

Saint Louis

LAWYER



ABA President Carolyn Lamm

is joined by NBA President Mavis Thompson,

MOBAR President "Skip" Walther, BAMSL President Tom Glick

and The University of Missouri CLEO students at the Eagleton Federal Courthouse

president's message

Thomas G. Glick

The Justice Gap



One of the prominent pieces of my presidential agenda is to strengthen the Bar Association of Metropolitan St. Louis's ties to Legal Services of Eastern Missouri. Support of Legal Services does not strike me as a particularly contentious position for the president of BAMSL to take. Since its inception in 1874, BAMSL's charter has included a plank explicitly calling for the organization and its membership to provide legal services to people who cannot afford them. True to this plank, BAMSL modified its bylaw in 1911 to create a standing committee for the provision of such legal services and, more significantly, to grant the authority to hire an attorney to provide those services. We mark the creation of this committee and the hiring of that lawyer as the foundation of the institution which eventually became Legal Services of Eastern Missouri. Of course, the provision of legal services to the poor goes beyond this mere institutional involvement. As lawyers, we collectively recognize an ethical obligation and individually swear an oath to provide such services.

I am always surprised to talk to BAMSL members and other lawyers who are either unresponsive or openly hostile to the concept of legal aid and/or to Legal Services of Eastern Missouri. Frequently, these comments belie a misunderstanding of the program or stem from some aspect of the program that was eliminated a longtime ago. So, this month I am taking the opportunity to dispel some common misconceptions about Legal Services.

Misconception #1: Legal Aid helps criminals. Another principal at Danna McKittrick, Joe Soraghan, recently relayed a story about an attorney who voiced this perspective to him. Joe stated that, at the time, he was attempting to solicit donations for

the United Way of Greater St. Louis. In response, the attorney not only refused the solicitation but berated Joe for collecting donations on behalf of the United Way because it supports Legal Services of Eastern Missouri. The attorney said he was surprised Joe would help to fund an organization that worked to free criminals. Hearing about this exchange shocked me for several reasons. For starters, it is simply not true. While Legal Services does receive substantial funding from the United Way, it also receives funding from the quasi-governmental Legal Services Corporation. Federal statute and regulation prohibit all recipients of Legal Services Corporation funding from entering into any criminal law matter. Moreover, I find the attorney's attitude surprising because I think of that prohibition as being based on financial considerations, not ideological ones. The prohibition prevents Legal Services and other recipients of governmental funds from duplicating services the Public Defender programs already offer criminal defendants. Lastly, the attorney's opposition to the idea of LSEM representing a criminal defendant surprises me because I assume that, like most lawyers, he is supportive of the right of legal representation established in *Gideon v. Wainwright*.

Misconception #2: Legal Services takes clients that might otherwise pay other lawyers. One of the saddest things about Legal Services is that they turn away potential clients, lots of them. Legal Services is constantly and continuously evaluating its priorities. This includes placing stringent income and property qualifications on all potential clients and thereby eliminating anyone who could afford to pay an attorney. Further, Federal regulations prohibit Legal Services from taking most kinds of paid

cases. Legal Services refuses to accept many types of contingency cases. Despite these government and self imposed limitations on the provision of services, the available attorney and staff time is always insufficient to provide representation to everyone who seeks it. Even if for some reason potentially paying cases slip through the regulatory scheme, those prospective clients face the worst hurdle yet: they must convince a trained member of the Legal Services staff to take their case even though they could get services elsewhere. This is a virtually impassable hurdle. Due to the limited resources of Legal Services of Eastern Missouri, staff members are regularly placed in the position of denying representation to persons that are qualified, deserving, and desperately in need of legal services. After turning away such potential clients, a staff member is never going to accept a client that can get legal representation elsewhere.

Misconception #3: Legal Services does more harm than good. I think one of the best things about our profession is our ability to disagree yet maintain professional, cordial relationships with each other. Many people bemoan the recent decline in professional courtesy and the rise of opposing counsels that are not appropriately detached and professional. Sometimes I wonder if this is really a recent trend or if lawyers have been complaining about it consistently for the last 500 years. Trend or not, there is no denying that some lawyers have more trouble with civility in the adversarial system than others. Lawyers like this that are predisposed toward incivility, are never really able to recognize any validity in the positions of opposing parties or their counsels. Moreover they may grow to see themselves as champions for their client not IN the legal system but

AGAINST the legal system. These lawyers develop such sympathy for their client's perspective that they forget all about the purpose of the law. So, when a Legal Services attorney shows up, they think because they're not getting an easy default judgment from a pro se litigant but facing off against another trained zealous advocate the system has failed. They think that because they have to put effort into a case that they otherwise would not that the system has failed. I would submit that the system doesn't fail when disadvantaged people are made equal, but rather the system has succeeded in dispensing justice rather than steamrolling the disadvantaged.

Misconception #4: Legal aid is for people who are not like me. It is not difficult to point out the differences between your average lawyer and your average client eligible for Legal Services' representation. The most obvious difference is finances, lack of which is the initial basis of qualification for Legal Services. While the average lawyer can afford to hire an attorney if necessary, not all lawyers can. The historical prosperity of the legal profession has diminished and seems unlikely to return anytime soon. If your experience differs, you may wish to ask new

lawyer still looking for their first job more than a year after graduation. Or ask new lawyers that have jobs practicing law but so much crushing debt from law school that their salary still doesn't allow for more than bare essentials. Or ask the solo practitioner who had a bad month or two with a landlord that doesn't understand the concept of a "bad month." Or even the experienced lawyers at big firms who discovered too late that their firm wasn't exempt from economic trouble or layoffs.

The client base for Legal Services seems very different from us because we want them to seem different. Denying that anyone of us is only a market crash away from being like them is what lets us sleep at night. Once we get past the money, the other differences are not that noticeable. Most of us are in a work setting that exposes us to a large number of people with immutable characteristics - like race, religion, age and disability - different from our own. Lawyers invented the idea that such people are equal despite their differences. We also invented the idea that access to justice should not depend on how much money you have. Locally, our short-hand for this latter idea is Legal Services of Eastern Missouri.

required more than flowery words. It requires our participation in the Volunteer Lawyer Program and our financial contributions to the current Bar campaign. Such participation and contributions also satisfies the broad mandate of Missouri Supreme Court rule of professional conduct 4-6.1. That rule states that we "should render public interest legal service" and allows us to "discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means." The rule also offers lawyers that lack the time or skills to provide volunteer legal services an easier and less time consuming way to satisfy their ethical obligation. Specifically, it permits lawyers to meet their ethical obligation through "financial support for organizations that provide legal services to persons of limited means." Legal Services of Eastern Missouri is happy to assist the Bar in meeting their obligations in either of these ways. By acting as a filter, Legal Services of Eastern Missouri assures that the people served are really "persons of limited means." Moreover, it provides a structure and a mechanism for connecting these people to lawyers who wish to provide volunteer services.

To participate in the Volunteer Lawyer Program please call attorney and BAMSL member Jim Guest at 314-256-8707 or to participate in Bar Campaign on-line at www.lsem.org or by calling Judy Miniaci at 314-256-8742.

To comment on this article, please use the discussions tab on The Bar Associations of Metropolitan St. Louis Group on Facebook

or email them to tglick@dmfirm.com. To access Facebook please click on the Facebook Icon at the bottom of the page at bamsl.org.

This article is meant as a companion to the President's column in the current issue of our scholarly publication, the St. Louis Bar Journal. That column is meant as a more politically conservative prospective on the need for the legal community to support legal services.

I'm sure I could fill this new format magazine waxing eloquent about the "justice gap." But the last 99 years of the BAMSL's support for Legal Services of Eastern Missouri has

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