

LAW: Potent Business Foes Fighting Legal Aid

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Rep. Terry G. Kilgore (R-Gate City), who introduced the bill, said he withdrew it because Legal Services' agreement to drop funding for the migrant program "achieved the bulk of what needed to be done."

It is unclear now how long Bauer and her colleagues will be able to continue to operate without the \$120,000 annual appropriation they received from Legal Services.

The business groups that pushed the legislation accused Bauer of overzealous advocacy and objected to state money being used for a program whose clients primarily are not U.S. citizens.

Big Blow Seen for the Poor

Others have decried the attack and subsequent fund cutoff, saying it is likely to dramatically reduce representation for some of the most vulnerable people represented by poverty lawyers. Many of them are from Mexico and Guatemala and were recruited under the federally sponsored H2B program that allows employers with labor shortages to import workers.

"This is direct retaliation" by business interests that have been successfully sued by lawyers representing the working poor, said David Udell of the Brennan Center for Justice at New York University Law School.

Udell and other poverty law experts say the Virginia case is the first they know of in which a state-financed legal services program for a specific class of people has lost its funding because of raw political pressure.

Some call Legal Services' action a bow to political reality, while others contend the organization made a Faustian bargain.

"The big fear we have about Virginia is copy-cattng," said Don Saunders of the National Legal Aid & Defender Society, referring to the prospect of Legal Services foes going state-by-state attempting to eliminate a wide variety of programs they don't like.

Kenneth Boehm, the director of the Virginia-based National Legal and Policy Center who favors abolition of the federal Legal Services program, agreed that there might be more battles across the nation.

Mark Braley, director of Legal Services Corporation of Virginia, said he regrets having withdrawn funding for the Justice Center. But he added that waging a battle to save the migrant program's funding would have failed and endangered indigent civil legal services statewide.

"We are not going to fall on the sword of this program if it risks the rest of our mission," Braley said in an interview in his Richmond office.

As a result of the cut in funding, representation for migrants in Virginia will dry up unless the Justice Center can raise funds on its own.

The center's clients include individuals who pick meat out of blue crabs, clear brush and work as landscapers.

The workers have few resources of their own, often arriving in debt, having paid hundreds of dollars to recruiters who arrange their trips to the U.S.

John McKay, a moderate Republican who is president of the federal Legal Services Corporation in Washington, said he was distressed by the situation in Virginia and expressed concern that it could foreshadow cutbacks elsewhere.

"To restrict funding for migrants is a huge mistake. It's unfair," said McKay, a former corporate lawyer who used to do volunteer legal work on behalf of tenants in Seattle. "You are invited by the government to work here but you must check your legal rights at the border. The morality of that is highly questionable."

Representation of migrants, whether citizens or not, has for decades been the most controversial component of the federally funded legal services program. The clashes started in the late 1960s when Ronald Reagan, then the governor of California, tried to cut off funding for California Rural Legal Assistance, the first major legal advocacy group for poor farm workers.

"Unlike suing banks or landlords, there is a conflict not just of economics but a conflict of culture—a culture that is rooted in a different century—about what is the proper social relationship between poor workers and their employers," said Bill Beardall, the former director of Texas Rural Legal Assistance.

After years of skirmishes, Congress in 1996 dramatically limited the circumstances in which U.S.-financed legal aid lawyers could represent illegal immigrants. Legal service agencies in a handful of states reacted by creating their own programs. In Virginia, the Justice Center was established at the Charlottesville-Albermarle Legal Aid Society, one of the



Attorney Tim Freilich talks with laborers at an employment and education center in Virginia. Freilich, of the Virginia justice center for migrants, flew to Sinaloa, Mexico, to ensure delivery of \$110,000 to 60 workers collecting back pay from a seafood processor.

state's oldest and most aggressive legal services program.

"We knew it was politically risky," said Braley, LSCV's director, but felt it was worthwhile because the board had determined that migrants were the group most adversely affected by the federal restrictions. "We were one of only five states that funded an unrestricted program" for migrant advocacy—meaning one not receiving any federal funds and consequently free of the strictures Congress had imposed.

After Legal Services appropriated the money, Gulotta convinced Bauer in early 1998 to give up her job at the American Civil Liberties Union in Richmond and return to Charlottesville, where she attended the University of Virginia Law School and started as a legal aid lawyer in 1991.

"Alex promised me it would be cool to start a migrant project," Bauer said.

Even though she knew the agency was bound to draw hostility, the prospect of running it appealed to Bauer, who said she became sensitized to poverty because of "appalling disparities" she saw while her father was working in Latin America during her youth.

The first year, the center had two employees—Bauer and a half-time paralegal. Now, there are three full-time attorneys and another who works part-time. Besides the state funding, the salaries of center attorneys—in the high \$20,000 range—have been provided by fellowships from Skadden Arps, Slate, Meagher & Flom, a major New York law firm, and the Ford Foundation.

Each attorney speaks fluent Spanish and, during growing and fishing seasons, drives around to remote areas to inform migrant workers where to call for help. Sometimes, it's not difficult to find them. "We just go into a little town and ask where the Mexicans are," said paralegal Paulo Mendonca.

Social service workers such as Mary Bell Boltwood also introduce migrants to center attorneys.

"We have had several cases where the farm workers complain to us, as their only outside contact, that they have just finished harvesting someone's tobacco crop and were not paid a penny," said Boltwood, who runs a federally funded health care program that serves migrants. "Instead of my outreach and nursing staff having to confront the grower, we can call the Justice Center and they, often with one phone call, can resolve the whole situation."

The workers are easy to exploit, Bauer said, because there is little federal oversight of the H2B program and because such workers cannot turn to federally funded legal services programs for help because of the 1996 congressional restrictions.

The degree to which many of the migrants are isolated is illustrated, Bauer said, by calls she got in 1998, the year the center was launched. "A woman named Rosa Zamora left a message saying, 'There's a problem in Saluda. Please come. I didn't know what to do,'" the attorney said.

"She called back and I asked, 'Where do you live?' She said she had no idea; she was in the middle of nowhere. . . . She called a few days later and said the workers were staying near a blue house on such and such a road."

Bauer went and found them. After a two-hour meeting, the workers decided to sue their employer, Shores and Ruark Seafood Inc., a processor of oysters and blue crabs in Urbanna, Va.



Mary Bauer directs the Virginia justice center for migrants. In its first three years, the project recovered \$500,000 in back pay.

The class-action suit alleged the company failed to pay minimum wages or overtime to workers whom the company brought up from Sinaloa. It also alleged that the company failed to comply with job safety laws and had forced the workers to buy their tools and pay \$21 a week to live in "substandard, unlivable" housing.

Shores & Ruark hired one of Virginia's largest law firms but ultimately settled the case.

Rufus Ruark, one of the company's owners, acknowledged in a telephone interview that the firm had broken federal wage and overtime laws, but did so in ignorance. "Minimum wage had never meant anything to us; it always had been piece work," he said. "That was one of the problems. We weren't punching time cards. We weren't keeping track of hours. . . ."

The company has since changed its procedures and now

pays minimum wage and time-and-a-half for overtime, Ruark said. "We have got a whole lot closer operation to make sure we do comply with all the requirements."

Nonetheless, Ruark said he was disturbed that the company didn't get any credit for nice things it had done for the workers, like taking them to the grocery store on Saturdays or to discount stores at Colonial Williamsburg to buy clothes for family members back in Mexico.

"We had very few people who were dissatisfied until they found out they had something to be dissatisfied about," Ruark said.

Lobbyist Sees 'Shakedown'

Jeff Smith, a lobbyist for the Seafood Council, accuses Bauer of engaging in a "shakedown" of

seafood companies, forcing them to settle suits without merit.

Bauer retorts that the center has never had a suit dismissed by a judge. "Over and over again, our job is simply to ask that workers be paid the minimum wage, overtime wages where they are entitled to receive them and that workers not be forced to live and work in dangerous conditions," she said.

"Our clients want such pathetically basic things," Bauer added. "In some ways what we do is pretty banal but it is controversial because of the population group we represent."

Among those basics is the right to receive a check you can cash, Bauer said. In one instance, the program recovered \$230 for two Latino workers whose employer wrote "void" in the corner of the check he gave to the Spanish-speaking laborers.

In another case scheduled for trial in July, the Center alleges that the Osborne Motel in rural Grayson illegally charged 16 migrant workers a total of more than \$1,000 a month for rooms lacking warm water, heat, electrical wiring or adequate plumbing. Most of the workers were harvesting Christmas trees nearby and there was no other place to live, Bauer said.

Last year, a state court judge, responding to a suit by Virginia's attorney general, ordered the motel shut down for months because of a host of health and safety violations. It just got a permit to re-open and the owners deny the discrimination charges.

Sometimes, the center has gotten action without going to court. For example, center attorneys discovered two years ago that 11 tobacco workers were being required to live in a room where open pesticide containers were being stored. A center complaint to a state agency led to the removal of the containers. The employer also agreed to provide workers with a washing machine so they could clean their clothes on a regular basis.

While these victories boosted

the center's reputation among migrants, they also angered business interests. Smith said members of the Seafood Council settled some of the suits simply because that was cheaper than incurring large legal fees to defend them.

A year ago, serious political problems emerged. At the urging of the Farm Bureau and the Seafood Council, state legislation was introduced to place the same restrictions on Virginia's state-financed legal services programs as Congress imposed on the federally funded program.

Legal Services director Braley agreed to a softened version of the bill that cleared the state Senate 24 to 19. But in the wake of opposition from the Catholic archdiocese and the Virginia Council of Churches, the bill was withdrawn before a vote in the House.

This year Kilgore introduced virtually the same bill and there was widespread belief that the measure would pass both houses of the Republican-dominated Legislature and be signed into law.

Braley and his lobbyist, Mark Rubin, sought a compromise, meeting several times with Smith of the Seafood Council and Virginia Farm Bureau leader Martha Moore. A bottom line emerged: If Legal Services wanted the legislation to go away there was only one way to do it, by killing funding for the migrant program.

"There were no alternatives acceptable to the other side," said Legal Services board member Harris.

"I was very disappointed, as is anyone who has compromised on an important principle even though they know it's necessary," said Harris, who created the Virginia Poverty Law Center in the 1970s. He said he hopes this year's deal stanches the problem rather than making legal services foes hungry for more restrictions.

Bauer said she felt "betrayed" by the compromise, as did Gulotta, who resigned from the Legal Services board after calling it "a Faustian deal."

"I understand the political realities," Gulotta wrote in a letter to the board. "However on the basis of the principles that we all stand for, I believe that opposition to this deal is an obvious requirement of our mantra, emblazoned on the LSCV Web page, 'Thou shalt not ration justice.'"

For now, the migrant program continues to operate. The center recently filed a new lawsuit on behalf of unpaid landscapers in northern Virginia and is bringing 15 workers up from Mexico to testify in the Osborne Motel trial.

Gulotta, who has become skilled at dialing for dollars, is looking for new sources of funding. He has enlisted Charlottesville resident John Grisham, the author of numerous best-selling legal thrillers, as honorary fundraising chairman for CALAS. Bauer hopes that private donors or foundations will see the merits of the program. So far, the Center has garnered a \$50,000 grant from the Public Welfare Foundation in Washington.

"I feel like we are doing some of the best work I've done as a public interest lawyer," said Bauer, who in mid-May was named the legal aid lawyer of the year by the Virginia Bar Assn. "We've made a difference in the lives of ordinary people."

Zamora, who was handed her \$4,000 settlement by Bauer in Sinaloa, agrees. "Mary's a person that even though she's American, she helps the Mexicans," Zamora said in a telephone interview from her home there. "She's a great worker and a wonderful friend."

U.S. Often Impedes Human Rights, Report Says

Justice: Amnesty International cites opposition to ban on land mines and abuse of female prisoners as examples of backsliding.

By NORMAN KEMPSTER
TIMES STAFF WRITER

WASHINGTON—The United States set the international standard for freedom and democracy decades ago but recently has fallen far short of the mark, often becoming an "impediment" to the sort of human rights that it once championed, Amnesty International says in a report to be issued today. The organization, which won the Nobel Peace Prize in 1977, put Washington's recent record at the top of a list of "the five greatest disappointments" in the field of human rights in the past 40 years.

"Twenty-five years ago, [President] Jimmy Carter made human rights a central tenet of his foreign policy," the report says. "Today, however, the United States is as frequently an impediment to human rights as it is an advocate."

The report says Carter's successors in the White House, both

Democrat and Republican, "have ignored or opposed several key human rights treaties."

It cites specifically the Clinton administration's opposition to pacts banning the use of land mines and establishing an international criminal court. The Bush administration also opposes the measures.

Other nongovernmental human rights organizations have criticized the U.S. in the past, but the Amnesty International report is one of the most scalding. And it comes just weeks after Washington lost its seat on the U.N. Human Rights Commission, an incident that generated a wave of anger on Capitol Hill and produced a defensive U.S. response to any sort of human rights criticism.

Opening a hearing on the U.N. vote last week, Sen. George Allen (R-Va.), chairman of the international operations subcommittee, said it may be time to reorganize a U.N. commission that excludes the U.S. but includes Sudan, widely criticized here for its human rights record.

Allen added that the European Union—which holds three seats on the U.N. panel—may have to assume the leading role that had been played by the United States. Previously, he said, Europe "tended to treat dictatorial governments like Cuba, Libya and Sudan as ordinary

countries" with which profitable business could be done.

The Amnesty International report levels a similar criticism at the United States. "Ten years after the end of the Cold War, the U.S. continues to support—through aid, military training and arms sales—many of the world's most egregious human rights abusers."

The report gives no examples, but William F. Schulz, executive director of the U.S. branch of the London-based organization, cited U.S. aid to the Colombian military, a force frequently accused of human rights violations.

Schulz conceded that the U.S. is not in the same league with countries such as Sudan when it comes to repression. But he charged that U.S. hypocrisy and a failure to live up to its own standards merited the spot at the top of the list of disappointments.

"The U.S. is a model and has always seen itself as a model of democracy," Schulz said in a telephone interview. "When you are a model . . . you set the rules and decide which ones to play by."

The State Department issues an annual report rating the human rights practices of every nation except for one—the United States. But Schulz suggested several U.S. practices that might merit criticism in the report if they occurred elsewhere.

"The United States is the leading producer of equipment that can be used for torture, such as electric shock batons and handcuffs with serrated edges," Schulz said. "We have seen growing examples of sexual mistreatment of women prisoners by guards and prison officials. And the treatment of political asylum seekers is deplorable. When they come here, instead of having their cases adjudicated quickly, they are often thrown into county jails."

Other matters on Amnesty International's list of disappointments include the failure of the fall of communism in Europe to produce a genuine democratic revolution; continued acts of "genocide" in nations such as Cambodia, Rwanda and Sudan, despite the world's vow of "never again" following the Holocaust; continued impediments to universal human rights; and the failure of international institutions to support and promote human rights.

In a contrasting list of human rights advances since Amnesty International was established in 1961, the report cites a "democratization of information" produced by the spread of computers and access to the Internet.

Schulz said the cyber-revolution means that governments can no longer hide repression and persecution.

