

*This past year has been a historic one for legal aid organizations.*

*Numerous groups that are committed to providing support to the less fortunate celebrated anniversaries. In a time of commemoration for Community Legal Services and Southern Arizona Legal Aid (each 50 years) and DNA—People's Legal Services (35 years), we spoke with a few of the pioneers of these services.*

BY LESLIE ROSS

“Our clients are really one paycheck away from poverty.” That is the reality that surfaces in most cases taken by legal aid lawyers. That fact can be disheartening at times, says Lillian Johnson, Executive Director of Community Legal Services, but their clientele’s grim situation usually motivates the CLS staff to do more.

“We know we are lawyers of last resort, and we know the consequences,” Johnson says. Having been involved with CLS for years, she has seen many faces turn to desperation when she has had to say that she cannot help.

Striving to help has been the mission of CLS staff for 50 years. Their efforts have had great effect with the poor population in Maricopa, Yavapai, Yuma and La Paz counties.

CLS has not been alone in its fight.

#### **Humble Beginnings**

In 1951, Charles Ayres was a law student at the University of Arizona. While he spent hours of his day preparing for his future legal career—one that would culminate in his becoming dean of the University of Arizona Law School—his wife Jean volunteered with other law students’ wives, all helping to run the Legal Aid Society. In a

room she describes as a “broom closet” in the Pima County Courthouse, Jean Ayres, along with two other wives and Tom Chandler, helped the poverty-stricken community find lawyers. Jean and the other wives scanned through a directory of attorneys, calling them one by one to check availability.

Before then, most people in Pima County either were referred to a boss, doctor or friend’s lawyer for their legal needs. If that didn’t work, they went door-to-door in search of some help. “If they really knocked on doors, they could, after not too many visits, find someone to help them,” says Chandler. “Things were different then; we were more of a profession and less of a business.”

Chandler’s passion and concern for legal aid is as exuberant as it was when he first began working for the Legal Aid Society. “In our country, which of course is the greatest in the world, we have the resources...to treat all of our citizens decently, and to give them a chance,” Chandler says. “We have the wherewithal to see that they have help in legal matters. And the profession has changed so much that at the present time if you didn’t have legal aid, and you didn’t have other things, comparable things, people would be up the creek without a paddle.”

Like many others, Chandler feels that it is an American responsibility to help those in need. However, this concept did not

**With Service to All**

**MARKING LEGAL AID ANNIVERSARIES**

always exist on the level that it exists today.

Before the drastic population growth in Arizona, legal aid was handled much differently. “There was a mixture of bartering,” recalls CLS’s Johnson. “In some situations in Arizona’s development, people brought in eggs or chicken.”

Arizona has come a long way since the days of exchanging food for services. The need for monetary funding altered the way in which legal aid organizations did business. Participating lawyers soon realized that they didn’t have the time or the funds to help every person who required legal aid. “Despite the fact that lawyers did good work and it was good of them to volunteer for these things,” Ayres says, “it was totally inadequate in terms of serving the needs of poor people. It was charity. ... And that lasted until essentially the War on Poverty came along.”

### Federalizing Legal Aid

In 1964, born of a desire for social change, the Economic Opportunity Act passed, which launched the War on Poverty. Funding for legal service organizations was a part of the change, and it became law through the efforts of the bar, the Office of Economic Opportunity and local organizations. Johnson recalls how Maricopa County benefited from federal funding: “The influx of federal funding made the concept of providing access to justice more

of a recognition that it was a commitment of all of us.”

The benefits of federal funding came with many challenges. There were fears within the groups that such funding would

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create a barrier between the legal aid organizations and the rest of the War on Poverty.

Many attorneys who were involved volunteered for legal aid fired with a sense of social change. With a memory of those tumultuous days, Ayres describes the Legal Aid Society of the 1960s.

“The atmosphere within legal services at that time was pretty heady, pretty radical. Well, it was seen as radical from the outside, ... it upset people. It caused trouble. The young lawyers who did that were sort of filled with fervor, and of course that created a backlash ultimately that resulted in restrictions on legal aid against filing class action suits and things like that.” Among those who took on legal aid cases then were lawyers seen as leaders and pioneers today—people such as William Morris, Tom Berning and Chuck Pyle.

The Economic Opportunity Act evolved into the Legal Services

Corporation. Once the LSC became responsible for federal funding, government restrictions were tightened: As long as federal funds were supporting these organizations, they could no longer take part in criminal cases or class-action lawsuits or represent non-citizens.

Thus, the need for funding ran up against the desire to continue to serve the population. This conflict forced organizations to find alternative options to help their clients.

### Obstacles and Solutions

Johnson recalls that CLS became part of a “mass-action” suit, rather than a class-action suit. “We can’t file class actions. But, for example, in order to serve in one case 400 low-income farm workers with the same legal problem, CLS filed a mass action. That is essentially representing 465 individuals in one case, but we are making sure that the clients’ rights are preserved. We are asserting their rights through the legal process whenever we can.”

John Harris, the Executive Director of Papago Legal Services, knew that he would no longer be able to lobby Congress. But he could still travel to Washington, DC, to speak about the importance of continued support for legal aid organizations—as long as he did it without using federal legal aid funds. The zeal for social change had not



disappeared. It simply reinvented itself.

Restrictions were not the only challenges that legal aid organizations faced after accepting federal funding. Suddenly, the funding was threatened by administrative politics. Legal aid funding was most affected during the Reagan administration, says Johnson.

“In the eighties there was a presidential administration that not only did not feel that legal services was necessary, but pretty much thought it shouldn’t be available—that all the lawyers in the country ought to satisfy the legal needs for poor people by every lawyer taking a case.” However, she says, as the numbers convey, it is impossible to support the indigent population’s legal needs simply by each lawyer taking a case. Johnson estimates that CLS turns down approximately 13,000 cases a year. This number is close to the number of attorneys practicing in Maricopa County. Consider the 15,000 people that CLS does reach each year, and the math just does not add up.

### **The Ongoing IOLTA Question**

In 1981, Congress changed banking laws to permit certain checking accounts to bear interest. The funds held by lawyers in trust of clients and other beneficiaries often are small in amount and remain in the accounts briefly, but interest on the funds can be significant: Such programs generated more than \$200 million in 2001 and, since their inception, have generated roughly \$3 billion for indigent legal services. Before 1981, the interest accrued on the accounts went back to the banks; since then, it could be used to fund certain legal services.

For this reason, Interest on Lawyers’ Trust Accounts (IOLTA) became of particular importance to the legal community. Since that time, all states, the District of Columbia and the Virgin Islands have used



Tom Chandler



Lillian Johnson

IOLTA interest to fund local legal aid organizations.

This is also not without controversy. Some argue that the Fifth Amendment restricts the use of IOLTA funds; their position is that the interest belongs to clients, so IOLTA seizes client property without

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compensation. Since it began, the constitutionality of IOLTA funds has been argued in courts around the country. In fact, oral argument before the U.S. Supreme Court was held on the issue on December 9 (*Washington Legal Foundation v. Legal Foundation of Washington*, No. 01-1325); the Court will rule in the spring.

The threat of reduced IOLTA funds has alarmed many organizations. However, if history can be used to predict the future, local organizations will continue to find alternative ways to protect their clients.

CLS has returned to its roots in the community to use funds more efficiently. Johnson optimistically states, "We really leverage our resources [in] collaboration outside of the legal community." Staff from CLS travel throughout the Valley to educate other social service organizations and to describe the work that CLS can offer. This enables them to turn away clients less frequently.

### Technology and the Future

By using the Internet to keep in touch with organizations throughout the country, CLS is further leveraging its funds. "I am on one listserv now where I will put out a question to hundreds, and within an hour I will have 34 responses," Johnson says. "I don't waste a lot of time spinning wheels doing something. If I get 20 responses and 19 have said, 'I wouldn't do it,' then chances are that I am not going to do it."

Other organizations are also trying to use the technology boom in their favor. The Legal Services Corporation has created a Technology Initiative Grant to help legal aid. DNA-People's Legal Services was awarded a grant to build touch-screen

kiosks. DNA's hope is the kiosks will deliver information to isolated communities in the Navajo and Hopi Nations. The technology allows DNA to bridge the language barrier by using voice and video files to access legal forms and other information.

The change in economics over the last 50 years has provided a roller coaster ride for the staff and boards of Arizona legal aid organizations. However, through the experience, the lawyers have remained enthusiastic about their ability to help those in

need. Perhaps the obstructions they have overcome have made them more optimistic about what they can provide in the future.

At the Southern Arizona Legal Aid 50th-anniversary celebration, Janet Napolitano, Governor-elect and former president of the board for Community Legal Services, put into words the daily mission of lawyers and staff: "All of us want to make where we live a better place. We want to make it kind of a little heaven on earth and, particularly for the disad-

vantaged, that's a really hard task. It's a really hard task if you don't have access to justice."

History's milestones include variations in funding, skirmishes over IOLTA and legislative changes. Through it all, agree legal aid attorneys, one responsibility has not changed. Both the legal community in Arizona and legal aid organizations, they say, must continue to provide the poor population with support. In that effort, they begin their next half-century's work. ▀

## History in the Making: Some Arizona Legal Services Cases

### Cases at the U.S. Supreme Court

- **Morten v. Ruiz**, 94 S. Ct. 1055 (1974)  
This case, handled by Papago Legal Services, involved equal protection and the rights of Native Americans on reservations to participate in a variety of government benefit plans.
- **Zobrest v. Catalina Foothills Unified School District**, 113 S. Ct. 2462 (1988)  
Co-counseled by Southern Arizona Legal Aid, this case involved the intersection of the Individuals With Disabilities Education Act and the First Amendment of the U.S. Constitution. It held that the provision of a sign-language interpreter on site at a parochial school did not violate the establishment clause.
- **Schweiker v. Chilicky**, 487 U.S. 412 (1988)  
In this case handled by Southern Arizona Legal Aid, the Court dealt with the issue of whether an improper denial of Social Security/disability benefits gave rise to a cause of action for monetary damages.
- **Blessing v. Freestone**, 520 U.S. 329 (1997)  
In this case, also handled by Southern Arizona Legal Aid, the Court dealt with the issue of whether systemic deficiencies in the state's child support enforcement program stated a cause of action under 42 U.S.C. § 1983.

### Jail Conditions

- **Erikson v. Boykin** (1980) (Pima County Jail case; Southern Arizona Legal Aid) (U.S. District Court)
- **Davis v. Richards** (1982) (Coconino County Jail case; Coconino County Legal Aid) (U.S. District Court)
- **Maricopa County Jail case** (1980) (Community Legal Services) (U.S. District Court)

Each of these cases dealt with conditions of local county jails. They all resulted in substantial improvement in the "living conditions" of inmates. They involved issues relating to overcrowding, medical services, access to the legal system, provision of mental health services, visitation and exercise.

### Jurisdiction of State Courts Over Cases Arising on Indian Reservations

- **Francisco v. State**, 556 P.2d 1 (Ariz. 1976)
- **Enriquez v. Superior Court**, 565 P.2d 522 (Ariz. Ct. App. 1977)
- **Nenna v. Moreno**, 647 P.2d 1163 (Ariz. Ct. App. 1982)

Each of these cases was handled by Papago Legal Services. They involved issues as to whether a state court had jurisdiction over causes of action ensuing on tribal land and involving Native Americans.

### Public Education

- **Roosevelt Elementary School v. Bishop**, 877 P.2d 803 (Ariz. 1994)  
This case, co-counseled by Southern Arizona Legal Aid and the Arizona Center for Law in the Public Interest, involved a constitutional challenge to the system of school finance in Arizona. The Arizona Supreme Court held that reliance on a property tax and arbitrary school district boundaries violated the state constitutional requirement of a general and uniform public school system.

### Alvarez-Jasso and Underwood v. Tucson Unified School District

These companion cases, handled by Southern Arizona Legal Aid, involved a historic pattern of underfunding of predominantly minority school districts by Tucson Unified School District.

### Consumer Finance

- **Aros v. Beneficial Arizona, Inc.**, 977 P.2d 784 (Ariz. 1999)
- **Maxwell v. Fidelity Financial Services, Inc.**, 907 P.2d 51 (Ariz. 1995)
- **Rascon v. TransAmerica Financial Corp.**, 812 P.2d 1019 (Ariz. Ct. App. 1990)
- **TransAmerica Financial Corp. v. Superior Court in and for Maricopa County**, 746 P.2d 497 (Ariz. Ct. App. 1987)
- **Villegas v. TransAmerican Financial Services, Inc.**, 708 P.2d 781 (Ariz. Ct. App. 1985)
- **Layne v. TransAmerica Financial Services, Inc.**, 707 P.2d 760 (Ariz. Ct. App. 1985)

These cases were handled by Southern Arizona Legal Aid and Community Legal Services. They involved a variety of consumer finance issues relative to low-income individuals. The issues ranged from whether consumer finance transactions were subject to the consumer fraud statute, loan "flipping" (continued refinancing at a higher rate) loan "Christmas trees" (the addition of a variety of unnecessary services and charges like credit life and credit disability insurance), and whether prepaid financial charges were properly disclosed.

- **Neeley v. Century Finance Co. of Arizona**, 606 F. Supp. 1453 (D. Ariz. 1988)  
This case involved a due process challenge to Arizona's garnishment statutes. As a result, the garnishment statutes were rewritten to provide greater protection to debtors.
- **Gulf Homes, Inc. v. Beron**, 688 P.2d. 632 (Ariz. 1984)
- **Gulf Homes, Inc. v. Gonzales**, 676 P.2d 628 (Ariz. 1984)

These cases involved the sales and repossession of mobile homes and issues under Articles 2 and 9 of the Uniform Commercial Code.

### Health Care

- **Zigler v. Kirschner**, 781 P.2d 54 (Ariz. Ct. App. 1989)
- **Grijalva v. Shalala**, 946 F. Supp. (D. Ariz. 1996)
- **Perry v. Chen**, 985 F. Supp 1197 (D. Ariz. 1996)
- **J.K. v. Dillenberg**, 836 F. Supp 694 (D. Ariz. 1993)

Among the issues addressed in these cases are the rights to both procedural and substantive due process in county and Medicaid provided health services, the provision of mental health services to juveniles, and whether the state is subject to §1983 class action for health care related claims.

### Welfare Reform

- **Lamberton v. Shalala**, 857 F. Supp. 1349 (D. Ariz. 1994)
- **Valenzuela v. S.B.** 860 F. Supp. 1421 (D. Ariz. 1993)
- **Alliman v. Glickman**, \_\_\_ F. 3d. \_\_\_ (9th Cir. 2000)

These cases handled by Southern Arizona Legal Aid dealt with a variety of issues related to welfare reform and government benefits, including arbitrary limitations on assets.