Securing Equal Justice for All:

A Brief History of Civil Legal Assistance in the United States

By

Alan W. Houseman

Linda E. Perle

Revised January 2007

CLASP

Center for Law and Social Policy

Securing Equal Justice for All:

A Brief History of Civil Legal Assistance in the United States

By

Alan W. Houseman

Linda E. Perle

Revised January 2007

CLASP

Center for Law and Social Policy

Acknowledgements

This short history is based on the previous written work of Justice Earl Johnson, Justice John Dooley, Martha Bergmark, and the authors. We want to thank all of those who reviewed the manuscript and made helpful comments, which significantly improved the accuracy and substance of the piece. These reviewers include: Jon Asher, Hulett (Bucky) Askew, Earl Johnson, Victor Geminiani, Bill McCalpin, and Don Saunders. We also want to thank Gayle Bennett for her efforts to pull together assorted materials the authors had previously written and for her editorial assistance.

The Center for Law and Social Policy (CLASP) serves as counsel to the National Legal Aid and Defender Association (NLADA) and its member programs.

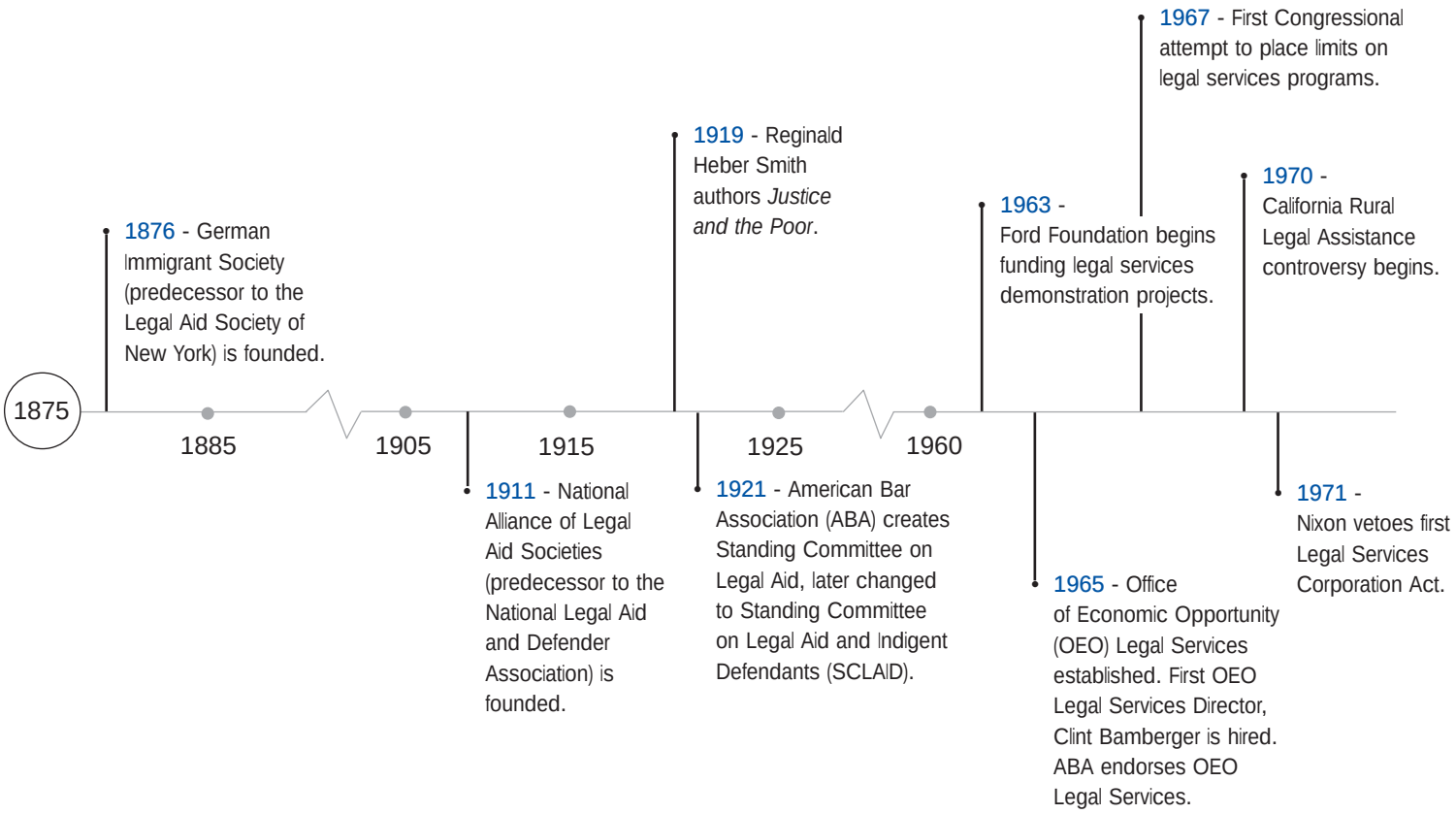
About the Authors

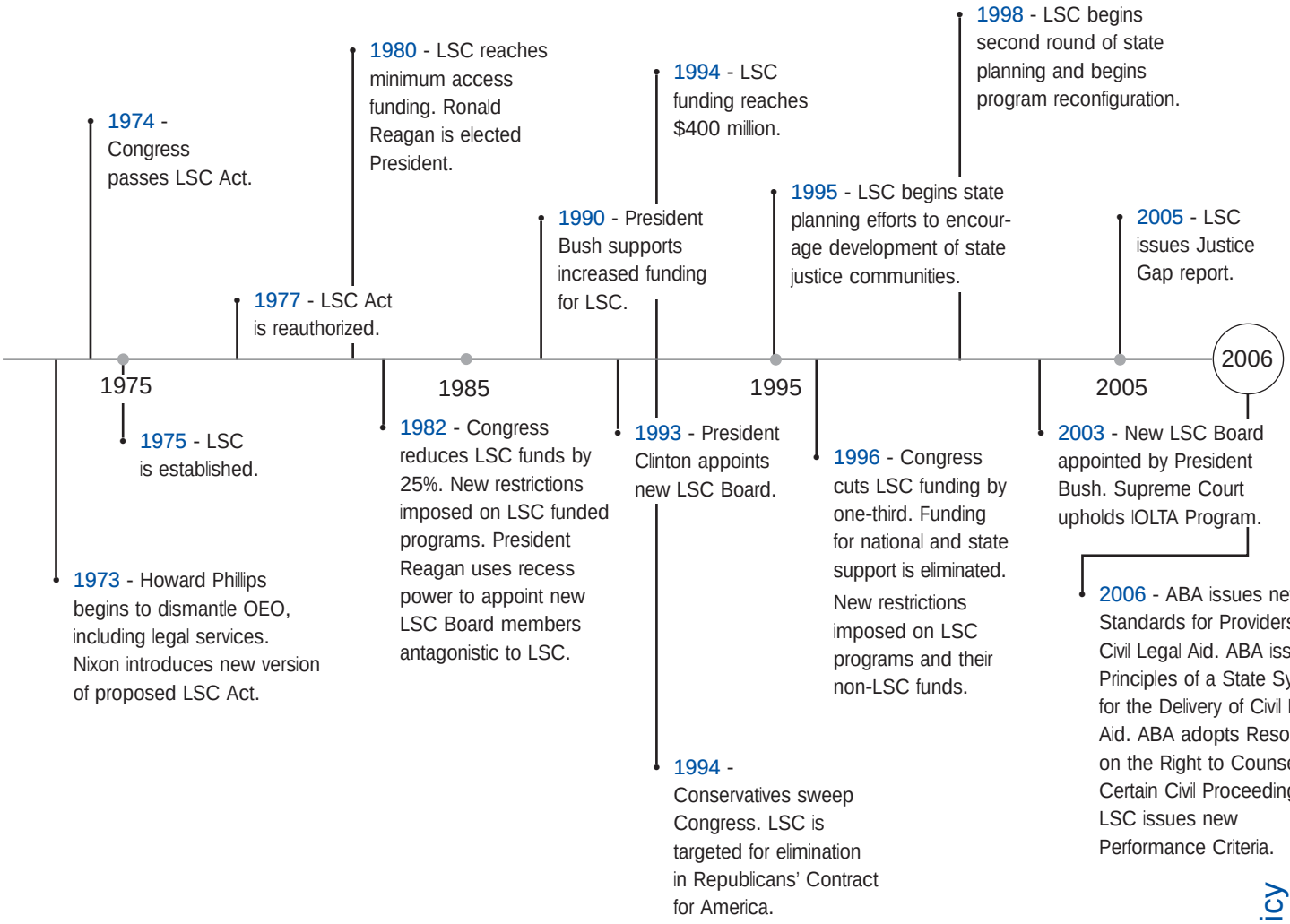
Alan W. Houseman is CLASP's Executive Director. Mr. Houseman has written widely about-civil legal assistance to the poor and has been directly involved in many of the initiatives described in this paper. Mr. Houseman can be reached at ahouse@clasp.org or (202) 906-8001.

Linda E. Perle is a Senior Attorney at CLASP and heads the legal services effort. Ms. Perle has been involved with civil legal assistance since 1975 and has worked at CLASP since 1988. She has been leading CLASP's "general counsel" work for the legal services community since 1996. Ms. Perle can be reached at lperle@clasp.org or (202) 906-8002.

Table of Contents

Civil Legal Assistance History Timeline




1974 - Congress passes LSC Act.
1980 - LSC reaches minimum access funding. Ronald Reagan is elected President.
1994 - LSC funding reaches $400 million.
1998 - LSC begins second round of state planning and begins program reconfiguration.
1977 - LSC Act is reauthorized.
1990 - President Bush supports increased funding for LSC.
1995 - LSC begins state planning efforts to encourage development of state justice communities.
2005 - LSC issues Justice Gap report.
1975
1985
1995
2005
2006
1975 - LSC is established.
1973 - Howard Phillips begins to dismantle OEO, including legal services. Nixon introduces new version of proposed LSC Act.
1982 - Congress reduces LSC funds by 25%. New restrictions imposed on LSC funded programs. President Reagan uses recess power to appoint new LSC Board members antagonistic to LSC.
1993 - President Clinton appoints new LSC Board.
1996 - Congress cuts LSC funding by one-third. Funding for national and state support is eliminated. New restrictions imposed on LSC programs and their non-LSC funds.
2003 - New LSC Board appointed by President Bush. Supreme Court upholds IOLTA Program.
2006 - ABA issues new Standards for Providers of Civil Legal Aid. ABA issues Principles of a State System for the Delivery of Civil Legal Aid. ABA adopts Resolution on the Right to Counsel in Certain Civil Proceedings. LSC issues new Performance Criteria.
1994 - Conservatives sweep Congress. LSC is targeted for elimination in Republicans' Contract for America.

Introduction

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[1] 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 40 years ago, the legal assistance 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 legal assistance to our nation's low-income community.

The Center for Law and Social Policy (CLASP) has prepared this brief history of civil legal assistance for the low-income community 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.

1 In general, this paper uses the term "legal aid" to refer to those programs that provided legal assistance to the poor prior to the advent of federal funding in the mid-1960s. In describing the programs that were established after federal funding was instituted in 1965, we generally use the term "legal services." "Civil legal assistance" is a generic term used to identify efforts to provide legal assistance to members of the low-income community and is used throughout the paper interchangeably with the other two terms.

The Early Years of Legal Aid: 1876-1965

Sustained efforts to provide 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.[2] Over the years, the legal aid movement caught on and expanded into many urban areas. Between 1920 and 1930, 30 new legal aid organizations were created. Annual case loads increased from 171,000 in 1920 to 307,000 in 1932. 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.

The only national legal aid structure that existed prior to the 1960s was the National Alliance of Legal Aid Societies (predecessor to the National Legal Aid and Defender Association [NLADA]), which was founded in 1911. Despite the existence of this association, most programs operated in isolation from their counterparts in other jurisdictions. With no national program or commonly accepted standards or models, the legal aid world was very heterogeneous. Many legal aid programs were free-standing private corporations with paid staff; others were run as committees of 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 legal aid 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. In addition, most legal aid programs only provided services in a limited range of cases and only to those clients who were thought to be among the "deserving poor" (i.e., those who were facing legal problems through no fault of their own).

2 Actually, the first legal aid effort was launched in 1865, in the District of Columbia and elsewhere across the South, under the auspices of the Freedman's Bureau, but the short-lived effort was terminated in1868.

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 its effect on the poor. Smith wrote *Justice and the Poor*, a book that challenged the legal profession to ensure 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 in 1920 by devoting a section of its 43rd annual meeting to legal aid and by creating the Standing Committee on Legal Aid, later changed to 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 address clients' problems. As a result, the legal aid program provided little real benefit to most of the individual clients it served and had 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 civil legal assistance for the poor began to emerge. This model was influenced by the "law reform" efforts of organizations such as the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund and the American Civil Liberties Union (ACLU), which had successfully used litigation to produce changes in existing law. In addition, private charitable foundations, particularly the Ford Foundation, began to fund legal services demonstration projects as part of multi-service 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.

These delivery models lacked a cohesive conceptual framework until legal services advocates Edgar and Jean Cahn wrote a seminal article in the 1964 *Yale Law Journal* entitled "The War on Poverty: A Civilian Perspective." They argued that neighborhood law offices and neighborhood lawyers were necessary for an effective anti-poverty program because they provided a vehicle for poor residents in local communities to influence anti-poverty policies and the agencies responsible for distributing benefits.

As the demonstration projects began to move beyond the traditional legal aid model of limited assistance for individual clients to a model that looked to the law as a vehicle for societal reform, Attorney General Nicholas deB. Katzenbach gave voice to the need for a change in how legal assistance programs were administered. During a speech at a U.S. Department of Health, Education, and Welfare conference in June 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 repeatedly in the early years of federally funded legal services: 1) something new was needed since 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). 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, several critical sources of support needed to emerge and coalesce: 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 at the local level; and implicit Presidential and Congressional support.

In late 1964 and early 1965, those elements of crucial support began to converge. 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, since legal services was not mentioned in the original Act. In 1966, legal services was added to the Economic Opportunity Act Amendments of 1966 and was made a special emphasis program in the Economic Opportunity Act Amendments of 1967.

Nevertheless, the Economic Opportunity Act was premised on the idea that community action agencies (CAAs), the local planning bodies, 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 part because 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 ABA 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 a CAA's lay leadership could not control the local legal services program, and non-lawyer bureaucrats within OEO could not control legal services at the regional and national level.

Support from the ABA 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 members), and John Cummiskey (Chair of the Standing Committee on Legal Aid), the ABA House of Delegates in 1965 passed a resolution endorsing the OEO legal services program. Although the resolution was adopted without a dissenting vote, the ABA conditioned its support on the organized bar having a policy role in formulating and overseeing the legal services program and the understanding that traditional legal ethics were to be considered as an integral part of the program's operations.

A key to ensuring the influence of the organized bar was the agreement by Shriver to create a National Advisory Committee, which included leaders of the bar, along with client representatives and others knowledgeable about civil legal assistance. The National Advisory Committee included a number of people who were to play critical roles in the future of the federal legal services program, including John Robb, a private attorney in Albuquerque, New Mexico; Bill McCalpin; Gary Bellow, an attorney at California Rural Legal Assistance and later a professor at Harvard Law School; Jerry Shestack, future President of the ABA; and Jean Cahn.

Having secured the endorsement of the ABA, OEO faced the critical and much more difficult task of generating the 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-funded 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 from private practice with the strong endorsement of the ABA leadership but with little 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. This group produced the OEO *Legal Services Guidelines,* which were 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. However, consistent with the statutory requirement that the poor be afforded

"maximum feasible participation" in the operation of OEO programs, the *Guidelines* required representation of poor people on the boards of local legal services programs and encouraged the formation of client advisory councils. This provision turned out to be perhaps the most controversial section of the *Guidelines* and required constant oversight by OEO to ensure its implementation. The *Guidelines* did not set national financial eligibility standards, but did permit poor people's organizations to be eligible for representation. The *Guidelines* prohibited legal services programs from taking fee-generating cases, but 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. The *Guidelines* required program services to be accessible to the poor, primarily through offices in their neighborhoods with convenient hours.

Unlike the legal aid systems that existed in other countries,[3] which generally used private attorneys who were paid on a fee-for-service basis, OEO's plan for the legal services program in the United States utilized staff attorneys working for private, nonprofit entities. OEO's grantees were to be full-service legal assistance 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. Programs serving those groups 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. This system 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.

3 In 1950, Britain implemented its Legal Aid and Advice Scheme, marking the first publicly funded legal assistance program in Anglo-American jurisprudence.

Initial Opposition to Legal Services

Although OEO was able to generate proposals for federal funding 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, particularly with personal injury lawyers represented by the Association of Trial Lawyers of America, 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) the perceived threat of the expansion of public financial support for, and governmental regulation of, the legal profession, which had been characterized by its independence and self-regulation.

One common response that arose out of local opposition to legal services programs was an 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 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 has shaped the civil legal aid program to this day.

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 which division would decide which legal services proposals to recommend for funding—the CAP program and its regional directors or the Office of Legal Services in Washington. 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 (such as Mayor Daley of Chicago) often attempted to interfere with legal services programs. 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, hospitals and mental health facilities, public utilities, 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 grew to $25 million for these local programs and the national infrastructure programs had been established to provide litigation support, training, and technical assistance.

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 $25 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 assistance program. The local OEO-funded legal services programs were facing impossible demands from clients for services with inadequate resources to meet the need. In response to this growing problem, Johnson decided to require that programs set local priorities for the allocation of resources, but established "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 who would then 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" recent law graduates and young lawyers into OEO legal services. This program 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. Many of the Reggies became leaders in their local legal services communities, as well as on the national level. Others went on to become respected lawyers in private practice and academia, as well as important political leaders and well-known public figures.

A large investment was also made in "back-up centers"—national legal advocacy centers, initially housed in law schools, that were organized around specific substantive areas (e.g., welfare or housing) or a particular group within the eligible client population (e.g., Native Americans or elderly). These centers co-counseled with, and provided substantive support

for, local programs that were engaged in key test case litigation and representation before legislative and administrative bodies on behalf of eligible clients and groups, as well as engaging directly in advocacy in significant cases with national impact. The back-up centers also provided research, analysis, 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 were essential to the emergence 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 numerous national publications, including the *Clearinghouse Review* and *The Poverty Law Reporter*, which featured articles on poverty law developments and national training and technical assistance programs.

In 1968, OEO also created the Project Advisory Group (PAG), an association of the federally funded legal services programs. PAG was created to ensure that legal services project directors would have input into OEO decisions. Through its democratically elected leaders, PAG helped create policies and positions for the legal services community and represented the interests of its member programs before Congress, OEO, and its successors for more than 30 years until it merged with NLADA in 1999.

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 element was the notion of responsibility to all poor people as a "client community." Local legal services programs attempted to serve, 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.

- The second element was the emphasis on the right of clients to control decisions about the priorities that programs 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 help clients 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 affluent clients who hired private attorneys.

Major Accomplishments

As its designers had intended, the legal services program soon had a significant impact on the laws that affected the rights of low-income Americans. Legal services attorneys won major cases in state and federal appellate courts and in the U.S. Supreme Court that recognized the constitutional rights of the poor and interpreted and enforced 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 spoken on their behalf, let alone listened to their side of the issues. Legal services advocates appeared before administrative agencies to ensure 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 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 innovative concepts, such as retaliatory eviction 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 laws enacted to benefit the poor were actually enforced on behalf of their intended beneficiaries. 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 the federal welfare program 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-scenes 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), and 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 on the forefront of regulatory developments on AFDC; SSI; Medicaid; Early Periodic Screening, Diagnosis and Treatment (EPSDT); food programs; Hill-Burton Act's uncompensated health care and community services requirements; regulations to implement the provisions of Truth in Lending legislation; federal housing; energy assistance and weatherization programs; Individuals with Disabilities Education Act; legislation protecting migrant farmworkers from actions by growers and 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. Legal services was also on the forefront of community legal education and self-help initiatives. 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 poor people more equitably and in a manner more sensitive to their needs. Legal services programs were leaders in the efforts to assist women who were victims of domestic violence and to ensure that police and prosecutors took their complaints seriously and treated them as victims of criminal acts by their abusers rather than simply as parties to domestic squabbles.

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 Governor of California Ronald Reagan who was, throughout his days in public office, an avowed opponent of federally funded legal services to the poor.

Murphy Amendments

In 1967, at the request of Governor Reagan, Senator George Murphy, a Republican from California, attempted 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 proposed an amendment that would give governors an absolute veto over funding for OEO programs in their respective states. At the time Senator Murphy proposed his amendment, governors had the power to veto programs in their states, but those vetoes could be overridden by the OEO director. The Murphy

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 draconian welfare and Medicaid policies in California and for its advocacy on behalf of farmworkers against agricultural employers. The second Murphy amendment was passed by the Senate, but it did not make it through the House. While OEO and CRLA won that battle, the war was just beginning.

CRLA Controversy

In December 1970, Governor Reagan announced his decision to veto the $1.8 million grant to CRLA. The California veto was not the first time that a Governor had vetoed a grant to a legal services program. Governors in Florida, Connecticut, Arizona, and Missouri had all vetoed refunding applications from legal services programs, and the governor in North Carolina had vetoed a grant to a statewide legal services program sponsored by the state bar association. Governors in North Dakota and Mississippi had prevented programs from being established by threatening to veto the programs. The CRLA fight, however, dwarfed these other disputes.

When Governor Reagan announced his veto, he cited "gross and deliberate violations" of OEO regulations. In January 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 Uhler 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 retired justices from various state supreme courts to examine and determine the validity of 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 CRLA and the farmworkers it represented.

The commission's work culminated in a 400-page report that found the Uhler report's charges to be totally unfounded and that 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, during the very early days of the Nixon Administration, the legal services program was elevated within 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, a former Reggie who had worked in legal services programs and who later became the executive director of NLADA.

As had been true during its earlier history, infighting within OEO was again 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, the National Advisory Committee, 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. In addition, the National Advisory Committee was disbanded.

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.

The Reign of Howard Phillips

In January 1973, President Nixon proposed dismantling OEO and appointed Howard Phillips as the 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 clearer than ever that, in order for the program to survive, a new legal services structure, separate from the Executive branch and protected from vagaries of the political process, was essential.

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, an ABA study committee headed by Jerry Shestack 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 led by Senator Mondale (D-MN) and Representative Steiger (R-WI) introduced authorizing legislation in February 1971. In May of that year, President Nixon introduced his own version of the legislation, which proposed creation of 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's bill 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 by staff attorneys.

In December 1971, President Nixon vetoed legislation that Congress had passed establishing LSC. His veto was primarily based on the fact that the legal services provisions were part of a larger package of legislation containing a national child care program, which he opposed. However, he also vetoed the bill because the legal services provisions sharply circumscribed the President's power to appoint the LSC board and did not include all of the restrictions on legal services advocacy that Nixon had sought. This legislation would have given the President power to appoint all the LSC board members, but it also would have required 11 of the 16 board members to be appointed from lists supplied by various interest groups, including the ABA, the Association of Trial Lawyers of America, and NLADA. Congress did not have enough votes to override the veto. Legal services supporters supported the bill because they feared that a board comprised of appointees selected solely by the President would inevitably include people who would work to undermine or fundamentally alter the program and its mission.

In May 1973, President Nixon again proposed a bill to create the LSC. The President was fresh from re-election and was not feeling as much pressure to please everyone as he had during the campaign, so this proposal contained additional restrictions on legal services programs and their advocates. The House Committee wrote exceptions to these restrictions, but the

How Legal Services Has Made a Difference: Important Cases

One of the great accomplishments of the federal legal services program, during both the OEO and LSC eras, has been the quality and effectiveness of the legal representation provided by the program and its advocates. Legal services representation successfully created new legal rights through judicial decisions and representation before legislative and administrative bodies.

For example, 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. Perhaps the greatest victory was *Goldberg v. Kelley*, 397 U.S. 254 (1970), which led to the due process revolution. *Goldberg* required the government to follow due process when seeking to terminate benefits. A series of later cases expanded due process to large areas of public and private spheres. *Escalero v. New York City Housing Authority*, 425 F.2d 953 (2d Cir. 1970), required public housing authorities to provide hearings before evictions from public housing. Later decisions, such as *Fuentes v. Shevin*, 407 U.S. 67 (1972), ensured that private parties must follow due process when seeking to recover possessions, such as automobiles.

Equally significant were judicial decisions that expanded common law theories on retaliatory evictions and implied warranty of habitability. These decisions were stimulated by the creative advocacy of the lawyers involved. For example, legal services helped develop the theory that tenants could not be evicted in retaliation for asserting their legal rights. In *Edwards v. Habib*, 397 F.2d (D.C. Cir. 1968), the Court held that the landlord's "right" to terminate a month-to-month tenancy "for any reason or no reason at all" did not include the "right" to terminate because the tenant complained of housing code

original 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 breeding ground for legal services activism and the incubator for 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 appoint all of the board members, but the appointees would have to be confirmed by the Senate. And most importantly, it had the support of the Nixon Administration, since White House staff was involved in the negotiations to craft the bill.

How Legal Services Has Made a Difference: Important Cases (cont.)

violations. Today, the doctrine of retaliatory eviction is the rule in most states and is endorsed by the *Restatement of American Law of Property*. Similarly, legal services developed the doctrine of implied warranty of habitability in *Javins v. First Nat'l Realty Corp*., 428 F.2d 1071 (D.C. Cir. 1970). This doctrine is also the majority rule, reflected in the *Uniform Residential Landlord-Tenant Act*, and is the rule of the *Restatement of American Law of Property*.

Legal services attorneys also effectively enforced rights that were theoretically in existence but honored only in the breach. Legal services representation ensured that federal law benefiting the poor was enforced on behalf of the poor. *King v. Smith*, 392 U.S. 309 (1968), led to the enforcement of federal statutory law not only in the welfare area but also, until recently, set the framework for enforcement of federal law across the board. And, more recently, legal services programs won *Sullivan v. Zebley*, 493 U.S. 521 (1990). Because of this case, hundreds of thousands of families with disabled kids now receive Supplemental Security Income benefits.

Perhaps most important, through sustained and effective legal services representation, public and private agencies and entities dealing with the poor were fundamentally changed. Legal services representation altered the court system by simplifying court procedures and rules so that they could be understood by, and made more accessible to, the poor. Legal services representation also forced the welfare and public housing bureaucracies, schools, and hospitals to act according to a set of rules and laws and to treat the poor equitably and in a manner sensitive to their needs. Legal services programs also have been on the forefront of the efforts to assist women subject to domestic violence.

Despite the Administration's support, conservative members of the Senate did not fall 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 by the Senate, and, with the exception of a prohibition on some abortion litigation, the restrictions that passed 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. However, the Conference bill did preserve 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 conservative Democratic Congresswoman from Oregon). However, the actual language of the Green amendment was not successful in eliminating major impact litigation and national advocacy and only placed certain limited restrictions on training, technical assistance, and research. Therefore, LSC supporters did not withdraw their support of the bill even though the Green amendment was added. President Nixon signed the bill into law on July 25, 1974. (See Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378, 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 1974.

The Early LSC Era: Growth and Expansion

The LSC Act created a private, nonprofit corporation that was controlled by an independent, bipartisan 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 by Supreme Court Justice Lewis Powell, who had led the ABA in endorsing legal services. The Board was chaired by Roger Cramton, Dean of Cornell Law School and former Chair of the Administrative Conference of the U.S., and included, among others, Robert Kutak, who later headed the ABA Committee that drafted the Model Rules of Professional Conduct, and Revius Ortique, Jr., a prominent lawyer from New Orleans who had been on the original National Advisory Committee and had been President of the National Bar Association. The first LSC 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 from the Community Services Administration, the successor to OEO.

During the year-long delay before the LSC Board was confirmed, the legal services community and the organized bar worked to prepare for the establishment of the Legal Services Corporation. Of particular note was the development of a complete set of model regulations by the "Umbrella Group" consisting of representatives of the ABA, NLADA, PAG, and the National Clients Council, the organization funded by OEO and later by LSC that represented clients of the federally funded legal services programs. These model regulations set the framework for many of the final regulations that were ultimately promulgated by LSC to implement the provisions of the LSC Act.

The new Board's decisions on major policy issue—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.

The Board selected Thomas Ehrlich, the former Dean of Stanford Law School to serve as the first LSC President. Former OEO Office of Legal Services Director Clint Bamberger, who had also served as Dean of the Columbus School of Law at Catholic University, was selected to serve as Executive Vice President. The new LSC staff worked out of the national headquarters in Washington, DC and nine regional offices were spread across the country.

Initially, there was some tension between the legal services field programs and the LSC staff and Board. Several field leaders were worried that LSC would serve simply as the enforcer of restrictions. Nevertheless, the relationship shortly evolved into one of close collaboration, quite similar to the relationship that had existed between field programs and OEO. LSC related to legal services programs through regional offices, training programs, technical assistance, and substantive law conferences. The regional offices played a critical role in expanding the legal services program to previously unserved areas of the country, and they worked closely with the leaders of local programs in their regions. While LSC was somewhat more bureaucratic than OEO had been, the new LSC, like OEO, de-emphasized its regulatory compliance role in favor of incentives, encouragement, assistance, and a spirit of partnership.

President Jimmy Carter appointed a new LSC Board to replace those members who had been appointed by President Ford. The new Board was chaired by Hillary Rodham, then a private practitioner and the wife of the young Governor of Arkansas, Bill Clinton. The Board also included F. William McCalpin, who had been instrumental in garnering ABA support for the legal services program, and Mickey Kantor, an activist who had been a legal services

lawyer and a staff member at OEO. In 1978, the LSC Board named Dan Bradley to replace Tom Ehrlich as LSC President. Bradley was a former legal services attorney who had once served as the LSC regional director in Atlanta and as special assistant to the director of the Community Services Administration, which replaced OEO when it was dismantled in 1972.

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 programs in every area of the country, including those where no programs had been established, 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 severely under-funded. In contrast, by 1981 LSC was funding 325 programs that operated in 1,450 neighborhood and rural offices throughout all 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, the initial goal of reaching "minimum access." Each legal services program received LSC funding at a level sufficient to theoretically support two lawyers for every 10,000 poor people in its service 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 the ABA and 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 when it was considering the passage of the LSC Act 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 included in the original LSC Act a provision that required LSC to conduct a study of alternatives to the staff attorney system to determine whether private attorneys could provide high-quality, economical, and effective legal services to eligible low-income clients. The Delivery System Study, which LSC conducted between 1976 and 1980, found that none of the alternative delivery models tested performed better than the staff attorney model. The study also found that independent judicare programs that included staffed components, contracts with law firms, and organized pro bono programs met all of the feasibility and performance criteria to be judged viable for the delivery of publicly funded legal assistance to the poor. LSC initially responded to the study by proposing a policy to encourage, but not require, private attorney involvement (PAI), particularly through pro bono programs. However, the ABA, which was then leading an unprecedented effort to prevent the Reagan Administration from eliminating LSC and funding legal services through social services block grants, adopted a resolution at its 1980 annual meeting urging Congress to amend the LSC Act "to mandate the opportunity for substantial involvement of private lawyers in providing legal services to the poor." In a 1981 LSC reauthorization bill, the House of Representatives incorporated the ABA position, but the legislation was never taken up by the Senate.

Before Congress could act, the LSC staff and Board responded with a 1981 instruction directing its grantees to use a substantial amount of their funds to provide opportunities for the involvement of private attorneys in the delivery of legal assistance to eligible clients. LSC later clarified this instruction to mandate programs to use an amount equivalent to 10 percent of their LSC funds for PAI activities. In 1984, LSC adopted a formal regulation that raised the required PAI allocation to an amount equal to 12.5 percent of a program's LSC grant. 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 individual client referrals from legal services programs. By exposing private attorneys firsthand 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, approximately 150,000 private attorneys participate in pro bono programs in conjunction with LSC-funded programs.

In addition, the Pro Bono Institute's Law Firm Pro Bono Project challenged large firms around the country to contribute 3 to 5 percent of their total billable hours to the provision of pro bono legal services. Today, 150 law firms are signatories to that challenge.[4] The Pro Bono Institute has also just begun a new challenge for corporate in-house counsel to increase the number of significant pro bono activities among lawyers who work on legal matters directly for corporations. The Corporate Pro Bono Challenge is a simple, voluntary statement of commitment to pro bono service by corporate legal departments, their lawyers, and staff.

In 2005, the American Bar Association's Standing Committee on Pro Bono and Public Services issued a new study-*Supporting Justice: A Report on the Pro Bono Work of America's Lawyers*-which described a 2004 survey of 1,100 lawyers throughout the country in private practice, corporate counsel, government, and academic settings. The study found that two-thirds of respondents provided free pro bono services to people of limited means and organizations serving the poor, and 46 percent of the lawyers surveyed met the ABA's aspirational goal of providing at least 50 hours of free pro bono services.

Accomplishments

The second half of the 1970s and the early 1980s marked the heyday of growth for the legal services program:

- Local legal services programs were established to provide service to poor people in every county in the country.
- A network of migrant and Native American programs or units of local programs was created, covering most areas where those special client populations lived or worked.
- A system of state support began to emerge.
- Several new national support centers were established.
- LSC began a national training program for lawyers.
- The number of legal services program staff around the country increased significantly.
- LSC funding rose dramatically, going from $92.3 million in 1976 to $321.3 million in 1981.
- In 1977, Congress reauthorized the LSC Act for an additional three years.

4 Information is available from the Pro Bono Institute. See www.probonoinst.org.

Despite the efforts by critics in the early 1970s to destroy the legal services program, once it was established LSC became an effective institution with broad-based support from Congress, the bar, and the general public. As a consequence, effective enforcement of the rights of the low-income community was becoming a reality. In many areas of the country—especially the South, Southwest, and Plains states, where legal services programs had never before existed—this enforcement was happening for the very first time. The significant legal victories of the 1960s, which established new constitutional, statutory, and common-law rights for the poor, were finally becoming a reality for low-income clients who lived where legal services had not previously been available.

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 incorporated 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 and among 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 access to legal services. Paralegals developed into full-fledged advocates and included among their numbers many former clients, as well as former social workers and community activists. Quality improved, but national standards were not fully developed until 1986 when the ABA promulgated *Standards for Providers of Civil Legal Services to the Poor*. Programs and advocates became more professional. Increased attention was devoted to supervision of legal work, 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 required by the LSC Act became a central tenet in determining how each program would decide which substantive areas to emphasize and which types of cases to accept for representation. LSC made no effort to directly set national substantive goals, but its staff conducted research and analysis to enable it 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 topics. 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.

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, local politicians, and 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, particularly the representation of migrant farmworkers and aliens, came to the attention of Congressmen elected from those areas. As a result, Congressional scrutiny of the legal services program and concerns about its advocacy 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 the House by a vote of 264 to 132 and was accepted by the Senate. However, 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 only prohibiting representation of those aliens against whom a final order of deportation was outstanding. Under this interpretation, LSC-supported 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 critical turning point in the history of federally funded legal services, ending the years of expansion and growth of political independence for LSC and its grantees. The Reagan Administration was openly hostile to the legal services program. Reagan initially sought LSC's complete elimination and proposed to replace it with law student clinical programs and a judicare system funded through block grants. In response to pressure from the White House, Congress reduced funding for the

Corporation 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, which were required to go through a painful period of retrenchment planning to decide how to allocate the 25 percent funding cut. 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. LSC also began a contraction of its regional offices, which had played a crucial role in the expansion of the legal services program during the late 1970s and had served as a repository within LSC for much of the history of local program development and the knowledge about the critical actors on the state and local levels.

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 died in the Senate and 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 added new restrictions on the use of LSC funds for lobbying and rulemaking and expanded the alien restriction by explicitly prohibiting the representation of certain categories of aliens using LSC funds. Congress also required that state and local bars make appointments to program boards and imposed new procedural requirements for class actions. Those appropriations riders were in effect until 1996, when more stringent restrictions were imposed.

At the end of 1981, President Reagan replaced a majority of the LSC Board, originally appointed by President Carter, with new recess appointees (appointments made when Congress is in recess and thus not available to confirm them). The balance of the Carter Board members was replaced in January 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, including William Harvey and Clark Durant who served as Board Chairmen, 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 expansion of PAI allocations to 25 percent of a program's LSC funding, elimination of all funding for national and state support services, lowering financial eligibility limits from 125 percent to 100 percent of the official poverty line and permitting service only to those individuals who had no assets. Several Board members wanted to preclude programs from engaging in any legislative and administrative advocacy. Many LSC Board members, including Operations and Regulations Committee Chairman Michael Wallace, 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, several Board members remained steadfastly supportive of the program they had been appointed to oversee, although they were almost always outvoted by their more hostile colleagues. Thomas Smegal, who served on the Reagan Board and was later reappointed by President Clinton, was a consistent voice in the wilderness in support of the program during the darkest days of the Reagan Administration.

The Corporation's management and staff also became increasingly hostile to the programs they funded. Dan Bradley had resigned as LSC President and was replaced on an interim basis by Gerald Caplan, a prominent Republican law professor with prior experience in the Justice Department. Caplan was replaced on a temporary basis by Clinton Lyons, the former Director of the Office of Field Services. The Reagan Board soon dismissed Lyons and appointed a series of short-lived presidents who were generally antagonistic to the idea of federally funded civil legal assistance and who brought in senior staff members who were similarly opposed to the basic mission of the program. Regional office staff was marginalized-many staff members were dismissed, and several of the offices were closed.

The new LSC staff began a highly intrusive and exhaustively detailed program of monitoring for compliance. Monitoring visits were conducted in an extremely adversarial atmosphere and required the local programs to expend extraordinary amounts of time and resources during the visits and in responding to the findings of the monitoring teams. LSC monitors often demanded access to client files and other confidential information, placing program attorneys at odds with their ethical obligations to their clients. There was no emphasis in the program monitoring on the quality of client representation or program performance. In some instances, LSC 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 that LSC found were out of compliance with new and often unannounced policies and previously unarticulated interpretations of the LSC Act and regulations.

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 and supportive of civil legal aid, including NLADA and PAG, and key members of Congress from both parties. As a result of this dynamic, 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 Congress or, in some instances, by the courts.

On the legislative front, LSC staff members actively lobbied Congress and paid others to lobby against LSC appropriations. LSC 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, had become the protector of the legal services program.

Led by Senator Warren Rudman, a conservative Republican from New Hampshire, along with Senators Fritz Hollings (D-SC) and Edward Kennedy (D-MA) and Congressmen Neal Smith (D-IA), Bruce Morrison (D-CT), Robert Kastenmeier (D-WI), Barney Frank (D-MA), Howard Berman (D-CA), and others, Congress frequently interceded to block actions by the Corporation. As its very first formal action, the original Reagan recess Board passed a motion instructing the LSC staff to not make funding awards for 1982, a move that had no effect, as the LSC staff had already issued the 1982 grants before the Board members were appointed. Later in 1982 the recess Board attempted to impose significant new conditions on funding. Congress then 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 LSC from implementing a number of its initiatives, including changes to migrant programs and support entities. Congress 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 eliminated restrictions on the use of private non-LSC funds.

Congressional supporters also led an unprecedented effort to thwart the Reagan administration's plans to eliminate LSC and replace it with social services block grants. Legal services supporters adopted provisions that 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 toward the LSC Board and staff during the 1980s, felt by Senator Rudman and other legal services supporters in Congress, are perhaps best expressed by Senator Rudman'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 had imposed on programs during the early 1980s significantly increased the involvement of individual private attorneys and the organized bar 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. In addition, LSC had required each recipient to devote an amount of funds equal to 12.5 percent of its LSC grant award to PAI activities that involved private attorneys in the delivery of legal services to the poor on either a pro bono or a low-fee compensated 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 resulted in several positive outcomes. The new requirements helped those private attorneys who participated as board members or PAI attorneys to appreciate the difficulties of serving poor clients with severely limited resources, enabled them to view legal services attorneys as respected peers within the legal community, and strengthened the role of the organized bar as a champion of federally funded legal services.

In addition to the ABA, acting through SCLAID, and state and local bar associations, other bar-led entities emerged in support of the legal services program, including Bar Leaders for Preservation of Legal Services, founded by key bar leaders Jonathan Ross from New Hampshire, Michael Greco from Massachusetts, and Bill Whitehurst from Texas.[5] The organized bar and these bar-led legal services support groups, working with NLADA, PAG, 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.

5 The three later became key leaders of the American Bar Association: Greco served as the president of the Association for 2005-2006; Whitehurst was chair of the Standing Committee on Legal Aid and Indigent Defendants (SCLAID); and Ross was chair both of SCLAID and of the Pro Bono Committee.

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, prior to the 1980s, outside funding for most programs represented only an insignificant 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 assistance was created. Interest on Lawyer Trust Account (IOLTA) programs were first conceived in Florida, after changes were made in the federal banking laws permitting interest to be paid on certain kinds of bank 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 court fees, settlement proceeds, or similar client needs that had previously been held only in non-interest-bearing accounts. Since these deposits were permitted to be pooled, interest could be earned in the aggregate, even though individually these nominal or short-term deposits would not earn interest for the client. Throughout the 1980s and 1990s, 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 and law-related activities, most IOLTA funding has gone to civil legal services programs, and IOLTA quickly became 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 the number of 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 advocates 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 and the efforts to reduce or eliminate funding and to restrict legal services advocacy of its predecessor. The Bush Administration instead 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 the Reagan Administration. Under the leadership of Board Chairman George Wittgraff and Operations and Regulations Chairman Howard Dana, the LSC staff, led by President John O’Hara,

also took a more conciliatory stance and began to work somewhat more closely with the organized bar and with the leaders of the legal services community, reducing the level of the overt hostility that had characterized the previous eight years.

The LSC Act had last been reauthorized in 1977, and that authorization had expired in 1980. Despite the fact that Congress had not reauthorized LSC, legal services funding continued to be appropriated under a waiver of the rules that ordinarily prohibited such appropriations. In the early 1990s, for the first time in many years, Congress began to consider 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 to 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 for the 1994 fiscal year, the largest increase since the early years of the Corporation. Congress also prepared to take up the LSC reauthorization bill again, starting from where the House had left off. With the majority of Congress in favor of a broad role for federally funded civil legal assistance 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 legal services 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. They included Chairman Douglas Eakeley, former Board members F. William McCalpin and Thomas Smegal, and Hulett "Bucky" Askew who had served as Atlanta regional director and as deputy director in the Office of Field Services at 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 that included Martha Bergmark and John Tull to serve in key LSC staff positions.

The new LSC administration initially focused on redesigning the monitoring system. In lieu of the old system that was focused only on compliance and was intended to intimidate 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 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-objectives 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, under the leadership of Operations and Regulations Committee Chair LaVeeda Morgan Battle, 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. Conservatives included the elimination of LSC in the infamous "Contract for America." In much the same way as the Reagan Administration in the early 1980s, the leadership of the new Congress, under House Speaker Newt Gingrich (R-GA), committed itself to the elimination of LSC and ending federal funding for legal services. The House leadership sought to replace LSC with a system of limited block grants to the states that would severely restrict the kind of services for which the funds could be used. The House of Representatives adopted a budget plan that assumed that LSC's funding would be cut by one-third for FY 1996, another third in FY 1997, and completely eliminated thereafter. Opponents of legal services dubbed this funding plan "the glide path to elimination." It seemed possible that the federal commitment to equal justice might be abandoned altogether.

Despite the efforts of the House leadership, a bipartisan majority in the Congress, led by Senator Pete Domenici (R-NM), remained committed to maintaining a federally funded legal services program. Nevertheless, key congressional decision-makers, led by Congressmen Bill McCollum (R-FL) and Charles Stenholm (D-TX), 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. Funding was to be distributed on a strict, census-based formula, eliminating any LSC discretion over grants. 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 nonprofit 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.

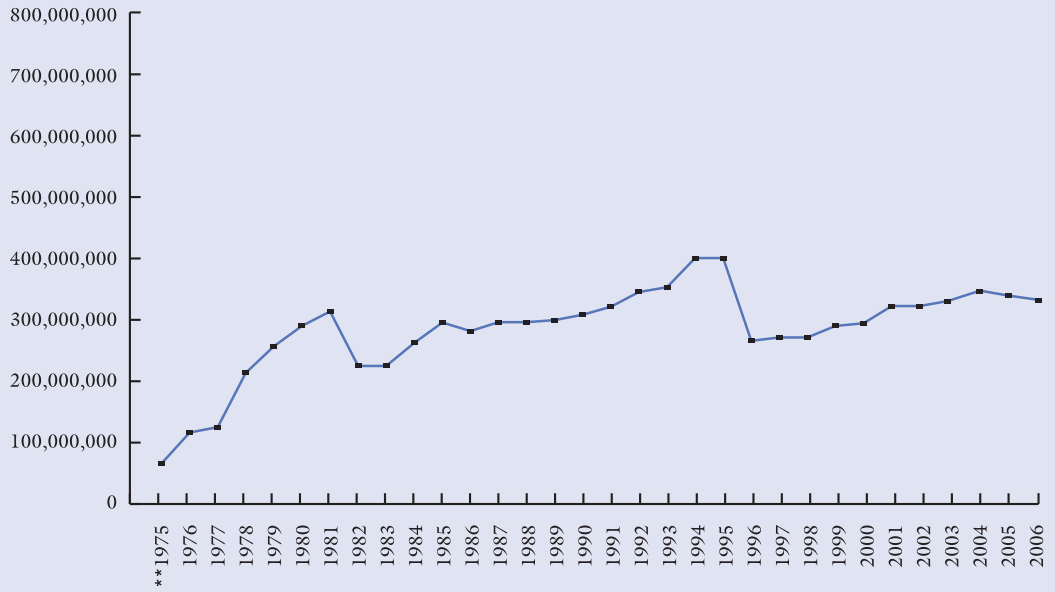
More fundamentally, the Congressional majority was determined to redefine the role of federally funded legal services by refocusing legal services advocacy away from law reform, lobbying, policy advocacy, and impact litigation and toward basic representation of individual clients. Congress set out to 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 used to support the activity. Thus, with certain limited exceptions, LSC-funded programs were prohibited from using the public funds that they received from federal, state or local governments, or the private funds they received from bar associations, charitable foundations, private donations, and any other non-LSC sources for the LSC-restricted activities.

Congress prohibited 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, programs were prohibited from claiming or collecting attorneys' fees, cutting off a significant source of funding and limiting programs in their ability to use an effective strategic tool. Finally, Congress eliminated LSC funding for national and state support centers, the *Clearinghouse Review*, and other entities that had provided support, technical assistance, and training to LSC-funded legal services programs.

In essence, when Congress passed the LSC appropriation riders in April 1996, it 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 systemic 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.

LSC Funding 1975-2006 (in actual dollars)

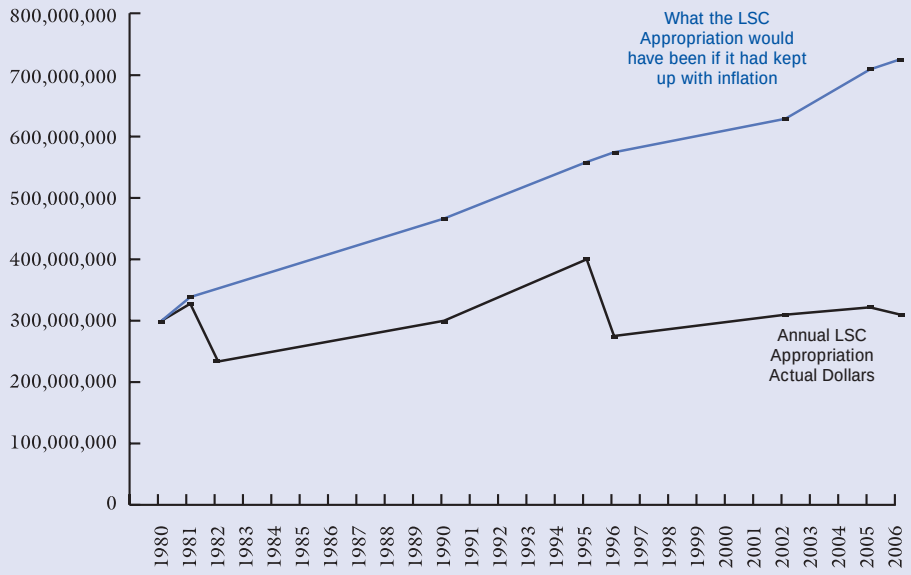


***Funds were appropriated to the Community Services Administration, which took over the administrator of the OEO legal services program until LSC was created.*

LSC Funding 1980-2006 (in actual dollars and 1980 dollars)

Selected Grant Year	Annual LSC Appropriation in Actual Dollars	What the LSC Appropriation would have been if it had kept up with inflation	Percentage Change From 1980 (Using 1980 Dollars)
1980	300,000.000	300,000,000	0.0%
1981	321,300,000	331,004,146	-2.9%
1982	241,000,000	351,219,424	-31.4%
1990	316,525,000	475,649,712	-33.5%
1995	400,000,000	554,737,587	-27.9%
1996	278,000,000	570,998,079	-51.3%
2002	303,841,000	626,878,350	-51.5%
2005	330,804,000	704,055,010	-53%
2006	326,577,984	717,888,563	-54.5%

LSC Funding 1980-2006 (in 1980 dollars)



Reaction to the Restrictions

LSC worked quickly to develop new regulations to implement the restrictions imposed as part of the 1996 appropriations act. In response to a report by the General Accounting Office, LSC also 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 that had been imposed by Congress. The LSC Office of Inspector General (OIG) 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 new statutory prohibitions, the substantive restrictions, and the limitations that had been imposed on the use 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 reform laws 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. After the Supreme Court issued its decision, LSC announced that it would no longer enforce the specific provision addressed by the Court, and in May 2002, LSC formally 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 LSC restrictions and the program integrity rules. In 2005, the District Court upheld the restrictions but held that the LSC program integrity rules imposed an undue burden on grantees. In 2006, a panel of the US Court of Appeals remanded the case to the District Court, having rejected the undue burden analysis and imposing a different and arguably higher standard.

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 Congressional proposals for legislative 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 138 in 2006, and the geographic areas served by many of the remaining programs have increased dramatically. These changes were the result of the Congressional elimination of funding for state and national support entities and the mergers and reconfigurations promoted or sometimes imposed by LSC.

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 had consisted of state and national support centers; the National Clearinghouse for Legal Services, which published the poverty law journal *The Clearinghouse Review*; and various training programs, had developed quality standards, engaged in delivery research, provided training to support legal services advocacy, and served as the infrastructure that linked all of the LSC-funded providers into a single national legal services program. Since the loss of their LSC funding, 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 closed their doors when they were unable to raise sufficient funds to operate effectively. 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. Only 12 of the current state entities are former LSC-funded state support centers. Several states have been unable to recreate a significant state support capacity at all.

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. Many of these non-LSC-funded providers were created specifically in response to the imposition of the restrictions, when LSC-funded programs either gave up their LSC grants or spun off new entities that were supported with non-LSC funds that formerly went to the LSC recipients. The non-LSC-funded providers are generally free to seek attorneys' fees; engage in class actions, welfare reform advocacy, or representation before legislature and administrative bodies; and 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.

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 initiated a strategic program that required all of its grantees to engage with non-LSC-funded providers, bar associations and state access to justice commissions, law schools, and other important stakeholders in each state in a state planning process. The goal was to develop a comprehensive, integrated system of legal service delivery for each state. 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 through a centralized telephone intake 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 into larger and arguably more efficient regional or statewide programs, leading to the reconfiguration and reorganization of the legal services delivery systems in many states.

In addition to the state planning initiative 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 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. In 2006, in recognition of the importance of state-level Access to Justice initiatives, the ABA created a new Resource Center for Access to Justice Initiatives to support the bench, bar, and legal services leaders engaged in efforts to expand civil justice and increase legal aid funding.

Beginning in 1998, under the leadership of LSC President John McKay and Vice President Randi Youells, 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 scope and intensity. Beginning in 1998 and continuing through 2005, LSC made funding decisions based in large measure on the results of the state planning process that has gone on in each state, although in some instances, LSC rejected the proposals that emerged from the state planning process, substituting its own configuration decisions. As a result of reconfigurations, the number of LSC grantees has been reduced substantially, and fewer programs with proportionately larger LSC grants are each responsible for serving more poor people in a larger geographic area. In 2006, LSC funded 138 grantees across the country, down from more than 325 in 1995.

The state planning initiative has fundamentally changed how civil legal assistance is organized in this country. Instead of a diverse group of separate, locally controlled, and fully independent LSC-funded programs, loosely linked by a network of state and national support centers, efforts were made in each state to develop a unified state justice system that includes LSC and non-LSC providers, law schools, pro bono programs, other human services providers, and key elements of the private bar and the state judicial system, working in close collaboration to provide a full range of legal services throughout the state. In numerous states, programs that served individual cities or counties were merged to form statewide or regional legal services providers. Instead of a philosophy of local control, programs were urged to think in terms of collective responsibility for the delivery of legal services in each state. The focus was no longer on what an individual program could do to serve the clients within its service area but on what a state justice community could do to provide equal access to justice to all of the eligible clients across the entire state. These efforts were more successful in some states than in others, but the legal services community as a whole has changed its focus from local programs to service to all of the clients within a state.

Moreover, in an increasing number of states, leadership for these state planning efforts and state justice communities is no longer concentrated in the hands of the staff and boards of individual LSC grantees, but 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 most states 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 assistance. State Access to Justice Commissions are appointed directly by these entities or by the Supreme Court based on nominations by the other entities. They are conceived as having a continuing existence, rather than being a blue-ribbon body created to issue a report and then sunset. They have a broad charge to engage in ongoing assessment of the civil legal needs of low-income people in the state and to develop, coordinate, and oversee initiatives to respond to those needs. Thus, the manner in which the civil legal services system develops in the future will no longer be determined solely by LSC and its grantees. Instead, the future of civil legal assistance increasingly 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 from all sources for legal services in the United States has grown from an estimated $700 million to over $1 billion. Despite the 1996 reductions, appropriations for LSC have recovered slowly from $278 million in FY 1996 to $326.5 million in FY 2006[6], and funding

6 As we go to press, Congress has not yet enacted the LSC appropriation for FY 2007. Under a series of Continuing Resolutions, LSC has been funded at the FY 2006 level of $326.5. The full House passed an increase for FY 2007 to $338.8 million and the Senate appropriations committee adopted a figure of $358.5 million, but it is not clear if LSC will actually receive an increase once the final FY 2007 appropriations act is passed.

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 that was available to support civil legal assistance. More recently, low interest rates and high administrative fees charged by banks have kept IOLTA revenue fairly low. However, in the last two years interest rates have begun to rise again, and IOLTA programs in several states have seen large increases because of alterations in their IOLTA programs, including changes from voluntary to mandatory programs, requiring lawyers to maintain IOLTA accounts in financial institutions that pay higher interest rates, and new rules that require banks to pay higher interest rates and limit the fees that financial institutions are permitted to charge. Until March 2003, there remained a serious question about whether the IOLTA program could survive under its current structure. Opponents of legal services had brought several law suits challenging the legality of 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. It now appears likely that, for the foreseeable future, the IOLTA program will continue to provide a significant source of funding for legal services programs.

Since the 1996 reductions in LSC funding, many programs successfully secured substantial additional new 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 government appropriations and from contracts with state or local agencies to assist them in establishing eligibility of individuals for federal benefits, including Supplemental Security Income / Social Security Disability Insurance programs and Medicaid. In addition, programs have received funding from court filing fee surcharges; attorney registration fees or state bar dues assessment; state abandoned property funds; 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 $300 million per year. However, 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.

LSC-funded legal services programs have also been successful in securing substantial increases in funding from private sources, including foundations and corporate gifts, donations from individual philanthropists, United Way campaigns, special events, grants from religious institutions, fee-for-service projects, private bar fundraising campaigns, grants from bar associations, voluntary bar dues check-offs or add-ons, *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 38 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 have become less dependent on LSC dollars in recent years. However, financial support for this newly emerging system of delivery must be put into context. Private philanthropy is highly dependant on the state of the economy. State funding may be no more secure than federal funding, and the debate over whether there should be government funding for civil legal assistance is also occurring at the state level. In many states, efforts have been made by the legislatures or IOLTA commissions to impose significant restrictions on the use of their funds. For example, state funding in Missouri now includes the LSC restrictions. In both the 2000 and 2001 legislative sessions, proposals were introduced in the Virginia legislature to impose the LSC restrictions on state funds, and funding for representation of migrant farmworkers in Virginia was severely limited.

In addition to changes in the funding landscape, there have been numerous modifications in the legal services delivery system over the last decade. Faced with severely limited resources, legal services programs have adopted new technologies and strategies that have allowed them to provide limited legal assistance to a larger number of people. Many programs and states have instituted hotlines[7] to screen cases, provide legal advice and brief service, and make referrals to private attorneys and other sources of legal assistance. Numerous legal services programs have begun to work with courts to expand the availability of legal information and limited legal assistance to pro se litigants.

Considerable changes have also been going on in the courts in order to increase access and help self-represented litigants or potential litigants. For example, many courts have developed sophisticated services addressed to the needs of self-represented litigants. These typically include simplified court forms, instructions, and procedural information, often translated into languages other than English to serve individuals who have limited proficiency in English. Some systems provide substantive legal information, often through a court-based or legal services program or state-based Web site. The amount of personal assistance provided to litigants in the use of this information varies significantly from court to court. Some only provide the basic information. Others provide assistance to litigants in completing forms. Some courts provide workshops to assist litigants in comprehending the information provided. Others provide videotapes of typical proceedings. Some non-court programs—particularly those for victims of domestic violence—provide a representative (usually not law trained) to accompany

7 Legal hotlines may provide answers to clients' legal questions, analysis of clients' legal problems, and advice on solving those problems so that the case can be resolved with the phone consultation or soon thereafter. Hotlines may also perform brief services when those services are likely to solve the problem or may make referrals to other legal services programs or private attorneys if further legal assistance is necessary.

and assist the litigant in the courtroom. Some courts are taking advantage of new technologies to provide easy-to-complete forms and information, including the ability to file them electronically with the court.[8]

In 2003, the Bush Administration appointed a new LSC Board of Directors. For the most part, the members of the LSC board have been highly supportive of the legal services program, seeking increased appropriations from Congress and adopting policies that continue the commitment of their predecessors. In early 2004, the Board selected as the new LSC President Helaine Barnett, who previously worked for many years as an attorney and manager for the Legal Aid Society of New York, a former LSC grantee. Ms. Barnett has hired a highly competent and committed senior staff, which has worked diligently to expand resources available to LSC grantees and to improve the quality of LSC programs. In 2005, LSC began a new quality initiative and issued a well received report on the national "justice gap," documenting the gap between the resources available to support legal services and the legal needs of the low-income community. In 2006, LSC issued a set of revised Performance Criteria, setting new standards for its grantees and recommitting LSC to high-quality and effective legal services.

The year 2006 was a landmark for the ABA's efforts relating to legal services. At its annual meeting in August, the ABA adopted a new set of substantially revised *Standards for the Provision of Civil Legal Aid*. Although based on its 1986 Standards, the new standards also addressed the major changes in the legal services delivery system and the client community that had been made in the previous two decades, including new standards on participation in statewide and regional systems, cultural competence, the effective use of technology, limited representation, representation on transactional matters, and representation of groups and organizations. In addition, the ABA adopted two new major policy statements. One was a call for the expansion of the right to counsel in civil cases involving basic human needs, and the other was a set of ten principals for an effective state-based legal services delivery system.

8 This overview of court developments is based on John M Greacen's "Framing the Issues for the Summit on the Future of Self-Represented Litigation," 2005.

Some Thoughts About The Future

LSC and the legal assistance program have become an accepted part of the civil justice system. Yet, it is not certain whether federal funding can be significantly increased and whether the growth in state and local funding will continue at the pace of the last several years. As this paper goes to press, the Democratic Party has just taken control of Congress for the first time in 12 years. Supporters of legal services will chair the Congressional committees with jurisdiction over federal appropriations and substantive restrictions and requirements for LSC and its grantees. LSC continues to be governed by a sympathetic board and managed by an experienced staff that is supportive of the programs that it funds. The ABA and the organized bar at the state and local levels continue their support for the legal services program.

The fundamental restructuring in the legal services delivery system that has begun over the last several years is likely to continue and may accelerate. Many states are now committed to developing comprehensive, integrated systems of legal services delivery. The majority of states are working to develop effective state support capacities to ensure that issues affecting large numbers of clients are addressed at a statewide level. Throughout the country, formerly separate LSC grantees have merged to form statewide or regional programs. Elsewhere, staff members from different programs collaborate on substantive issues through task forces, co-counseling arrangements, e-mail listservs, and other vehicles. Statewide systems have developed to coordinate client outreach and community legal education to increase the awareness of members of the low-income community about their legal rights and to prevent legal problems from arising. Most states are working to develop and implement technologically advanced systems for client intake and to provide advice and brief services. In many states, programs are working together to raise non-LSC resources.

Nevertheless, without additional resources, the civil legal services community may never achieve the full promise of this new reality. The legal services system in the United States 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.

Over the last 25 years, federal funding for legal services has declined in purchasing power and is now a far smaller share of the overall funding for civil legal assistance in this country than it was two decades ago. While it is important to continue to seek additional resources from state and local governments and from private sources, it is also essential to continue to strive and struggle to increase federal funding. Although LSC has made substantial gains in developing a much stronger bipartisan consensus in Congress in support of continued

funding for LSC, 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 and competition from other programs for the limited funds. 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, most members of the legal services community strongly believe that Congress should reconsider the restrictions that have been imposed on federally funded legal services programs. Despite the fact that the legal services community has developed mechanisms to cope with the Congressionally imposed restrictions, most legal services advocates believe that the restrictions, especially as they are applied to programs' non-LSC funding, represent an unreasonable limitation on access to justice for poor people. Supporters of civil legal assistance have long argued that no compelling rationale has been offered to justify their continued application to the non-LSC funds of LSC grantees, especially in view of the fact that LSC funds continue to represent an increasingly smaller share of the total funding for the legal services programs that receive grants from LSC.

In the wake of the 2006 Congressional elections, the legal services community is hopeful that the new majorities in Congress will be willing to eliminate or modify at least some of the restrictions that have been imposed on LSC grantees. 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 understanding of and support for legal services, it may still be extremely difficult to persuade Congress and the Administration, as well as state legislators, to remove the current restrictions. In order to do so, 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, of 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 four decades, evolved from a relatively insignificant and disorganized program that provided limited services in only a few areas of the country, with little financial support and political recognition, into a system that provides a broad panoply of legal services to the low-income community nationwide. Overall, funding has grown from less than $5 million in 1965 to over $950 million in 2006. Spurred on by LSC and by its own leadership, the civil legal assistance community has begun to fundamentally change its structure, with the goal of developing in each state a comprehensive, integrated system of civil legal assistance. This fundamental restructuring is viewed by many as essential to building a much broader base of public support for civil legal assistance, obtaining critical new funding for the program, achieving broadened access to justice for low-income people, and improving the quality and effectiveness of 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 continuing on a path toward the creation of a civil justice system that will make that dream a reality for the nation's low-income community.

References

Books

Allison, J. (1995). *Balancing the Scales of Justice*. Venice, FL: Type Effects.

Besharov, D.J. (Ed.). (1990). *Legal Service for the Poor: Time for Reform*. Washington, DC: American Enterprise Institute.

Brakel, S.J. (1974). *Judicare: Public Funds, Private Lawyers, and Poor People*. Chicago: American Bar Foundation.

Brownell, E. (1951, Supp. 1961). *Legal Aid in the United States.* Rochester, NY: Lawyers' Coop.

Cappelletti, M., Gordley, J., & Johnson Jr., J. (1975). *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies.* Milan / Dobbs Ferry, N.Y.: Guiffre / Oceana.

Cooper, J. (1983). *Public Legal Services: A Comparative Study of Policy, Politics and Practice*. London: Sweet & Maxwell.

Davis, M.F. (1998). *Brutal Need: Lawyers and the Welfare Rights Movement 1960-1973*. New Haven, CT: Yale University Press.

Dooley, J.A., & Houseman, A.W. (November 1985). *Legal Services History*. Washington, DC: CLASP.

Garth, B. (1980). *Neighborhood Law Firms for the Poor*. Rockville, MD: Sijthoff & Noordhoff, ch. 2.

Goodman, L.H., & Feuillan, J. (1972). *Alternative Approaches to the Provision of Legal Services for the Rural Poor: Judicare and the Decentralized Staff Program*. Washington, DC: Bureau of Social Science Research.

Handler, J.F., Hollingsworth, E.J., & Erlanger, H.S. (1978). *Lawyers and the Pursuit of Legal Rights.* New York: Academic Press.

Hollingsworth. (1977). Ten Years of Legal Services for the Poor. In R.H. Havemann (Ed.), *A Decade of Federal Anti-Poverty Programs: Achievements, Failures and Lessons.* San Diego, CA: Academic Press, pp. 285, 300-02.

Johnson, E. (1973). *Justice and Reform: The Formative Years of the American Legal Services Program.* New York: Russell Sage Foundation.

Johnson, E. (1994). Preserving Justice in an Era of Global Economic Competition. *The Tokyo International Symposium on Civil Justice in the Era of Globalization*, 211.

Johnson, E. (2001). Access to Justice. *International Encyclopedia of the Social and Behavioral Sciences*, vol. 24.

Katz, J. (1982). *Poor People's Lawyers in Transition*. New Brunswick, NJ: Rutgers University Press.

Kessler, M. (1987). *Legal Services for the Poor: A Comparative and Contemporary Analysis of Interorganizational Politics.* New York: Greenwood Press.

Lardent, Esther F., ed., 1991, *Civil Justice: An Agenda for the 1990's: Papers of the American Bar Association National Conference on Access to Justice in the 1990s.*

Lawrence, S.E. (1990). *The Poor in Court: The Legal Services Program and Supreme Court Decision Making*. Princeton, NJ: Princeton University Press.

Lopez, Gerald P., 1992, *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice.* Boulder, CO: Westview Press, Inc.

Maguire, J.A. (1928). *The Lance of Justice: A Semi-Centennial History of the Legal Aid Society 1876-1926*. Cambridge, MA: Harvard University Press.

Rhode, Deborah L. (2004). *Access to Justice*. NY, NY: Oxford University Press.

Smith, R.H. (1919). *Justice and the Poor*. New York: Carnegie Foundation.

Soar, P. (Ed.). (2002). *The New International Directory of Legal Aid*. The Hague: Kluwer Law International.

Stumpf, H. (1875). *Community Politics and Legal Services: The Other Side of the Law.* Beverly Hills / London: Sage Publications.

Zemans, F. (1979). *Perspectives on Legal Aid.* Westport: Greenwood Press.

Articles and Monographs

Abel, L., & Udell, D. (2002). If You Gag the Lawyers, Do You Choke the Courts? Some Implications for Judges When Funding Restrictions Curb Advocacy by Lawyers on Behalf of the Poor. *Fordham Urban Law Journal, 29,* 873-906.

Abel, Laura & Udell, David, 2002, *If You Gag the Lawyers, Do you Choke the Courts? Some Implications for Judges when Funding Restrictions Curb Advocacy by Lawyers on Behalf of the Poor*, 29 Fordham Urb. L.J. 873.

Abel, Richard L., 1985, *Law Without Politics: Legal Aid Under Advanced Capitalism*, 32 UCLA Law Review 474D621 at 575D578, and *supra* Note 3.

Agnew, S. (1972). What's Wrong With the Legal Services Program? *American Bar Association Journal, 58*, 930-34.

Alfieri, Anthony V., 1983, *Impoverished Practices*, 81 Geo. L.J. 3567.

American Bar Association, Access to Justice 2000 Project. (October 1993). *Equal Justice in this Century: What American Can Do to Make Access to Justice a Reality for the Common Citizen Before the End of the Twentieth Century.* Chicago: American Bar Association.

Arnold. (April 1973). The Knockdown, Drag-Out Battle Over Legal Services. *Juris Doctor.*
Bamberger, C. (1997). The American Approach: Public Funding, Law Reform, and Staff Attorneys. *Cornell International Law Journal, 10,* 207.

Bamberger, C. (1966). The Legal Services Program of the Office of Economic Opportunity. *Notre Dame Lawyer, 41,* 847.

Bamberger, James, 2005, *Confirming the Constitutional Right of Meaningful Access to the Courts in Non-Criminal Cases in Washington State*, 4 Seattle J. for Soc. Just. 383.

Belden, Russonello, & Stewart. (May 2000). *Developing a National Message for Civil Legal Services: Analysis of National Survey and Focus Group Research.* Washington, DC: Open Society Institute and the Project for the Future of Equal Justice, pp. 39-40.

Bellow, G. (Spring 1977). The Legal Aid Puzzle: Turning Solutions into Problems. *Working Papers, 52.*

Bellow, Gary, 1980, *Legal Aid in the United States*, 14 Clearinghouse Rev. 337.

Bellow, G. (1994). Legal Services in Comparative Perspective. *Maryland Journal of Contemporary Legal Issues, 5,* 371.

Bellow, G., & Charn, J. (1995). Paths Not Yet Taken: Some Comments on Feldman's Critique of Legal Services Practice. *Georgetown Law Journal, 83,* 1633.

Bennett & Reynoso. (1972). California Rural Legal Assistance: Survival of Poverty Law Practice. *Chicano Law Review, 1.*

Blasi, Gary, 2004, *How Much Access? How Much Justice?*, 73 Fordham L.Rev. 865.

Boyer, Bruce, 2005, *Justice, Access to the Courts, and the Right to Free Counsel for Indigent Parents: The Continuing Scourge of Lassiter v. Department of Social Services of Durham*, 36 Loy. U. Chi. L.J. 363.

Breger, Marshall J., 1982, *Leal Aid for the Poor: A Conceptual Analysis*, 60 N.C.L. Rev. 281.

Breger, Marshall, 1982, *Disqualification for Conflicts of Interest and the Legal Aid Attorney*, 62 B.U.L. Rev. 115.

Brodoff, Lisa, et al., 2004, *The ADA: One Avenue to Appointed Counsel Before a Full-Civil Gideon*, 2 Seattle J. for Soc. Just. 609.

Cahn, E.S., & Cahn, J. (1964). The War on Poverty: A Civilian Perspective. *Yale Law Journal, 73,* 1317-52.

Cahn, E.S., & Cahn, J. (1966). What Price Justice: The Civilian Perspective Revisited. *Notre Dame Lawyer, 41,* 927.

Cahn, Edgar S., 1994, *Reinventing Poverty Law*, Yale L.J. 2133.

Cahn, Edgar S., 2000, *Co-Producing Justice: The New Imperative*, 5 U.D.C.L. Rev. 105.

Cahn, Edgar S., & Cahn, Jean Camper, 1970, *Power to the People or the Profession?—The Public Interest in Public Law,* Yale L.J. l005.

Cantrell, Deborah, 2002, *Justice for Interests of the Poor: The Problem of Navigating the System Without Counsel*, 70 Fordham L.Rev. 1573.

Carr, C.C., & Herschel, A.E. (1998). The Transformation of Community Legal Services, Inc., of Philadelphia: One Program's Experience Since the Federal Restrictions. *Yale Law and Policy Review, 17,* 319-38.

Charn, Jeanne & Zorza, Richard (2005) *Civil Legal Assistance for All Americans,* Bellow-Sacks Access to Civil Legal Services Project.

Conference Report on S. 2007, Economic Opportunity Amendments of 1971. (November 29, 1971). *Congressional Record, 117,* 43117, 43129-30.

Cramton, R.C. (1976). Promise and Reality in Legal Services. *Cornell Law Review, 61,* 670-80.

Cramton, R.C. (1975). The Task Ahead in Legal Services. *American Bar Association Journal, 61,* 1339.

Cramton, Roger C., 1981, *Crisis in Legal Services for the Poor*, 26 VII. L.Rev. 521.

Cramton, Roger C., 1994, *Delivery of Legal Services to Ordinary Americans*, 44 Case W. Res. L. Rev. 531.

Falk & Pollack. (1973). Political Interference with Publicly Funded Lawyers: The CRLA Controversy and the Future of Legal Services. *Hastings Law Journal, 24,* 599.

Failinger, Marie A. & May, Larry, 1984, *Litigating Against Poverty: Legal Services and Group Representation*, 45 Ohio St. L.J. 1.

Feldman, M. (1995). Political Lessons: Legal Services for the Poor. *Georgetown Law Journal, 83,* 1529.

Finman, T. (1971). OEO Legal Services Programs and the Pursuit of Social Change: The Relationship Between Program Ideology and Program Performance. *Wisconsin Law Review*, 1001.

Galanter, Marc, 1976, *Duty Not to Deliver Legal Services*, 30 U. Miami L. Rev. 929.

George, W.E. (1976). Development of the Legal Services Corporation. *Cornell Law Review, 61,* 681.

Greene, C.M., Keyser, D.R., & Nadas, J.A. (1976). Depoliticizing Legal Aid: A Constitutional Analysis of the Legal Services Corporation Act. *Cornell Law Review, 61,* 734-76.

Handler, Joel, 1990, *Constructing the Political Spectacle: The Interpretation of Entitlements Legalization and Obligations in Social Welfare History, 56 Brook L. Rev. 899.*

Hazard, G.C. (1970). Law Reforming in the Anti-Poverty Effort. *University of Chicago Law Review, 37,* 242-55.

Hazard, G.C. (1969). Social Justice Through Civil Justice. *University of Chicago Law Review, 36,* 699-712.

Houseman, Alan W. (March 2006). *Future Changes And Prospects For Legal Aid And Public Defender Organizations*," reprinted in 24 QLR 557 (2006) (The Law Review Association of Quinnipiac University School of Law).

Houseman, Alan W., (June 2005) *Civil Legal Aid in the United States: An Overview of the Program* and *Developments in 2005*, (CLASP).

Houseman, A.W. (October 2002). Legal Aid History. *Poverty Law Manual for New Lawyers*. Chicago, IL: National Center on Poverty Law.

Houseman, A.W. (February 2002). Civil Legal Assistance for Low-Income Persons: Looking Back and Looking Forward. *Fordham Urban Law Journal, 29*, 1213.

Houseman, A.W. (April 2001). Who Are Our Clients? What are the Emerging Legal Problems? What Do These Implicate for State Justice Communities? Prepared for the LSC Client Conference and reprinted in the Summer 2001 issue of the *Management Information Exchange Journal*.

Houseman, A.W. (November 2001). *The Missing Link of State Justice Communities: The Capacity in Each State for State Level Advocacy, Coordination and Support*. Washington, DC: Project for the Future of Equal Justice and the Center for Law and Social Policy.

Houseman, A.W. (Fall 2000). Civil Legal Assistance—Five Years Later. *Management Information Exchange Journal*, 24.

Houseman, A.W. (Summer 1999). Legal Services Corporation Marks 25 Years of Equal Justice. *NLADA Cornerstone, 21*(2).

Houseman, A.W. (May-June 1999). The Context for Information Technology: The Transformation of the Civil Legal Assistance System. *Clearinghouse Review, 33*, 25.

Houseman, A.W. (April 1999). Restrictions by Funders and the Ethical Practice of Law. *Fordham Law Review, 67*, 2187.

Houseman, A.W. (1998). Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All. *Yale Law and Policy Review, 17*, 369.

Houseman, A.W. (April 1995). Political Lessons: Legal Services for the Poor: A Commentary. *Georgetown Law Journal, 83*, 1669-72.

Houseman, A.W. (July 1993). Opportunities and Challenges for the Long-Term Future. *MIE Journal, 21*.

Houseman, A.W. (Spring 1992). Legal Services: Has It Succeeded? *The District of Columbia Law Review, 1*, 97.

Houseman, A.W. (April 1990). A Short Review of Past Poverty Law Advocacy. *Clearinghouse Review, 23*, 1514.

Houseman, A.W. (May 1990). Poverty Law Developments and Options for the 1990s. *Clearinghouse Review, 24*(2).

Houseman, A.W. (Summer 1985). Community Group Action: Legal Services, Poor People and Community Groups. *Clearinghouse Review, 19*, 291.

Houseman, A.W. (1979). Equal Protection and the Poor. *Rutgers Law Review, 30.*

Houseman, A.W., & Dooley, J.A. (January 1982). Legal Services in the 80s and Challenges Facing the Poor. *Clearinghouse Review, 15*(9), 704-18.

Houseman, A.W., & Dooley, J.A. (May 1983). Legal Services for the Poor in the Years Ahead. *American Bar Association Journal, 60.*

Johnson, E., (1968). A Conservative Rationale for the OEO Legal Services Program. *West Virginia Law Review.*

Johnson, E. (1985). The Right to Counsel in Civil Cases: An International Perspective. *Loyola of Los Angeles Law Review, 19,* 341.

Johnson, E. (1994). Toward Equal Justice: Where The United States Stands Two Decades Later, *Maryland Journal of Contemporary Legal Issues, 5,* 199.

Johnson, E. (2001). Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies. *Fordham International Law Journal, 24,* 83.

Johnson, E., & Schwartz, E. (1978). Beyond Payne: The Case for a Constitutional Right to Representation in Civil Cases for Indigent California Litigants. *Loyola of Los Angeles Law Review, 11,* 249.

Johnson, Jr., Justice Earl, 2003, Will Gideon's Trumpet Sound a New Melody? The Globalization of Constitutional Values and Its Implications for a Right to Equal Justice in Civil Cases, 2 Seattle J. Soc. Just. 201.

Katz, Jack, 1978, *Lawyers for the Poor in Transition: Involvement, Reform, and the Turnover Problems in the Legal Services Program,* 12 Law & Soc'y Rev. 275.

Klaus, W. (1972). Legal Services Program: Reply to Vice President Agnew. *American Bar Association Journal, 58,* 1178.

Kettleson, Jeanne & Bellow, Gary, 1979, *The Politics of Scarcity in Legal Services Work,* 36 NLADA Briefcase 5.

Kleinman, Rachel, 2004, *Housing Gideon: The Right to Counsel in Eviction Cases,* 31 Fordham Urb. L. J. 1507.

Legal Services Corporation. (1980). *Delivery Systems Study,* 45 C.F.R. § 1614. Author: Washington, DC.

Legal Services Corporation. (1976). *Legal Services Corporation Annual Report.* Author: Washington, DC.

Legal Services Corporation. (1981). *Legal Services Corporation Annual Report.* Author: Washington, DC.

Legal Services Corporation. (2005) *The Justice Gap.* Washington, DC: Author.

Legal Services of New Jersey (November 29, 2006). *The Evolution of the Legal Services Program: Key Developments and Setbacks.*

Lowenstein, Daniel H. & Waggoner, Michael J., 1967, Note, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 Harvard L. Rev. 805.

Matthews, Jr., Arthur R. & Weiss, Jonathan A., 1967, *What Can Be Done? A Neighborhood Lawyer's Credo*, 47 B.U.L. Rev. 231.

McCalpin, W. (1965). The Bar Faces Forward. *American Bar Association Journal, 51*, 548.

McKay, J. (Fall 2000). Federally Funded Legal Services: A New Vision of Equal Justice Under Law. *Tennessee Law Review, 68*, 109-12.

McNeal, May Helen, 2005, *Toward a "Civil Gideon" Under the Montana Constitution: Parental Rights as the Starting Point*, 66 Mont. L. Rev. 81.

Meadow, Robert G. & Menkel-Meadow, Carrie, 1985, *Personalized or Bureaucratized Justice in Legal Services: Resolving Sociological Ambivalence in the Delivery of Legal aid to the Poor*, 9 Law & Hum. Behav. 397.

Menkel-Meadow, Carrie, 1984, *Legal Aid in the United States: The Professionalization and Politicalization of Legal Services in the 1980's* 22 Osgoode Hall L.J. 29.

Menkel-Meadow, Carrie & Meadow, Robert G., 1983, *Resource Allocation in Legal Services: Individual Attorney Decisions in Work Priorities*, 5 Law & Pol. Q. 237.

Milleman, Michael, et al, 1997, *Rethinking the Full-Service Legal Representational Experience: A Maryland Experiment*, 30 Clearinghouse Rev. 1178.

Moore, Wayne, 1992, *Improving the Delivery of Legal Services for the Elderly: A Comprehensive Approach*, 41 Emory L.J. 805.

Office of Economic Opportunity. (1966). *Guidelines for Legal Services Programs*. Author: Washington, DC.

Parker, C. (1974). The Impact of Federal Funding on Legal Aid. *California Western Law Review, 10*, 503.

Perluss, Deborah, 2004, *Washington's Constitutional Right to Counsel in Civil Cases: Access to Justice v. Fundamental Interest*, 2 Seattle J. for Soc. Just. 571.

Pious. (1972). Congress, the Organized Bar and the Legal Services Program. *Wisconsin Law Review,* 418.

Pye, K. (1966). The Role of Legal Services in the Antipoverty Program. *Law and Contemporary Problems, 31*(11).

Pye, K., & Cochran. (1969). Legal Aid—A Proposal. *North Carolina Law Review, 47*, 528.

Quigley, W.P. (1998). The Demise of Law Reform and the Triumph of Legal Aid: Congress and the Legal Services Corporation From the 1960's to the 1990's. *St. Louis University Public Law Review, 17*, 241-364.

Redlick, Allen, 1993, *A New Legal Services Agenda*, 57 Alb. L. Rev. 169.

Rhode, Deborah, 2004, *Access to Justice: Connecting Principles to Practice*, 17 Geo. J. Legal Ethics 369.

Rhode, D.L. (April 2001). Access to Justice. *Fordham Law Review, 69*, 1785-1819.

Rhudy, R. (1994). Comparing Legal Services to the Poor in the United States with Other Western Countries: Some Preliminary Lessons. *Maryland Journal of Contemporary Legal Issues, 5*, 223.

Robb, J. (1970). Controversial Cases and the Legal Services Program. *American Bar Association Journal, 56*, 329.

Robb, J. (1971). Poverty Lawyers' Independence—Battle Cry for Justice. *New Mexico Law Review, 1*, 215.

Saltzman, Andrea J, 1983, *Private Bar Delivery of Civil Legal Services to the Poor: A Design for a Combined Private Attorney and Staffed Office Delivery System*, 34 Hastings L.J. 1165.

Scherer, Andrew, 2006, *Security a Civil Right to Counsel. The Importance of Collaboration*, 30 N.Y.W. Rev. L. & Soc. Change 675.

Scherer, Andrew, 2005, *Why People Who Face Losing Their Homes in Legal Proceeding Must Have a Right to Counsel*, 3 Cardozo Pub. L. Pol'y & Ethics J. 699.

Shriver, S. (December 1967). Law Reform and the Poor. *American University Law Review, 17*, 1-11.

Silver, C. (1969). The Imminent Failure of Legal Services for the Poor: Why and How to Limit Caseload. *Journal of Urban Law, 46*, 217.

Simon, William H. 1994, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern Post-Reagan Era*, 48 U. Miami L. Rev. 1099.

Smith, W.R. (1994). Legal Aid in the United States: Directions for the Future. *Maryland Journal of Contemporary Legal Issues, 5*, 193.

Smiles, Jacob, 2003, *A Child's Due Process Right to Legal Counsel in Abuse and Neglect Dependency Proceedings*, 37 Fam. L. Q. 485.

Sparer, Edward V., et al, 1966, *The Lay Advocate*, 43 U. Detroit L.J. 493.

Sparer, Edward V., 1965, *The Role of the Welfare Client's Lawyer*, 12 UCLA L. Rev. 361.

Sparer, E. (1976-1977). Legal Services and Social Change: The Uneasy Question and the Missing Perspective. *NLADA Briefcase, 34*, 58.

Sullivan, L. (1971). Law Reform and the Legal Services Crisis. *California Law Review, 59*, 1-28.

Sweet, R.W. (1998). Civil *Gideon* and Confidence in a Just Society. *Yale Law and Policy Review, 17*, 503-7.

Tremblay, Paul R., 1990, *Toward a Community-Based Ethic for Legal Services Practice*, 37 UCLA L. Rev. 1101.

Turner, A.F. (1982). President Reagan and the Legal Services Corporation. *Creighton Law Review, 15*, 711-32.

Udell, D.S. (1998). The Legal Services Restrictions: Lawyers in Florida, New York, Virginia and Oregon Describe the Costs. *Yale Law and Policy Review, 17*, 337.

U.S. Department of Health, Education and Welfare. (1964). *Conference Proceedings—The Extension of Legal Services to the Poor.* Author: Washington, DC, p. 11.

Vivero, M. (2002). From 'Renegade' Agency to Institution of Justice: The Transformation of the Legal Services Corporation. *Fordham Urban Law Journal, 29*, 1323-48.

Waggoner, M.J. (1967). Neighborhood Law Offices: The New Wave in Legal Services For the Poor. *Harvard Law Review, 90*, 805-13.

Wald, P. (June 1965). *Law and Poverty.* Working Paper for the National Conference on Law and Poverty, Washington, DC.

Wexler, Stephen, 1970, *Practicing Law for Poor People,* 79 Yale L.J. 1049.

White, Lucie E., 1990, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 Brook L. Rev, 861.

CLASP

Center for Law and Social Policy

1015 15th Street, NW, Suite 400
Washington, DC 20005

202.906.8000 main
202.842.2885 fax

www.clasp.org