ever play as prominent a role in the operations of legal services agencies as it did in the late 1970s and early 1980s. “Regardless of any changes that may take place at LSC, the fundamental restructuring in the legal services delivery system that has begun over the last several years is likely to continue and may accelerate. Many states are committed to developing comprehensive, integrated systems of legal services delivery. The majority of states are working to develop effective state support capacities to ensure that issues affecting large numbers of clients are addressed at a statewide level. In many states, formerly separate LSC grantees have merged to form statewide or regional programs. In virtually every other state, staff members from different programs collaborate on substantive issues through task forces, co-counseling arrangements, e-mail lists, and other vehicles. Many have adopted statewide systems to coordinate client outreach and community legal education to increase the awareness of members of the low-income community about their legal rights and to prevent legal problems from arising. Most states are working to develop and implement technologically advanced systems for client intake and to provide advice and brief services. In many states, programs are working together to raise non-LSC resources.

“Nevertheless, without additional resources, the civil legal services community may never achieve the promises of this new reality.”

Despite the lack of resources to handle existing cases, there are many calls for creation of a “civil Gideon” – that is, a guarantee of access to an attorney similar to that guaranteed for criminal defendants in the landmark 1963 U.S. Supreme Court decision in Gideon v. Wainwright. Several states have discussed this type of measure, although none have yet implemented it. However, in 2006 the American Bar Association’s House of Delegates approved a resolution that “urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.” Citing a common law tradition of granting indigent litigants a right to counsel in civil cases, the ABA said “the venerable age and persistence of this right in the common law tradition suggests the fundamental importance of that tradition, which is the basis of American law, accords guaranteeing poor people equality before the law and furnishing them the lawyers required to make that guarantee a reality.”

While a civil right to counsel would please legal aid directors in that their programs could help more needy people, they are also aware of the pitfalls inherent in such a proposal. Indeed, the state’s legal aid officials need look no further than Missouri’s public defender system to see the potential crisis that would result from an obligation to provide legal help without a commensurate increase in funding.

“Our charge is equal access to justice for all. Anything that will facilitate more representation for those in need is

“The latest needs study . . . shows that about one out of five people who need help get it. With Gateway, we can cut into that number. That’s really sufficient purpose in itself.”

— Michael Ferry
critical,” said Glazier. “But we have to be sure that extending the responsibility to serve all those in need is coupled with funding that would allow it to happen.”

“What concerns me about a civil Gideon is the problem of funding,” added Kays. “As the funding is right now, we couldn’t handle a civil right to counsel.”

Halliburton said a civil right to counsel “could prompt better state funding to handle those cases. If it doesn’t, there would be a disaster.”

“As a concept, I think our society is overdue in adopting something like this, but everyone has to understand the realities of funding it.”

In the meantime, efforts are being made to provide assistance to young legal aid attorneys, who – as with their public defender counterparts – often leave their low-paying jobs for greener pastures, taking with them valuable experience and skills. For example, Congress has enacted, and President Bush has signed into law, the College Cost Reduction and Access Act of 2007, which offers low-earning public service attorneys – including legal aid lawyers – assistance with the often-crushing debt of their student loan repayments. Figures indicate the average national salary for a legal aid lawyer is $35,000, with a $12,000 annual loan repayment burden for a new law school graduate.

Along with student loan repayment programs being initiated by many law schools, The Missouri Bar in 2005 created its own Loan Repayment Assistance Program that offers help to public service attorneys in repaying their student loans. Since 2005, some 158 public service attorneys have received financial help through this program, which is solely supported by donations from Missouri Bar members.

“If it weren’t for public service lawyers . . . who provide legal aid to the poor, disabled and victims of domestic violence, the rule of law that defines our society would break down,” noted American Bar Association President William H. Keukom. “It is in our nation’s interest to invest in those who serve the public interest.”

Still, there is much more that remains to be done to ensure that all Americans, regardless of their income, receive the legal help they need.

“Fifty million Americans are eligible for civil legal assistance, including 13 million children,” according to the Legal Services Corporation’s Semiannual Report to the Congress of the United States. “The civil legal aid provided by LSC grantees helps the most vulnerable members of society: women seeking protection from abuse, mothers trying to obtain child support, families facing foreclosure and homelessness, veterans who have been denied health and disability benefits, elderly people who have been exploited by predatory lenders.

“The issues involved threaten not just the economic and personal survival of an individual, but the fabric of society as a whole.”

“I think members of Congress and members of our legislature, when they take time to think about it, understand that providing access to attorneys to resolve problems is a whole lot better than marching in the streets,” said Ms. Dodson. “Legal services is only able to serve the tip of the iceberg, but they do wonderful work.”

ENDNOTES

3. Id.
4. Id.
5. Id.
6. Id.
8. Id.
9. Id.
10. Id.
12. Id.
13. Id.
15. Id.
16. Id.
17. Id.
18. Id.
19. Id.
20. Id.
21. Id.
22. Id.
23. Id.
26. Id.
27. Scott Lauck, Gov. Blunt Signs Bill Funding Missouri’s Basic Civil Legal Services, St. Louis Daily Record/St. Louis Countian (July 16, 2007).
28. Id.
29. Id.
30. Id.

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