



# PRO BONO

## THE LEGAL AID BUSINESS

by Ashley Wiltshire

**B**efore establishing his own firm earlier this year, Kevin Sharp was an attorney with Stokes, Bartholomew, Evan, and Petree in Nashville. His usual practice involved handling matters for sophisticated business clients who paid substantial fees for his services. Last year one of his clients, Cynthia P., paid nothing.

Cynthia was referred to Kevin not by an accountant or a business consultant, but by the Nashville Bar Association's pro bono program. After Kevin completed the case, Cynthia wrote, "Mr. Sharp is the only lawyer I ever had, and I appreciate everything that he did. The service was great, and so was the pro bono staff."

This article describes the organized provision of free legal services in civil cases to low-income people in Tennessee. It does not cover the public defender system and the heroic provision of legal assistance in criminal cases by both public defenders and the private bar. It does not cover the ad hoc free legal services provided every day by lawyers in Tennessee to needy friends, neighbors, and strangers.

This article describes an organized effort not only by lawyers but by whole communities to address significant problems of low-income people. Through fundraising campaigns and United Way gifts, through advocacy for government funding, as well as through volunteer involvement, lawyers and others in the community are helping to give voice to the maxim "Justice is everybody's business."

In July 1999 Ms. N. S. called the Murfreesboro office of the Legal Aid Society of Middle Tennessee and the Cumberland. She needed protection from her abusive husband. She had left him three times before, but kept going back because she was dependent on his income for the support of their three children. Finally, she left him for good and got help from a domestic violence shelter. Her husband saw her and begged her to come back. When she refused, he hit her in the face hard enough to break her glasses.

She sought an Order of Protection from the court, and it was granted. After the hearing on the Order of Protection, however, her husband

refused to leave the home and threatened to kill her. The police removed him from the home, but he continued to harass her at work and home. The staff of the Legal Aid Society interviewed Ms. N. S. and then placed her divorce case with pro bono attorney Gary Beasley. Even after the divorce, Gary continued to represent Ms. N. S., obtaining the child support that was ordered with the divorce. He closed her case in 2002, after having spent 48.3 hours working on it. Gary sent a note to Legal Aid saying, "Ms. S. was an excellent client and it was a pleasure representing her. Hopefully, we were of some assistance to her."

Ms. K. T. was retired and owned her own home. Her only income was Social Security and a small pension, but she could pay the small mortgage she owed. She had been thinking about adding a sun porch to her home when a contractor, who was going door-to-door in the neighborhood, came to see her.

The contractor persuaded her to sign a contract with him for much more than the job should have cost. She signed a deed of trust to secure the financing. The contractor arranged for Ms. K. T. to get a loan from a financial institution, and he was paid the contract amount by the financial institution, but he did not do the work on Ms. K. T.'s house.

The financial institution demanded that Ms. K. T. make the payments required in the note she had signed. When she protested that the contractor had not done the work, the financial institution replied that she would have to deal with the contractor about that.

Finally, Ms. K. T.'s daughter called the Legal Aid Society. David Tarpley, a staff attorney with Legal Aid, accepted her case. David has been handling cases like this since he began working as a staff attorney at Legal Aid in 1971. For many years he has taught a seminar at Vanderbilt Law School entitled "Consumer Credit Protection." Ms. K. T.'s daughter had gotten her to the right place and the right person.

David immediately sent a notice to the

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financer citing violations of the 1996 Home Owners Equity Protection Act (HOEPA) and rescinding the transaction. “This,” David says, “stripped down the loan to net balance and voided the Deed of Trust.” David then turned to the contractor and demanded restitution.

David explained to Ms. K. T. other remedies available to her. Because she was in frail health and did not want to have to testify in court, Ms. K. T. chose not to pursue those.

After David’s demand, the contractor repaid Ms. K. T. all the money he had received from the financer. Ms. K. T. paid the financer the net loan, and David negotiated favorable terms for her to pay off the original amount she had owed before the contractor came to her door. Her home was saved.

These stories are repeated hundreds of times every year across Tennessee as volunteer attorneys and legal aid staff lawyers help low-income people deal with very serious problems. The common element of these stories is legal help without charge.

Kevin Sharp and Gary Beasley are good examples of the more than 1,500 attorneys in Tennessee who signed up with their local pro bono program and last year agreed to accept without a fee one or more cases. The applicants for the services are screened by the local legal aid office and referred to the volunteer lawyers on a rotating basis.

David Tarpley is one of the nearly 100 attorneys employed full-time by local legal aid organizations, law school clinics, and statewide advocacy organizations in Tennessee. Their salaries are paid by the organizations so that the services can be provided to low-income people without charge. The organizations raise their money from a variety of governmental and private sources.

The provision of these services is not simply an effort of these individual lawyers and organizations, however. It is a point of emphasis of the Tennessee Bar Association (TBA). Al Harvey, a Memphis attorney with the firm of Thomason, Hendrix, Harvey, Johnson & Mitchell, is president of the TBA. He wrote in the January issue of the *Tennessee Bar Journal*, “We must step forward to ensure that every citizen has access to the justice system, whether it is by our own legal representation or by others supported with our financial contributions.”

Later that month, Frank Drowota, chief justice of the Tennessee Supreme Court, called together leaders of the largest firms in the state and urged them to “... put in writing your commitment to pro bono and encourage service widely within your firm.”

## History

The earliest organized and staffed legal assistance program in Tennessee was the Legal Clinic established at the University of Tennessee College of Law in 1947. The clinic served the dual purpose of educating law students and providing assistance to low-income people. Clinic staff supervised students who gave counsel and, in some cases, representation in criminal cases as well as civil cases.

In 1965, as part of the War on Poverty during Lyndon Johnson’s presidency, the federal government established within the Office of Economic Opportunity (OEO) an Office of Legal Services. The purpose of this office was to make grants to local legal aid organizations and encourage people in other locales to form legal aid organizations and receive federal funding. By 1969 legal aid organizations had been formed in Nashville, Memphis, and Chattanooga. These three organizations, plus the UT Legal Clinic, received grants from OEO.

In 1971 the Vanderbilt University Law School began a Legal Clinic and hired its first full-time director. The University of Memphis Law School established its clinic in 1977.

In the late 1970s the federal funding of legal assistance was transferred from OEO to the newly formed Legal Services Corporation (LSC), and funding increased substantially. It was a federal goal to have civil legal assistance available to low-income people in every county in the nation. Legal aid organizations were formed in Johnson City, Oak Ridge, Columbia, and Jackson, and they received funding from LSC. Almost immediately, however, in 1981, federal funding was cut, and while the goal theoretically had been achieved, the actualization became more difficult.

The rollercoaster of federal funding for civil legal assistance went back up slightly in the early nineties, but back down in 1996. With the reduced 1996 appropriation came also extensive Congressional restrictions on the organizations that received LSC funding. These restrictions included prohibitions against handling class-action cases, receiving attorney fees, representing certain immigrants, and providing legislative advocacy for clients. In order to continue providing some of the services that no longer could be handled by recipients of LSC funding, a new entity, the Tennessee Justice Center, was founded in 1996. It now has a staff of five attorneys.

There has been another more recent change in the landscape driven by LSC funding: consolidation. In 2002 LSC made it clear that consistent with its national policy it no longer would fund the eight local legal aid organizations in Tennessee; it would fund only four. This led to

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two sets of consolidations of organizations in east and middle Tennessee, resulting in the following regional lineup of organizations and offices today: **Legal Aid of East Tennessee**—Johnson City, Kingsport, Morristown, Maryville, Knoxville, Cleveland, and Chattanooga; **Legal Aid Society of Middle Tennessee and the Cumberland**s—Oak Ridge, Cookeville, Tullahoma, Murfreesboro, Gallatin, Nashville, Columbia, and Clarksville; **West Tennessee Legal Services**—Dyersburg, Huntingdon, Jackson, and Selmer; **Memphis Area Legal Services**—Covington and Memphis. There are local legal aid organizations in Chattanooga, Memphis, and Cookeville that deliver special services but do not receive LSC funding.

In 1976 the extant legal aid organizations, in order to work together better, formed the Tennessee Association of Legal Services. In recent years that organization has been expanded to include representatives of bar associations, the courts, and related organizations. The name has been changed to the Tennessee Alliance for Legal Services (TALS), and it has undertaken coordinating and supporting the delivery of civil legal services to the poor in our state.

### The Need

Some wag with more wit than sensitivity once said that the main problem with the poor people is that they don't have enough money. But it is true.

Problems that for others might be a nuisance, for the poor become crises. A dispute with a landlord becomes homelessness. A dispute with a home repair contractor becomes foreclosure. A dispute with a health care provider becomes lack of medical attention. Some problems are horrible regardless of income, e.g., domestic violence, but even with that, the lack of resources compounds the terror.

Often it is hard for us to realize how many everyday problems for low-income people become legal problems. It is hard for them to recognize as well, and that makes matters worse. They fail to seek the help they need. To help people recognize their legal rights and duties, legal aid organizations in Tennessee publish brochures and conduct workshops about common problems. Here are some examples:

- Can't Get TennCare to Give Your Child the Health Care She Needs?
- Financing Long-Term Care: Medicaid Eligibility for Nursing Home Services
- Legal Services Consumer Guide to Tennessee Medicare Supplement Insurance
- Medical Bill Blues? (For People Who Are Disabled or Over 65)
- Turn Medical Bills into Medical Care with

Spend-Down Medicaid

- Afraid Of Someone You Know? Here's How To Get an Order of Protection
- 15 Warning Signs of a Battering Personality
- Finding Safety and Support
- Using Orders of Protection from Other States in Tennessee
- How To Get Child Support While You Are on Families First
- How To Solve Child Support Problems
- What You Need To Know about Special Education
- Bill Collectors Bugging You?
- Boost Your Paycheck with the Earned Income Credit
- Chapter 13 Bankruptcy—What You Need To Know
- Get Help Quickly if You Can't Make Your House Payments!
- How To Stop or Prevent the Garnishment of Your Pay

Almost 750,000 Tennesseans live in families that have an annual income below the poverty level (\$8,980 for one person, \$3,140 for each dependent). Some years ago the Tennessee Bar Foundation funded a study of this population and its problems. The study, "Civil Legal Needs of Low-Income Tennesseans: A Survey by Demographic Data Consultants," found that 36 percent of low-income households had one or more potential civil legal problems. Those households with problems had an average of 2.36 problems per household.

The gap between the enormity of the need and the paucity of resources is staggering. In the general population of Tennessee, there is one attorney per 500 people, but the ratio of persons in poverty to the number of legal aid lawyers is one per nearly 8,000.

### Who Is Helping

In January the *Tennessee Bar Journal* listed 1,500 private attorneys who are on pro bono panels and are taking cases referred to them by legal aid offices. Law firms, individual lawyers, and others in the community have given generously to annual fundraising campaigns for legal aid organizations. Foundations and businesses have contributed and have given special grants. United Ways in several counties make allocations for legal aid. Since 1996 state funds for local legal organizations under the Civil Access to Justice Act have helped increase services and make up for lost federal funds. The Tennessee Bar Foundation provides funding through its Interest on Lawyers' Trust Accounts (IOLTA) program. These funds pay the salaries of attor-

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neys like David Tarpley and help fund the intake workers who refer cases to pro bono attorneys.

### **The Challenges Ahead**

Too many clients. Too few resources. So little time. Legal aid and pro bono organizations, like businesses and institutions across the state, must become more efficient at the delivery of services. We have opportunities to use technology to improve access and convey information. We can develop Web sites when computers become as common as televisions and telephones for our clients. We can develop hotlines to give limited advice and information. We can further computerize pro bono referrals. We already use sophisticated databases that allow us to record and maintain client information and keep up with documents. We already use computer assisted legal research.

TALS has a Web site (www.tals.org) that provides information about the location of legal aid offices and indicates the counties they serve. The Web site reproduces many of the brochures listed above, informing people about their legal rights and responsibilities. TALS maintains listserves through which attorneys and paralegals can share information and practice tips. We can use these to improve our practice.

Ultimately, however, in any case of substance, it comes down to having a real live attor-

ney available to relate to the client in person and do the legal work required by the problem. The gap between the need and the resources remains.

We will have to be smarter about recruiting pro bono attorneys, providing more attractive volunteer opportunities. We will have to communicate better the extent of the need and the effectiveness of the remedies lawyers can bring. We will have to enlist broader support in the community for this important work. The whole community needs to understand that justice is everybody's business.

We need to communicate better with low-income people about their rights and responsibilities. Cynthia P. was 44 years old. She had never talked to a lawyer before. Kevin Sharp "was the first lawyer I ever had." She did, however, know to call Legal Aid when her case went to a board of review. Ms. K. T.'s daughter also recognized a problem and knew where to turn for help. For them the American system of justice was real, was there, and it worked. Countless others suffer "the slings and arrows of outrageous fortune" without help and without hope. Every time that happens, it weakens the American system of justice for all of us. It frays the fabric of our society. It is the business of all of us to keep the fabric strong. ■

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