

Pro Bono Publico

Federal Legal-Aid Cuts Spur the Bar to Increase Free Work for the Poor

A Few Companies Help Too; But Efforts Don't Cancel Effects of Budget Trims

A Frustrating Divorce Case

By CHARLES F. MCCOY

Staff Reporter of THE WALL STREET JOURNAL

EL PASO, Texas—When the Reagan administration first succeeded 2½ years ago in cutting spending on legal help for the poor, this city's Legal Assistance Society responded in a way typical of federally financed legal-aid groups: It halved its staff and stopped taking a whole category of cases. What El Paso cut was divorce suits.

That might have been bad news for Maria Magdalena Rojo. She was broke and living with her young daughter in an adobe hut shared by eight other relatives, with little idea of the whereabouts of her husband of three years. "I had to make a divorce," she says in broken English, "for my daughter, for the future. But to divorce costs money. I was out of money."

In spite of the legal-aid cutbacks, Mrs. Rojo obtained her divorce. She got it because a group of local lawyers banded together and did something most American attorneys consider abhorrent and constitutionally dubious: They forced most of the city's nongovernmental lawyers to take two divorce cases a year for poor clients *pro bono publico*—for the public good.

El Paso's move to mandatory pro-bono work struck many as an extreme step, and it hasn't been copied by bar associations elsewhere. But it suggests how hard some segments of the private bar are struggling to fill at least part of the gap in legal aid left by the administration's assault on the program.

New Programs

Concerned that a tidal wave of untended legal problems among the poor is building, bar groups are stepping up existing voluntary pro-bono efforts in some places, such as Nebraska and Minnesota, while establishing new ones in some other states. Among these is Mississippi, where the private bar and legal-aid lawyers had been implacable enemies for years.

The American Bar Association estimates there now are over 300 organized programs involving private lawyers in legal aid, compared with 50 just two years ago. Legal-aid groups also are getting help from some big law firms, which are contributing money or time, and from a smattering of large corporations, where legal departments are setting up in-house efforts for the poor. In addition, some bar-sponsored gimmicks to generate legal-aid funds are springing up. "The legal establishment is jumping through hoops," says Esther Lardent, the director of the Boston Volunteer Lawyers' Project.

This isn't to say it is making up for the Reagan administration's cuts—far from it. Legal-aid offices around the country tell of slashing their caseloads, of limiting the kinds of cases they accept, of sending clients away with perfunctory advice. And among the indigent clients turned away by legal-aid groups, only about 44% get help from the private bar, according to a survey of 41 programs by the Washington Council of Lawyers, a public-interest bar association.

"It's sheer lunacy to suggest that the private bar's efforts, as important as they are, can make up for the cuts" in the legal-aid budget, says Thomas Ehrlich, the provost of the University of Pennsylvania, who is a former president of the Legal Services Corp.

Is It Appropriate?

Nevertheless, the Reagan administration is citing the response as proof that the private bar can look out for the poor. As presidential counselor Edwin Meese put it shortly after Mr. Reagan took office, legal aid to the poor "isn't really and has never been a fundamental responsibility of government." The administration wants not simply to reduce financing for the Legal Services Corp. but to eliminate it.

Congressional maneuvering has prevented that, preserving about three-fourths of the LSC's budget. Still, the cuts have had broad effects on the local legal-aid groups to which the LSC channels federal funds. For example, the Legal Aid Foundation of Los Angeles has shut four of its seven offices and reduced the number of cases it closed from 25,000 in 1980 to 17,300 in 1983. The Legal Aid Society of Alameda County, Calif., stopped taking any cases involving firings or allegations of used-car fraud. Types of cases dropped by other groups include bankruptcies, child-custody and, as in El Paso, divorce.

"We are forced to offer perfunctory advice in many cases because we can't afford thorough case work," says Alberto Salda-mando, the executive director of California Rural Legal Services. Sue Thompson, the managing attorney at the Gadsden, Ala., legal-aid office, estimates that as many as 25 eligible clients are turned away each week.

Class Actions

The budget cuts have also affected a kind of litigation for which the legal-aid groups have been much criticized, namely, class-action suits designed to remedy what the plaintiffs see as systematic injustice. The San Francisco Neighborhood Legal Aid Foundation, in its heyday one of the leaders in this type of litigation, often had as many as 25 class actions working at a time; today it has three.

The shrunken legal-aid program leaves out people like Vera Thomas, 24, who lives on welfare with her three small children in the Watts district of Los Angeles. In January
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ary, chunks of plaster began falling from her ceiling, and 15-month-old Frankie liked their taste. "He thought they were candy or something," Mrs. Thomas says. "He's been sick with fever every time he eats it." Leaks from pipes exposed by the missing plaster soon rotted the apartment's carpet.

Mrs. Thomas called the board of health and was advised to see a lawyer to force the landlord to make repairs. But legal aid turned her away. "They told me they didn't have any funds," she says. "I called a few lawyers. They said \$700 to \$800. I'm in a bind. I can't afford justice, so there's nothing I can do but live under these conditions."

The growing number of similar cases has spurred bar associations to action. But a major problem is motivating a group as diverse as the legal profession. It sounds simple in Nebraska, where the state bar association says it merely appealed to lawyers' better instincts through letters and public meetings. In six months, participation in pro-bono work rose to more than 40% of lawyers from about 10%. "We're proving that lawyers have hearts," insists Robert Spires, a former president of the Nebraska bar.

It wasn't nearly so easy in Mississippi. There the private bar has been warring with legal-aid lawyers since 1965, when they first began filing civil-rights suits. Over the years, the bar repeatedly called for the abolition of government-subsidized legal aid, threatened to disbar legal-services attorneys and once even hired a detective to spy on them.

It wasn't until May 1982 that the two sides settled on a voluntary pro-bono program, under which some private lawyers have agreed to take three cases a year referred by legal-aid attorneys. Ironically, the change came only when the private bar realized that its long-cherished dream of a world without the LSC might actually come true. "It suddenly dawned on people that the Reagan administration was dead serious about abolishing legal aid and that it might succeed," says attorney William Bost, who

heads the program. "That would leave private lawyers responsible for a flood of new clients, with nothing in place to handle them."

In practical terms, the Mississippi program shows how far the legal establishment still has to go in dealing with the federal financing cuts. Only 766, or 27%, of the state's lawyers have enlisted; the 580 cases closed so far were a tiny fraction of the total legal-services cases closed statewide. On the other hand, given the years of hostility, the fact that a program exists at all and that the two sides are communicating makes it a success in the eyes of many.

"Private lawyers can see we're not all wild-eyed radicals intent on destroying the government, and we find that there are some socially conscious lawyers out there," says Louis Armstrong, the director of the Mississippi Legal Services Coalition, the statewide support unit for Mississippi's six LSC field programs. "That's progress."

The Mandatory Program

In El Paso, some lawyers wanted more from a pro-bono project. Discouraged by the level of voluntary participation across the nation, bar leaders such as Raymond Caballero lined up the support of 10 district judges and several high-powered El Paso attorneys and, at a stormy meeting in September 1982, persuaded bar members to approve the mandatory pro-bono scheme. Within two weeks, a state-court order requiring participation was in place.

The program clearly has benefited the poor. Through mid-February, private attorneys had handled 1,033 cases and closed 512, including that of Mrs. Rojo, who got her divorce last fall. "The bottom line is that a thousand people who otherwise would have been shut out of the courts have been served," says Irma Jaime, the project coordinator. "That's good news for everybody."

Not quite everybody. "It stinks," declares David Dolezal, a private El Paso attorney. "I'm ordered what to do, when to do it and to do it for free. That's slavery."

Opposition also comes from attorneys who are feeling the pressure of a competitive environment, made worse by a lawyer glut. Even Mr. Caballero concedes that "a lawyer has to pay bills regardless of the size of his heart."

Where Do You File?

In addition, many lawyers spend most of their careers outside the courtroom and are ill-prepared to handle even the simplest of pro-bono cases. Corporate lawyers are particularly uneasy about getting involved in the kinds of cases legal aid normally deals with.

Robert Glanville is an El Paso tax attorney, and he is apprehensive about trying to handle divorce cases. "I had never done one, never wanted to do one," he says. "It's a little scary, going into court with that divorce. All I can say is, thank God for form books, other lawyers and simple cases."

Yet not all cases are simple. One El Paso lawyer put in more than 100 hours on a pro-bono divorce case that turned nasty when the state human-resources department intervened and the case became a child-custody free-for-all.

Mr. Dolezal's initial pro-bono divorce client missed her first four appointments, then showed up unannounced one hectic afternoon when he had six paying clients swarming all over his office. She didn't have a telephone, and Mr. Dolezal's letters were returned unopened. He later learned that friends of the client were intercepting the mail and sending it back because they thought the letters were notices of overdue bills.

A few weeks after Mr. Dolezal filed the case, his client vanished. After weeks of scouring, he reached her by phone in Oregon. She told him she was on vacation. "Six months on a lousy two-month case," he says with disgust. "It was tremendously frustrating."

Company Efforts

Though efforts so far are fledgling, the private bar may get a bit of relief from corporate legal departments. Boise Cascade Corp., the forest-products concern, set up a pro-bono project last October and has committed 400 attorney hours for the ensuing 12 months. Its lawyers are handling only referrals of Social Security cases, which have been flooding the Idaho legal-services offices.

At Aetna Life & Casualty Co., an elaborate program for providing free legal help to the elderly has handled more than 300 cases so far. It was set up in April 1981. Besides being the right thing to do, "it's good public relations, and that's good business," says Robert L. Hill, an Aetna lawyer and chairman of the American Corporate Counsel Association Pro Bono Committee.

The Washington law firm of Steptoe & Johnson, besides contributing some legal work, increased its 1983 financial offering to legal-aid programs by 70%. And in 21 states, a novel fund-raising program has sprung up. It is a Canadian concept called Interest on Lawyers' Trust Accounts, or IOLTA, which pools in a single statewide account the fee advances and other money held by participating lawyers on behalf of clients. The interest on the account is earmarked for legal aid.

In Florida, a voluntary IOLTA project that began in September 1981 raised \$2 million for legal aid in its first two years and is expected to produce \$2.7 million this year. California instituted a mandatory program of this sort last May, which is expected to raise \$6 million in 1984.

Limits of the Programs

Yet most legal authorities agree that the private bar alone, for all its contortions, could never provide legal services at anything approaching current levels. They say that the very programs the Reagan administration cites as arguments for eliminating legal-aid financing couldn't exist without Legal Services Corp. money. The El Paso program, for instance, got \$45,000 of seed money from the local legal-services office. "Take that away and we're right down the tubes," Mr. Caballero says.

And many experts say there simply are too many low-income people for the private bar to deal with. Legal Services Corp. eligibility rules (a maximum income of 125% of the federal poverty level) mean that there were roughly 12.5 million legal problems qualifying for LSC help in 1983, sources at the American Bar Association estimate privately. But the Legal Services Corp. closes only about 1.1 million cases a year, and the number of lawyers it employs has fallen 24% since 1981.

Although the Reagan administration recommends mandatory pro bono as the potential core of a private-sector system for all legal services, most legal experts doubt this could be done on a wide scale. Proposals for mandatory pro bono failed in New York City and California a few years ago, and an attempt to add a mandatory-pro-bono clause to the new ABA model code of ethics failed overwhelmingly. "You might have aroused as much opposition from the ranks if you had proposed licensing us to kill babies," says Robert Meserve, a former ABA president who practices law in Boston.

Even some of the seemingly innocuous private-bar responses have run afoul of legal or ethical principles. California's mandatory IOLTA fund-raising program, for instance, has been challenged by suits alleging that it unconstitutionally removes property (a client's money) without due process. Maine's highest court rejected a voluntary IOLTA program proposed by the state bar.

Still, private lawyers in many areas keep pressing ahead. A group of attorneys that includes former Secretary of State Cyrus Vance has been lobbying with law firms and corporations in New York City in an effort to double participation in voluntary pro-bono work there. And in El Paso, the mandatory program may be expanded to cover family cases other than divorce.

"All this politicking over the fate of the Legal Services Corp.—we can't worry about that," says Mr. Caballero. "We're down here at ground level, facing a problem. Some people say we're doing too much. Some say we're not doing enough. But at least we're doing something."