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Securing Equal Justice for All:
A Brief History of Civil Legal Aid in the United States

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INTRODUCTION

The Center for Law and Social Policy (CLASP) has prepared this brief history of civil legal aid in the United States, from its privately funded beginnings, through its achievement of federal funding, to its expansion and growth into a national program operating throughout the United States, Puerto Rico, and former U.S. territories in the South Pacific. We also describe some of the political battles that have been fought around the legal services program and the restrictions that have come with government funding. We conclude with some brief thoughts about the future.

The program to provide legal services to the poor has never been without controversy. Depending on the how the political winds have blown, support for legal services in the United States has waxed and waned. Regardless of politics, however, the legal aid program has a long history of effective representation of low-income persons and has achieved many significant results for the low-income community from the courts, administrative agencies, and legislative bodies. With the addition of federal funding more than a quarter of a century ago, the legal services program has expanded access to legal representation throughout the country and provided significant relief to millions of low-income and vulnerable persons. Without the civil legal assistance program, there would be virtually no access to civil justice for low-income persons in the United States, and the goal of equal justice for all would be only a distant dream. Although equal access to justice is far from complete, the legal services program provides vital services to our nation's low-income community.

THE EARLY YEARS OF LEGAL AID: 1876-1965

Civil legal assistance for poor people in the United States began in New York City in 1876 with the founding of the German Immigrants' Society, the predecessor to the Legal Aid Society of New York. Over the years, the legal aid movement caught on and expanded into many urban areas. By 1965, virtually every major city in the United States had some kind of legal aid program, and the 157 legal aid organizations employed more than 400 full-time lawyers with an aggregate budget of nearly $4.5 million.

Despite the fact that most metropolitan areas had a legal aid program, there was no national legal aid structure and each program existed separate and apart from its counterparts in other jurisdictions. With no national program, the legal aid world was very heterogeneous. Many legal aid programs were free-standing private corporations with paid staff; others were run as adjuncts to bar associations, relying primarily on private lawyers who donated their time. Still others were units of municipal governments or divisions of social service agencies, and others were run by law schools.

Regardless of the structure, these programs shared many common characteristics. First and foremost, no program had adequate resources. It has been estimated that during its early years, legal aid reached less than 1 percent of those in need. Many areas of the country had no legal aid at all, and those legal aid programs that did exist were woefully underfunded. For example, in 1963, the legal aid program that served the city of Los Angeles had annual funding of approximately $120,000 to serve more than 450,000 poor people. In that year, the national ratio of legal aid lawyers to eligible persons was 1 to 120,000.

The American Bar Association's Initial Involvement

In 1919 Reginald Heber Smith, a young Harvard Law School graduate who had become Director of the Boston Legal Aid Society, received a grant from the Carnegie Foundation to research the current legal system and the poor. Smith wrote *Justice and the Poor,* a book that challenged the legal profession to see to it that access to justice was available to all, without regard to ability to pay. "Without equal access to the law," he wrote, "the system not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented." The American Bar Association ("ABA") responded to Smith's call by creating the Standing Committee on Legal Aid and Indigent Defendants ("SCLAID") to ensure continued ABA involvement in the delivery of legal assistance to the poor. Many state and local bars responded by sponsoring new legal aid programs.

However, the ABA initiative and the bar programs made only modest headway in achieving the goal of equal access to justice. In part because of inadequate resources and the impossibly large number of eligible clients, legal aid programs generally gave perfunctory service to a high volume of clients. Legal aid lawyers and volunteers rarely went to court for their clients. Appeals on behalf of legal aid clients were virtually nonexistent. No one providing legal aid contemplated using administrative representation, lobbying, or community legal education to remedy their clients' problems. As a result, the legal aid program provided little real benefit to those that it served and no lasting effect on the client population as a whole. Most of what we know today as poverty law and law reform (e.g., welfare law, housing law, consumer law, and health law) did not exist, even in concept, in the early days of legal aid.

The Need for "Something New"

In the early 1960s a new model for legal services began to emerge. Private charitable foundations, particularly the Ford Foundation, began to fund legal services demonstration projects as part of multi-service social agencies, based on a philosophy that legal services should be a component of an overall anti-poverty effort. This new model also called for the programs'

offices to be located in the urban neighborhoods where the majority of the poor resided, rather than in downtown areas where many of the legal aid societies of the time were located, far removed from their client populations. Mobilization for Youth in New York, Action for Boston Community Development, the Legal Assistance Association in New Haven, Connecticut, and the United Planning Organization in Washington, DC, were among the earliest legal services programs of this type.

As the demonstration projects began to move beyond the traditional legal aid model of limited assistance for individual clients, Attorney General Nicholas deB. Katzenbach gave voice to the need for a change in how legal aid was administered. During a speech at a U.S. Department of Health, Education and Welfare conference in 1964, Katzenbach set the tone for the conference and the future of legal services:

> There has been long and devoted service to the legal problems of the poor by legal aid societies and public defenders in many cities. But, without disrespect to this important work, we cannot translate our new concern [for the poor] into successful action simply by providing more of the same. There must be new techniques, new services, and new forms of interprofessional cooperation to match our new interest….There are signs, too, that a new breed of lawyers is emerging, dedicated to using the law as an instrument of orderly and constructive social change.

The Katzenbach speech had two interrelated themes that were to recur constantly in the early years of federally funded legal services: 1) something new was needed—well-funded traditional legal aid was not adequate; and 2) the law could be used as an instrument for orderly and constructive social change.

THE OEO ERA

The Early Development

In 1964, Congress passed the Economic Opportunity Act, the beginning of President Johnson's War on Poverty (Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508 [1964] [repealed in part, 1981]). The Act established the Office of Economic Opportunity (OEO), which administered the Administration's anti-poverty programs. For the first time, Congress made federal money available for legal services for the poor.

In order to establish a federal financing niche as part of the War on Poverty, a confluence of several circumstances needed to occur: a commitment from the OEO leadership to include legal services in the services OEO would fund; support for legal services from the organized bar at the national level; encouragement for legal services programs from the local level; and implicit Presidential and Congressional support.

In late 1964 and early 1965, those circumstances began to converge. Legal services advocates Jean and Edgar Cahn convinced Sargent Shriver, the first director of OEO, to include legal services in the package of activities that could be funded by the agency. Legal services was not mentioned in the original Act. In 1966 it was added to the Economic Opportunity

Amendments of 1966 and as a special emphasis program in the Economic Opportunity Act Amendments of 1967.

However, the Economic Opportunity Act was premised on the idea that the local planning bodies, a community action agency (CAA), would decide how to address poverty problems in the individual communities. Thus, a CAA could choose not to include legal services in its overall community anti-poverty strategy. And in practice, few CAAs opted to provide legal services. In fact, legal services programs often took positions on behalf of clients that were inconsistent with CAA positions on local issues.

Therefore, in adopting the Cahns' recommendation, Sargent Shriver also agreed to earmark funds for legal services, irrespective of local CAA plans. This earmarking was, to a certain degree, a condition of American Bar Association support. The organized bar took the position that the legal services program should be free from lay control locally, regionally, and nationally. This meant that CAAs could not control local legal services programs, and nonlawyer bureaucrats within OEO could not control legal services at the regional and national level.

Support from the American Bar Association was critical to the success of the federal legal services program, and it was achieved with much less difficulty than most thought was possible. Under the progressive leadership of ABA President (and later Supreme Court Associate Justice) Lewis Powell, F. William McCalpin (then Chairman of the ABA Standing Committee on Lawyer Referral and later to become Chairman of the Board of Directors of the Legal Services Corporation and one of its longest serving member), and John Cummiskey (Chairman of the SCLAID), the ABA House of Delegates unanimously endorsed the OEO legal services program on the condition that the organized bar retain a measure of control over the program and traditional legal ethics were considered as an integral part of the program's operations.

Having secured the endorsement of the ABA, OEO faced the critical and much more difficult task of generating local programs that would actually deliver the services to low-income clients. While the designs for the individual programs would be developed locally and set out in funding proposals submitted by entities that were organized in local service areas, OEO had the responsibility to provide potential grantees with guidance regarding the kinds of programs that it would fund and to decide whether the proposals should be modeled after traditional legal aid societies or the foundation experiments. The overall design for the program was fleshed out by E. Clinton Bamberger, the first director of OEO Legal Services and his deputy (and later the second director) Earl Johnson. Bamberger came to OEO with the strong endorsement of the ABA leadership, but with no experience in legal aid for the poor. Johnson had been the deputy director of the Washington, DC, foundation-funded legal services program but had never worked in a traditional legal aid office.

In developing the overall design for the OEO legal services program, Bamberger and Johnson worked with the National Advisory Committee, a group that primarily represented the organized bar. This group produced the OEO Legal Services *Guidelines,* which was supplemented by the OEO staff's *How to Apply for a Legal Services Program.* The *Guidelines*

took the middle ground on most of the controversial design issues. They required representation of the poor on the boards of local programs (although not necessarily by poor people themselves), and encouraged the formation of client advisory councils. They did not set national financial eligibility standards, but did permit poor people's organizations to be eligible for representation. The *Guidelines* prohibited legal services from taking fee-generating cases, but they required local programs to provide service in all areas of the law except criminal defense and to advocate for reforms in statutes, regulations, and administrative practices. They identified preventive law and client education activities as essential components of local programs. They required program services to be accessible to the poor, dispensed primarily from neighborhood office locations, and to have convenient office hours.

Unlike the legal aid systems that existed in other countries, which generally used private attorneys who were paid on a fee-for-service basis, known as "judicare," OEO's plan for the legal services program in the United States would utilize staff attorneys working for private, non-profit entities. OEO's grantees were to be full-service providers, each serving a specific geographic area, with the obligation to ensure access to the legal system for all clients and client groups. The only specific national earmarking of funds was for services to Native Americans and migrant farmworkers. Those programs were administered by separate divisions within OEO and had separate delivery systems. The presumption was that legal services providers would be refunded each year unless they substantially failed to provide acceptable service or to abide by the requirements of the OEO Act. In addition to local service providers, OEO also developed a unique legal services infrastructure. OEO funded a system of national and state support centers, training programs, and a national clearinghouse for research and information that would provide the legal services community with leadership and support on substantive poverty law issues and undertake litigation and representation before state and federal legislative and administrative bodies on issues of national and statewide importance.

Most of the initial proposals submitted to OEO for legal services funding came from areas with existing legal aid societies and progressive local bar associations. These proposals covered many of the urban areas of the Northeast, Midwest, and the West Coast, but few proposals came from the South and Southwest. It would take many years and much turmoil and change before a federally funded legal services program provided poor people throughout the country with access to the legal system.

Initial Opposition to Legal Services

Although proposals for federal funding poured in to OEO from organizations eager to provide legal assistance, the legal services program also generated substantial opposition within the legal profession, mainly from local bar associations that represented private attorneys practicing in the areas that would be served by the new programs. Their concerns fell into three categories: 1) competition for clients from publicly supported legal services programs; 2) the impact that representation of the poor might have on their clients, primarily local businesses and governments that might be the subject of lawsuits by legal services programs; and 3) a perceived threat of a change in the legal profession from an independent, self-reliant profession to one influenced by the expansion of public financial support with potentially regulated lawyers.

One common response that arose out of local opposition to legal services programs was and effort to seek OEO funding for judicare—a delivery system in which attorneys in private practice are paid on a fee-for-service basis for handling cases for eligible clients, similar to the way doctors are paid for handling Medicare patients. However, OEO refused to fund judicare programs as the primary model for legal services delivery, agreeing to fund only a few small programs, primarily in rural areas. Bamberger felt that a nationwide judicare system would be prohibitively expensive and would not provide the aggressive advocacy required to adequately represent the low-income community. This fundamental policy decision shaped the civil legal aid program for the next 35 years.

Another source of initial opposition to the legal services program came from the CAAs that were funded under the Community Action Program (CAP), the largest unit of OEO. Some CAAs were hostile to any funding for civil legal assistance and argued that the money that went to legal services could be better used by the CAAs for other purposes in the community. Other CAAs wanted to control the legal services program and did not want legal services to sue local governments (some of which housed the CAAs). In addition, there was significant bureaucratic in-fighting within OEO over whether the CAP program and its regional directors would decide which legal services programs to recommend for funding or whether the Office of Legal Services in Washington would make the recommendations. It took direct intervention from Sargent Shriver, after pressure from the ABA and the National Advisory Council, to overcome these internal turf battles and struggles over priorities and authority for legal services funding.

In addition, local political figures often attempted to interfere with legal services proposals. Many of the OEO-funded programs were controversial because they had sued both government agencies and powerful private business interests. For the first time, social welfare agencies, public housing authorities, large private landlords, banks, merchants, school districts, police departments, prisons and jails, and numerous other public and private institutions were subject to challenge by lawyers advocating on behalf of low-income people.

In spite of the initial external controversy, bureaucratic in-fighting, and general skepticism by the establishment, within nine months of taking office Clint Bamberger and his staff had completed the Herculean task of funding 130 OEO legal services programs. Many local lawyers, progressive bar leaders, community activists, and traditional legal aid societies sought and received federal funds to establish legal services programs. In the end, despite their initial misgivings, the OEO legal services program obtained the support of many local and state bar associations, CAAs, and local politicians. By the end of 1966, federal funding for these local programs, along with the other national infrastructure programs that had been established to provide training and back-up assistance, had grown to $20 million.

Growth and Development

By 1968, 260 OEO programs were operating in every state except North Dakota, where the governor had vetoed the grants. The legal services budget grew slowly but steadily from the initial $20 million in 1966 to $71.5 million in 1972.

In 1967, OEO legal services' second director, Earl Johnson, made a second fundamental policy decision that would also have long-term implications for the civil legal aid program. The local OEO-funded legal services programs were facing impossible demands from clients for services and totally inadequate resources to meet the need. In response to this growing problem, Johnson sought to implement "law reform" for the poor as the chief goal of OEO legal services. He made clear that OEO would give priority in funding to proposals that focused on law reform.

In addition, Johnson wanted to create a cadre of legal services leaders and use peer pressure to encourage programs to provide high-quality legal services. In order to achieve this goal, OEO funded the Reginald Heber Smith Fellowship program to attract "the best and the brightest" young law graduates and young lawyers into OEO legal services through a special program that provided a summer of intensive training in various law reform issues, and then placed the "Reggies" in legal services programs throughout the country for one- or two-year tours of duty.

A large investment was also made in "back-up centers"—national legal advocacy programs, initially housed in law schools, that were organized around substantive areas (e.g., welfare or housing) or a particular group within the eligible client population (e.g., Native Americans or elderly). These centers engaged in key test case litigation and provided representation before legislative and administrative bodies to eligible clients and groups while providing support, assistance, and training to local legal services programs that were working on cases within the centers' areas of expertise. These centers engaged in specialized representation and developed knowledge and expertise that was essential to the development of new areas of poverty law. They also provided leadership on key substantive issues and worked closely with the national poor people's movements that had evolved during the early years of the legal services program (e.g., the National Welfare Rights Movement and the National Tenants Organization). The work of the back-up centers was memorialized in a national publication, the *Clearinghouse Review*, which included articles on poverty law developments and national training and technical assistance programs.

Thus, by 1970 the basic structure of the legal services program was in place. It was differentiated from traditional legal aid by five principal elements:

- The first was the notion of responsibility to all poor people as a "client community." Local legal services programs served, as a whole, the community of poor people who resided in their geographic service area, not simply the individual clients who happened to be indigent and who sought assistance with their particular problems.

- Second, legal services emphasized the right of clients to control decisions about the solutions that program would pursue to address their problems. The legal services program was a tool for poor people to use rather than simply an agency to provide services to those poor people who sought help.

- The third element was a commitment to redress historic inadequacies in the enforcement of legal rights of poor people caused by lack of access to those institutions that were

intended to protect those rights. Thus, "law reform," was a principal goal for the legal services program during the early years.

- The fourth element was responsiveness to legal need rather than to demand. Through community education, outreach efforts, and physical presence in the community, legal services programs were able to assist clients to identify critical needs, set priorities for the use of limited resources, and fashion appropriate legal responses, rather than simply respond to the demands of those individuals who happened to walk into the office.

- The fifth and final element was that legal services programs were designed to provide a full range of service and advocacy tools to the low-income community. Thus, poor people were to have at their disposal as full a range of services and advocacy tools as that offered by private attorneys who served the affluent.

Major Accomplishments

As its designers had intended, the legal services program soon began to significantly change the law that affected the rights of low-income Americans. Legal services attorneys won major cases in state and federal appellate courts and the U.S. Supreme Court that recognized the constitutional rights of the poor and interpreted statutes in ways that protected their interests. Programs engaged in advocacy before legislative bodies that gave the poor a voice in forums where no one had previously listened. Legal services advocates appeared before administrative agencies to assure effective implementation of state and federal laws and to stimulate development and adoption of regulations and policies that had a favorable impact on the poor. Equally important, programs represented individual poor clients before lower courts and administrative bodies and helped them enforce their legal rights and take advantage of opportunities to improve their employment status, public benefits and other income supports, education, housing, health, and general living conditions.

Legal services attorneys won landmark decisions such as *Shapiro v. Thompson*, 394 U.S. 638 (1969), which ensured that legal welfare recipients were not arbitrarily denied benefits, and *Goldberg v. Kelley*, 397 U.S. 254 (1970), which led to a transformation in the use of the concept of due process. Creative advocacy by legal services lawyers expanded common law theories that revolutionized the law protecting poor tenants and consumers, including the innovative concepts of retaliatory evictions and implied warranty of habitability. Legal services attorneys also worked to enforce rights that existed in theory but were honored only in the breach and to ensure that federal law benefiting the poor was actually enforced on behalf of the poor. Cases like *King v. Smith,* 392 U.S. 309 (1968), radically changed poverty law by providing remedies in federal and state courts against those who administered Aid for Families with Dependant Children (AFDC), the Food Stamp Program, public housing, and other public benefit programs.

Legal services lawyers also played critical behind-the-scene roles in enacting or modifying federal, state, and local legislation. Legal services advocates significantly influenced the enactment of the Food Stamp Program, the Supplemental Food Program for Women, Infants and Children (WIC), Supplemental Security Income (SSI), and they were instrumental in making changes to key federal housing legislation, Medicaid, consumer legislation and nursing home

protections. Legal services advocates were also in the forefront of regulatory developments on AFDC; SSI; Medicaid; Early Periodic Screen, Diagnosis and Treatment (EPSDT); food programs, Hill-Burton Act's uncompensated health care and community services requirements; Truth in Lending legislation; federal housing; energy assistance and weatherization programs; Individuals with Disabilities Education Act; farm labor contractors; Fair Debt Collection Practices Act; and numerous others.

Perhaps most important, through sustained and effective advocacy, legal services lawyers were able to fundamentally change the way that public and private entities dealt with the poor. Legal services representation helped alter the court system by simplifying court procedures and rules so that they could be understood by, and made more accessible to, low-income people with limited education. As a result of legal services representation, welfare and public housing bureaucracies, social service agencies, schools, and hospitals began to act in accordance with established rules and to treat the poor more equitably and in a manner more sensitive to their needs. Finally, legal services programs have been on the forefront of the efforts to assist women who were victims of domestic violence.

Political Efforts to Curtail OEO Legal Services

In spite of, or because of, the success of its grantees, the OEO Legal Services Program had its share of detractors and was enmeshed in many controversies. One of OEO legal services' most sustained and dangerous battles was with then California Governor Ronald Reagan who was, throughout his days in public office, an avowed enemy of legal services.

Murphy Amendments

In 1967, at the request of Governor Reagan, Senator George Murphy, a Republican from California, tried to amend the Economic Opportunity Act to prohibit legal services lawyers from bringing actions against federal, state, or local government agencies. The amendment failed in the Senate by a vote of 36 to 52. In 1969, again at Governor Reagan's request, Senator Murphy tried a new strategy. He submitted an amendment to give state governors an absolute veto over funding for OEO programs in their respective states. At the time, governors had the power to veto programs in their states, but the veto could be overridden by the OEO director. The amendment was widely viewed as an attempt to give Governor Reagan the power to veto the grant to California Rural Legal Assistance (CRLA), which was a particularly aggressive legal services program that had gained notoriety for its successful efforts to stop certain welfare and Medicaid policies in California and for its advocacy for farmworkers against agricultural employers. The second Murphy amendment passed by the Senate, but did not make it through the House. While OEO and CRLA won that battle, the war was just beginning.

CRLA Controversy

In December 1970, Reagan announced his decision to veto the $1.8 million grant to CRLA, citing "gross and deliberate violations" of OEO regulations. In January of 1971, the director of the California Office of Economic Opportunity, Lewis K. Uhler, released a 283-page report, which was to serve as a justification for Reagan's earlier veto of the annual grant to CRLA. The report itemized some 150 charges of alleged misconduct by CRLA, including

disruption of prisons, disruption of schools, organizing labor unions, criminal representation, and representation of ineligible, over-income clients.

In response to this report, OEO appointed a blue ribbon commission composed of three justices from state supreme courts to assess the charges in the Uhler report. Despite Uhler's refusal to present evidence to the commission and his demands that testimony be given in executive session, the commission conducted public hearings on all of Uhler's charges and heard evidence from 165 witnesses from all over California. Much of the anti-CRLA testimony came from the California Farm Bureau, an organization of agricultural employers, which was frequently at odds with the farmworkers CRLA represented.

The commission's work culminated in a 400-page report that found the Uhler report's charges totally unfounded and concluded that "CRLA has been discharging its duty to provide legal assistance to the poor…in a highly competent, efficient and exemplary manner." The commission recommended that CRLA be refunded. After the report was issued, OEO Director Frank Carlucci and Governor Reagan engaged in intense negotiations, and Reagan ultimately agreed to withdraw the veto. In exchange, OEO agreed to award the state $2.5 million to start a demonstration judicare program and to place some restrictions on CRLA, even though the commission's report had cleared CRLA of all of charges. In the end, however, the judicare program was never implemented because of disputes over the evaluation criteria.

Lenzner-Jones Firing

In 1969, at the beginning of the Nixon Administration, the legal services program was elevated to a special status in OEO with the creation of the Office of Legal Services (OLS), headed by an associate director of OEO who reported directly to the OEO director. Terry Lenzner, a young Harvard Law School graduate who had worked at the Justice Department, became the new Director of OLS. He hired as his deputy Frank Jones, who had worked in legal services programs and who later became the Executive Director of the National Legal Aid and Defender Association. Although key leaders in the legal services community were initially suspicious of Lenzner, they ultimately became convinced that he was fully supportive of the program.

However, infighting within OEO was rampant, particularly over the issue of including legal services within a reorganized regional structure. OEO Director Donald Rumsfeld decided to shift grant-making authority and supervision of the legal services program to "generalist" OEO regional directors. The ABA and other legal services supporters opposed this move, arguing that legal services would be run by non-lawyer political appointees who would curb the independence of the program. The plan was never implemented, but in the course of the dispute, Rumsfeld fired Lenzner and Jones, both of whom had supported independence for the legal services program and had opposed regionalization.

The firings were far more significant than a mere fight over internal bureaucratic issues. They symbolized the growing disparity in views between the Nixon Administration and legal services supporters over the role and functions of the legal services program. After Lenzner and

Jones left the program, with two exceptions, OLS was headed by directors with little experience and no power within OEO.

The Reign of Howard Phillips

In January 1973, President Nixon proposed to dismantle OEO and appointed Howard Phillips, Acting Director of OEO, to head the effort. Even though the Administration was about to propose legislation that would eventually transition the legal services program out of the federal government and into a private, nonprofit corporation, Phillips, a vocal critic of the War on Poverty in general and legal services in particular, was determined to destroy the legal services program. He declared, "I think legal services is rotten and it will be destroyed." Phillips put legal services programs on month-to-month funding, eliminated law reform as a program goal, and moved to defund the migrant legal services programs and back-up centers. The federal courts eventually stepped in and ruled that because he had not been confirmed by the Senate, Phillips lacked the authority to take such action as Acting Director.

While Phillips' effort to decimate legal services was ultimately thwarted by the courts, his assault made it more clear than ever that a new legal services structure, separate from the Executive branch and protected from vagaries of the political process, was necessary. The need for the Legal Services Corporation was very clear.

LEGAL SERVICES CORPORATION

The Gestation Period

Within the organized bar, the Nixon Administration, the Congress, and the legal services community, the idea of an independent legal services entity began to take root. In 1971, a study committee comprised of the ABA and the President's Advisory Council on Executive Reorganization (known as the Ash Council) both recommended the creation of a private, nonprofit corporation, separate from the federal government, to receive funds appropriated by Congress and distribute them to local legal services programs. A bipartisan group in Congress introduced authorizing legislation in February of 1971. In May of that year, President Nixon introduced his own version of the legislation, which created the Legal Services Corporation (LSC), calling it a new direction to make legal services "immune to political pressures…and a permanent part of our system of justice." At the same time Nixon proposed a number of restrictions on legal services advocates that were not in the Economic Opportunity Act, including prohibitions on lobbying, organizing, and political activities of staff attorneys.

In December of 1971, Nixon vetoed legislation that had been passed by Congress to establish LSC. His veto was primarily based on the fact that the legal services piece was part of a larger package of legislation containing a national child care program that he opposed. However, he also vetoed the bill because the legal services provisions limited the President's power to appoint the LSC board and did not include some of the restrictions that Nixon had sought. The legislation passed by Congress did give the President power to make all of the entity's board appointments, but 11 of the 16 board members had to be appointed from lists

supplied by various interest groups, including the ABA, the American Trial Lawyers Association (ATLA), and the National Legal Aid and Defender Association (NLADA). Legal services activists feared that an LSC board appointed solely by the President would inevitably include people who would work to destroy the program's mission. Congress did not have enough votes to override the veto.

In May of 1973, Nixon again proposed a bill to create the LSC. Since Nixon was fresh from re-election and was not feeling as much pressure to please everyone as he had during the campaign, this proposal contained some new restrictions. The House Committee wrote exceptions to the prohibitions, but the restrictions were reinstated following debate on the House floor. In the end, 24 restrictive amendments were appended to the bill, limiting the types of cases legal services attorneys could take, restricting lobbying and rulemaking, limiting class actions, and eliminating training and back-up centers. The back-up centers were a favorite target of conservatives because they were seen as the brains behind legal services activism and law reform efforts.

Action in the Senate, however, had a much different tone. A unanimous Labor and Public Welfare Committee produced bipartisan legislation that carefully preserved the ability of the legal services program to provide the full range of representation to all eligible clients. Like the House bill, it allowed the President to choose board members, but the appointees would have to be confirmed by the Senate. And most importantly, it had the support of the White House, since White House staff was involved in the negotiations to craft the bill.

This is not to say that conservative Senators fell into line behind the bipartisan bill. A group of conservative Senators engaged in a filibuster by introducing more than 120 amendments to the bill establishing LSC. There were three cloture votes to cut off debate over a three month period before the Senate finally considered the legislation. In the end, only a few of the proposed amendments were adopted, and, with the exception of a prohibition on some abortion litigation, they would not have represented significant barriers to the full representation of eligible poor people.

The Conference Committee produced a bill that was closer to the Senate bill than the House version. The restrictions that remained in the Conference bill dealt with representation in cases dealing with non-therapeutic abortions, school desegregation, selective service, and some instances of juvenile representation. The bill also imposed restrictions on outside practice of law and political activities by staff attorneys. But the Conference bill preserved the back-up centers and maintained the ability of legal services advocates to represent eligible clients before legislative bodies and in administrative rulemaking.

The Conference Report passed both houses, although the vote in the House was very close. Nevertheless, conservatives made their continued support of President Nixon in the impeachment hearings contingent on his veto of the LSC bill unless an amendment that they thought would eliminate the back-up centers was added to the bill. The President demanded that the LSC bill include the so-called "Green amendment" (named after Rep. Edith Green, a Congresswoman from Oregon). However, the actual language of the Green amendment did not succeed in eliminating major impact litigation and national advocacy, and only placed certain

limitations on training, technical assistance, and research. Therefore, LSC supporters did not withdraw their support of the bill even with the addition of the Green amendment. Nixon signed the bill on July 25, 1974 (see Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378 [codified at 42 U.S.C.] § 2996 [1994]). The Legal Services Corporation Act of 1974 was one of the last bills that President Nixon signed into law before he resigned from office in August of 1974.

The Early LSC Era: Growth and Expansion

The LSC Act created a private, nonprofit corporation that was controlled by an independent, non-partisan Board, appointed by the President and confirmed by the Senate. No more than six of the Board's 11 members could come from the same political party. The initial selection of Board members was delayed by President Nixon's resignation. It took almost a year for President Gerald Ford to appoint and the Senate to confirm the first LSC Board of Directors. Opponents of LSC urged the President to appoint several leading critics of the program to the Board. On July 14, 1975, the first of Board of Directors of LSC was sworn in. The Board included both liberal and conservative members, but all were supportive of the basic goals of the legal services program, the delivery of effective and efficient legal services to poor people. Ninety days after the Board was confirmed, on October 12, 1975, LSC officially took control of the federal legal services program.

The new Board's decisions on major policy issues—selecting a staff that included many experienced legal services advocates, continuing support for the national back-up centers, maintaining a strong national training and communications capacity, adopting regulations that permitted legal services attorneys to provide full professional representation to the low-income community, and maintaining the basic staff attorney structure of the program—all reflected a desire to ensure that the poor received effective legal representation and an appreciation of the merits of the existing delivery system. The delivery and support structure put in place by OEO was carried over fundamentally unchanged by LSC when it began to function in 1975.

Initially, there was tension between the legal services field programs and the LSC staff and Board. Some in the field were worried that LSC would serve simply as the enforcer of restrictions. But the relationship shortly evolved into one that was quite similar to the relationship that had existed between field programs and OEO. While LSC was somewhat more bureaucratic than OEO had been, like OEO, the new LSC de-emphasized its regulatory role in favor of incentives, encouragement, assistance, and a spirit of partnership.

Expansion

Most of the initial efforts of the new Corporation went into obtaining increased funds for the program from Congress. LSC conducted a study of the funding levels of local programs in relation to the population they served and found that over 40 percent of the nation's poor people lived in areas where there was no legal services program at all, and many of those living in the remaining areas had only token access to legal assistance. On the basis of that report, the Corporation developed a "minimum access" plan, with the goal of providing a level of federal funding for LSC in every area of the country, including those not then served at all, that would

support two lawyers for every 10,000 poor persons, based on the U.S. Census Bureau's definition of poverty.

This funding and expansion strategy proved highly successful. LSC was able to transform the federal legal services program from one that had only served the predominantly urban areas of the nation to a program that provided legal assistance to poor people in virtually every county in the United States and in most of the U.S. territories. In 1975, LSC inherited a program that was funded at $71.5 million annually. By 1981, the LSC budget had grown to $321.3 million. Most of this increase went into expanding to previously unserved areas, creating new legal services programs, and greatly increasing the capacity of existing ones. Based on the 1970 census figures, out of a total of 29 million poor people in 1975, 11.7 million had no access to a legal services program, and 8.1 million had access only to programs that were inadequately funded. In contrast, by 1981, LSC was funding 325 programs that operated 1,450 neighborhood and rural offices throughout the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, Micronesia, and Guam. Although legal services program resources were still extremely limited, by 1981, LSC had achieved, albeit briefly, its initial goal of reaching "minimum access." Each legal services program received LSC funding at a level to theoretically support two lawyers for every 10,000 poor people in its services area.

Private Attorney Involvement

Although the LSC-funded legal services program has always been a primarily staff attorney system, beginning in the early 1980s, a significant effort was made by LSC to involve private attorneys in the delivery of civil legal services. While the organized bar was generally supportive of LSC, certain segments of the legal profession remained unfamiliar with legal services practice, felt threatened by legal services advocacy, and, in some instances, were hostile to LSC's mission. Many of these lawyers had urged Congress to require LSC to provide funding for private attorneys through judicare programs and other mechanisms that would compensate private attorneys for providing legal assistance to eligible clients.

In response to those urgings, Congress required LSC to conduct a study of alternatives to the staff attorney system. Pursuant to the findings of the LSC Delivery System Study, which was completed in 1980, LSC began to encourage its grantees to involve private attorneys, particularly through the development of pro bono programs. Beginning in 1982, the LSC Board passed a resolution requiring its grantees to use the equivalent of 10 percent of their LSC funding for private attorney involvement (PAI) activities. In 1984, LSC adopted a regulation that raised the amount of funds allocated to PAI to 12.5 percent. Most PAI activities went to increase pro bono efforts, although many programs used judicare, contracts, or other compensated arrangements as components of their PAI efforts. Private attorneys began co-counseling with legal services attorneys on large cases and accepting client referrals from legal services programs. By exposing private attorneys first-hand to the realities of legal services practice and by creating partnerships between private attorneys and legal services advocates, hostility to LSC and its programs diminished substantially, and private lawyers across the country have, along with the ABA and state and local bar associations, become staunch allies of LSC and its local legal services programs. Today, more than 150,000 private attorneys participate in pro bono efforts in conjunction with LSC-funded programs.

Accomplishments

The second half of the 1970s marked the heyday of the legal services program. Local legal services programs had been established to provide service to every county in the country; a network of migrant and Native American programs or units of local programs covered most areas where their client population lived or worked; a system of state support had begun to emerge; several new national support centers had been established; LSC had begun a national training program; and the number of legal services program staff around the country had increased significantly. Despite the efforts of the early 1970s to destroy the legal services program, LSC had become an effective institution with broad-based support from Congress, the bar, and the general public. As a consequence, the rights of the poor were effectively enforced, often for the first time in the many areas of the country, especially the South, Southwest, and Plains states where legal services programs were established for the first time. The significant victories of the 1960s, which established new constitutional, statutory, and common-law rights for the poor, were finally becoming a reality for those low-income clients who lived where legal services had not previously existed.

With the growth of the legal services program came significant changes in the ways in which poverty advocacy was conducted and in the manner in which services were delivered, along with changes in the role of LSC. At the local and state level, advocates became more specialized. Separate units for "law-reform" work that had been the hallmark of OEO-funded legal services programs were eliminated or subsumed into the general framework of the program, and efforts were made to better integrate law reform and basic service work. Local program staff received more and better training, and coordination between programs increased. New fields of poverty law emerged, such as advocacy for persons with disabilities, veterans, nursing home residents, the institutionalized, and other groups with special problems of legal access. Paralegals developed into full-fledged advocates, and included among their numbers many former clients as well as ex-social workers and community activists. Quality standards improved. Programs and advocates became more professional. Increased attention was devoted to supervision, case reviews, evaluation, and other methods of ensuring high-quality representation.

As the legal services program expanded nationally, a new focus also developed at the local level. Local control became the new legal services mantra. Local priority setting became a central tenet in determining how each program would decide which substantive areas and types of cases to emphasize. LSC made no effort to set substantive goals directly, but instead it relied upon its Research Institute and Office of Program Support to provide programs with options and ideas for local consideration. LSC created the Research Institute, which provided poverty law research, conducted seminars on emerging poverty law issues, and developed new poverty law issues. The Office of Program Support conducted an extensive training program and produced a large number of substantive and skills manuals. National support centers continued to engage in both support and direct representation, but their influence on local substantive work waned as the number of major constitutional and statutory cases declined, and regulatory and law enforcement practice that required sustained advocacy at the state and local level increased. Many more local

and state advocates emerged as new national leaders on substantive areas of law, often working in conjunction with advocates from state and national support centers.

Funding Reductions and the Struggle for Survival

Although in most parts of the country legal services had come to be respected and accepted as an institutional presence, the expansion of the program into previously unserved areas was sometimes still met with suspicion on the part of the local bar, politicians, business and community leaders, who feared that the business environment and social order that they had come to expect would be upset by the new breed of lawyers whose role was to assist the poor to assert their rights. Many of the issues that had led to controversies a decade earlier in areas served by OEO legal services arose again in newly served areas. These issues came to the attention of Congressmen elected from those areas. As a result, Congressional scrutiny of the legal services program began to increase.

The Late 1970s and the Beginnings of a Backlash

Two issues became particularly contentious during the late 1970s—legislative advocacy and representation of illegal aliens. In 1978 Carlos Moorhead, a Republican Congressman from California added a rider to the legal services appropriations bill that prohibited the use of LSC funds "for publicity or propaganda purposes designed to support or defeat legislation pending before Congress or any state legislature." The Moorhead Amendment passed by a vote of 264 to 132. LSC interpreted the Moorhead Amendment narrowly and found it consistent with the existing LSC Act's provisions on representation before legislative bodies, an interpretation that was subsequently criticized by the Government Accounting Office, the investigative arm of Congress.

An alien restriction was added to the 1980 fiscal year (FY) appropriation. The provision prohibited LSC and legal services programs from using LSC funds to undertake any activity or representation on behalf of known illegal aliens. LSC also interpreted this rider narrowly as prohibiting representation of only those aliens against whom a final order of deportation was outstanding. Under this interpretation, representation of most aliens continued until 1983, when a much more restrictive rider was added to the FY 1983 appropriations act.

The Reagan Era

The election of President Ronald Reagan in 1980 was a watershed for legal services, ending the years of expansion and growth of political independence for the Corporation and its grantees. The Reagan Administration was openly hostile to legal services. Reagan initially sought LSC's complete elimination and proposed to replace it with law student clinical programs and a judicare system. In response to pressure from the White House, Congress reduced funding for the Corporation for 1982 by 25 percent, slashing the appropriation from $321 million in FY 1981 to $241 million in FY 1982. The cut represented an enormous blow to legal services providers nationwide. Programs were forced to close offices, lay off staff, and reduce the level of services dramatically. In 1980, there were 1,406 local field program offices; by the end of 1982 that number had dropped to 1,121. In 1980, local programs employed 6,559 attorneys and

2,901 paralegals. By 1983, those figures were 4,766 and 1,949, respectively. Programs also cut back significantly on training, litigation support, community education, and a host of other efforts. LSC was forced to eliminate the Research Institute and to significantly downsize the Office of Program Support, both of which had been invaluable resources for the legal services community.

In the early 1980s, Congress also began an effort to impose new restrictions on legal services advocacy. In 1981, the House adopted an LSC reauthorization bill that would have severely limited lobbying and rulemaking activities, imposed significant restrictions on alien representation, prohibited class actions against government agencies, prohibited representation in abortion and homosexual rights cases, required the establishment of judicare programs, mandated that attorneys' fees obtained by recipients be remitted to LSC, and required that a majority of local program boards of directors be appointed by state and local bar associations, in addition to other changes in the LSC Act. While this legislation was never enacted, it established the basis for a number of restrictions that Congress later attempted to impose through the appropriations process. In 1982, Congress enacted new restrictions on the use of LSC funds for lobbying and rulemaking and expanded the alien restriction by prohibiting the representation of certain categories of aliens. Congress also required that state and local bars make appointments to program boards and imposed new procedural requirements for class actions. These appropriations riders continued in effect until 1996.

At the end of 1981, President Reagan replaced a majority of the LSC Board, originally appointed by President Carter, with new recess appointees. The balance of the Carter Board members was replaced in January of 1982. The Senate refused to confirm these individuals when the Reagan Administration formally nominated them, and for much of the Reagan presidency, LSC was governed by a series of Boards consisting of recess appointees and holdover members. Many of the Board members who served during that period expressed outright hostility to the program they were charged with overseeing. Several sought to totally revamp legal services into a judicare-based program that did no significant litigation and did not engage in any policy advocacy. Others professed to support the concept of legal services for the poor, but advocated changes that would have eviscerated the program. For example, some board members advocated expanding private attorney involvement to 25 percent of funding, eliminating all funding for national and state support services, narrowing eligibility criteria to permit service only to those people with below-poverty level income and no assets, and precluding virtually all legislative and administrative advocacy. Many expressed open disdain for the organized bar, particularly the ABA, which had emerged as a vigilant protector of the legal services program. Despite the hostility of the majority of the Board, throughout the Reagan Administration there were a few Board members who remained steadfastly supportive of the program they had been appointed to oversee, although they were consistently outvoted by their colleagues.

The Corporation's management and staff became increasingly hostile to the programs they funded. The Board appointed a series of LSC Presidents who were antagonistic to civil legal aid and the national legal services program and who brought in senior staff members who were similarly opposed to the basic mission of the program. The LSC staff began a program of highly intrusive and exhaustive monitoring for compliance of local programs that was conducted

in an extremely adversarial manner and required the expenditure of extraordinary amounts of time and resources by the programs being monitored. Often, LSC monitors demanded access to client files and other confidential information that placed program attorneys at odds with their ethical obligations to their clients. There was no emphasis in the monitoring on the quality of representation or program performance. In some instances the Corporation withheld funds from programs or provided only short-term funding because of minor technical violations, such as board vacancies, and attempted to reduce funding levels for a number of programs.

Throughout the 1980s, there was constant hostility and friction between the LSC Board and staff, and supporters of legal services, including legal services providers, the organized bar, national organizations concerned about civil legal aid, and key members of Congress from both parties. However, efforts by the LSC Board to make major policy changes, to pass restrictive new regulations, and to eliminate key components of the national program, such as national and state support centers and training entities, were repeatedly thwarted by court decisions or by Congress.

On the legislative front, LSC staff members actively lobbied Congress and paid others to lobby against LSC appropriations. They hired a consultant to write a legal opinion expressing the view that the Corporation was unconstitutional. LSC staff and Board members developed a series of new regulations and policies designed to restrict legal services activities far beyond the Congressionally imposed limitations of the LSC Act and subsequent appropriations riders. Despite these efforts by LSC and the continued hostility of the Reagan Administration and some members of Congress, bipartisan support for the mission of LSC continued to grow, and by the mid-1980s, Congress, which earlier in the decade had cut LSC funding and imposed new restrictions, became the protector of the legal services program.

Led by Senator Warren Rudman, a conservative Republican from New Hampshire, Congress frequently interceded to block actions by the Corporation. When, as its very first formal action, the new Reagan recess Board voted to stop the refunding of all LSC recipients, Congress enacted an appropriation rider that required LSC to refund all existing grantees under the terms of their current grants. Later, Congress enacted appropriation provisions that precluded changes to migrant programs and support entities; required LSC to award 12-month grants; prohibited the use of competitive bidding and a proposed timekeeping system; overturned regulations on fee-generating cases, lobbying and rulemaking, and restrictions on the use of private non-LSC funds; and limited LSC's rulemaking authority. By 1994, there were 22 riders on the LSC appropriation, most of which limited LSC's authority to take action.

The hostility and mistrust felt by Senator Rudman and other legal services supporters in Congress toward LSC during the 1980s is perhaps best expressed by the Senator's statement during the Congressional debate in December of 1987: "I do not trust the board of the Legal Services Corporation farther than I can throw the Capitol. They have double-crossed the Senator from South Carolina (Senator Hollings) and the Senator from New Hampshire at every possible opportunity. Frankly, I am sick of it.… I find [in] dealing with this group of people that nothing they tell me can I believe."

The Legal Services Community Weathers the Storm

One of the major sources of strength and support for legal services during this period of turmoil was the private bar. Two new requirements that Congress and LSC imposed on programs during the early 1980s had increased the involvement of individual private attorneys in the governance and delivery of legal services. Congress had required that a majority of each local program's board of directors be attorneys appointed by state or local bar associations. LSC had required each recipient to devote 12.5 percent of its grant award to activities that involved private attorneys in the direct delivery of legal services to the poor on a reduced fee or pro bono basis. Despite the fact that the legal services community had resisted both of these requirements, fearing they would undermine the independence of the legal services program and divert scarce resources, in fact, they had several positive and unintended outcomes. The new requirements helped those private attorneys who participated as board members or PAI attorneys appreciate the difficulties of serving poor clients with severely limited resources, enabled legal services attorneys to take their place as respected peers within the legal community, and strengthened the role of the organized bar as a champion of legal services.

In addition to the ABA and state and local bar associations, other bar-led organizations emerged in support of the legal services program, including Bar Leaders for Effective Legal Services, founded by key bar leaders from New Hampshire, Massachusetts, and Texas. The organized bar and these bar-led legal services support groups, working NLADA, the Project Advisory Group, and the Center for Law and Social Policy (CLASP), were able to effectively advocate before Congress to prevent implementation of many of the hostile policies that the LSC Board and staff had attempted to impose.

Another positive development in the 1980s was the growth of non-LSC funding for legal services. In most areas of the country, programs had always received some limited funds from private donations, foundations, or state or local governments. However, outside funding for most programs represented only an insubstantial portion of their budgets. When faced with a major funding cut and the threat of losing all federal funding, legal services programs began aggressive efforts to obtain funding from other sources, including United Way agencies, foundations, bar associations, private donations, state and local government grants and contracts, as well as non-LSC federal funds such as the Older Americans Act, Community Development Block Grants, and Revenue Sharing.

Also during the early 1980s, a completely new source of funding for civil legal services was created. IOLTA (Interest on Lawyer Trust Account) programs were first conceived in Florida, after changes were made in the federal banking laws permitting interest to be paid on certain kinds of accounts. IOLTA programs were instituted by state bars, courts, and legislatures, in cooperation with the banking industry, to capture pooled interest on small amounts or short-term deposits of client trust funds (used for things like court fees or settlement payments) that had previously been held in non-interest-bearing accounts. Since these deposits are pooled, interest can be earned in the aggregate, even though individually these nominal or short-term deposits would not earn interest. Throughout the 1980s and 90s more and more states adopted IOLTA programs, and by 2000, every state plus the District of Columbia and Puerto Rico had an IOLTA program. While resources created by IOLTA are used to fund a variety of

public service legal activities, most IOLTA funding has gone to civil legal services programs, and IOLTA is the second largest source of funding for LSC grantees.

Despite this infusion of non-LSC funds, the cuts in LSC funding, inflation, and a growth in those living in poverty all contributed to a devastating decline in the resources available for legal services. By 1990, the poor were served by many fewer legal services attorneys than in 1981, when the modest level of "minimum access" was briefly achieved.

A Slight Resurgence

The 1990s began with a small but significant improvement in the situation of the legal services community. The Corporation's appropriation, which had been stagnant for several years, began to move upward, to $328 million for FY 1991 and $350 million for FY 1992. The first Bush Administration abandoned the overt hostility to legal services of its predecessor and consistently recommended that Congress continue to appropriate money for the Corporation, albeit at level funding. The first President Bush appointed a Board with a majority of legal services supporters, breaking from the tradition of past Boards under the Reagan Administration. Under the new Board's leadership, the LSC staff also began to work more closely with the organized bar and legal services leaders and lowered the degree of the overt hostility that had characterized the previous eight years.

The LSC Act had last been reauthorized in 1977, and the authorization had expired in 1980. (Since 1980, the Act has not been reauthorized; LSC has continued because Congress has appropriated funds to LSC.) For the first time in many years, Congress took up reauthorization of the LSC Act. In the summer of 1992, the House adopted legislation reauthorizing LSC and incorporated many of the changes that supporters of the program had proposed. However, it was not clear that the Bush Administration would support this legislation, and the Senate failed act on the bill.

With the election of President Bill Clinton, the legal services community anticipated an end to the long period of insecurity and inadequate funding. Congress increased the LSC appropriation to $400 million, the largest increase since the early years of the Corporation. Congress also prepared to take up the LSC reauthorization bill, starting from where the House had left off. With the majority of Congress in favor of a broad role for legal services, and a supportive President in the White House, it seemed likely that a new statutory framework for the program could be enacted that would carry the program through the rest of the 1990s.

Clinton's appointees to the LSC Board, confirmed in late 1993, were uniformly supportive of a strong, well-funded LSC. The Board hired a well-known New York lawyer, Alex Forger, to be LSC President and he assembled a number of respected legal services leaders to serve in key staff positions. The new administration of the Corporation focused initially on redesigning the monitoring system. In lieu of the old system that had the effect of intimidating programs, the new system was designed to ensure that LSC grantees both complied with Congressional mandates and regulatory requirements and provided high-quality services. By late 1994, the Corporation had completed development of a new system for compliance monitoring and enforcement that relied, as did other federal agencies, on auditing by independent CPAs and

ending the intrusive on-site monitoring by LSC staff and consultants of the previous decade. LSC also developed a new peer review system designed to evaluate program performance and improve quality—goals that the Corporation had made no serious effort to achieve since 1981. Finally, together with the ABA and organizations representing legal services programs, the Corporation began an effort to revise and update all of the key LSC regulations affecting grantee operations.

The 104th Congress

With the 1994 congressional elections, the Corporation suffered a dramatic reversal of political fortune. In much the same way as the Reagan Administration in the early 1980s, the leadership of the new Congress committed itself to the elimination of LSC and ending federal funding for legal services. The leadership sought to eliminate LSC and replace it a state block grant program. The House of Representatives adopted a budget plan that assumed that LSC's funding would be cut by one-third for FY 1996, two-thirds for FY 1997, and eliminated completely thereafter. Opponents of legal services dubbed this funding plan "the guide path to elimination." It seemed possible that the federal commitment to equal justice might be abandoned altogether.

Fortunately, a bipartisan majority in the Congress remained committed to maintaining a federally funded legal services program. Nevertheless, key congressional decision-makers determined that major "reforms" in the delivery system would be required if the program was to survive. Grants were to be awarded through a system of competition, rather than through presumptive refunding of current recipients. A timekeeping system was imposed on all attorneys and paralegals working in programs. Programs were subject to a host of new organizational and administrative requirements. LSC funds could no longer be used to pay dues to non-profit organizations, including the ABA and NLADA, or to sue LSC. The LSC Office of Inspector General was given new powers over local program audits, and LSC was given expanded access to recipient and client records.

More fundamentally, the Congressional majority was determined to redefine the role of federally funded legal services, by refocusing legal services advocacy away from law reform, policy advocacy, and impact litigation and toward representation of individual clients. Congress set out to accomplish this goal by restricting the broad range of activities that programs had engaged in since the early days of OEO, many of which had been mandated in the past. These restrictions applied to all activities that a recipient undertook, regardless of the source of the funding that was supporting the activity. Thus, with certain limited exceptions, LSC-funded programs were prohibited from using either the public funds that they received from federal, state or local governments, and private funds they received from bar associations, charitable foundations, private donations, *or* the other non-LSC sources for any of the restricted activities.

Congress prohibited the representation of certain categories of clients, including prisoners, specified groups of aliens, and public housing residents who were being evicted based on drug-related charges. Perhaps even more damaging and insidious, Congress limited the kinds of legal work that LSC-funded programs could undertake on behalf of eligible clients, prohibiting programs from participating in class actions, welfare reform advocacy, and most

affirmative lobbying and rulemaking activities. In addition, when they were prohibited from claiming or collecting attorneys' fees, legal services programs were cut off from a significant source of funding and were limited in their ability to use an effective strategic tool. Finally, Congress eliminated LSC funding for national and state support centers (formerly known as back-up centers), the *Clearinghouse Review,* and other entities that had provided technical assistance and training to LSC-funded legal services programs.

In essence, when Congress passed the LSC appropriation riders in April 1996, it had determined that federal funds should go only to those legal services programs that focused on individual representation and concentrated on clients' day-to-day legal problems, while broader efforts to address the more general problems of the client community and to ameliorate poverty should be left to those entities that did not receive LSC funds. As former LSC President John McKay recently wrote: "Taken as a whole, the restrictions on the types of cases LSC programs are allowed to handle convey a strong Congressional message: federally funded legal services should focus on individual case representation by providing access to the justice system on a case-by-case basis."

Along with the new restrictions came a major reduction in funding. The LSC appropriation was cut by 30 percent, from $400 million for FY 1995 to $278 million for FY 1996. Final 1996 statistics revealed the staggering cost of the funding cuts: the number of cases that were closed fell from 1.7 million in 1995 to 1.4 million in 1996; during the same period the number of attorneys working in LSC-funded programs nationwide fell by 900, and 300 local program offices closed.

Reaction to the Restrictions

LSC worked quickly to develop a set of new regulations to implement the 1996 appropriations act restrictions. In response to a report by the General Accounting Office, LSC tightened its case reporting requirements and resumed and significantly expanded its monitoring efforts to ensure compliance with these reporting rules as well as numerous other regulatory requirements and restrictions. The Corporation's Office of Inspector General began a series of special program audits around a variety of specific issues.

Although the leadership of the legal services community recognized that Congressional support for continued legal services funding was, to a large degree, premised on the notion that the legal services program had been "reformed," opposition to the restrictions remained intense within the legal services community.

In January 1997, legal services programs filed two separate lawsuits against LSC, challenging the constitutionality of the statutory prohibitions, the substantive restrictions, and the limitations on non-LSC funding. In the first of the two suits, *LASH v. LSC*, the federal District Court held that the statutory restrictions were constitutional, but the regulatory scheme restricting non-LSC funds violated the First Amendment. In response to the lower court decision in *LASH*, LSC revised its regulations and imposed a new set of "program integrity" requirements that required strict legal, financial, and physical separation between LSC funded programs and

entities that engaged in restricted activity. The Court of Appeals approved the new LSC scheme and held that the restrictions were constitutional.

In the second suit, *Velazquez v. LSC*, the Court of Appeals did strike down part of one of the restrictions. The Court found that the provision in the welfare reform restriction that prohibited legal services advocates from challenging welfare law as part of the representation of an individual client who was seeking relief from a welfare agency violated the First Amendment because it constituted impermissible viewpoint discrimination. In February 2002, the U.S. Supreme Court upheld that decision. LSC announced that it would no longer enforce the provision, and in May 2002 eliminated it from the welfare reform regulation. In 2002, a new lawsuit, *Dobbins v. LSC,* was filed by a group of plaintiffs that included non-LSC funders, former LSC recipients, and private attorneys. The new suit challenged several of the LSC restrictions and the program integrity rules. That suit is pending in the U.S. District Court, but to date, no decisions have been issued.

In the years since the imposition of the restrictions, there have been numerous conversations within the legal services community and among its supporters about the impact of the restrictions on the ability of legal services providers to provide a full range of services to low-income clients. Consideration has been given to strategies for eliminating some or all of the restrictions or limiting their reach to only LSC funds rather than the non-LSC funds of recipients. To date, none of these conversations has resulted in concrete proposals for Congressional action, and LSC programs have, for the most part, learned to live within the restrictions, albeit unhappily.

The Legal Services Landscape from 1996 to the Present

Since 1996, the legal services landscape has undergone a dramatic transformation. Legal services has seen a reduction in the total number of LSC grantees from more than 325 programs in 1995 to 160 at the beginning of 2003, and, as a result of mergers and reconfigurations, discussed below, the number of local LSC-funded legal services providers has shrunk from 292 to 156. At the same time, new legal services delivery systems have begun emerging in many states that include both LSC-funded programs, operating within the constraints of Congressionally imposed restrictions, as well as separate non-LSC-funded legal services providers that operate unencumbered by the LSC restrictions. The non-LSC providers are generally free to engage in class actions, welfare reform advocacy, or representation before legislature and administrative bodies, and to provide assistance to aliens and prisoners, as long as their public and private funders permit their resources to be used for those activities. In 16 states and more than 20 large or medium-size cities, two or more parallel LSC- and non-LSC-funded legal service providers operate in the same or overlapping geographic service areas. Moreover, in a number of jurisdictions, the private bar is becoming increasingly more involved in delivering basic legal services, as well as in undertaking those cases and activities that LSC recipients are prohibited from handling.

In addition to changes in basic service delivery, the network of state and federal support entities formerly funded by LSC has been substantially curtailed and some of its components have been completely dismantled. This network—which consisted of state and national support

centers, a National Clearinghouse and poverty law journal, and training programs—combined with a single federal source of funds, quality standards, delivery research and training had served as the infrastructure that linked all of the LSC-funded providers into a single national legal services program. At the national level, several of the national support centers that had focused solely on issues affecting the low-income community have broadened their focus to attract new sources of funds. Several national support centers no longer exist. At the state level, the network of LSC-funded support centers has been replaced by a group of independent non-LSC funded entities engaged in state advocacy that operate in 35 states. (Some of the state entities are former LSC-funded state support centers, although only 12 of those still exist.) Several states have been unable to recreate any real state support capacity at all.

This new statewide system is emerging in large part because, beginning in 1995, in anticipation of funding cuts and the imposition of new restrictions, LSC started a program that required all of its grantees to engage in state planning, with the goal of developing for each state a comprehensive, integrated system of legal service delivery. Hallmarks of the new statewide delivery systems were to include a capacity for state level advocacy; a single point of entry for all clients into the legal services system; integration of LSC and non-LSC legal services providers, equitable allocation of resources among providers and geographic areas in the state; representation of low-income clients in all forums; and access to a full range of legal services, regardless of where the clients live, the language they speak, or the ethnic or cultural group with which they identify. States with large numbers of small LSC-funded legal services providers were urged to consider mergers and consolidation of local programs, leading to the reconfiguration of the legal services delivery systems in those states.

In addition to the state planning push that came from LSC, the Project for the Future of Equal Justice, a joint program of NLADA and CLASP, undertook a series of projects to promote the development of comprehensive, integrated statewide delivery systems. The ABA joined the effort by encouraging bar leaders to participate in state planning and to promote statewide, integrated systems. In February of 1996, NLADA and the ABA created the State Planning Assistance Network (SPAN). SPAN provided leadership and assistance to state planning groups in order to support and stimulate legal services planning efforts around the country.

Beginning in 1998, LSC intensified its effort to promote state planning, by requiring its grantees to submit detailed state plans and to engage in numerous follow-up activities. LSC's efforts to promote mergers and reconfigurations increased in intensity. Beginning in 1998 and continuing through 2003, LSC has made funding decisions based in large measure on the results of the state planning process that has gone on in each state. As a result of reconfigurations, the number of LSC grantees has been reduced substantially, and fewer programs, with proportionately larger LSC grants are responsible for serving more poor people in larger geographic areas.

The state planning initiative is already fundamentally changing how legal aid is organized in this country. Instead of a diverse group of separate, independent LSC-funded programs, loosely linked by a network of state and national support centers, each state is now attempting to develop a statewide system that includes LSC and non-LSC providers, pro bono programs, other human services providers, and key elements of the private bar and the state judicial system. The

focus is no longer on what an individual program can do to serve the clients within its service area, but on what a state justice community is able to do to provide equal access to justice to all of the eligible clients within the state.

Moreover, in a majority of states, leadership for these state planning efforts and state justice communities is provided by new entities that are known generically as access to justice commissions. Although the exact structure of these commissions varies from state to state, in virtually every state, representatives of the courts, the organized bar, and the legal services provider community, including both LSC and non-LSC funded programs, work together through some formal structure to expand and improve civil legal aid. Thus, the manner in which the civil legal aid system develops in the future will no longer be determined solely by LSC and its grantees. Instead, it will be in the hands of a much broader partnership of stakeholders who operate within the justice system in each state.

Funding for this new state justice system has not remained static. Over the last decade, total funding for legal services in the United States has grown from an estimated $400 million to over $800 million. Despite the 1996 reductions, appropriations for LSC have recovered slowly from $278 million in FY 1996 to $338.5 million in FY 2003, and funding from other sources has grown significantly. Until recently, most of this increase was attributed to expansion of IOLTA programs and new mechanisms to increase the amount of IOLTA funding. More recently, IOLTA funding has decreased as a result of lower interest rates and higher administrative fees charged by banks. Until March of 2003, there was also a serious question about whether the IOLTA program could survive under its current structure. Opponents of legal services had brought several suits against the IOLTA program, charging that it constituted an unconstitutional "taking" of private property. However, in *Brown v. Legal Foundation of Washington*, 123 S.Ct. 1406 (March 26, 2003), in a 5-4 decision, the U.S. Supreme Court held that the IOLTA program is constitutional under the "takings clause" of the Constitution, and the IOLTA program will continue to provide a significant source of funding for legal services programs.

Since the 1996 reductions in LSC funding, many states have been successful in securing substantial additional new sources of funding to support civil legal services. Legal services programs have received non-LSC federal funding from the Department of Justice under the Violence Against Women Act (VAWA), the Department of Housing and Urban Development, the Internal Revenue Service, and other federal agencies. Funds also have come from general state or local governmental appropriations, court filing fee surcharges, state abandoned property funds, punitive damage awards, and various other state and local government initiatives. Since 1982, funding for civil legal aid derived from state and local governments has increased from a few million dollars to over $215 million per year. (The exact amount of state funding for civil legal assistance has not been fully documented because much of this funding has gone to non-LSC funded programs that do not have to report to any central funding source, unlike LSC-funded programs.)

In addition, LSC-funded legal services programs have been successful in securing substantial increases in funding from private sources, including foundation and corporate gifts, donations from individual philanthropists, United Way campaigns, special events, grants from religious institutions, fee-for-service projects, private bar fundraising campaigns, attorney

registration fees or bar dues assessment, check-off or add-ons, grants from bar association, *cy pres* awards, and awards from attorneys' fees pursuant to fee-shifting statutes where permitted under the LSC restrictions. While these resources are not distributed equally, in 32 states non-LSC funds exceed LSC funds, and the ratio of non-LSC funds to LSC funds continues to increase. Although LSC funds remain the single largest source of support for civil legal services, programs in most areas of the country are becoming less dependent on LSC dollars as time goes by.

However, this newly emerging system of delivery must be put into context. State funding is no more secure than federal funding, and the debate over whether there should be governmental funding for civil legal assistance is not limited to Congress. Many of the same debates are occurring at the state level. For example, in both 2000 and 2001, efforts were made in Virginia to impose the LSC restrictions on state funds.

SOME THOUGHTS ABOUT THE FUTURE

The fundamental changes in the legal services delivery system that have begun to take shape over the last several years are likely to continue and to accelerate. States will continue down the path toward a new reality of comprehensive, integrated systems of legal services delivery that that will help protect the legal rights and promote the legal interests of the nation's poor. Through coordinated and comprehensive client outreach and community legal education, the new delivery systems will increase the low-income community's awareness of legal rights as well as the options and services that are available to poor people and will enable low-income individuals to anticipate and prevent legal problems from arising in the first place. They will facilitate access to legal assistance through technologically advanced systems for client intake, provision of advice, and brief services. They will have the capacity to provide a full range of civil legal assistance and related services, to resolve legal problems efficiently and effectively, to enforce and reform laws, and to improve the opportunities and quality of life for their low-income clients.

Nevertheless, without additional resources, the civil legal assistance community may never achieve this new reality. As many commentators, including Earl Johnson, have pointed out, the U.S. legal services system is funded far below the level of funding that is provided by most of the other Western developed nations. In the United States, the annual per capita government expenditures for civil legal assistance is $2.25, while the equivalent figure for England is $32. Per capita government expenditures are $12 in New Zealand and $11.40 in Ontario, Canada.

As noted above, the amount of federal funding for legal services has declined dramatically over the last 20 years in relation to overall funding for the civil legal aid system. While it is important to continue to seek additional funding increases from state and local governments and from private sources, it is also essential to continue the fight to increase federal funding. Although LSC has made substantial gains in developing a much stronger bipartisan consensus in Congress in favor of continued LSC funding, the political leadership of the United States remains deeply divided about whether there should be a federally-funded legal services

program, and, if so, how it should be structured. Legal services supporters will have to overcome significant political barriers in order to substantially increase federal funding for civil legal assistance. In addition, in order to secure political support for substantial growth in federal funding, legal services must develop much greater awareness of and support for civil legal services among the general public.

Finally, it is essential that Congress address the restrictions that have been imposed on federally funded legal services advocacy. These restrictions have proven to be unreasonable limitations on access to justice for poor people, and no compelling rationale has been offered to justify their continued application to federally funded legal services programs. Nevertheless, even though a persuasive case can be made that the restrictions have caused real harm to the interests of poor people, without a broad base of public and congressional understanding of and support for legal services, it may be extremely difficult to persuade Congress and state legislators to remove the current restrictions.

It is critical to convince those leaders who shape public opinion at the state and local level, including the press, the business community, labor, and human services organizations about the value of legal services and the very real limitations that the restrictions impose on the ability of the program to fully protect the legal rights and interests of the low-income community.

CONCLUSION

Civil legal assistance in the United States has, over the last 35 years, evolved from a relatively insignificant and disorganized program that provided services in only a few areas of the country, with limited financial and political support, into an $800 million institution that serves poor people nationwide. Recently, the civil legal assistance community has begun a long overdue transformation of its structure and work, with the goal of developing in each state a comprehensive, integrated system of civil legal assistance. This fundamental restructuring was essential in order to build a much broader base of public support for civil legal assistance, obtain critical new funding for the program, achieve broadened access to justice for low-income people, and improve the quality and effectiveness civil legal assistance.

The overarching goal for the civil legal assistance program has always been and will continue to be equal justice for all. While the United States has a long way to go to reach that goal, it is moving down a path toward a civil justice system that will make that dream a reality for our nation's low-income community.

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