

1998 Virginia Legal Aid Award Recipient

Acceptance Remarks

One hundred thirty guests from the pro bono and legal aid communities attended a luncheon on Friday, June 19 in the rooftop restaurant of the Virginia Cavalier Oceanfront Hotel. They gathered during the Virginia State Bar's Annual Meeting in Virginia Beach to honor Harrisonburg attorney John E. Whitfield, the recipient of the 1998 Virginia Legal Aid Award. Executive director of Blue Ridge Legal Services and then-president of the Harrisonburg-Rockingham Bar Association, Mr. Whitfield was recognized by the bar for his outstanding legal skills and statesmanship in cultivating positive relations across the Commonwealth between legal aid, the private bar, community groups and the public.

Noted civil rights activist and attorney Morris Dees, of the Alabama-based Southern Poverty Law Center, was this year's guest speaker. Mr. Dees commended Mr. Whitfield for his dedication to the less fortunate, and he exhorted the audience to stand proud in remembering the nobility of the profession as it seeks to enforce justice and the rule of law.

Mr. Whitfield's acceptance remarks are reprinted below. The accompanying picture shows, (from left to right), John Whitfield, his children Emily and Matthew, wife Rita, and mother Marjorie.

by John E. Whitfield

Thank you, Ed, for those kind words, and thank you to the Virginia State Bar for this wonderful honor. I think I can safely speak for the entire legal aid community in Virginia when I tell you that we appreciate deeply the State Bar's efforts in the last eight or nine years to highlight and support the work of Virginia's legal aid societies and to emphasize the importance of pro bono involvement. The creation of this award, as well as the Lewis Powell Pro Bono Award, has been a particularly effective way of communicating that support to our community and the bar at large. There was a time many lawyers in legal aid thought the State Bar didn't know that they existed. That's clearly not the case anymore. Thanks to Tom Edmonds, the VSB's executive director, Maureen Petrini, the VSB's pro bono coordinator, the VSB leadership, and the members of the VSB's Access to Legal Services Committee for all of your support of legal aid and pro bono work over the last decade.

My friend, Alex Gulotta, the executive director of the Charlottesville-Albemarle Legal Aid Society, pointed out to me after I learned that I would be receiving this award that I would be in the unfortunate position of following Morris Dees, who, as we have just witnessed, is a gifted public speaker with a message of unequalled moral imperative. Quickly sizing up the situation, Alex kindly but never-

theless emphatically urged me to set my oratorical sights for this occasion on being...brief. "Forget eloquent, go for brief!" I plan to take his advice. After all, there's a beach or a golf course out there beckoning to each of us this beautiful Friday afternoon.

For those of us who work in legal aid programs funded by the Legal Services Corporation, the imposition of the restrictions enacted by Congress in 1996 have undeniably had a demoralizing effect. We are no longer able to provide our clients with the same range of legal services that we were able to use with much success a few years ago. We can no longer freely advocate policy changes to our legislators on behalf of our clients, no matter how compelling the cause. We can no longer file a class action in federal court, even if it is the only practical way to right a clear injustice on behalf of thousands of low income Virginians. We are, from this perspective, second-class lawyers. And the United States Supreme Court has certainly given us scant cause for encouragement in the last week with its IOLTA decision. It is, however, exactly under these oppressive conditions, that we can take strength in the righteousness of our work, that we should draw ourselves up and resolve to persevere and renew our commitment to equal justice, against these odds.

While most of us may no longer be

able to bring the big federal class action, vindicating rights for thousands in one fell swoop, there are still important roles for us to play in fighting for systemic changes in the way poor people in Virginia are treated. Simply, our presence in the courtroom or the administrative hearing, advocating on behalf of an individual client, has an impact on the system, just as the lack of representation for poor people had an impact for so many decades prior to the creation of Virginia's legal aid societies. Consider the impact of decades, centuries of litigation in courts in every corner of our Commonwealth, where poor people did not have the benefit of counsel due to their poverty, while the opposing party was represented. What effect would that naturally have on the development of law and practice over time, particularly in those types of cases where one party was generally someone of means, while the other was not? Where, because of the parties' legal relationship, one party was generally powerful, with financial resources, while the other is not? Where one side benefitted from a lawyer's legal research, analysis and advocacy, while the other did not? Where one side had the resources to appeal, and the other did not? Landlord-tenant cases, creditor-debtor cases, foster care cases and public benefit cases, would have been the most susceptible to the effect, since rarely would there be one of these cases



where the parties were equally matched in resources and representation. You may be able to think of other areas of law where this would be just as true.

What would be the natural result of years of imbalance in advocacy in these types of cases? Judges would hear only one side of the law, for their entire careers. As you know, judges don't know, and aren't expected to know, all the relevant statutes, case law, and legal principles applicable to every case before them. Rather, they rely on the parties' counsel to develop and present the law favorable to their position. No matter how fair they might want to be, the effect would be irresistible yet insidious: the gradual erosion and distortion of the law, and of local practices, against the poor. Just as a plant that only gets sunlight from one direction gradually leans in that direction, and ultimately hardens in a permanently misshapen form, so would the law. No one would consciously be conspiring to deprive the poor man of equal justice of the law, yet it would be the natural product of

years of poor, pro se litigants appearing in court, litigants who were ineffective in negotiating the court's processes, inarticulate in presenting their side of the facts, and generally ignorant of the law and of their rights. As this condition persisted, the distortions would be institutionalized, passed down from one judge to the next, one generation of lawyers and clerks to the next, with no malicious intent, but with the terrible impact, nevertheless, of discriminating against the rights of the poor, and all without any legislative enactment or Supreme Court decision.

Let me share one old war story that illustrates this point. In 1982 or so, I was a brand new legal aid attorney right out of law school. I knew virtually nothing about anything useful, yet I was the only attorney covering several cities and counties in the Shenandoah Valley. Blue Ridge Legal Services had only begun providing services to the area within the prior year or so; prior to that time there had been no legal services for the poor on any organized, sustained basis.

A young woman came in. She was behind in her rent, and her landlord had obtained a distress warrant against her. I never see distress warrants anymore, but apparently they were the legal process of choice for landlords in that particular small city in our service area at that time. As you may know, a distress warrant is an extraordinary remedy that authorizes the Sheriff to place a lien on a tenant's belongings for back rent, prior to any hearing, when the landlord alleges that the tenant is about to abscond without paying the rent. That's bad enough, but in this particular jurisdiction, the practice had evolved into something much more oppressive. Landlords would routinely request these warrants, without any real showing other than the tenants were allegedly behind in the rent. Once the warrant was issued, and prior to any notice or hearing, the Sheriff would summarily padlock the premises, locking the tenant out until the return date, which might be a week or two later. In the meantime, the tenant was not allowed access to

any of her belongings. I imagine this practice was a particularly effective tool for landlords to squeeze the rent out of destitute but desperate tenants. Never mind that the statutes expressly recognized the Poor Debtor's exemptions, and did not contemplate the ousting of the tenant. Never mind that due process principles were blithely being ignored. In this woman's case, her pets were locked inside, as were her baby's clothing, diapers, bed, food, etc. And her court date was over a week away.

I didn't know anything in particular about landlord-tenant law and procedure, or about due process or debtors rights. But I examined the statutes and saw nothing authorizing padlocking. I saw an express protection of her belongings in the poor debtors' statute, and I had a vague enough understanding of due process to conclude that what was happening to my client was very wrong. I called the sheriff to raise these issues. He dismissed my objections, I think rather contemptuously, pointing out that this is the way they had always done it, that no other attorney had ever suggested that there was anything wrong with it, and essentially, who did I think I was to be telling him anything different. When I persisted, he referred me to the city's assistant commonwealth's attorney, who adamantly defended the sheriff's practice, in a face-to-face meeting.

So I did what any other legal aid attorney would have done at that point. I called the circuit court and scheduled an injunction hearing for the next morning, and then called the commonwealth's attorney to let him know of the time and place of the hearing. I had never even been in a circuit court before, I knew nothing about injunctions, I had never even laid eyes on that particular judge. I was absolutely in over my head, but I was convinced my client was getting shafted, so I started drafting a bill of complaint to file the next morning. It was never filed. At five o'clock that afternoon, the commonwealth's attorney called me and informed me that the padlock had been removed, and that my client was free to reenter the premises. Since that day, no other tenant has ever been padlocked out

of her home by the sheriff in that jurisdiction.

A few years later, when I was in city hall for another case, a deputy sheriff stopped me in the hall and asked if I were the attorney that had stopped them from padlocking tenants. When I warily responded that I was, he then went on to thank me, explaining that they had never liked doing it, but thought that they had to. No one had ever challenged the practice, because those oppressed by the practice were in no position to hire an attorney to challenge it. Now, I didn't do anything extraordinary in that case — that's not the point of this story at all. Any other legal aid attorney or *pro bono* attorney would have done the same thing, and achieved the same result. The only thing unique about it was that it was simply the first time a tenant in that situation had access to a lawyer to challenge that despicable practice, a practice had been allowed to develop and grow into an established routine because the poor had no representation, since time immemorial.

I'm sure many of you have similar stories of outrageous practices by the courts that oppressed poor people, that had developed over time because of the vacuum created by a lack of representation for the poor. Yet while many of the most outrageous practices against the poor have been rooted out across the state by the presence of legal aid offices and their *pro bono* counterparts, there are undoubtedly many more instances of more subtle insidious discrimination against the poor, waiting to be recognized as such and attacked. And it won't necessarily take a federal class action, or a legislative change, to make that attack. Individual legal aid and *pro bono* attorneys representing individual clients can, over time, reverse the effect of years of imbalance and prevent further erosion of our clients' rights and the perversion of the law.

Last winter, Nancy Glickman, the managing attorney of BRLS' Winchester office, and I were at UVA Law School for the annual Public Interest Job Fair. We were spending the day trying to entice law students from various law schools in Virginia

to come to work for us as summer law clerks, despite the fact that we wouldn't be able to pay them. Instead, they would have to find their own funding, or work for free. By the middle of the afternoon we were seriously jaded. We had been interviewing students back-to-back for hours, repeating the same lines over and over and over, until we weren't sure whether we had told the current interviewee the same thing three times in a row, or if we had failed to cover that topic at all with him or her. Whatever modicum of enthusiasm we may have mustered earlier in the day to inspire young law students to come to work for Blue Ridge Legal Services that summer was long since gone, replaced with glazed eyes, slouched shoulders, and, frankly, an utter indifference to anyone and anything between us and the end of our interview schedule.

I'm sure Nancy felt the same sort of irrational resentment that I did at the bounce in the step of the next law student that entered our little interview cubicle, a bright-eyed, smiling, energetic young man, from New Jersey, no less. As we summoned the will to begin yet another interview, just like the other one, and having lost even a pretense of enthusiasm by this time, this young man interrupted by offering, "You must feel really good about what you do." When we looked at him somewhat blankly, a little confused, he went on to explain: "You know, fighting for justice, justice for the poor and oppressed—*God's* work!" I tell you, what a transformation occurred. We were instantly sitting up tall, focussed, and proud. Even Nancy, who, as those of you who know her would agree, has never been accused of being a Boy Scout. We suddenly found new vitality in telling this earnest young man all about working in legal services.

For many of us working in legal aid programs, or, for that matter, handling *pro bono* cases, we inevitably become immersed in the day to day minutiae of handling cases and representing clients, and we don't dwell on the underlying public good of what we're doing. However, those few words of that law student have come back to me again and again, resonating with me ever since: "You know,

fighting for justice—justice for the poor and oppressed—*God's* work!" You know, he's **right**. That **is** what we do. It was absolutely true, we are and should be proud of what we do, we **are** fighting for justice, justice for the poor and oppressed. It **is** God's work. There is no more noble an endeavor that we could undertake with our lives, and we have a right to celebrate it and find strength in it.

Now, don't get me wrong. We have no grounds to be self-righteous. In any individual case, we are just an attorney for our client, just like the attorney representing the other side. Our client may not necessarily have a claim on sainthood. He or she may well be occupying something less than the high moral ground in any particular case. And we as attorneys are not saints, we have no personal claim of righteousness, for being legal aid or *pro bono* lawyers. But the cause that we pursue, justice for the poor, is righteous, and we do need to stop and remind ourselves occasionally of this fact—just as the law student from New Jersey did for Nancy and me.

To those of you Legal Aid attorneys who have clearly committed your lives to this work, who have spent decades in legal services, who were here when I first started as a lawyer, I applaud you and thank you. You are my heroes, my role models, and an inspiration to the rest of us.

To those of you who have been in the "trenches" for years, who have developed priceless experience and expertise in poverty law, please don't lose heart. Remember, it **is** God's work—fighting for justice for the poor and oppressed. Truly, some of the saddest moments in my career have been witnessing some of the most promising, the most talented and effective, the cream of our legal aid attorney corps, whether at Blue Ridge Legal Services or at other programs in Virginia, move on. And some of the most joyous, when some of them, like Jill Hanken and Steve Myers, rejoin us. (Parenthetically, speaking of real troopers, I congratulate Nancy Glickman today on her ninth anniversary as a Virginia legal aid attorney and as the managing attorney of our Winchester office.) To

all of you experienced, seasoned legal aid attorneys, we need your continued commitment, your experience, and your leadership.

To our committed paralegals, referral coordinators, and office support staff, we depend on your hard work, experience, and commitment to keep our offices running smoothly despite the deluge of clients. You too are doing God's work.

To the newer legal aid attorneys who are showing such promise, bringing new energy, and most importantly, a passion to be great lawyers, to the legal aid community in Virginia (whether you're in the room today, or perhaps in your office flipping through a future issue of *The Virginia Lawyer*, and stop to scan this page to see if I had anything worthwhile to say), please don't think of your work at Legal Aid as a launching pad for your legal career. Instead, consider whether should be the purpose of your legal career. The leadership of the legal aid programs has an obligation, perhaps more important than any other responsibility, to make sure you have the opportunity to develop and grow professionally as far as you might aspire. We need you, and our clients need you.

To the private attorneys who handle *pro bono* cases referred by legal aid, you deserve the highest praise of all. While we legal aid attorneys do what we do for a paycheck, your *pro bono* work is purely altruistic, based on your commitment to professionalism and to the ideal of equal access to justice for all. Your *pro bono* work lends immeasurable strength and depth to our efforts, and we need your help now more than ever.

Before I close, I ask your indulgence for a little stroll with me down Narcissist Lane, so that I can acknowledge the support and influence of some folks that are particularly important to me.

- To the staff at Blue Ridge Legal Services, I thank you for putting up with me, and for all your dedication, and the hard work you do, to make our program successful.
- To the Blue Ridge Legal Services Board of Directors, I thank you for your selfless involvement with BRLS,

for your confidence in me, and for nominating me for this award.

- To my lawyer friends and colleagues in the Valley, particularly my friends in the Augusta County Bar Association and the Harrisonburg-Rockingham Bar Association, thank you for support of legal aid and *pro bono*. I believe the private attorneys in the Valley set the standard for excellence in *pro bono* for the rest of state.
- On a personal note, to my mother, Marjorie Whitfield, who is here today, I thank you for everything you have done for me and our family. My mother is a proud and dignified woman, yet she did whatever menial jobs she had to do to provide for her children. She told us we were free to pursue whatever dreams we had, so long as we got an education first. The success of **all** of her children convincingly establishes her success as a mother.
- To my wife and partner in life of 18 years, Rita, I thank you for keeping me straight, and overlooking me when I'm totally immersed in working on that next brief or grant application that's due.
- My children, Emily and Matthew, bring to life that tired old phrase, "pride and joy." They **are** my pride and my joy. Thank you for being such great kids!
- I thank God for His mercy and blessings.

To paraphrase my latest role model, Melvin Udall, the character played by Jack Nicholson in the movie "As Good as It Gets," I say to each of the folks that I have mentioned, and to each of you, "You make me want to be a better man, and a better attorney." While I don't deserve this recognition today, I assure you that I intend to do my best to earn it, before it's all over. Thank you.