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COLUMN ONE

Powerful Foes of Legal Aid

■ State money for a Virginia justice center for migrants is slashed after business protests. Dispute focuses on who needs government-funded attorneys.

By HENRY WEINSTEIN
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CHARLOTTESVILLE, Va.—After a year of living with congressional restrictions on his legal services program, veteran poverty lawyer Alex Gulotta had had it.

"We were sick and tired of telling our clients, 'We can't do that,'" Gulotta said.

The ban on political lobbying and filing class-action lawsuits was odious, but Gulotta was most upset that the 1996 law barred him from helping the state's 41,000 migrants, many of whom weren't citizens, didn't speak English and had little awareness of their rights.

So in the spring of 1997, Gulotta went to his bosses at the Legal Services Corporation of Virginia with a creative way to get around limits Congress had imposed at the urging of groups such as the American Farm Bureau Federation: Establish a program free of federal funds.

Legal Services signed on, using \$120,000 in state money to launch the Virginia Justice Center for Farm and Immigrant Workers. Headed by a tenacious young civil rights attorney named Mary Bauer, the fledgling center quickly made an impact. In its first three years, the project recovered \$500,000 in back pay and overtime. It filed class-action lawsuits on behalf of migrants who harvest apples, plant trees, shuck oysters and paint homes. Bauer went as far as to fly to Sinaloa, Mexico, with her colleague Tim Freilich to ensure safe delivery of \$110,000 to 60 workers

collecting back wages from a seafood processor who settled a federal lawsuit.

Just as quickly, the program made some powerful enemies.

In February, Legal Services halted funding—faced with the stark alternative of a move by the Virginia Legislature to effectively hamstring all facets of Legal Services' overall \$6.5-million operation.

"If you are in the wilderness and your leg gets caught in a bear trap and you have a chance of dying with your leg in the trap or cutting off your leg and possibly living, what would you do?" said Jack Harris, executive director of the Virginia Trial Lawyer Assn. and a Legal Services board member.

The situation has cast a sharp focus on a long-running debate about what government-funded legal aid lawyers ought to be doing and who they should be able to represent. The controversy may also be a harbinger of similar disputes in other states.

In this case, the center's parent organization pulled the plug after legislation—instigated by the Virginia Farm Bureau and the Virginia Seafood Council—was introduced that would have barred any state-funded Legal Services program from filing class actions, lobbying on poverty-related legislation, collecting court-awarded attorney fees or representing migrants.

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-cattin'," 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 state's oldest and most aggressive legal services program.

"We knew it was politically risky," said Braley, LSCV's director, but he believed 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 \$20,000s—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.

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. Lobbyist Sees 'Shakedown'

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

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 reopen and the owners deny the discrimination charges.

Sometimes, the center has received 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 fund-raising 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."

Photo:

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.

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

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