

ASPECIAL PROVIDERS OF LEGAL SERVICES TO THE POOR **By Mary Lee Hall, Deborah Greenblatt, Greg Malhoit, and Michael Hamden**

In the late 1970s and early 1980s, North Carolina's system for the delivery of civil legal services was often cited as a model because it provided comprehensive services to impoverished people in this State. In addition to state-wide coverage under the umbrella of Legal Services of North Carolina (LSNC), three programs were dedicated to serving the special needs of distinct groups of low-income citizens across the State; the mentally disabled, the incarcerated, and migrant farmworkers. The North Carolina Legal Services Resource Center, also a constituent program of the LSNC confederation, provided expertise and support on substantive matters regarding poverty law to legal services programs and pro bono lawyers and engaged in effective policy advocacy on behalf of low-income citizens in North Carolina.

In 1996, Congress passed legislation that imposed substantial restrictions on Legal Services Corporation funds, drastically affecting these special providers and necessitating a change in the structure of North Carolina's delivery system. A blanket prohibition on the representation of prisoners brought to a close a 15-year relationship between North Carolina Prisoner Legal Services (NCPLS) and LSNC when NCPLS relinquished all Legal Services funding to continue its mission. Carolina Legal Assistance (CLA) also became independent, rather than jeopardizing its clients in several ongoing class action lawsuits. At the same time, to complement CLA's work, LSNC created the Mental Health Unit to provide permissible representation for the mentally disabled. The Resource Center also separated from LSNC to preserve its historic role in the delivery system and merged with another organization, the North Carolina Client and Community Development Center, to form the North Carolina Justice and Community Development Center (The Justice Center). Farmworkers Legal Services remains an LSNC program, but a project within the Justice Center now represents farmworkers who can no longer be represented under congressional restrictions.

The special providers, both within and outside LSNC, remain a vital part of North Carolina's delivery system for legal services to all poor people in this State. This article highlights the work of these programs.

FARMWORKERS LEGAL SERVICES OF NORTH CAROLINA

Did you drink orange juice for breakfast this morning? Did you have a salad yesterday? Did a Frasier fir decorate your home last December?

If so, migrant farmworkers made these experiences possible. John Steinbeck captured the terrible irony of migrant farmworkers during the Great Depression in *The Grapes of Wrath*, -- people who toil long and hard in the nation's food harvest, yet often do not earn enough to feed and clothe their own children. Sixty years later, migrant farmworkers remain the lowest paid workers in the nation, often living under third world conditions not far from our prosperous communities.

Farmworkers Legal Services of North Carolina (FLSNC) was created by Legal Services of North Carolina in 1978 specifically to address the special legal problems faced by migrant farmworkers in North Carolina and to help migrant farmworkers surmount the particular barriers to redressing those legal problems which they encounter.

Characteristics of Migrant Farmworkers

Farmworkers are generally described as either year-round, seasonal, or migrant. Year-round workers, such as those employed on hog farms, work for the same farm indefinitely. Seasonal workers reside permanently in one location and work on a farm or farms only during the growing season. Migrant farmworkers travel away from their homes in Florida, Texas, Puerto Rico, or Mexico, to work on farms in North Carolina during the growing season.

The majority of migrant farmworkers who work in North Carolina are Hispanic. Most speak Spanish, although some workers primarily speak an indigenous language, and limited Spanish as a second language. In North Carolina, most migrant farmworkers live in employer-controlled housing. North Carolina Department of Labor officials license more than 1,200 labor camps and estimate the total number of labor camps to be in excess of 2,000.

The major crops in which migrant farmworkers labor in North Carolina are tobacco, sweet potatoes, apples, and pickle cucumbers. Migrant farmworkers are critical to the blueberry harvest, other fruit and vegetable harvests, Christmas tree production, nurseries and reforestation. Cotton

gins, potato packing sheds, and other packinghouses also employ large numbers of migrant farmworkers.

Legal Needs

Migrant farmworkers= most prevalent legal needs are employment-related. Problems with pay, with employer-provided housing or transportation, or with unsafe working conditions are common. Complaints frequently concern the failure or refusal of an employer to pay workers their wages. Because the piece rates paid to workers have changed little in many years, minimum wage issues abound. About 7,000 migrant farmworkers in North Carolina in 1997 were Mexican nationals with visas to work for the season for an association of farmers. These workers depend upon their employers for their lawful status in the United States. Their unfamiliarity with U.S. law and limited visas make it particularly difficult for them to assert their rights.

FLSNC's Work

FLSNC=s first task is to raise awareness among migrant farmworkers about their legal rights and to inform them that FLSNC exists to help them defend those rights. The program works with a broad array of church and community groups, health providers and educational institutions to accomplish this. During the harvest season, FLSNC staff, summer interns, and volunteers visit workers in the evenings to provide information and presentations on workers' rights.

Most clients initially contact FLSNC by phone. Virtually all client communication, whether oral or written, is in Spanish. FLSNC=s three attorneys and two paralegals speak Spanish and the program employs a bilingual receptionist. FLSNC also has a nationwide toll free number to encourage clients to remain in contact as they follow the crops from state to state. FLSNC=s staff of seven work out of the program=s office in Raleigh, although meeting with clients requires frequent trips to outlying areas from May to November.

Typical cases handled by the program include negotiating for the payment of wages, affirmative lawsuits under the North Carolina Wage and Hour Act or the Fair Labor Standards Act for unpaid wages and unlawful deductions, or under the federal Migrant and Seasonal Agricultural Worker Protection Act for wage, housing, or transportation problems, and affirmative claims under the North Carolina Retaliatory Employment Discrimination Act for workers fired or blacklisted for asserting workers compensation claims or making OSHA complaints. Most clients' claims are resolved through negotiation.

Since its inception, FLSNC has tried to improve conditions for migrant farmworkers in North Carolina through litigation and other advocacy. Familiarity with the legal and factual issues, ability to communicate with workers in their language, willingness to be available to workers, and educating workers about their rights have been the cornerstones of FLSNC's efforts to effectively represent this special group of clients.

**THE NORTH CAROLINA JUSTICE AND COMMUNITY
DEVELOPMENT CENTER (JUSTICE CENTER)**

Equal Justice Under Law.® These four words chiseled in stone above the entrance to the U.S. Supreme Court convey a solemn commitment by this nation to its citizens. They represent a promise to the people that every person, regardless of his or her status in life, should have equal access to the protection of the law. As described more fully below, the North Carolina Justice and Community Development Center (The Justice Center) is about giving meaning to this simple yet powerful commitment.

The Justice Center is a non-profit legal advocacy organization created by the July 1996 merger of the North Carolina Legal Services Resource Center and the North Carolina Client and Community Development Center. Prior to 1996, these two organizations were among the confederation of programs operating under the umbrella of Legal Services of North Carolina

(LSNC). Historically, these two organizations provided litigation support, training, research, backup expertise and legislative and policy advocacy for the 150 Legal Services field program advocates and their clients. Funding was provided by the Legal Services Corporation (LSC), IOLTA and private foundations. Both organizations were widely recognized as an indispensable resource for *pro bono* attorneys, Legal Services field programs, and as a forceful advocate for the rights of poor North Carolinians.

In January 1996, Congress severely cut funding for Legal Services programs and imposed a series of dramatic restrictions on the range of legal services and the types of cases that could be handled by LSC grantees. For example, under these restrictions, recipients of LSC funds could no longer: (1) represent clients before city, county or state government elected bodies; (2) represent individuals in class action cases; (3) seek or obtain an award of attorneys fees; (4) inform low income people of methods for influencing decisions by elected officials; (5) assist clients in any matter related to welfare reform; (6) represent certain non-citizens; or (7) represent prisoners. These restrictions severely limited the range of strategies and options available to federally funded Legal Services attorneys in many situations. The restrictions also would have resulted in low income clients going without representation in a number of class action cases. Finally, the restrictions, in effect, would have denied the poor with access to the full range of legal services available to others in society.

In the summer of 1996, with the full support of the Legal Services community, the Justice Center affirmatively rejected federal funding from the Legal Services Corporation. This was done in order to establish an organization which could represent the legal interests of the poor in matters that could not be handled by federally funded Legal Services programs and to ensure that legal representation would continue in pending cases that were restricted by Congressional amendments to the Legal Services Corporation Act. By taking these actions, the Legal Services community in North

Carolina and the Justice Center established a national model, followed by other states, which ensured full access to the courts for the poor.

Today, the Justice Center continues to fulfill this unique role ensuring that poor North Carolinians have full access to the civil legal system. The program is governed by a 15 member board of directors composed of private attorneys, members of the judiciary, Legal Services attorneys, leaders from statewide non-profit organizations and the faith community, and low income persons eligible for the program's legal services. Funding for the organization is provided by a series of grants and contracts. Major funders include the North Carolina IOLTA Program, the Z. Smith Reynolds Foundation, the Mary Reynolds Babcock Foundation and the Ford Foundation.

To accomplish its mission, the Justice Center operates a number of special projects and serves a variety of roles. Under the Justice Center's umbrella are the following projects and initiatives:

1. The Poverty Law Litigation Project, providing legal assistance in civil matters of major import to poor people who cannot be assisted by LSC funded Legal Services Programs due to Congressional restrictions.
2. The Immigrants Legal Assistance Project, providing legal assistance for hundreds of the state's immigrants and migrant farmworkers who cannot be served by LSC funded Legal Services programs.
3. Coordination of a special statewide *pro bono* panel of attorneys to assist the project and local Legal Services programs in handling LSC-restricted cases.
4. Support and training for the work of LSC funded Legal Services advocates and *pro bono* attorneys by conducting CLE events and providing backup support for poverty law advocates.

5. Publication of the North Carolina Poverty Law Monitor, for poverty law advocates which covers all of the important developments in North Carolina poverty law, including consumer, education, family, housing, public benefits and employment law.
6. Public policy research and analysis on public policy issues related to poverty.
7. Representing the interests of the poor in legislative and administrative bodies.
8. Operation of three special projects: (1) the North Carolina Budget and Tax Center which analyzes the impact of fiscal policy on low and moderate-income North Carolinians; (2) the North Carolina Education and Law Project which works to improve the public education system so that it better serves low-income and minority children; and, (3) the North Carolina Health Access Coalition which seeks to increase the availability, affordability and quality of health care for low-income and other vulnerable populations.

Although we have yet to achieve *AEqual Justice Under Law*® for every North Carolinian, the work of the Justice Center keeps this promise alive. The continued commitment and support by the lawyers of North Carolina will be critical to make this promise a reality for every North Carolinian.

CAROLINA LEGAL ASSISTANCE, INC.
A Mental Disability Law Project

When people with mental disabilities participate in Special Olympics, the community takes pride in that achievement. But when the same people need housing, job opportunities or special education, the reality is that they often encounter barriers and discrimination. Although there are many laws which have been written to protect people with mental disabilities, the unfortunate reality in North Carolina is that these laws are often not implemented. Thus, people with mental disabilities sometimes need a good lawyer.

Carolina Legal Assistance (CLA) is a non-profit, tax-exempt legal services project with a strong track record of success in representing people with mental disabilities. CLA has made a

difference in the lives of many people. One is Leroy L. who had been a patient at John Umstead Hospital for decades. Leroy had a dual diagnosis of mental retardation and mental illness. When a CLA paralegal first met him, he was tied to a bed, wearing only a diaper and screaming a lot. But as the result of a lawsuit brought and won by CLA, Leroy was discharged from Umstead and moved into the community. When the same paralegal visited him later, she saw a well-dressed, smiling man who was living in a group home and was proud of his new surroundings. Leroy is just one of the more than 800 people who have been discharged from state psychiatric hospitals as a result of the *Thomas S.* class action case. Without the case brought by CLA, Leroy and many others may have spent their entire lives in deplorable conditions. Now they grow gardens, have pets, and go to church. Many have jobs.

CLA was part of Legal Services of North Carolina from 1978 until 1996. Since January 1 1996, we have been an independent non-profit. The particular accomplishment of our organization has been to have a vision about what it would take to really bring about systemic change in the way our clients are treated and to take significant steps to implement that vision. We have been thoughtful in our strategies for improving the lives of our clients, and we have understood the magnitude of the task. Part of this has been to recognize that, in impact litigation, the real work often begins when the case is won. People with disabilities have sometimes been the subject of laws and cases that appeared on paper to help them, but which were not implemented in a way that makes a difference. The work of Carolina Legal Assistance has, however, made a real difference in people=s lives.

Our biggest challenge in the past year has been to keep body and soul together. We have been dependent almost entirely on earned attorney fees for our sustenance and have incurred debts to both IOLTA and the Self-Help Credit Union. We are taking steps to diversify our funding base and have

found a small niche in training lawyers and judges on how to communicate with cognitively impaired clients and witnesses.

CLA serves individuals with mental illness and developmental disabilities throughout the state of North Carolina. Our clients reside in state institutions, group homes and rest homes, and many other facilities and settings. Some of them are children living with their parents who need special education services. The mission of the program is to promote for our clients true freedom of choice and the right to quality services in the least restrictive setting. In order to fulfill this promise, the program needs the support of the bar and a stable source of funding for the long term.

NORTH CAROLINA PRISONER LEGAL SERVICES, INC.

Dostoevsky once observed that the degree of civilization in a society can be judged by entering its prisons.

North Carolina Prisoner Legal Services, Inc., is a non-profit organization that exists to give prisoners access to the legal system and to act as an advocate within that system. NCPLS also ensures for the broader society that humane conditions and the rule of law prevail within the prison walls.

In the current political climate, prisoners are often despised and reviled. The clarion call is to get tough on crime, even though that approach offers no hope that the underlying causes of crime ever will be addressed. While the United States incarcerates (at a staggering cost) a higher percentage of its population than any other country, our politicians mindlessly chant the familiar refrain, Lock 'em up. Congress has recently classified prisoners differently from all other litigants and has sharply curtailed the power of the courts to remedy even proven constitutional violations of prisoners' rights. And recent court decisions have allowed prison institutional concerns to trump some constitutional guarantees, including matters as fundamental as the way prisoners choose to worship.

Meanwhile, our prisons are often harsh and cruel places where neglect, abuse and brutality reign. In North Carolina, for example, a systemic failure to provide timely medical evaluations, diagnoses, and treatment for serious medical conditions has resulted in deaths, miscarriages, and other serious injuries according to a class of women confined at one of our correctional facilities. *Thebaud v. Jarvis*, 5:97-CT-463-BO(3)(EDNC 1997).

Most prisoners are not bad people. As a group they are undereducated, impoverished, and they often lack basic job skills. Many prisoners have been victims of abuse and a large percentage have problems with drugs and alcohol dependency. They need treatment, education, and job training while they are in prison to equip them to lead productive lives when they are released. Of course prisoners need to learn respect for the law, but punishment for their crimes is only one part of that lesson. Prisoners learn respect for an ordered society as much from the lesson that the law applies equally to everybody, including the people who have almost absolute power over their lives, as by suffering the consequences of their illegal conduct.

With certain limitations, prisoners retain First Amendment rights to free speech, to exercise their religion, and to petition the government for redress of grievances; their Eighth Amendment right to be free from cruel and unusual punishment; and their Fourteenth Amendment rights to due process and equal protection of the law. NCPLS provides a range of legal services to prisoners, from advice about their legal rights to representation in all state and federal courts.

For instance, Anthony D. is a youthful offender who has a low IQ and severe mental health problems. Although prison officials were aware that Anthony had been identified as a person entitled to special educational services under both state and federal law, he was deprived of those services in prison. Anthony was instead placed into administrative segregation as part of his mental health treatment. An investigation into Anthony's situation revealed that the deprivation of special educational services within the prisons was systemic, but prison officials were either unable

or unwilling to rectify the problem. The institution of a federal class action lawsuit on behalf of Anthony D. recently resulted in comprehensive reforms that substantially improve the chance that Anthony and others like him will be prepared to lead productive lives when they return to our communities. *Anthony D., et al., v. Freeman, et al.*, 5:95-CV-1053-BR(1)(EDNC 1995).

Civilization and the success of any society depend in large part on the extent to which the rule of law prevails. By working to guarantee equal justice under law, we vest every citizen with a stake in an ordered society. People who may avail themselves of the protection of the law are more likely to live within its constraints. These principles apply with special force to prisoners, most of whom will one day re-enter free society. When they do, will they be prepared to lead law-abiding lives as productive, contributing members of our society?

Providing inmates with a means of access to our legal system, seeking to ensure humane living conditions, and upholding the rule of law even behind prison walls, North Carolina Prisoner Legal Services plays a small role in working toward an affirmative answer to that question for the good of all our citizens.