

# Wyoming lawmakers step up

New legislation will provide means for a statewide civil legal services program to help Wyoming's indigent population

By Hon. E. James Burke

Last year's February edition of the *Wyoming Lawyer* had a map of the United States on the cover (see far right). Three states were colored red. Wyoming was one of those states. The red states were the only ones that did not provide state funding for civil legal services for the indigent. A lot has happened since then. The Wyoming Legislature, in challenging economic times, stepped up big time. They passed House Bill 61 in this year's budget session. The legislation will generate more than a million dollars per year for a statewide civil legal services program that will provide sorely needed legal help for people in our state that cannot afford it. I was fortunate to have an inside view of the effort that led to this legislation.

Back in February of 2009, the Access to Justice Commission was just getting up and going. It was tasked with identifying the unmet need for civil legal services and, if need was established, crafting a strategy to address that need. In order to fulfill that responsibility, we tried to get a handle on the current situation. We found that at least 50,000 people, 10% of the state's population, are

at or below poverty level. Studies that have examined the legal needs of those living in poverty have concluded that 80% of their legitimate civil legal needs go unmet.

We learned what "poverty level" means in real dollars. For a family of four the federal poverty amount is \$22,050. We visited with clerks of court who are on the front lines and grapple with the frustration of individuals unable to afford basic legal help. Members of the judiciary told us of the significant increase in pro se representation and the difficulties inherent in that situation. We learned that the vast majority of debt collection cases resulted from unpaid medical bills.

We identified the civil legal service providers in this state. They are few in number and must routinely turn down many legitimate requests for help because they lack the necessary personnel and resources to meet the demand. We spent a great deal of time with Legal Services Corporation discussing the need for an immediate replacement grantee for the federal funds administered by that organization. Fortunately, a new

grantee, Legal Aid of Wyoming, is now in place and is accepting clients. They have four attorneys and offices in Cheyenne, Casper, and Fremont County. Unfortunately, the replacement process took too long and the funds are limited and severely restricted. Legal Services Corporation made it clear that federal funding for civil legal services was never intended to be the complete solution to the unmet civil legal need problem. They hoped that the federal funding, if properly utilized and coordinated with other programs and resources, would be an important component of a statewide program. Since receiving the federal grant, Legal Aid of Wyoming has been inundated with calls and has been able to accept only a relatively small percentage of callers as clients. The federal legal services grant limits financial qualification for prospective clients to 125% of the federal poverty level, or \$27,562.50 for a family of four.

The law school legal service clinics continue to offer assistance but have limits on the help they can provide. Those programs have two supervising faculty attorneys and



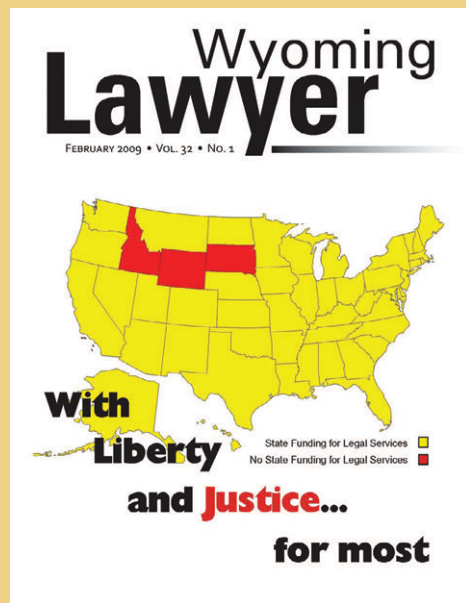
Governor Freudenthal signs House Bill 61 into law as Senator Tony Ross, Cheyenne attorney; Dona Playton, Director of the University of Wyoming Domestic Violence Legal Assistance Project; and Denise Burke (far right), Assistant Dean of the University of Wyoming College of Law, look on.

up to 16 law students available to provide help each semester. The Wyoming Coalition Against Domestic Violence and Sexual Assault Legal Assistance to Victims Project offers civil legal representation in the domestic arena. It has two full-time attorneys, but is facing elimination of one of the positions because of the loss of federal grant funds. All of the legal service providers told us that the need was overwhelming and all have been part of this effort to secure additional resources.

We also explored the status of pro bono efforts in the state. We found that the definition of “pro bono” is pretty vague. It is difficult to gauge the number of attorneys who are actually providing pro bono representation to specific clients. It appears that many fulfill their “aspirational” 50 hour pro bono requirement by “participation in activities

for improving the law, the legal system or the legal profession.” (See Rule 6.1(a)(2) (iii), Wyoming Rules of Professional Responsibility). This is a problem if the goal of pro bono involvement is to help individuals with specific legal problems. For example, I may be entitled to pro bono credit for the time spent writing this article, but this article doesn’t help one person with a specific legal problem.

Law nights have increased in number, but are still sporadic in most communities. While beneficial in many respects, they also can be a source of frustration for the participating attorneys and those seeking help. Participating attorneys find that they have few referral options for someone who needs representation beyond the advice given that evening. The efforts of the State Bar to identify attorneys who will accept pro bono cases



The cover of the February 2009 *Wyoming Lawyer* indicated that Wyoming was one of three states that did not provide state funding for civil legal services for the indigent.



Wyoming Supreme Court Justice Jim Burke expresses his gratitude to the Governor (behind Burke), the Wyoming Legislature, and countless others who helped in the process of getting House Bill 61 passed and signed into law. Cheyenne attorney, Representative Mary Throne, looks on.

have been marginally successful. As of this date, only 32 attorneys have taken the pro bono pledge.

Certainly there are many attorneys that go above and beyond in the pro bono area and they do so without publicity or recognition. And there are successful programs. One that has had significant success is the pro bono program at Casper College run by Mary Kubichek and Craig Silva. With focus and local leadership, that program could be implemented in other legal communities. Hopefully, the State Bar's current efforts and renewed emphasis on pro bono activities will result in more attorneys opting to provide pro bono representation in specific cases. That involvement is critical to the development of a statewide legal services program but, by itself, can never satisfy the tremendous need that exists.

We also tried to identify programs and approaches that have worked in other states. We reviewed studies and surveys conducted about the need in other states. We consulted with experts from other states and the ABA who have worked with numerous programs around the country.<sup>1</sup> They suggested that we hold public meetings throughout the state as a way to assess need, engage community leaders, and learn about public perception of our legal system. We took their advice.

We held community meetings in Cheyenne, Evanston, Riverton, Casper, and Gillette. We invited every member of the Legislature to every meeting. We invited local government officials. We invited those who provided services to the indigent in a variety of contexts. We invited everyone. Many came. We learned a lot.

For me, the public meetings brought the need home in a very personal way. The sense of individual hopelessness was palpable at every meeting. "Justice can be bought" was a common refrain. And when you listened to the reasons behind the statement, you were forced to concede that there was merit in the accusation. The law is complicated. Those with lawyers do better in court than those without. Legal forms are daunting and the court system is intimidating. Pro se representation is a viable option for very few. Paid attorney representation is simply out of the question for most.

Connie Sloan Cathcart, Executive Director of the United Way of Laramie County, came to the Cheyenne meeting with a flip chart. She ran the numbers for a family of four making \$34,000 (approximately 150% of the federal poverty level). Her presentation brought home the economic realities in devastating detail. There simply is no money available for that family to pay for necessary

legal services. Several individuals, demonstrating remarkable courage, shared their personal stories.

We obtained a grant from the Federal Court's Attorney Admission Fund Committee and hired videographers to record all of the meetings. A young film maker from Cheyenne, Dillon Petrillo, combed through the hours of footage and created a 16 minute video that is available for viewing on our website.<sup>2</sup> I'd recommend it. It gives a glimpse of what occurred at those meetings. It puts a face on the problem. Although many at the meetings expressed skepticism about the possibility of anything worthwhile coming from the meetings, there was no doubt that, deep down, all were still counting on our profession for help. For members of the commission, it was simply impossible to attend those meetings and not want to take meaningful action to address the problem.

There is no question that the current patchwork of federal grants, pro bono efforts and pro se representation is inadequate. Ultimately, we came to the same inescapable conclusion as all who have studied the issue: a viable statewide legal services program is impossible without state funding. We focused on obtaining that funding.

We drafted proposed legislation and a detailed White Paper, "Indigent Civil Legal

*“ This is a system based solution, where the Courts and the legal system are fixing the problems rather than expecting the Wyoming taxpayers to carry the burden. ”*

Governor Dave Freudenthal

Services in Wyoming: A Report to Governor Freudenthal and the Wyoming Legislature and a Call to Action to Establish a State-wide Program” supporting that legislation. We obtained legislative sponsorship for the legislation.<sup>3</sup> We tweaked the bill prior to introduction based upon sound advice we received from those in the Legislature and the Governor. All advised removing our request for an immediate \$500,000 general fund appropriation (to be repaid). We took the advice and the bill as introduced, HB 61, sought only a special appropriation from funds raised by a \$10 increase in court fees.

The clerks of court, who will be tasked with collecting those funds, publically supported the bill. Governor Freudenthal supported the bill and expressed that support in a letter sent to every member of the Legislature.<sup>4</sup> Chief Justice Voigt expressed support for the bill in his State of the Judiciary address to the Legislature. The Wyoming State Bar and the Wyoming State Bar Foundation publically supported the legislation. Many other organizations expressed support for the bill at legislative hearings. Efforts were made to ensure that every legislator was contacted and educated about the bill. Many had attended one of the public meetings. All were provided with a copy of the White Paper and a DVD of the public hearings. We welcomed and attempted to address all concerns about the bill.

Nevertheless, passage of the bill proved to be a challenge, particularly in the Senate. HB 61 passed the House by a vote of 49-9 (2 excused). In the Senate, on second reading, an attempt was made to amend the bill by significantly restricting the type of legal services that could be provided. The amend-

## Access to Justice Commission Members

- Hon. E. James Burke, Justice, Wyoming Supreme Court
- N. Denise Burke, Assistant Dean, UW College of Law
- Stuart R. Day, Attorney at Law, Wyoming State Bar Foundation
- Hon. Timothy C. Day, Circuit Court Judge, Ninth Judicial District
- Sleeter C. Dover, Executive Director, Wyoming State Bar
- \*Walter F. Eggers, III, Attorney at Law
- R. Daniel Fleck, Attorney at Law
- William L. Hiser, President, Wyoming State Bar
- Hon. Marilyn S. Kite, Justice, Wyoming Supreme Court
- Richard L. Lavery, Immediate Past President, Wyoming State Bar
- Leigh Anne Manlove, Governor’s Press Secretary
- Ronda Munger, Deputy Court Administrator/Public Information Officer, Wyoming Supreme Court
- Dona Playton, Attorney at Law
- Amanda Kay Roberts, Attorney at Law
- Hon. Wesley A. Roberts, Circuit Court Judge, Ninth Judicial District
- \*Sen. Anthony F. Ross, Wyoming Legislature, Senate Vice President
- Hon. John St. Clair, Chief Judge, Shoshone and Arapaho Tribal Court
- Hon. Scott W. Skavdahl, District Court Judge, Seventh Judicial District
- Gen Tuma, District Court Clerk, Natrona County

### “Honorary” Commission Members:

- Mark Aronowitz, Attorney at Law
- John Burman, Professor, University of Wyoming, College of Law
- Ray Macchia, Director, Legal Aid of Wyoming, Inc.
- Joann Odendahl, Court Administrator, Wyoming Supreme Court
- Rennie Polidora, Student, University of Wyoming, College of Law
- Leah Schwartz, Student, University of Wyoming, College of Law
- Sharon Wilkinson, Communications Director, Wyoming State Bar
- \*Larry Wolfe, Attorney at Law

\* All who participated made valuable contributions. If we were to give out MVP awards for the legislative success, they would go to Sen. Tony Ross, Walter Eggers, and Larry Wolfe. Their efforts were extraordinary.

*“It may not rank up there with, “The Giants win the pennant! The Giants win the pennant!” or “Do you believe in miracles? Yes!” for all time great calls, but “Having received a majority vote of those elected to the Senate, House Bill 61 has passed the Senate,” will stay with me for awhile.”*

ment failed in a very close vote. Later that day, discussions were held in an effort to alleviate concerns that were raised in the floor debate. Consensus was reached on a proposed amendment. On third reading, the bill was amended to specifically exclude tort cases, criminal defense, and cases against public agencies or political subdivisions seeking to change or overturn existing rules, regulations, and policies. The amendment also identified non-exclusive case priorities.<sup>5</sup> As we soon learned, however, passage of the amendment did not guarantee passage of the bill.

We listened to the debate on our computers courtesy of the Legislature’s website. Those who spoke in opposition outnumbered those who spoke in favor. Debate was passionate at times. Senators Massie, Meyer, Perkins, and Scott spoke in favor and their defense of the bill still resonates with me. On third reading, the Senators vote individually and it was difficult to hear their votes. There was a significant pause before the totals were announced: “20 ayes, 10 no’s.” It may not rank up there with “The Giants win the pennant! The Giants win the pennant!” or “Do you believe in miracles? Yes!” for all time great calls, but “Having received a majority vote of those elected to the Senate, House Bill 61 has passed the Senate.” will stay with me for awhile.

The House concurred in the amendment and on March 11, 2010, the bill was signed into law by Governor Freudenthal. The commission members savored the legislative success for less than a day. The focus immediately shifted to developing and implementing a statewide legal services program that is right for Wyoming. We have strict deadlines for progress. Our efforts will

be monitored by the Legislature and future funding will be jeopardized if demonstrable results are not achieved. If you wish to lend your time and talents to this important endeavor, let us know. We’ll put you to work and I’ll bet you find it satisfying. There is no doubt that those who participated in this project feel that their time has been well spent. (See insert on previous page.)

As you are all aware, opportunity is a terrible thing to waste. We now have a tremendous opportunity. Let’s not blow it. Too many are counting on us. We’ve seen their faces.\*

#### ENDNOTES

1. Meredith McBurney and Bob Echols from the ABA Resource Center for Access to Justice Initiatives, and John Asher of Colorado Legal Services were particularly helpful.
2. <http://www.courts.state.wy.us/AJC.aspx>
3. Senators Ross, Massie, Meyer, and Sessions agreed to sponsor the bill in the Senate. Representatives Throne, Connolly, Gingery, Hales, Hammons, Lockhart, Lubnau, and Dan Zwonitzer signed on as sponsors of the bill in the House. Rep. Throne shepherded the bill through the House. Sen. Ross, the bill’s prime sponsor, handled things in the Senate.
4. The White Paper and the Governor’s letter are also available on the website.
5. The pertinent language of the statute states:
  - (A) In adopting rules and regulations governing the program the court shall set the following priorities, which are not intended to be ex-

clusive, but to provide direction on the management and operation of the program:

- (I) Cases in which an indigent individual is a defendant in a lawsuit;
  - (II) Cases in which an indigent individual is seeking to enforce a court order;
  - (III) Cases involving domestic relations and family law;
  - (IV) Matters involving general legal advice to indigent individuals.
- (B) In adopting rules and regulations governing the program, the court shall prohibit the program from providing legal representation in the following areas:
- (I) Cases seeking tort damages;
  - (II) Criminal defense;
  - (III) Cases against public agencies or political subdivisions seeking to change or overturn existing rules, regulations and policies. This prohibition shall not limit the program’s ability to represent indigent individuals who are seeking benefits that may be owed them by public entities.
  - (iv) The rules shall establish eligibility standards for the receipt of services. The eligibility standards shall require that civil legal services be funded from the account only for individuals whose total household income does not exceed two hundred percent (200%) of the federal poverty level;