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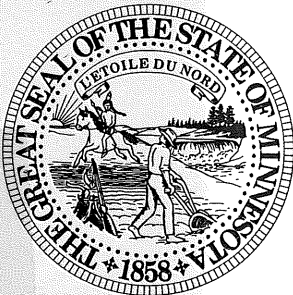
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THE DELIVERY OF LEGAL SERVICES TO MINNESOTA FARMERS

A Joint Task Force Report

Friday, December 6, 1985

Office of the
Minnesota Attorney General
Hubert H. Humphrey III, Attorney General



The
Minnesota State Bar Association



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EXECUTIVE SUMMARY

In spring 1985, Attorney General Hubert H. Humphrey, III, and then-President of the Minnesota State Bar Association, David Doty, organized a Joint Task Force on the Delivery of Legal Services to Minnesota Farmers. The Task Force has 31 members including representatives of major state farm organizations, the Minnesota Attorney General's Office, the Minnesota law schools, the Minnesota Department of Agriculture, the State Planning Agency, the University of Minnesota Agricultural Extension Service, the Minnesota Legislature, the Minnesota Legal Services Coalition, and 11 Minnesota State Bar Association sections, committees, and programs.

The major goals of the Task Force are: (1) to urge farmers to seek legal counsel as soon as farm credit problems arise in order to protect their legal rights; and (2) to make sure that legal professionals are supported adequately to handle the increased demands placed on them.

The Task Force then proceeded to: (1) assess the components of the current legal delivery system for farmers; (2) coordinate the efforts of those components in meeting the increased needs of farmers for legal assistance; and (3) recommend improvements to the delivery system.

Many agencies, organizations, and individuals are already contributing significantly to meeting the legal needs of financially distressed farmers. However, the number of financially distressed farmers continues to increase dramatically. As a result, there is a

critical unmet need for legal assistance. It is often difficult for financially distressed farmers to find legal advice and representation. When they do, their attorneys need extensive information and support.

The Task Force's findings focus on five broad areas: education; attorney referral and lawyer-to-lawyer programs; legal assistance for low-income farmers; farmer-lawyer support systems; and alternative dispute resolution. In each area, the Task Force has examined available resources and programs and has recommended specific proposals to improve current efforts. Those recommendations include:

- * Education: (1) development of a comprehensive statewide farm law educational program (2) coordination of available resources and development of means of informing farmers that those resources exist; and (3) dissemination of information by providing more written material, more workshops, more continuing legal education programs for attorneys, and by investigating the use of relevant technology in educating farmers and attorneys.
- * Lawyer referral and lawyer-to-lawyer programs: (1) development of a central lawyer referral system through which farmers can easily locate knowledgeable and willing attorneys; (2) refinement of existing referral systems to screen conflicts of interest, to link people with attorneys with specialized knowledge, and to keep track of recurring fact patterns; (3) expansion of the Minnesota State Bar Association's existing lawyer-to-lawyer program (SCOPE) in which attorneys share expertise in a variety of areas; and (4) development of a computerized data base for lawyer referral and lawyer-to-lawyer referrals as a part of a fully coordinated referral and information system.
- * Legal assistance for low-income farmers: (1) additional money must be made available to ensure access to legal services for low-income farmers; (2) the Legal Services Corporation should be urged to

allow local Legal Services programs greater flexibility in determining the eligibility of farm clients; and (3) private attorneys are encouraged to expand their assistance through the Judicare and Volunteer Attorney Programs of the Legal Services providers.

- * Farmer-lawyer support systems: (1) coordination among these systems to ensure that duplication is avoided; and (2) additional financing to expand the Minnesota Department of Agriculture's Farm Advocate Program.
- * Alternative dispute resolution: the Task Force encourages negotiation as an important means of resolving debtor-creditor difficulties, and recommends that alternative dispute resolution mechanisms, including mediation, be explored and developed for farm credit issues.

The sharing of information and ideas which has taken place over the months the Task Force has met is very encouraging. That interaction has already inspired increased coordination and activity among both the groups represented and others. It is hoped that the readers of this report will be similarly inspired to action: that farmers will increasingly seek legal information; that attorneys will increasingly be available and able to assume farm law cases; that there will be continued coordination among the components of the legal delivery system; and that the Legislature and private foundations will provide needed support to organizations and proposals which address the legal dimension of the farm crisis.

BACKGROUND

The Joint Task Force's analysis of the delivery of legal services to farmers has been premised upon a recognition of the financial crisis which faces Minnesota's agricultural economy and an awareness that this crisis will not be remedied in the foreseeable future.

Evidence of this financial crisis is well documented.^{1/} In 1984, Minnesota's farm equity dropped \$8.091 billion, a decline of 22.4 per cent.^{2/} Also in 1984, Minnesota's farmers' narrow profit margin disappeared for the first time on record, as production expenses exceeded cash receipts. As of October, 1985, farm prices were running an additional 14% below those of 1984. From June 1, 1984, through June 1, 1985, Minnesota led the nation in the number of farms lost, as the total number of Minnesota farms fell from 101,000 to 96,000. Of the 43,770 farms lost nationwide, 11% were from Minnesota.^{3/} Although specific data showing how many Minnesota farms were lost through bankruptcy, foreclosure, or the retirement of debt is not readily available, the University of Minnesota's Agricultural Extension Service's annual survey of the

^{1/} U.S. Dept. of Agriculture, Financial Characteristics of U.S. Farms, January 1985 (July 1985); U.S. Dept. of Agriculture, The Current Financial Condition of Farmers & Farm Lenders (March 1985); Harl, "The Architecture of Public Policy: The Crisis in Agriculture," presented at the Annual Meeting of the American Agricultural Law Association (October 3, 1985).

^{2/} Minnesota Agricultural Statistics Service (November, 1985) (unpublished).

^{3/} Minnesota Agricultural Statistics Service, AGRI-VIEW, Issue AV-16-85 (Aug. 13, 1985).

rural real estate market for 1984 indicates that over one-third of all farm real estate sales in 1984 were a reflection of financial difficulties or a need to reduce the scale of farm operations.^{4/}

Agricultural land values in Minnesota have been declining for four consecutive years. Since 1981, average land values in Minnesota have dropped from \$1,281 per acre to \$823 per acre. In the last year alone, average land values dropped 24%. This loss of value was the fifth largest loss in the nation.^{5/} As a result, it is no longer a rare occurrence for farm loans current in payment to be called due by lenders for lack of adequate security precipitated by land and equipment devaluations. In real terms (current dollars deflated with the consumer price index), farm land values in Minnesota have fallen 42% since 1981.^{6/} A decline of this scale has wiped out asset values and the credit capacity of farmers to an extent that fully justifies the use of the term "crisis" to describe agriculture's financial situation.

Significant in evaluating the extent of the financial crisis are the current statistics on farmers' debt-to-asset ratios. The debt-to-asset ratio measures relative indebtedness and is a

^{4/} University of Minnesota Agricultural Extension Service, "The Minnesota Rural Real Estate Market in 1984," Minnesota Agricultural Economist, No. 648 (February 1985).

^{5/} Minnesota Agricultural Statistics Service, AGRI-VIEW, Issue AV-13-85 (June 24, 1985).

^{6/} Raup, "The Crisis In Agriculture," Staff Paper P. 85-34, University of Minnesota (September 1985).

simple indicator of financial distress.^{7/} Generally, farmers with debt-to-asset ratios of less than 40% are not experiencing severe financial distress. Those with debt-to-asset ratios of over 40% are likely to do so. In 1984, the average debt-to-asset ratio for Minnesota farmers was 43.6%. Twenty-five percent of Minnesota's farmers had debt-to-asset ratios of 70% or more.^{8/} With high interest rates, few farmers in the over 70% group can survive for two years unless the operation has an unusually profitable combination of enterprises or the farm is infused with nonfarm income or capital.^{9/} These debt-to-asset ratios are indicative of the steadily increasing farm debt, which on a national level has increased drastically over the last 15 years, and now stands at \$214.8 billion.^{10/}

The financial stress on Minnesota farmers has had a serious ripple effect on the other elements of the rural economy and social structure. It is estimated that for each farm that fails, about three jobs are lost in the local economy. This means that as

^{7/} A debt-to-asset ratio of 10 percent means that for every \$10 of assets, the farm operator has \$1 of debt.

^{8/} Minnesota Farmer Financial Survey, prepared for the Minnesota Department of Agriculture by Mid-Continent Research (August 1984). See also, Food and Agricultural Policy Research Institute, "Economy-Wide Impacts of the Farm Financial Crisis," Staff Report #9-85 (July 1985).

^{9/} See generally, Harl, Problems of Debt in Agriculture, 6 Journal of Agriculture Taxation & Law 689 (1985).

^{10/} U.S. Dept. of Agriculture, Financial Characteristics of U.S. Farms, January 1985 (July 1985), Table 1.

many as 75,000-100,000 jobs could be lost in rural Minnesota in the next five years. In addition, for every 10 farms lost, one local business can expect to fold, which would result in a net loss of 2,500 to 3,500 businesses in rural Minnesota before 1990.^{11/} The Minnesota Department of Agriculture has seen the number of grain elevator failures quadruple during the last two years. Since February, 1983, eight rural banks have been closed by the Minnesota Commissioner of Banking, five of them in 1985. Many more rural banks are considered to be in difficulty. The nation's largest agricultural lender, the Farm Credit System, recently reported a third quarter loss of \$522 million and predicted that 1985 would become the first losing year for the System since the Great Depression. On the human side, there are the tragedies of displacement, increased numbers of suicide, incidents of family violence, and increased breakups of families with separations and divorces.

The agricultural financial crisis and the resulting competition for available farm income dollars and assets has not gone unnoticed by the Minnesota Legislature. In 1983, finding that the number of mortgage loans currently in default had reached critical levels, the Legislature enacted a limited moratorium law under which some property owners could seek judicial deferral for up to one year against a foreclosure on their homestead property.^{12/}

^{11/} Report of the Minnesota Agricultural Policy Commission (November 8, 1984).

^{12/} Minn. Stat. Ch. 583 (1983).

In 1985, the Legislature extended the application of the Act through July 1, 1987.^{13/}

In 1984, the Legislature provided a mechanism by which suppliers of agricultural inputs, such as chemicals, fertilizers, seed, and pesticides, can share in the crop proceeds as secured creditors or lienholders.^{14/} The 1984 Legislature also appropriated \$50,000 to the Department of Agriculture to be used to provide financial advice and counsel to farmers in financial distress.

In 1985, the Legislature established a registration system for the buyers of farm products under which secured creditors may notify registered buyers of their security interests in such farm products and assure that their secured status will not be lost when the products are sold.^{15/} In addition, the 1985 Legislature enacted the Emergency Farm Operating Loan Act under which limited amounts of money were made available to pay initial interest payments on operating loans and ownership loans;^{16/} amended the Minnesota Department of Agriculture's family farm security program to allow the deferral of loan payments guaranteed under that program for up to two years;^{17/} provided some protection for farm income under the

^{13/} Minn. Laws 1985, ch. 306.

^{14/} Minn. Stat. § 514.950 (1984).

^{15/} Minn. Laws 1985, ch. 306.

^{16/} Minn. Laws 1985, ch. 4.

^{17/} Minn. Laws 1985, ch. 276.

garnishment and attachment laws and increased the exemption for farm machinery;^{18/} prohibited legal action by debtors on credit agreements which are not in writing;^{19/} and appropriated \$141,500 to the Department of Agriculture to continue its farm crisis assistance program.

The statistics on Minnesota's farm economy, and the specific measures enacted by the Legislature, document a serious farm credit crisis. Farmers and creditors alike face difficult decisions, including: who is paid and in what order; who reviews new financing; who shares in available public loan monies; and who ultimately will own Minnesota's farms and farm equipment.

The farm financial crisis has created a tremendous challenge to Minnesota's legal system in an area of law generally unexplored until recently. Simply put, the farm financial crisis has created a farm legal crisis. This crisis is the result of several factors. First, there has been a severe deterioration of business relations between farmers, lenders, creditors, suppliers, and buyers of farm products as they compete for limited dollars. Second, farmers, who may not have budgeted or anticipated the many dollars which are necessary for legal counsel, are now attempting to find attorneys to help them with their financial and resulting legal difficulties. Third, the issues raised are often new and complex,

^{18/} Minn. Laws 1985, ch. 306.

^{19/} Minn. Laws 1985, ch. 246.

and many attorneys are not prepared to address them.^{20/} In fact, only recently has the legal community recognized "agricultural law" as a separate subject for study.^{21/}

The complexity of farm credit matters results from the need to draw on expertise in a number of recognized fields of law and apply that expertise specifically to farm debtor/creditor relationships. Analyzing a farm credit case is likely to require a working knowledge of mortgage foreclosure and moratorium laws, garnishment and attachment, both chapter 7 and 11 bankruptcy laws and recent decisions as they apply to farm cases, and tax consequences of agricultural liquidations and foreclosures. In many of these areas there is recent legislation which has not yet been interpreted by the courts. Of particular challenge are the rules, practices, and procedures of the Farm Credit System and the Farmers Home Administration.^{22/} The relationship of these entities to their

^{20/} See generally, Massey, Farmers & the Law: Another Kind of Farm Crisis, 54 The Hennepin Lawyer 8 (May/June 1985); Massey, Farmers in Crisis: A Challenge to Legal Services, 18 Clearinghouse Review 704 (November, 1984); Harl, A Financial Revolution in Agriculture, 60 No. Dak. L. Rev. 387 (1984).

^{21/} Dahl, Agricultural and Law Economics, 29 S.D. L. Rev. 217 (1984); Harl, Agricultural Law: A Place in the Intellectual Firmament, 1981-82 Agricultural Law Journal 31 (1982); Hamilton, The Importance of Agricultural Law in the Law School Curriculum, 1980-81 Agricultural Law Journal 31 (1981).

^{22/} Recent information gathered by the Minnesota Department of Agriculture indicates that the Federal Land Bank holds almost half of all Minnesota's farm real estate debt. The Farm Credit System holds in total 30% of all Minnesota farm debt when operating loan debt is included, a figure of about \$3.6

(Footnote Continued)

borrowers or prospective borrowers has opened up a body of evolving law to which many lawyers have not been exposed.

An offshoot of the farm legal crisis should not go unmentioned here. In their sometimes desperate effort to save their farms, farmers are turning in increasing numbers to individuals and organizations offering "quick fixes" and questionable ideological solutions to the farm credit crisis. They sell, for hundreds and even thousands of dollars, fictitious loans and pro se litigation packets which at best produce no return and at worst establish a bar to litigation of possibly meritorious claims.

The farm legal crisis has had a particularly significant impact upon Minnesota's middle and low-income farmers. In 1984, there were over 80,000 persons living on Minnesota farms who were considered to fall below the federal poverty level.^{23/} There does not currently exist in Minnesota any special program to provide legal representation for low-income farm residents. While much volunteer and reduced fee work is being done by the private bar, farm cases are sometimes too complex and time-consuming for full representation to be handled on a pro bono basis. Combining the

(Footnote Continued)

billion. The Farmers Home Administration holds another 6% of Minnesota farm debt. As of June 30, 1985, 32% of FmHA's borrowers, 7% of the Production Credit Associations' borrowers, and 8% of the Federal Land Bank's borrowers were delinquent.

^{23/} Minnesota State Planning Agency, Office of the Demographer, "1980 Census: Planning Notes" (August 1984).

total existing legal resources available to low-income farmers (staffed Legal Services offices, judicare programs, volunteer attorney programs, and law school clinics), and assuming Minnesota's low-income farmers have access to existing resources in proportion to their population, only 21% could receive legal assistance.^{24/}

While the farm law crisis has had a particularly significant impact upon Minnesota's low-income farmers, the crisis is not limited to low-income farmers or those who would qualify for free legal representation. Farmers of all income levels, faced with higher production costs, lower market prices for their products, and drastic land devaluations have a new need for legal assistance.

In response to the legal needs raised by the farm crisis, Minnesota Attorney General Hubert H. Humphrey, III, and then-President of the Minnesota State Bar Association David Doty convened the Joint Task Force. The goals of the Task Force have been to: (1) assess the component parts of the current legal delivery system for farmers; (2) coordinate the efforts of those component parts in meeting the increased needs of farmers in the area of farm law; and (3) recommend improvements to the delivery system. In organizing the Task Force, an effort was made to draw on the expertise of a broadly representative group of individuals and organizations who have been addressing the legal needs of farmers. The Task Force has thus been comprised of representatives of 11

^{24/} Massey, "Unmet Legal Needs of Minnesota Farmers" (1985) (unpublished manuscript).

Minnesota State Bar Association sections, committees and projects; the Minnesota Attorney General's Office; the three Minnesota law schools; the major state farm organizations; the State Department of Agriculture; the State Planning Agency; the Minnesota Legal Services Coalition; the University of Minnesota Agricultural Extension Service; and representatives from the Minnesota Legislature. A brief description of the organizations represented on the Task Force is attached as Appendix A.

CHALLENGES IN THE DELIVERY OF LEGAL SERVICES TO FARMERS

The Task Force's first meeting was held on June 7, 1985, and monthly meetings were held thereafter through November, 1985. During its seven sessions, all participants were encouraged to discuss in detail their activities, programs, and projects in the farm credit area; what they saw as the problems with the current system for providing legal assistance to farmers; and their proposals or recommendations for change. The legal profession has often had to adapt to major changes in the past. The Task Force examined ways to facilitate such adaptation.

In studying the various components of the legal delivery system and the system's ability to address farm law issues, a general consensus developed among the Task Force members regarding the relationships between farmers and lawyers and the ability of the current system to deliver expertise and assistance in farm law.

From the farmers' perspective, the following concerns were raised:

1. In the past, farmers' contacts with attorneys have generally centered upon more traditional areas of law, such as estate, tax, and business planning, and property transactions.
2. Farmers have traditionally avoided the services of attorneys until specific needs arise. As a result, in the current farm crisis, farmers have tended to seek legal assistance at the height of their own crisis rather than at an earlier time when an attorney could be more helpful.
3. In the past, farmers generally relied upon the expertise and judgment of their lenders in negotiating financial transactions. In

repossession rights and procedures, and tax consequences of agricultural liquidation and bankruptcies have not been definitively addressed.

- d. Many farm law issues involve the Farm Credit System and/or the Farmers Home Administration and require knowledge of a vast and complex area of federal rules, law, and procedures.
- e. Farm litigation often involves opposing parties with unlimited resources and may require multi-stage litigation. It thus requires a major time commitment and substantial litigation expenses.

From the perspective of those attorneys who have assumed a major role in representing low-income farmers in financial distress, the following concerns exist:

- 1. The Legal Services programs have limited resources, and federal eligibility requirements restrict the number of farmers who can be assisted. Farmers have particular difficulty meeting eligibility standards. Although a farmer might meet the income test because his cash flow is inadequate, his equity in land, machinery, crops and livestock can put him over the asset limitations for eligibility.
- 2. Given current resources, the Legal Services Coalition programs, including their judicare and volunteer components, are only meeting about 21% of the overall need for legal assistance for low-income persons statewide.
- 3. Even if the financial eligibility guidelines of the Legal Services programs were revised, current resources would only enable the programs to reach a small percentage of those people who are in need of assistance.

In addressing these concerns, the Task Force focused upon the following broad questions:

1. Education: What is currently being provided to farmers and attorneys on the subject of farm law, and how can programs be extended, funded and coordinated in order to reach more lawyers and farmers;
2. Attorney-referral and lawyer-to-lawyer programs: How can these services be improved through coordination of the activities of the attorney referral systems, volunteer attorney programs, attorney support programs, Legal Services, law schools, the private bar and government;
3. Legal assistance for low-income farmers: How can current programs be enhanced through additional funding, revision of eligibility standards, and coordination with other elements of the delivery system;
4. Farmer-lawyer support systems: How can current programs be changed or expanded and how can working relationships between non-lawyer representatives and attorneys be established and strengthened;
5. Alternative dispute resolution: How can formalized and costly legal proceedings be reduced or avoided through some form of mediation or other alternative dispute resolution mechanism.

The following sections address each of these areas with an emphasis on currently available resources, programs, and activities, and proposals to improve and enhance current efforts. Virtually all of the Task Force's recommendations require ongoing coordination among the various groups providing services. Many of these efforts will require additional funding and resources in order to be effective.

identifying farm law problems and with sufficient information regarding the resources available for their use. An increased availability of information will make the practice of farm law more economically efficient for attorneys. It will also assist attorneys in building the trust needed in order to work effectively with farmers on these issues.

Many of the Task Force participants have already been very active in providing education to both farmers and attorneys. The Minnesota Attorney General and the Agricultural Extension Service both have toll free resource hotlines which farmers may call. Several of the participants have also provided a substantial amount of written information for farmers. For example, the Attorney General has published several "Know Your Rights" news columns on farm legal issues and has also developed a resource referral booklet including information on legal and social service resources in each county in Minnesota. Similarly, Mid-Minnesota Legal Assistance has developed a series of Community Legal Education bulletins on farm legal issues and the Minnesota Legal Services Coalition has published and distributed close to 20,000 copies of the "Farmers Guide To The Farmers Home Administration." Also, the Agricultural Extension Service sponsored the development of a series of articles written by Task Force member and attorney Phillip Kunkel on topics such as bankruptcy, foreclosure, security interests and contracts. The farm organizations on the Task Force have all provided a variety of written information to their members. Several of the Task Force

participants have also sponsored workshops for farmers regarding legal issues. The Minnesota Legal Services Coalition and the Agricultural Extension Service have each held such workshops throughout the state, and both are planning additional workshops for this fall and winter. Other organizations (the Minnesota State Bar Association, Hamline Law School, Agricultural Extension Service, and the Minnesota Legal Services Coalition) have provided several continuing legal education seminars for attorneys in the Twin Cities, Mankato and Fergus Falls. Finally, the University of Minnesota Law School and the Agriculture Extension Service are in the process of developing radio and television programs for educational purposes.

RECOMMENDATIONS

The above efforts have contributed substantially to meeting the legal education needs of farmers and attorneys. However, more of everything is needed if adequate legal services are to be provided in rural Minnesota. The Task Force therefore recommends the development of a comprehensive educational program, which reaches into every community and area in Minnesota. There is a need to assemble all available resources and to develop means of informing farmers and lawyers that those resources exist and where they can be obtained. There is also a need to expand the existing dissemination of information in all respects: by providing more written material, more workshops, and by investigating the use of relevant technology in educating both farmers and attorneys.

I. FARMER EDUCATION

A. Informational Resources

A compilation should be made of all available informational resources including but not limited to, informational pamphlets, and the names and telephone numbers of legal and non-legal resources for farmers (e.g., the Attorney General's Hotline, attorney referral numbers, farm advocates, farm organizations, agricultural extension agents, and appropriate social welfare agency information). This information should be maintained and kept current in a central location. A comprehensive directory of available resources should be prepared and should be provided to farmers and their advisors as needed. In addition, a bibliography of legal resources should be prepared which would include titles of such resources, where they may be obtained, and their cost.

B. Workshops/Seminars for Farmers

A crucial component in the effort to meet the legal needs of farmers is to make available opportunities for farmers to obtain firsthand information on legal issues, ask questions, and become more acquainted with attorneys and the legal system. The past experience of many Task Force participants indicates that meetings and seminars for farmers are an effective way of accomplishing this goal.

Groups who are currently providing farmer legal education are encouraged to expand their efforts as much as time and resources will permit. Farm organizations are also encouraged to expand their efforts to provide legal education for their members.

To supplement these efforts, the Task Force recommends that a series of farmer legal education workshop/seminars be provided in all areas of the state. These workshops should be locally organized and locally taught in order to best meet the needs of the community. The seminars should be broadly sponsored by, for example, the local bar, the county agricultural extension agent, the farm advocates, farm organizations, community education, community colleges, the Area Vocational Technical Institute, and community groups, including service organizations and Chambers of Commerce. All groups should work together to assure that the workshops reach as many farmers as possible. Task Force members and organizations are encouraged to participate.

The workshops should utilize the informational resources which have been compiled and prepared by the central office described below. Information should be made available on a broad range of issues, including: (1) preventative tactics, e.g., keeping adequate records, putting agreements and conversations in writing, etc., (2) identifying when to call an attorney, (3) how to choose an attorney and establish the attorney-client relationship, (4) negotiations, (5) Farmers Home Administration, (6) security interests, (7) foreclosure, (8) bankruptcy, (9) tax, (10) lender liability, (11) replevin, (12) garnishment, and (13) public benefits.

The seminars should be provided at no cost, and printed materials should be provided free or at only a modest charge. The seminars should be designed for and advertised to all farmers, not just those currently experiencing financial difficulties. The importance of preventative education should be noted.

C. Use of Media

The media provides excellent avenues for reaching large numbers of persons effectively and efficiently. Regular columns regarding farm law issues should be prepared and distributed to state newspapers and appropriate farm publications. In addition, video and audio tapes of farm law seminars should be developed for loan or sale to farmers. Creative television and radio programming should also be explored. One example of such programming could be a series on public television which would provide panel discussions on different farm law topics. Another possibility would be to organize radio programs which would combine a presentation on a particular topic with an opportunity for listeners to call in questions.

D. Coordination

There is a need for a central repository and coordinating office in order to ensure the success of the education proposals. The location of the office should be as neutral as possible, either within a public agency or in a private nonprofit organization. The office should be staffed by a coordinator, whose duties would include:

1. collecting available resource materials and developing additional materials where necessary;
2. serving as a clearinghouse for all education efforts and information;
3. coordinating efforts of existing providers and facilitating communication among them;
4. serving as focal point for assistance to local groups seeking to organize seminars;
5. stimulating development of education programs within existing organizations and communities, emphasizing those areas where no education programs are occurring; and
6. encouraging local organization, sponsorship, and participation as much as possible.

The office and coordinator position should continue for the length of the farm economic crisis. The Task Force encourages existing organizations to continue and expand their efforts and encourages individuals and organizations to conduct the workshops.

E. Financial Resources

Although the involvement of many volunteers will hold down the cost of the recommended education programs, funding will be necessary to ensure that all areas of the state are reached. The primary funding needs will include: (1) the cost of expanding existing programs; (2) the cost of producing and disseminating informational resources; and (3) cost of the coordination effort. The Legislature should consider providing funding for all of these needs, particularly for the coordination effort if it is to be located in a state agency. There is also much room for participation by private foundations, particularly in expanding existing and new programs and in producing the necessary

informational resources. Finally consideration might be given to providing direct grants to education providers with matching funds to local organizations that seek to organize seminars.

II. ATTORNEY EDUCATION

It is essential that attorneys have the opportunity to obtain information regarding the many and often complex legal issues generated by the farm crisis. In this regard, a growing number of continuing legal education (CLE) programs are being provided on farm law issues. The Task Force recommends that CLE providers continue this important activity and coordinate the timing of and topics addressed by farm law CLEs.

In addition, the Task Force recommends that the availability of these CLEs be expanded, especially in rural Minnesota. One method of accomplishing this would be to videotape and/or audiotape all farm law CLEs and make them available for both formal presentation in various outstate locations and for use by individual attorneys or firms.

The Task Force also recommends that, to the extent possible, farm law CLEs be provided on a reduced fee basis, especially for volunteer attorneys and/or attorneys committing themselves to take farmer clients on a reduced fee basis and for farm advocates. The Task Force recognizes that CLE programs outside the metro area often do not generate sufficient income to meet expenses. CLE providers might therefore consider seeking funds for underwriting farm law CLEs both to encourage their continued

provision and to expand their availability to a wider range of attorneys. CLE providers might also consider jointly sponsoring some farm law CLEs in order to reduce the cost to each provider.

LAWYER REFERRAL

Even with excellent and widespread education and with a large pool of knowledgeable and willing attorneys, it is critical to have a delivery system and administrative process that effectively brings attorneys and clients together. Task Force representatives from farm groups expressed the need to be able to find attorneys who are knowledgeable, willing to do the work, and who can be trusted. Because of their serious financial condition, many farmers must also be able to find attorneys who are willing to take cases free or on a reduced fee and or reduced or delayed retainer basis. There is a need for some kind of central place where farmers can call and be referred to an appropriate attorney.

A major concern expressed repeatedly by Task Force members was with the frustratingly large numbers of calls farmers have to make before they find an attorney willing and able to represent them. Many of the problems stem from both perceived and real conflicts of interest. Where an attorney in a community is known to represent creditors, farmers are reluctant to go to that attorney even if there is no actual conflict in a particular case. Real conflicts are also a problem. Because most farmers have multiple creditors, most attorneys in a small community are already likely to represent at least one of the creditors. All of the farm organizations and the farm advocates reported problems with conflicts. One, perhaps extreme example, was given by a farm advocate. A farmer with a loan from a private lending institution

tried sixteen attorneys in his local area. Fourteen attorneys turned him down because they represented member institutions of the lender. Two told him that they were too busy. His family lawyer was one of those who turned him down because of conflicts.

While there are a number of existing referral systems which provide a variety of information and assistance to farmers, the most prevalent method of finding an attorney is informal recommendations from friends or acquaintances. While this system has resulted in some very good referrals to a relatively few attorneys, these few attorneys quickly reach the limit of new clients whose cases they can handle effectively. It also raises serious questions. For example, a report was received by the State Bar Association in October of one attorney in northwestern Minnesota who had interviewed 54 new farmer clients in one week. Similarly, attorneys at Mid-Minnesota Legal Assistance receive over 50 calls a week from farmers and lawyers. Yet most of the formal attorney referral systems have received relatively few calls.

In order to reach the direct attorney referral systems, many farmers begin by calling one of two toll free numbers that provide a wide range of referrals and assistance to farmers. The Attorney General's Farm and Home Preservation Hotline, which receives over 400 calls per month, provides referrals to the farm advocates, social service agencies, Legal Services providers, and to the bar association referral services. Project Support of the Agricultural Extension Service also operates a toll free information

service. Again, to find an attorney, the caller is be referred to a formal referral service. Finally, the Farmers Union has a toll free number through which its members can either obtain direct assistance or referral to another attorney in a nearby county.

Direct attorney referral is provided by the Minnesota State Bar Association's Statewide Lawyer Referral Service (LRS) and by six other local bar-sponsored lawyer referral systems. There are single county systems in Dakota, Hennepin, Olmsted, Ramsey, Washington, and Winona counties. In addition to the bar-sponsored systems, Southern Minnesota Regional Legal Services (SMRLS) offices provide attorney referrals specifically for farm cases.

Dakota, Olmsted, Washington, and Winona Counties each have separate lawyer referral services. The first three are operated through the county legal aid offices. Winona's is operated by the secretary of the Winona County Bar Association. In Winona County, a caller is simply given the name of the next attorney on the list without any screening for case type. In Olmsted County, a special farm panel has been established. All four counties are part of the SMRLS' service area so farmers can also obtain farm law referrals through the SMRLS' system.

Ramsey and Hennepin counties have identified a number of attorneys willing to accept farm cases. In fact, in a survey of all MSBA members, 42% of those indicating a willingness to serve on a farm law referral panel were from the Twin Cities metro area. However, farmers are unlikely to call a Twin Cities referral

service. If they do call, they are likely to be asked where they are from and then directed to the statewide Lawyer Referral Service. The small number of attorneys in the metropolitan area who have active farm practices report receiving all of their referrals by informal recommendation, since they are only permitted to participate in lawyer referral in the county in which they practice.

The toll free statewide Lawyer Referral Service is available to serve Minnesota's other 80 counties. There are currently 145 attorneys in 52 counties who are willing to take farm cases through the LRS. Each attorney pays \$30/year to MSBA to participate in the LRS. In addition, \$10 is paid to MSBA for each case that results in a retainer agreement. For those who join to handle farm law cases only, the \$30 annual enrollment fee is waived. Attorneys who join the LRS indicate those areas of law in which they will accept cases, and what their fee will be for the first half-hour consultation. They also agree to base their fees on the client's ability to pay. When a call is received, the caller is asked: (1) the county in which the person would like a referral; and (2) the type of legal problem. The LRS is staffed by non-lawyer personnel from the State Bar Association.

The LRS has three categories specifically directed at farm cases: agricultural law, farm law, and farm foreclosure. From April through June 1985 there were 48 referrals made in these three categories. From July through September there were 74 referrals. From April through June reports from participating lawyers indicate

that only three of the referrals, or 6.25 percent, resulted in a fee paying lawyer-client relationship. There are no records to indicate what happened to the other 45 farm referrals. In the LRS at large, during that same period, 11.9 percent of the referrals resulted in a fee paying lawyer-client relationship. According to past surveys of people receiving referrals through LRS, even though very few referrals result in fee-paying lawyer-client relationships, most people feel that they have been adequately served. Many questions are answered by phone or in the initial consultation.

To deal with potential conflicts of interest, the LRS sent a letter to all of the attorneys who had indicated a willingness to handle farm cases. Lawyers have been asked to screen farm referrals quickly for conflicts, preferably before making an appointment to have the person come to their office. Where there is a conflict, they have been asked to have the person call LRS again for another referral. Callers to LRS are told that if the lawyer to whom they are referred cannot handle their cases, they should call back for another referral. Only one lawyer's name is given out at a time.

In October, after considering issues raised by the Task Force, the MSBA Statewide Lawyer Referral Committee decided to make some immediate changes to make their system more responsive to farmers. Panel members will be asked to identify more specifically farm law subject areas in which they will take referrals. Statewide coverage will be provided by adding those lawyers who handle farm law cases in Dakota, Hennepin, Olmsted, Ramsey, Washington, and Winona Counties.

In response to concerns about the difficulties farm clients in their 33 county service area were having finding attorneys, Southern Minnesota Regional Legal Services (SMRLS) offices sent a letter to all of their volunteer attorney panel members (and in some cases to all members of the bar in their counties) asking whether the attorneys would be willing to take farm referrals. The questionnaires also requested confidential information about the attorneys' representation of lending institutions and creditors so that when referrals are made, conflicts can be avoided. Attorneys signed up in 12 categories: repossession of machinery, equipment, or livestock; foreclosure by Federal Land Banks, banks, or the Farmers Home Administration (FmHA); operating loan denials by banks, Production Credit Associations, or FmHA; tax repercussions; farm bankruptcy; and reinvestment.

SMRLS offices have their trained intake staff and attorneys do case screening and referral. In Mankato, a specially trained intern screens farm cases. Where clients referred out would be eligible for free legal assistance, SMRLS staff attorneys are available to provide backup assistance to the private attorneys accepting the cases. Many lawyers accepting cases through SMRLS have informally agreed to provide limited free advice and to consider reduced or delayed retainers and fees.

Under the SMRLS system, there is a reasonable certainty before the referral is made that there will not be a conflict. Because SMRLS covers multiple counties, it is also possible

conveniently to refer outside the farmer's home county. Furthermore, because trained staff are running the system, recurring issues can be spotted and lawyer-to-lawyer referrals can also be made.

RECOMMENDATIONS

Ideally, there should be one central number that farmers call for all referrals. Staff should be trained to do screening, to provide immediate answers to those who have quick questions and who do not yet need full representation, and to provide mental health, social service, farm advocate, and attorney referrals. The attorney referral component should be computerized and should have sufficient information about the attorney's institutional clients to avoid making a referral where there would be an obvious conflict of interest. The system should list attorneys in fairly specific subject matter areas. It should also have an ability to link people with those attorneys who have specialized knowledge. It is important that the farmer be given more than one name by the referral system. This would allow the farmer some choice between attorneys who are both willing and knowledgeable. It should be possible to indicate which attorneys have attended farm law continuing legal education courses. The system should also be able to keep track of recurring fact patterns. If one integrated system were handling all formal referrals, it would be possible to spread the cases more evenly. If farmers had more confidence in the formal referral system, it is likely that they would use the system instead of primarily relying on informal referrals.

Practically speaking, without significant additional financial resources, the central referral system described above may not be possible. Because the Bar Association's Statewide Lawyer Referral Service at this point covers the broadest geographic area, the Task Force recommends that the LRS incorporate as many of the above recommendations as possible to make that system more responsive to the needs of farmers.

It is also essential that there be widespread publicity about the availability of lawyer referral services. The telephone numbers need to be published in newspapers and farm organization newsletters. Churches could also be asked to include the numbers in their bulletins. When the numbers are published, what farmers can expect from lawyer referral should be made clear. For example, it should be specified that they are likely to have to make more than one call before finding an attorney who can take their case.

In addition, it would be helpful to have a printed referral guide in which attorneys who are willing to take farm cases would be listed, including geographical and subject matter listings. To make this suggestion economically viable, attorneys could be asked to pay a fee to be listed. Similarly, Bar Association sections, such as the bankruptcy and tax sections, could publish lists of their members who are willing to handle farm cases.

LAWYER-TO-LAWYER

It is essential that attorneys representing farmers be knowledgeable. They need to know enough about the range of farm law issues to identify those issues that affect a particular client's situation, and then either provide full representation themselves or be able to contact an expert to assist them.

As discussed in previous sections, farm law cases may be very complex. They require knowledge in several specific areas of law, and they raise issues which are often on the cutting edge of legal development. It is unrealistic to expect attorneys to learn and keep current on all aspects of this complex and evolving area of law.

As a result, it is important for the farmer to find a primary care attorney with whom the farmer is comfortable, and then for that attorney to have access to experts with whom he can consult and possibly co-counsel. Such lawyer-to-lawyer contacts are predominantly made on an informal basis. Attorneys who are known to be experts in farm credit matters receive many phone calls from other lawyers asking for information and advice. Currently, these calls are going to only a small number of attorneys, imposing additional burdens on those who are already the most active in representing farmers.

The State Bar Association has a more formal network, a program called Seek Counsel of Professional Expertise (SCOPE), through which attorneys may call MSBA and ask for the name of

another attorney willing to answer questions in particular areas of law. SCOPE experts are self-selected, that is, attorneys identify their own areas of expertise. In April, 1985, in response to an MSBA survey, approximately 50 lawyers said that they would be willing to participate in SCOPE on farm law topics. Ten did not identify specific areas of expertise. Only two attorneys identified themselves as having expertise in farm tax issues; six in farm credit and government regulation; and two in FmHA. These attorneys are found in twenty counties, including 18 attorneys in Hennepin County and 11 in Ramsey County. SCOPE for farm issues is currently underutilized. Since April 1985, it has received only four calls on farm law topics. During the same period, some Task Force members have received several calls each week.

Backup legal research services are also very useful. Two such services exist at the present time. Hamline Law School recently began a Rural Legal Research Service in which law students, under the supervision of a faculty member, respond to requests for research. There is a small charge for these services. In addition, the Minnesota Justice Foundation (MJF) works through all three Minnesota law schools. Through MJF, students volunteer their time to assist Legal Services staff and attorneys who participate in volunteer attorney and judicare programs.

RECOMMENDATIONS

Use of the SCOPE program should be encouraged and expanded. In order for SCOPE to be effective, however, panel members need to identify more specifically the subject areas in which they can provide advice. They should also be asked very clearly whether they are actually experts in the farm law applications of such areas as bankruptcy and tax.

SCOPE should be used to facilitate co-counsel relationships between Twin Cities and outstate attorneys. This would permit handling cases more efficiently where the courts are in the Twin Cities and the clients and local attorneys are several hours away, for example, in farm bankruptcy cases. Similarly, where urban attorneys have been retained as primary counsel, they could be linked to rural attorneys where appropriate, for example, for the purpose of negotiating with a local creditor.

If possible, a computerized data base should be developed for lawyer-to-lawyer referrals as part of a fully coordinated lawyer referral and information system. Such a system would keep track of recurring fact patterns and of those attorneys who have had experience with particular issues. Attorneys could then be put in touch with others who had confronted similar situations. Such a system could also keep track of pleadings and other printed information which could be provided to attorneys. In addition, the system could track research assignments completed by the law student programs in order to make them more generally available.

The above-described resources should be well-publicized in bar and other publications so that attorneys will be more likely to use them. It would be particularly helpful to have a regular newsletter covering developments with respect to farm credit issues available to any attorney who handles farm credit cases.

Finally, MSBA should organize an agricultural law section. This would serve to increase the visibility of farm law issues among lawyers in the community and before the Legislature. It would also increase communication on the substantive issues among those practicing in the field and would encourage the development of continuing legal education opportunities.

LEGAL ASSISTANCE FOR LOW INCOME FARMERS

Many farmers cannot afford to hire a lawyer when they need one. For some, there may be free services available through one of the six federally funded non-profit Legal Services Corporation programs in the state. These programs and their administrative offices are:

Southern Minnesota Regional Legal Services, St. Paul
Mid-Minnesota Legal Assistance, Minneapolis
Northwest Minnesota Legal Services, Moorhead
Legal Aid Service of Northeastern Minnesota, Duluth
Judicare of Anoka County, Anoka
Anishinabe Legal Services, Cass Lake

The programs provide services through staff attorneys and paralegals, private judicare attorneys, and volunteer attorneys.

The resources of these programs have been strained in recent years. At the same time there has been an enormous increase in demand for service as more people have fallen below the poverty line. Four years ago, federal funding for the Legal Services Corporation was cut by 25%. Small rural offices were the most seriously affected by such cuts since they had small staffs to begin with. Since 1981, federal funding has been partially restored. However, the \$305 million federal appropriation in 1985, which is the same level anticipated for 1986, is still below the \$321 million appropriated in 1981.

Supplemental funding from Minnesota sources, such as the civil filing fee surcharge, Interest on Lawyers Trust Accounts, and private foundations, has helped Legal Services programs maintain services at 1981 levels. However, it is estimated that only about

21% of the legal needs of low-income Minnesotans, including farmers, are being met with current resources, available to the Legal Services programs, including volunteer and judicare attorneys.

The financial eligibility guidelines required by federal regulations present an additional obstacle for farmers. Legal Services Corporation (LSC) programs, including their private bar components, are required to establish a two-part means test for determining client eligibility: (1) a maximum income limitation, which generally cannot exceed 125% of the federal poverty guideline; and (2) an asset test. This restriction applies to all private supplemental funds that a program receives. Only certain state or local government funds are not subject to it. Many farmers meet the income test (gross income of \$12,750 or less for a family of four) because they lack adequate cash flow. But they may own land, machinery, grain, or livestock which puts them over the asset limits.

While most of the Minnesota Legal Services Coalition programs serving farm communities have amended their eligibility guidelines to re-define and expand some of the limits, they are still very restrictive. The implicit assumption -- that families over the threshold can afford to hire an attorney -- is untrue for many low to moderate income families. Farmers in the low to moderate income range are often less able to hire attorneys than are their non-farm counterparts. Farmers are cash poor as never before. Many used what cash reserves were available to put in a crop when operating credit became unavailable in the last several years.

The Legal Services programs have a large and pressing caseload. The legal needs created by the farm crisis present a new demand. Legal Services programs are frustrated at not being able to address those needs with the necessary commitment of time and resources. Also, many of the issues presented in farm cases are new to Legal Services staff and to judicare and volunteer attorneys. In the past, farm law has generally not been among the cases handled by these programs. While formal support projects exist in most areas of substantive law unique to a given population group, often at the national level, there is no such resource for farm law.

An additional barrier is that some farmers view Legal Services programs in the same light that they view welfare agencies. There is a perceived stigma to seeking free legal help, or anything else "free." Despite this barrier, more and more farmers are requesting assistance. Having overcome their initial reluctance, it is especially discouraging for them to hear that help may not be available.

Legal Services programs have undertaken significant activities to assist farmers, including continuing casework for many individual farmers on a variety of issues. In addition to staff and judicare attorneys, there are now volunteer attorney programs, covering all 87 Minnesota counties, with over 2,000 participating attorneys. All such programs operate through, or in cooperation with local Legal Services offices. For a volunteer attorney to be assigned, a client must be financially eligible for Legal Services

and the case must fall within the program's case type priorities. Currently, most volunteer attorney service is provided in family law, housing, and consumer cases.

Legal Services staff and members of local volunteer attorney programs indicate that it is unreasonable to expect private attorneys to undertake full representation in most farm cases on a pro bono basis. These cases simply are too complex and time consuming. Volunteer attorneys have expressed willingness to provide brief advice and some case screening on a volunteer basis. They are also co-counseling farm cases with Legal Services staff. For example, Legal Services staff may handle the FmHA issues, and the private attorneys work on bankruptcy and tax issues. Members of local VAPs also form the nucleus for local referral panels through which attorneys have agreed to take cases on a reduced fee and/or delayed or reduced retainer basis.

Both Hennepin and Ramsey counties have extensive volunteer attorney programs. Close to 100 attorneys in these and other Twin Cities area counties have expressed a willingness to provide some free legal assistance to financially distressed farmers. There are, however, no specific mechanisms in place through which these resources can be linked directly to either farmers or rural attorneys in need of assistance.

In addition to individual casework, attorneys from Mid-Minnesota Legal Assistance filed Gamradt v. Block, a class action suit on behalf of all FmHA borrowers in Minnesota against the

Farmers Home Administration. The Minnesota class eventually became part of the national class of 250,000 farmers in the companion case, Coleman v. Block, in which Mid-Minnesota Legal Assistance now serves as lead counsel.

Legal Services staff, often in cooperation with local private attorneys, have presented several legal issues workshops around the state for farmers, have presented several training sessions for the Minnesota Department of Agriculture Farm Advocate Program, and have participated in continuing legal education programs for lawyers. As described in previous sections, many informational documents and booklets for farmers have been written and distributed by the various Legal Services programs.

The Minnesota Legal Services Coalition has formed a statewide Legal Services Farm Law Task Force which meets at least bi-monthly to share information, court decisions, pleadings, and ideas on how best to approach the various legal issues farmer clients are facing. The programs are also coordinating with each other on possible major litigation.

Mid-Minnesota Legal Assistance and Southern Minnesota Regional Legal Services have recently received small grants from private foundations that have helped these programs continue their work on behalf of family farmers. However, it is clear after two years of fundraising, that private foundation funding alone will not be sufficient to address the unmet needs of farmers who are unable to pay for legal assistance. Legal Services programs continue to

seek additional sources of funds to support more legal help for farmers.

RECOMMENDATIONS

The Task Force supports the concept that additional money must be made available to ensure that those farmers who are unable to pay have access to legal assistance. State money would be especially helpful because it would not be subject to restrictive federal eligibility requirements. To this end the Task Force adopted the following resolution at its sixth meeting:

RESOLVED, that the legislature be urged to adopt bi-partisan sponsored legislation that would make additional funding available to the Supreme Court to fund legal services for family farmers, who need but cannot afford such services, and for appropriate support and coordination of such efforts. Funds should be directed to nonprofit organizations with demonstrated expertise and experience in providing legal assistance to individual farmers.

The Supreme Court was chosen as the vehicle to administer the funding because it already has a mechanism in place, the Legal Services Advisory Committee which administers the civil filing fee surcharge funds, and would be an appropriate body to administer funds such as those described in the resolution. Furthermore, the Task Force strongly supports efforts by the Legal Services programs to secure additional private funding for legal representation for low-income farmers.

It is also essential that the Legal Services Corporation be urged to allow local Legal Services programs greater flexibility in determining the eligibility of farm clients, especially with respect to assets. However, it must be recognized that even if financial eligibility requirements are changed, without additional funds for more attorneys and paralegals, the number of clients served will be static. Only the possible client mix will be affected.

Because there is a serious need for free legal assistance for low-income farmers, more private attorneys must be enlisted to assist with initial screening and advice through the local volunteer attorney programs. Because farm cases are often complex and time consuming, private attorneys should only be asked to provide full representation free of charge to low-income farmers in appropriate circumstances. Private attorneys should be encouraged to co-counsel cases with Legal Services staff attorneys. Private attorneys should also be encouraged to cooperate with each other where such cooperation could reduce the time and expense to each one.

Hamline University Law School has applied to the Legal Services Corporation for a grant for a Farm Law Support Center which would provide training, research, and other support for attorneys serving low-income farmers, as well as some advocacy and co-counseling. Both students and attorney staff would be involved. The Task Force approved a letter to the LSC supporting the proposal. Since that time the LSC has requested that the proposal be revised

to include more training on rural and farm issues for students, while offering some research and support to attorneys in Minnesota only. The Task Force continues to support the proposal in its revised form.

The McKnight Foundation is in the process of initiating regional rural projects throughout the state. The Task Force approved a letter to the McKnight Foundation urging the inclusion of a legal component in those projects. The letter also emphasized the need for a state-wide farm law support center.

The Task Force recommends that the Legal Services programs continue their efforts to coordinate with each other, with private attorneys, and with other support systems in educating and representing farm clients. It also urges that the programs continue to represent as many low-income farmers as possible within the programs' limited resources.

FARMER-LAWYER SUPPORT SYSTEMS

Expertise in the area of farm law is closely intertwined with expertise in the financial and business aspects of farming. In order to effectively negotiate with lenders and creditors and to provide a factual basis upon which legal issues can be analyzed, a great deal of time must be spent in marshalling the farm's business records, assessing its financial status through the development of updated cash flow and financial statements, evaluating interest payments and production costs, and closely scrutinizing all relevant loan and security documents. This process usually takes place prior to the time a farmer feels the need to contact an attorney for direct representation. Also, for practical reasons (time and cost), it is often not feasible for a farmer to hire an attorney to assist in this process. The Task Force recognizes the need that both farmers and attorneys have for additional support services during this process. There is also a need, short of direct legal representation, to educate farmers on basic principles of law during this process, and to assist farmers in preparing, presenting, and advocating their positions during the course of discussions and negotiations with their creditors.

Part of these needs have been addressed by the University of Minnesota Agricultural Extension Service, which has been assisting farmers with farm management and financial planning for many years through individual and group counseling services. The Extension Service has an established network in the rural

communities through its agents located in each county. In October 1984, the Extension Service expanded its financial management services by initiating Project Support, a program intended to assist farm families who need financial planning, resource management, stress management, and community support. At the beginning of this program, the Extension Service emphasized training and educating its county agents in order to assist them in helping distressed farm families. The extension agents then focused on individual consultations, group meetings, and networking with other agencies. In addition, extension agents have held numerous workshops and meetings throughout the state focusing on production economics, marketing, credit and debt, family stress, and cash flows. The Extension Service also has published a series of farm law articles written by attorney Phillip Kunkel on topics such as security interests, foreclosure, and bankruptcy.

The Extension Service views itself as an independent, objective consultant and advisory service whose fundamental objective is education rather than advocacy. Its activities focus on farm financial planning rather than addressing individual farm law issues, and it does not attempt to resolve individual cases by serving as an advocate for farmers in their dealings and negotiations with their lenders.

In contrast, the Minnesota Department of Agriculture's Farm Advocate Program provides advocacy assistance to farmers. The Farm Advocate Program arose from the efforts of a small number of

individual farmers who, having gained expertise in the financial and procedural requirements of the Farmers Home Administration's (FmHA) loan application and approval process, devoted their time to assisting other farmers with their loan applications and negotiations. The need for such assistance became apparent in 1984 when the FmHA suffered a serious backlog in processing and approving loan applications. At that time, the farm advocates became more active in assisting other farmers with their loan applications.

In March, 1984, the status of the farm advocates was formalized by the Department of Agriculture, which contracted with 36 farmers to provide assistance to other farmers. The farm advocates serve as independent contractors and are paid \$5.00 per hour for a maximum of 20 hours per week. Any hours spent over 20 are purely voluntary. The program includes intensive training for the advocates by the Department in conjunction with Mid-Minnesota Legal Assistance.

Specific duties which the farm advocates are under contract to perform include: accepting telephone referrals; informing farmers of the policies, practices and procedures of lenders; assisting with loan applications and related documents; attending meetings of lenders and borrowers to facilitate communications between them; and recognizing the point in time at which a farmer should seek legal counsel. The advocates often accompany their clients to meetings with the farmer's lenders and advocate on behalf of the farmer. This may include participation in

the administrative appeals process before the Farmers' Home Administration. The advocates' work often includes helping farmers find lawyers knowledgeable in farm law and willing to assume additional clients. In doing so, advocates often face the same difficulties in finding attorneys that farmers face. When an attorney is found, the advocates often will continue to work with both the farmer and attorney.

Reduced funding in 1985 reduced the number of advocates from 36 to 15. Notwithstanding this reduction, the advocates' client base continues to expand at an average of 4.5 new clients per week. Each advocate has an average caseload of 60 clients, and servicing the needs of these clients requires from 40-60 hours per week. However, the program suffers from a shortage of funds which are expected to be exhausted before the end of the fiscal year.

The services provided by the Extension Service and the Farm Advocates compliment each other. Extension agents occasionally refer their farm clients to advocates for additional assistance or for alternative advice. And, advocates refer clients to extension agents for management advice and financial planning. Some members of the Task Force indicated that they often utilize extension agents or Project Support personnel in evaluating the economic status of their clients with farm law problems. Similarly, some of the members of the Task Force have developed close working relationships with farm advocates, and have found that they provide a useful service in preparing a farmers' financial statements and assembling

the papers which identify a farmer's farm law problems. Where farmers have had the assistance of an advocate or extension agent prior to meeting with an attorney, a great deal of attorney time has been saved. There is a need, however, to further apprise farmers and attorneys of the services offered by the Extension Service and the Advocate Program and to coordinate the interaction of the two programs.

A third support and educational system is provided through the Vocational-Technical Education System which operates under the umbrella of the State Board of Vocational-Technical Education. Through funding provided by the State Board, the system's 34 Adult Vocational Technical Institutes located throughout the State operate seven hundred educational programs, a number of which focus exclusively on agricultural subjects. Each year approximately 300,000 people participate in these programs. Included in these programs is an on-going farm management program called "Farm Business Management" which is offered through the various school districts. The program is open to all full and part time farm families. There are three computer programs in use by the instructors which help with long range plans of six to ten years ("FINLRB"), annual cash flows ("FINFLO") and intermediate plans of two to three years ("FINTRAN"). The vo-tech system is capable of putting together part-time programs upon demand and is capable and willing to launch a series of programs for farmers.

Beyond its educational capabilities, the vo-tech system has demonstrated its ability to assume a useful role in providing support services to farmers during the financial crisis. In 1984, when the backlog and processing of farm operating loans, particularly FmHA loans, became a crisis by itself, the program's 100 farm management instructors participated in the State's farm intervention program by providing financial analysis services to FmHa and the local banks. Their participation greatly expedited the loan application process for many individual farmers. The potential exists for the system's instructors to play a further role in assisting farmers and lawyers in the areas of loan analysis, negotiation and/or mediation.

The Minnesota Attorney General's Office also provides support services to farmers and lawyers in a number of ways. It has participated as an amicus on behalf of farmers in a number of lawsuits challenging various aspects of federal agricultural loan and/or price support programs. The Attorney General has also appeared before federal and state legislative committees to urge legislative changes and remedies to help farmers in the current crisis. The office responds to numerous telephone and written requests from farmers, lawyers and farm advocates for assistance on farm legal issues. Many of these requests come through the office's toll free Farm and Home Preservation Hotline. The farm crisis has also precipitated many new and novel rural fraud issues such as land patents, common law liens, loan schemes and specious legal advice

which have been the subject of investigation by the Attorney General's Office.

Minnesota's three law schools have also been involved in providing support services to both farmers and lawyers and have the potential for increasing their participation in this area. The University of Minnesota Law School, through its Agricultural Law and Policy Institute, is working with the Agricultural Extension Service at the present time on the Extension's farm hotline and on developing a television and radio program aimed at farmer education. The Institute is also participating with the American Bar Association Forum Committee on Rural Lawyers and Agribusiness on developing of a lawyer referral backup system.

Four years ago, Hamline Law School began developing courses which addressed agricultural problems. The law school also offers courses and services to farmers which are jointly sponsored with the Agricultural Extension Service and a rural law reference service for attorneys and others dealing with rural legal issues. Hamline has also presented a Farm Law Project grant proposal to the Federal Legal Services Corporation which the Task Force by resolution has supported. The project has plans for legal education for lawyers, advocates, and farmers; for an attorney hotline; and a referral mechanism for assistance with on-going litigation for other attorneys, in an effort to assist indigent farmers with their legal problems.

William Mitchell College of Law also has developed courses in agricultural law over the last several years and has strong programs in state and local taxation and administrative law. Its Task Force representative expressed the school's desire to further develop their curriculum to meet the needs of rural practitioners.

All three law schools have an agricultural focus beyond education for lawyers and have the capability of providing additional support and assistance directly to farmers and/or other lawyers.

Minnesota also enjoys the presence of a number of farm organizations which provide or are capable of providing further direct contact with farmers and could serve a further role in offering direct support services, particularly through the publication of legal articles in their newspapers and newsletters. These organizations all indicate a willingness to continue to provide such assistance.

RECOMMENDATIONS

Current support systems provide needed assistance and information to both farmers and attorneys. These efforts should be coordinated in order to ensure that duplication is avoided. The Task Force encourages organizations providing support assistance to share their information and assist in the coordination of support activities. In particular, the Task Force encourages the Farm Advocate Program, and the Agricultural Extension Service, and the Vocational-Technical System, to work together to avoid duplication

of functions and to assure that each entity and the clientele it serves benefits from the knowledge gained by both entities.

The Task Force recognizes the success of the Farm Advocate Program and supports an expansion of that program within the Department of Agriculture. It recommends that additional financing be provided to further develop this program. The program serves as a useful bridge between farmers and attorneys and is a key element in providing legal assistance to financially distressed farmers.

The Task Force recommends that the law schools and the Agricultural Extension Service consider providing a single agricultural attorney/farmer hotline, and to assist in further development of educational and training sessions for farm advocates, farmers and attorneys.

ALTERNATIVE DISPUTE RESOLUTION

Debtor-creditor relations are under intense pressure in rural Minnesota. The relationships have become increasingly adversarial as more lenders foreclose or refuse to extend credit and as more farmers dig in their heels to save their farms. The resulting costs, both economic and human, are significant.

Alternative dispute resolution offers an avenue for decreasing this pressure. By encouraging the parties to seek a mutually acceptable solution, it decreases the adversarial nature of the relationship. By maximizing non-litigation alternatives, it can also decrease the costs to both creditors and debtors.

However, the inherent limitations of alternative dispute resolution must also be recognized. Although at one end, negotiation is probably acceptable to both borrowers and lenders and is being used currently, at the other end, arbitration is unlikely to be accepted by farmers because they feel that their entire home and livelihood are at stake. Mediation may be a form of alternative dispute resolution which can be used effectively for farm credit matters. However, it must be carefully structured to take into account the complexity of farm credit issues and relationships and should be designed to reinforce rather than supplant negotiation. In addition, it must be recognized that mediation is complementary to legal representation, not necessarily a substitute for it. Farmers should be encouraged to seek legal advice at all stages of the dispute resolution process.

Farm credit mediation efforts in Minnesota are just beginning. In northwestern Minnesota, a farm mediation pilot project sponsored by the Agricultural Extension Service, Department of Agriculture and State Planning Agency, is underway. Similar projects are being explored in southwestern Minnesota. Minnesota lenders have agreed to voluntary mediation efforts over the next ninety days as an alternative to commencing foreclosure proceedings. The Minnesota Attorney General has proposed legislation which would provide voluntary mediation services for farmers and creditors and would require mediation before any foreclosure action could be completed.

RECOMMENDATIONS

The Task Force encourages negotiation as an important means of resolving debtor-creditor difficulties.

The Task Force recommends that alternative dispute resolution mechanisms, such as mediation, be explored and developed for farm credit issues, with due attention to the complexity of the legal and financial issues involved.

CONCLUSION

It is abundantly clear that the dimensions of Minnesota's farm financial crisis are expanding and that the impact of the crisis is deepening. The bitter harvest on Minnesota's farms presents difficult problems for many different sectors of society, and the inadequacy of legal resources for farmers is but one significant aspect of this multi-dimensional problem. Nevertheless, as this Report demonstrates, there is plenty of room for Minnesotans to assist farmers.

Attorneys in Minnesota have always reacted in a positive and professional manner when a need is presented to them. This Report suggests many avenues for attorneys to become involved in assisting farmers, whether that participation be as a volunteer attorney handling farm cases, an organizer and participant in farmer legal education efforts, or an active user of the Farm Advocates or the Extension Service in representing farm clients. There is a similar need for expanded efforts on the part of public officials and farm organizations.

The time to act is now. Although we cannot raise farm commodity prices, lower interest rates, or re-inflate the value of farmland, we can make sure that farmers have a basic understanding of the law and that farmers are well-represented by attorneys. The primary goals of this Task Force have been to ensure that well-educated farmers are better able to help themselves in the legal process, that attorneys are available to assist farmers with

the legal aspects of their financial problems, and that there are positive tools available to enable farmers and lawyers to better work together.

The Task Force presents many ideas in this Report that will help achieve these goals. Members of the Task Force have given generously of their time and ideas and will continue to meet on an infrequent basis to review the response to the Report and to discuss new ideas. The Task Force is a true public/private partnership, and it is important to continue that spirit of partnership in implementing the recommendations and developing new ideas. Those who participate in these efforts will not only help Minnesotans through a crisis period, but will substantially help themselves. The pain on Minnesota's farms should be more than enough spark to encourage widespread participation.

APPENDIX

Minnesota State Bar Association (MSBA)

MSBA is a voluntary bar association with over 10,700 members of the approximately 15,000 lawyers registered to practice in Minnesota. Much of the work of MSBA is accomplished through its sections and committees. MSBA also has a number of organizations and projects with which it cooperates. MSBA sections exist as specialized organizations within MSBA for carrying on work in a particular field of law. MSBA members pay additional dues for each section they want to join. The sections serve primarily as a means for people in the same speciality to communicate with one another. Many have newsletters for the purposes of keeping their members informed of developments in their field of law and meet on a regular basis to discuss current concerns and developments. MSBA committees are appointed each year by the President of MSBA to carry on the association's business and to work on issues of concern to the association and its members. None has more than 50 members. The following MSBA sections and committees are represented on the Task Force.

Bankruptcy Section--During the past two years, this Section, which has 224 members, directed much of its educational activity toward the concerns of farmers facing financial difficulties. It currently is compiling a list of its members who

are willing to provide pro bono services to farmers, to consult with attorneys representing farmers on a pro bono basis, and to teach attorneys representing farmers how to handle bankruptcy cases. It has a monthly newsletter that includes substantive legislative developments and court decisions as well as other news of interest to its members.

Corporations, Banking, and Business--This Section, with 788 members, is most likely to include those attorneys representing creditors and lenders. It holds periodic lunch meetings, produces a newsletter, and sponsors two or three CLE events each year.

General Practice Section--This Section has 329 members most of whom are in solo practice or in small or medium sized firms. A significant number of members are from outside the metropolitan area. The section sponsors an annual CLE program and is re-instituting a news letter.

Real Property Section--This Section has 2,085 members. Its primary project is the publication of the Minnesota Title Standards.

Tax Section--This Section, with 570 members has a monthly newsletter that goes to all of its members. It holds periodic meetings, and co-sponsors an annual Tax Law Institute with Minnesota Continuing Legal Education.

Committee on Continuing Legal Education - (CLE) --The CLE Committee has 16 members. Its principal role is to provide oversight of and guidance for Minnesota CLE. Minnesota CLE, in

cooperation with the Minnesota Legal Services Coalition, has offered a course entitled Farm Credit: Representing Farmers in Crisis for the past two years. Minnesota CLE also offers annual institutes in cooperation with a number of MSBA sections.

Committee on Lawyer Referral--The Committee has 10 members and meets quarterly. Its principal function is to provide oversight for and guidance to the MSBA Statewide Lawyer Referral Service.

Committee on Legal Assistance to the Disadvantaged--The Committee has 42 attorney and public members. Its mission is to support programs throughout the state which provide civil legal assistance to people who would otherwise be unable to afford attorneys' services and to encourage the involvement of private practitioners in the delivery of this assistance through local volunteer attorney programs. The Committee works closely with the Minnesota Legal Services Coalition and the Minnesota Volunteer Attorney Program.

Minnesota Legal Services Coalition--The Minnesota Legal Services Coalition is comprised of the six federally funded regional legal services programs which are separate corporate entities serving low-income persons. The programs and their administrative offices are: The programs operate through 24 offices serving all 87 Minnesota counties. Southern Minnesota Regional Legal Services, headquartered in St. Paul; Mid-Minnesota Legal Assistance, headquartered in Minneapolis; Northwest Minnesota Legal Services, headquartered in Moorhead; Legal Aid Service of Northeastern

Minnesota, headquartered in Duluth; Anishinabe Legal Services, headquartered in Cass Lake; and Judicare of Anoka County.

Minnesota Volunteer Attorney Program--The Volunteer Attorney Program works closely with the Minnesota Legal Services Coalition and the Committee on Legal Assistance to the Disadvantaged. There are now volunteer attorney programs covering all 87 Minnesota counties with over 2,200 participating attorneys. Approximately 5,000 volunteer cases were closed in 1984-85 by these attorneys who each handled an average of 2.5 cases.

Minnesota Attorney General, Hubert H. Humphrey, III

The Attorney General is the chief legal officer for the State of Minnesota and serves as the attorney for all state officers and boards. The Attorney General has established a rural affairs group within the Office of the Solicitor General in order to address farm issues both on a legal and policy basis. The Attorney General has also established a Farm and Home Preservation Hotline to assist farmers in locating social service and legal resources.

American Agricultural Movement

The American Agricultural Movement is a national grass roots lobbying organization with no partisan political identity. Its major goal is to increase farm income through increased farm prices. Its activities go back to 1977-78 when it first foresaw the coming farm crisis and began a substantial lobbying effort on a national level prior to adoption of the 1981 Farm Bill.

Communicating For Agriculture, Inc.

Communicating For Agriculture is a national non-profit, non-partisan rural membership organization made up of people who derive their income from agriculture or agribusiness. It has a national membership of 35,000 members and serves as a political force with respect to agricultural issues on both the federal and state levels. The organization publishes a monthly newspaper which is sent to over 40,000 individuals and organizations.

Groundswell

Groundswell is a loosely knit non-profit organization willing to take on the causes of farmers and to direct legislative attention to various agricultural issues. Its informal network informs its followers on current legal issues, and provides a link between farmers, advocates and attorneys.

Hamline Law School

Four years ago, Hamline Law School began developing courses which addressed agricultural problems. The law school also offers courses and services to farmers which are jointly sponsored by the Agricultural Extension Service and offers a rural law reference service for attorneys and others dealing with rural legal issues. In addition, Hamline sponsors a continuing legal education program, Advanced Legal Education. Hamline has also presented a Farm Law Project grant proposal to the Federal Legal Services Corporation which the Task Force by resolution has supported.

Minnesota Department of Agriculture

The Department serves as a spokesperson for farmers in financial crisis and has established a Farm Advocate Program to directly assist farmers in their relationships with their lenders. The Department also compiles statistical information relating to the farm crisis. It has worked in cooperation with the Legal Services Coalition and the University of Minnesota Agricultural Extension Service in developing and hosting workshops for farmers and farm advocates. Assistant Commissioner Anne Kanten served as co-chair on the executive branch's state Agriculture Policy Project Task Force which was organized by Governor Perpich in 1984 to study farm issues.

Minnesota Farm Bureau Federation

The Minnesota Farm Bureau is the largest of Minnesota's farm organizations, representing 33,000 members in Minnesota. Its purpose is to represent the interests and serve the needs of farmers in problem solving on a broad range of subjects including state and federal farm policies, and trade and marketing issues and to provide information and education to its membership. The Bureau publishes a bi-weekly periodical entitled "Farm Bureau News" which provides information to farmers on all aspects of farm issues and in the past has included articles on farmers' legal rights.

Minnesota Farmers Union

The Minnesota Farmers Union has a membership of 22,000 farmers. Its purpose and goal is to improve the economic and social environment for Minnesota's farmers through utilization of appropriate public initiatives. The Farmers Union has a network of attorneys working through county chairpersons who offer negotiated-rate legal services to members primarily in the agricultural counties. The Farmers Union provides attorney referrals for its members through its General Counsel's office. It also publishes a weekly periodical entitled "Minnesota Agriculture" which provides direct information to farmers.

Minnesota Legislature

The Senate Committee on Agriculture and Natural Resources and the House Committee on Agriculture are the primary legislative bodies addressing farm issues. In addition, the Senate committee on Finance and the House Committee on Appropriations address proposals involving appropriated funds. The Senate and House Judiciary Committees may also address issues facing the legal delivery system.

Minnesota State Planning Agency

The State Planning Agency serves as a planner in the long range development of farm and rural economics and reviews and coordinates proposals for legislative consideration. It recently co-chaired the Executive Branch's State Agriculture Policy Task Force which was organized by Governor Perpich in 1984 to study farm issues.

National Farmers Organization

The National Farmers Organization is a national collective bargaining organization whose members are farmers who have joined together for the purpose of jointly marketing their crops and livestock.

University of Minnesota Agricultural Extension Service

The Agricultural Extension Service is an educational institution which has been assisting farmers with farm management for many years. It views itself as an independent, objective consultant and advisory service whose fundamental objective is education in farm financial planning. In October, 1984, the Extension Service initiated Project Support, a program intended to assist farm families who need financial planning, stress management, and community support.

University of Minnesota Law School

The University of Minnesota Law School has been offering courses in agricultural law for several years. It has also established an Agricultural Law and Policy Institute to address farm issues through attorney and farmer education and support systems. At the present time, the Institute is working with the Agricultural Extension Service on a farmer hotline, and is also working with the Extension Service to develop a television and radio program aimed at farmer education. The Institute is also participating with the American Bar Association Forum Committee on Rural Lawyers and Agribusiness on the development of a lawyer referral backup service.

William Mitchell College of Law

William Mitchell College of Law in recent years has developed courses in agricultural law in an attempt to offer a practical focus to farm issues. It has developed strong programs in administrative law and state and local taxation and has an extensive clinical program.