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Nevada Legal Services: The Legal Services Corporation Restrictions and the Diminishing Capacity of Access to Justice for the Poor

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NEVADA LEGAL SERVICES: THE LEGAL SERVICES CORPORATION RESTRICTIONS
AND THE DIMINISHING CAPACITY OF ACCESS TO JUSTICE FOR THE POOR

By

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Abstract

The lofty idea of equal justice for all is not the reason legal aid began in the United States. Legal aid was born from the indignation over injustices committed against the poor. Unable to afford an attorney, the poor could not effectively assert their rights within the criminal and civil justice system. Without access to justice through the courts, the extralegal activities required to defend oneself and exact justice such as personally forcing an employer to pay rightful wages, are deemed criminal in most cases. By providing legal resources to the poor, legal aid not only brought order to society by preventing lawlessness, but it protected the rights of the poor as citizens. The chronological history of legal services in America, from the first legal aid program, Der Deutsche Rechts Schutzverein in 1876, to the merger in 1964 of the 89-year legal aid movement and the two-year old reform movement, which formed the federally-funded Legal Services Program (LSP) during the War on Poverty, shows the proliferation of legal aid societies in urban areas across the nation.

Under the Great Society's Office of Economic Opportunity (OEO) and the LSP, legal aid greatly expanded with the use of discretionary government funding. During the mid-1960s and early 1970s Legal Services programs showed great promise in eliminating the barriers that kept the poor entrenched in poverty. With the use of national "back-up centers", the Reginald Heber Smith (Reggie) program and other initiatives, legal aid programs created a nation-wide network designed to help the poor with more than just their legal problems. Programs used class actions, legislative advocacy, and threat of attorney's fees to reform laws and attack the very institutions afflicting the poor. As the history of legal aid in America becomes more apparent, the LSP looks more like an aberration, especially considering the previous eighty-nine

years of legal aid as strictly a privately-funded affair. Designed to fight a war on poverty, LSP awarded grants to the majority of established legal aid societies, but because their boards and directors held fast to the traditional idea of legal services they were reluctant to use law reform to correct injustices. Reluctant board members, directors and those who ran the programs, in tandem with local bars, the unenthusiastic American Bar Association, and powerful business and political opponents ultimately eliminated law reform; as such, an opportunity to truly help the poor during the last decades of the twentieth century was lost.

Access to Justice is less a “right” today than it was in the 1960s. Since the advent of the Legal Services Corporation (LSC) in 1974, the quality of legal services to the poor has steadily diminished.¹ The conservative view that legal aid is a form of unnecessary welfare and unnecessary interference by the federal government played a dominant role in the restrictions placed on LSC funds during the Richard Nixon, Ronald Reagan and Newt Gingrich eras. The "Republican Revolution" in 1996 resulted in the greatest restrictions on funding and ultimately ended the controversial "Support Centers" and "Reggie" program. These restrictions reflect the historical concept of the “sturdy beggar” and the bygone philosophy that legal aid is a form of charity; as such, they work to identify and restrict the able-bodied poor from receiving any type of government aid, including legal services. LSC restrictions and initiatives promote the use of alternative delivery methods such as Pro Bono and Pro Se that move field programs away from quality legal services and suggest a return to the private charity days of the first legal aid movement. Without quality programs that allow legal services attorneys unrestricted use of the

¹ Quality is defined as a fitness for purpose. The LSC restrictions on legal aid programs diminished the capacity of attorneys to fully represent all poor people, making them less fit to achieve their purpose of providing legal services.

tools available to private attorneys, America's promise of justice for all will continue to exclude the impoverished. The most heinous restriction, which places LSC restrictions on non-LSC funds today, creates an unnecessary and expensive overlap of legal services in Nevada, making it more difficult to coordinate the patchwork of legal services that comprise Nevada's make-shift civil Gideon.

The thesis includes interviews with those involved in legal aid in Nevada such as Supreme Court Justice Michael Douglas, Former NLS Executive Directors Carolyn Worrell and Wayne Pressel, Executive Director of NLS AnnaMarie Johnson, founder of Nevada Indian Legal Services Charles Zeh, Director of Nevada Indian Legal Services Dick Olson, and legal aid attorney and legislative advocate Jon Sasser. It utilizes the early work of Reginald Heber Smith, his book *Justice and the Poor*, and former OEO Director Earl Johnson Jr's publications, *Justice and Reform* and *To Establish Justice for All*, to trace the growth and atrophy of legal representation for the poor. The thesis extends our knowledge by providing a more current overview of LSC with special emphasis on its Nevada Legal Services (NLS) program. The thesis also complements Annelise Orleck's study of Ruby Duncan and the welfare rights movement by putting legal services in Nevada into great historical context.

According to Justice Michael Douglas, there is still a group in the public which does not believe that legal aid is the work of a real attorney. This group argues that legal services lawyers must be second-tier attorneys, because a successful first-tier attorney would never choose legal aid as a career. Many of those interviewed such as Wayne Pressel, Jon Sasser and others are still fighting, in their own unique way, a war on poverty, an idea anathema to the American Bar Association, and the Legal Services Corporation today. Not only did these legal

aid leaders challenge the institutions that perpetuate poverty, they refuted the idea that legal aid is a charity and through their work and talent disproved the second-tier attorney stigma that extends to the “people’s lawyer” and the legal aid profession.

Acknowledgments

To Wayne Pressel and Jon Sasser, the Robber Barons for the poor.

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List of Abbreviations

AB	Assembly Bill	NALAO	National Alliance of Legal Aid Societies
ABA	American Bar Association	NCIO	National Council on Indian Opportunity
ADC	Aid to Dependant Children	NIRLS	Nevada Indian-Rural Legal Services
ADFC	Aid to Families with Dependant Children	NLADA	National Legal Aid and Defenders Association
CAA	Community Action Agency	NLS	Nevada Legal Services
CAP	Community Action Program	NLSP	Neighborhood Legal Services Program
CCBA	Clark County Bar Association	NWRO	National Welfare Rights Organization
CCC	Civilian Conservation Corps	OCR	Office of Compliance and Review
CCLAS	Clark County Legal Aid Society	OEO	Office of Economic Opportunity
CCLS	Clark County Legal Services	OEO-LSP	Office of Economic Opportunity Legal Services Program
CCWRO	Clark County Welfare Rights Organization	OIG	Office of Inspector General
CETA	Comprehensive Employment and Training Act	OL	Operation Life
CLASP	Center for Law and Social Policy	PAI	Private Attorney Involvement
CPI	Community Progress Inc.	PD	Program Development
CRLA	California Rural Legal Assistance	REGGIE	Reginal Heber Smith Fellowship
CSA	Community Service Administration	SB	Senate Bill
FHA	Federal Housing Administration	SSA	Social Security Administration
FY	Fiscal Year	TIG	Technology Initiative Grant
GAO	General Accounting Office	UPO	United Planning Organization
HEW	Department of Health, Education and Welfare	VAWA	Violence Against Women Act
HUD	Housing and Urban Development	VISTA	Volunteers in Service to America
IOLTA	Interest on Lawyers Trust Accounts	WCLAS	Washoe County Legal Aid Society
IRS	Internal Revenue System	WIC	Women, Infants and Children Program
LSC	Legal Services Corporation	WIN	Work Incentive Program
LSP	Legal Services Program	WLS	Washoe Legal Services
MFY	Mobilization for Youth		
NAACP	National Association for the Advancement of Colored People		

The Legal Aid Movement

Denial of justice is the short cut to anarchy.

—Reginald Heber Smith, 1919

Introduction

By the late nineteenth century, the attorney was an indispensable figure of modern life in America and a vital prerequisite for anyone caught up in the civil and criminal justice system. Those who could not afford one had the task of representing themselves in court, which was inadvisable, because representing oneself and navigating through changing laws and legal procedure usually proved impossible. As a result, the poor rarely received justice. The first legal aid societies were born out of indignation over the exploitations of the poor, usually at the hand of lawyers representing the opposing party. Reformers responded to this with charity in the form of legal aid. The ensuing legal aid movement and Congress at the time, considered legal aid to be a charitable institution; it was not considered a government responsibility. With the advent of Lyndon Johnson's Great Society in the 1960s, America turned its attention to poverty. Sargent Shriver's Office of Economic Opportunity (OEO) became a potential source of federal funds for legal aid. Board members and directors of legal aid programs rejected the idea. They argued against government involvement, holding to an eighty-nine year tradition of private funding. It would take Shriver, Jean and Edgar Cahn, Lewis Powell, William McCaulpin and other legal aid advocates to persuade Congress, the American Bar Association (ABA) and the legal services programs to accept federal money. Thus legal aid grudgingly became a matter of discretionary government funding and politics under the OEO Legal Services Program (OEO-LSP). What the LSP was designed to do, how effective it was, and why it was ultimately

disbanded, depended upon whether those in need required assistance or were responsible for their own needs; it hardly relied upon the idea of equal justice for the poor.

This chapter begins with Reginald Heber Smith and his book *Justice for the Poor* that stimulated a conversation regarding equal justice for the impoverished which gained popularity and sparked the legal aid movement. The chapter surveys America's changing landscape and the proliferation of legal aid societies across the nation beginning with the first one, *Der Deutsche Rechtsschutz Verein* in 1876. It traces the movement's progress leading up to the formation of the federally-funded Legal Services Program launched in 1965. A brief review of the landmark *Gideon v. Wainwright* decision and the right to an attorney in criminal matters will demonstrate how civil legal matters for the poor became the primary responsibility of legal aid. The chapter continues by describing how poverty became more visible in the 1960s and how the legal aid movement attached itself to the OEO during President Johnson's "War on Poverty." Finally, it explains how an eighty-nine-year-old legal aid movement met a two-year-old social reform movement to form the OEO-LSP with a dichotomous mission.

Legal Aid Pioneer

According to Justice Earl Johnson Jr., "until 1920, legal aid was provided by a loose, unorganized collection of independent organizations located in a few of the country's larger cities." But after that, "it emerged as something that could be called a movement, with a measure of organization and a unifying national mission."² Johnson credits Reginald Heber Smith and his book *Justice and the Poor* (1919) for the movement, marking his work as "the first

² Earl Johnson Jr., *Justice and Reform: The Formative Years of the OEO Legal Services Program* (New York: Russell Sage Foundation, 1974), 5.

definitive treatment of inequality in the administration of justice.”³ Using case histories, statistics, and potent language, Smith dispelled the myth that equal justice existed. “The American justice system is not impartial, and the rich and poor do not stand on equality before the law,”⁴ Smith avowed, “for the State to erect an uneven, partial administration of justice is to abnegate the very responsibility for which it exists.”⁵

To Smith, delay and costs denied justice to the poor. The time taken to receive final judgment made it impractical to sue, and costs incurred for a host of services made litigation unaffordable.⁶ Moreover, without proper representation, cases devolved into one-sided arguments, wasting the court’s time. Smith urged simplified procedure, efficient reorganization, and unification of the courts to help eliminate delay and to lower costs. For the cost of counsel, he offered three solutions: attempt Pro Se by “representing one’s self”, make the attorney’s services unnecessary, and/or provide assistance of counsel for those who could not afford one. Thus, the essence of early legal aid work was to provide legal advice and assistance to the poor through free representation, a service the courts vitally needed.

Smith published his book at an opportune time in America. The beginning of World War I promised a “world safe for democracy”, but its end brought myriad labor strikes and social turbulence, including virulent racism. The Bolshevik Revolution in Russia spawned

³ Johnson, 5.

⁴ Reginald Heber Smith, *Justice and the Poor, a Study of the Present Denial of Justice to the Poor and of the Agencies Making More Equal Their Position before the Law, with Particular Reference to Legal Aid Work in the United States* (New York: The Carnegie Foundation, 1919), 8.

⁵ *Ibid.*, 5.

⁶ Delay and costs often denied justice to the poor. In one case over a wage claim the final judgment took one year, nine months and eleven days. Fortunately, the judge ruled in favor of the wage-earner to collect a week’s worth of wages owed, approximately \$10.00. Costs and fee schedules differed from state to state and from court to court, [Appellate, Supreme etc.] and fees were often incurred for a range of services including, docketing, filing, searching and obtaining records, certifying or copying documents, and general processing. Smith suggested an all-inclusive *in forma pauperis* statute, similar to that in the federal courts.

growing fears over the spread of a godless communism and anarchism. At home, Socialist Party candidate Eugene V. Debs attracted nearly a million votes in the presidential election of 1920. The migration of families of Eastern European immigrants only exacerbated WASP fears about class revolution, leading to quota acts in 1921 and 1924 that were not lifted until the Great Society in 1966. All of these events impelled US Attorney General A. Mitchell Palmer to enlist the support of a young J. Edgar Hoover to conduct “Red Raids” to restore America to normalcy. Against this backdrop of fear, of communism and socialism, Smith’s voice warned that “when the law recognizes and enforces a distinction between classes, revolution ensues or democracy is at an end.”⁷ Without access to justice for the poor, faith in democracy would fail. Smith, a bellwether of justice for the poor, capitalized on present fears while harnessing an opportunity for Americans to take action. Provide justice for all, he urged, *if you don’t want anarchy.*

The Need for Legal Aid

American philosopher, Ralph Waldo Emerson, wrote in 1841, “*A good indignation brings out all of one’s powers.*”⁸ Smith believed that legal aid societies sprang, not from loftier ideas of a right to justice, but from plain indignation. In 1876, Der Deutsche Rechtsschutz Verein, the German Legal Aid Society in New York, hired an attorney to protect its immigrants from “runners, boarding-house keepers, and a miscellaneous coterie of sharpers who found that the trustful and bewildered newcomers offered an easy prey.” The first of its kind, the society provided “legal aid and assistance, gratuitously, to those...who from poverty are unable to

⁷ Johnson, 6.

⁸ Ralph Waldo Emerson, 24 October 1841, Journal XXXII, From (From Journals E, G, H, and J), The Ralph Waldo Emerson Journals Digital Archive, Volume 6 [From the 1904-14 Edition, Edward Emerson, General Editor], presented by The Ralph Waldo Emerson Institute and RWE.org. http://www.perfectidius.com/Volume_6_1842-1844.pdf

procure it.”⁹ Eight years later, *The Protective Agency for Women and Children* opened in Chicago, to protect women and children against “the great number of seductions and debaucheries...under the guise of proffered employment.”¹⁰ Earl Johnson credits the *Agency* with establishing the need to provide legal help for the poor in Chicago, because in 1888, only four years later, the *Bureau of Justice*, the first true legal aid society, opened its doors to people of any nationality or gender.

Smith reasoned that *Der Deutsche Rechtsschutz Verein*, *The Protective Agency for Women and Children*, and the *Chicago Bureau* were born out of indignation over the lack of legal protection for the poor, without which placed the power of law “in the hands of their oppressors.”¹¹ How much power the oppressors possessed or how many seductions or debaucheries were averted by these new protective agencies is unclear. What is clear is whether it was a response to the abuses of the legal process by those who could afford attorneys or the current civil and criminal justice system’s failure to protect the poor, early societies recognized that justice for the poor could no longer be realized without an attorney. *The German Society*, *Woman’s Club*, and *Chicago Ethical Cultural Society* were the first to recognize the need for legal aid.

America’s Changing Landscape

By 1880, New York City, home of *Der Rechtsschutz Verein*, passed one million residents. The engine of American industry acted like a magnet to millions of foreign people looking for opportunity. From 1880 to 1920, US commercial growth garnered what labor it could from the

⁹ Smith, 135.

¹⁰ Earl Johnson Jr., *Justice and Reform: The Formative Years of the OEO Legal Services Program* (New York: Russell Sage Foundation, 1974), 4.

¹¹ Smith, 9.

able-bodied men, women, and children comprising 23 million immigrants. The influx of newcomers, including the mass migration of rural people to industrial areas, led to urban crises. By 1920, America reached a turning point when, for the first time, more Americans lived in cities than in rural areas. This segmented, decentralized America, described by Robert Wiebe as, “a nation of loosely connected islands,”¹² with small-towns as the norm, was disappearing. Frantic urbanization and industrialization turned many towns into cities and displaced traditional communities. According to Lawrence Friedman, “the small face-to-face communities grew larger and became societies of strangers...the demands of economic rationality and the need for predictability and certainty asserted their claims.”¹³ More formality meant more rules. According to Smith, the attorney was critical in navigating the legal system for justice:

With the great cities came the infinite complexity of modern life, of business, and of affairs in general which breed litigation. The law itself became highly complicated. With thirteen thousand decisions of courts of last resort being made each year and twelve thousand laws annually enacted by the legislatures, no man could determine his rights without employing attorneys.¹⁴

Smith contended that the right to justice based on a government of laws was the cornerstone of the republic, because the rights of every individual, their life, liberty, property, and character depended on it. From New York’s Bill of Rights mandating that “Neither justice nor right should be sold to any person, nor denied,”¹⁵ to the Illinois Constitution, avowing that “Every person... ought to obtain right and justice freely,”¹⁶ legal aid provided requisite attorneys

¹² Robert Wiebe, *The Search for Order, 1877-1920* (New York: Hill & Wang, 1967), 4.

¹³ Lawrence M. Friedman, *A History of American Law* (New York: Simon & Schuster, 2005), 31.

¹⁴ Smith, 7.

¹⁵ Part I, Declaration of Rights, Article VI.

¹⁶ IL, Constitution Article VIII, Section 12.

to safeguard America's guarantee of a right to justice. Were legal aid societies simply a response to America's chaotic transformation? Certainly they developed more from necessity than from missionary work. The sheer number of laws enacted and court decisions issued are the justice system's attempt to fashion law and create order out of America's changing landscape. Confusion and complication of law and procedure were the byproducts of the need to create order. The attorney was now more important than ever; and, with the poor's growing inability to afford one, the fight was fixed against them.

Legal Aid Evolves

Smith argued for essential counsel, holding that high demand for help made the old solution of legal aid undesirable. The days of the kind lawyer taking a case were gone—a relic of the nineteenth century. Historian Richard Hofstadter noted the change at the turn of the century as corporations began to monopolize the legal profession, making it increasingly difficult for the proverbial country lawyer to make a living.¹⁷ In 1905, Louis Brandeis declared that “instead of holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either, able lawyers have, to a large extent, allowed themselves to become adjuncts of great corporations and have neglected to use their powers for the protection of the people.”¹⁸ In larger cities, Smith held “charities, churches, bar associations, women's clubs and the like found themselves confronted with the pressing problem of how to obtain justice for poor persons who came to their attention.”¹⁹

¹⁷ Richard Hofstadter, *The Age of Reform: From Bryan to FDR* (New York: Vintage Books, 1955), 156-164.

¹⁸ Louis Brandeis addresses the Harvard Ethical Society at Phillips Brooks House on May, 4, 1905. Louis D. Brandeis, “The Opportunity in the Law,” *The American Law Review* 39 (July-August, 1905): 559.

¹⁹ Smith, 140.

In response, new legal aid societies, modeled after New York, reproduced in kind to answer the rising problems associated with urbanization: Boston Legal Aid Society (1900), New Jersey Legal Aid Association (1901), Legal Aid Society of Philadelphia (1902), Cleveland Legal Aid Society (1904), and the Legal Aid Dispensary of Denver (1904). In 1905, the Bureau of Justice and Protective Agency merged to become the Chicago Legal Aid Society. By 1909, all of the larger cities in the East offered some type of legal aid work. From the East to the Midwest, and into the Pacific Northwest and Southwest regions, legal aid spread across urban America with Legal Aid Bureau of Baltimore (1911), Legal Aid Society of Rochester (1911); and similar organizations in Kansas City in 1910, St. Louis, Akron and St. Paul in 1912, and Duluth, Minneapolis and Louisville in 1913.²⁰ By 1913, there were twenty-eight legal aid organizations. The term “legal aid” became synonymous with such organizations, noted Smith, and “the phrase...came to carry a clear connotation of safety and relief to the minds of the poor.”²¹

To be sure this process was but another aspect of American “progressive reform,” which began in the big cities in the 1880s, slowly spread to the states, and by 1901 to the Federal Government with Theodore Roosevelt as president. Innovations such as the *Legal Aid Review* (1903) and *Legal Aid Alliance* helped promote interest and financial support and encouraged the sharing of vital resources among societies.²² Indeed, the Alliance helped form a clearing house whereby cases were transferred from one city to be handled in another. Further developments involved the Association of the Bar of the City of Detroit, which established and

²⁰ Smith, 145.

²¹ In 1896, Der Deutsche Rechtsschutz Verein changed its name to the New York Legal Aid society. After “Boston Legal Aid Society” adopted the nomenclature in 1900, the term “legal aid” became the uniform way to describe such organizations. Smith, 138.

²² The *Review* provided interesting stories on client cases and notes on the significance and development of legal aid work.

supported a legal aid office in 1909, making it the first such organization to join the movement. Kansas City, in particular, took legal aid out of the realm of charity and placed it under a department of municipal government, the Board of Public Welfare. The city paid for legal aid expenses through its public treasury. By doing so, the City of Fountains “put the ideal of the fundamental law into practice and saw that no one was denied justice because of inability to employ counsel.”²³

By 1917 there were forty-one societies including ones in San Francisco, Milwaukee, Columbus, Nashville, Plainfield, Richmond, and San Diego.²⁴ Four public defender organizations provided criminal representation, while two offered both civil and criminal. The Los Angeles Defender’s Office (1914) and its counterparts in St. Louis, Dayton, Dallas (1915), Portland, OR, and Omaha (1916) took on civil cases. Notable legal aid developments included a student-supported legal aid society established by George Washington and Yale University law schools, and the “The Voluntary Defenders Committee” (1917) in New York, which provided legal aid work in the criminal field.

Legal aid societies responded to the growing need for attorneys. “The most important fact,” held Smith “is that the prevailing type of organization shifted to that of the publicly controlled, publicly supported bureau.”²⁵ Public involvement of legal aid, involving both civil and criminal matters, transformed the movement by challenging the idea that it was a charity—rather, legal aid was a reputable, proven, and integral part of the administration of justice.

²³ Smith, 146.

²⁴ Ibid., 148.

²⁵ Ibid., 148. According to Smith, “Up to 1910, of the fourteen societies that attained permanence, ten were organized as private charitable corporations. From 1910 through 1913, of the fourteen societies that lasted, eight came into being as departments of organized charities”, 145.

The Legal Aid Movement

Smith startled the officials of the American Bar Association (ABA) when he suggested sending copies of his controversial book to all attorneys. In response, the ABA refused to send him its membership list. Ultimately, interest from ABA leaders, such as Charles Evans Hughes, led to an entire session devoted to legal aid at the 43rd Annual Convention of the ABA (1920). Notable speakers such as Hughes, a past and future Supreme Court Justice, and Judge Ben Lindsey, a pioneer in the establishment of the Denver juvenile court system, addressed poverty and the administration of justice. The director of the Philadelphia Welfare Department, Ernest Tustin, made the case for a legal aid bureau:

To investigate and prevent impositions upon the poor and ignorant and to furnish a proper and rational defense for men, women and children without means is just as much an obligation as to fill the office of district attorney for the prosecution of crime or to provide a city solicitor to enforce health mandates and building restrictions.²⁶

The session ended with the creation of a Special Committee on Legal Aid. By 1923, the National Association of Legal Aid Organizations (NALAO) succeeded the National Alliance of Legal Aid Societies. The NALAO later became the National Legal Aid and Defender Association (NLADA).²⁷ Smith's call for a national legal aid organization had been answered.

By the 1930s resources for legal aid more than doubled with the addition of thirty new legal aid organizations, but the decade would be dominated by growing concerns over the Great Depression. With businesses trimming costs, the legal profession was often the first service to be cut. As corporate bankruptcies increased and many individuals went broke,

²⁶ Reginald Heber Smith, Charles Evans Huges, Ernest L. Tustin, and Ben B. Lindsey, "Justice and Need of Legal Aid," *American Bar Association* 6, no. 5 (October, 1920): 85.

²⁷ In 1912, an informal group of legal aid organizations met in New York to form the National Alliance of Legal Aid Societies. Discontinued during WWI, the Alliance resurfaced in 1923 to become the National Association of Legal Aid Organizations.

private attorneys and members of the ABA grew concerned over the diminishing number of clients. Self-preservation took precedence over charitable legal aid. Hard times only resulted in growing caseloads for legal aid organizations. Unable to keep pace with demand in times of prosperity, financial support for legal aid decreased as caseloads increased. During the first three years of the Depression the workload almost doubled from 171,000 new cases in 1929 to 307,000 in 1932.²⁸ Afterward and throughout the decade, cases declined. Underfunded legal aid societies could no longer meet demand in a timely and reasonable manner; as a result of these delays, many clients simply gave up.

During the 1940s and 1950s, legal services continued their expansion. In 1949, approximately fifty-seven percent of large cities housed a legal aid office; by 1959 the number rose to seventy-nine. The development of new legal aid societies was no easy task: almost all societies required the support of local bar associations. Emery Brownell, staff leader of the NLADA explained the difficulty of garnering that support:

Whether due to unfounded fear of competition, inherent lethargy, or mere lack of interest, the failure of local bar associations to give leadership, and in many cases the hostility of lawyers to the idea, have been formidable stumbling blocks in the efforts to establish needed facilities.²⁹

Legal aid leaders found that eloquent speeches on morality and equal access to justice did little to entice apathetic or hostile state bar associations; rather, documentation, in writing, of the practical advantages of legal aid won their hearts. Winning arguments held that legal aid filters out non-paying clients, and keeps them out of private lawyers' offices. Moreover, by securing back wages for discharged employees and support funds for abandoned women, legal aid

²⁸ Johnson, 8.

²⁹ Ibid., 8.

societies kept people off the relief roles. Legal aid also educated people about the value and necessity of lawyers, which increased future business for private practitioners. Finally, legal aid was not only a training ground for young lawyers, but established a better public image of the bar with the general public.

The largest boost for legal aid in the U.S. came in 1950 from a foreign source when the British Parliament funded its Legal Aid and Advice Scheme. Great Britain's government-funded legal aid system smacked of socialism at a time when the second wave of the Red Scare and McCarthyism left Americans, once again, concerned about and fearful of communism and socialist programs. At the time, the average lawyer looked askance at a federal program for legal aid. "To me, the greatest threat aside from the undermining influence of Communist infiltration," said former ABA president Robert G. Storey, "is the propaganda campaign for a federal subsidy to finance a nationwide plan for legal aid and low-cost legal service..."³⁰ Storey likened the minority Lawyer's Guild, which pushed for such a campaign, to the minority organized by Hitler and Lenin to secure their revolutions. The ABA condemned any government role in legal aid. Orison Marden, President of the NLADA, saw *private* legal aid as a protective measure against socialism and government control of the legal profession. In response, many states and local bars began to support private legal aid societies. Johnson refers to the fact that "In an earlier time—the 1930s, for instance—proponents of legal aid might have embraced the opportunity to obtain government funds. But the rhetoric and experience of the 1950s had turned leaders of the legal aid movement completely away."³¹

³⁰ Ibid., 18.

³¹ Ibid., 19.

By the 1960s the legal aid movement still could not meet the demand for its services. Funding was exclusively private with the majority of funds coming from community chests (60%) and bar associations (15%) and the remainder from campaigns and *Pro Bono*. “There was almost no governmental support—federal, state or local—,” said Johnson, “and a philosophical preference among the members of legal aid societies that things remain the same.”³² The ABA and NLADA remained reluctant to use federal funding. According to Johnson, even with comparative prosperity, total funding for legal aid in 1962 was less than \$4 million. This equated to four hundred full-time lawyers serving fifty million Americans or one lawyer per 120,000 persons, resulting in underpaid staff attorneys with unrealistic caseloads.

Right to an Attorney

Until *Gideon v. Wainwright* guaranteed legal representation in the criminal context, the scales of justice were unfairly stacked against poor persons charged with a felony crime.³³ Beforehand, the right to counsel surfaced in only a few Supreme Court cases. In 1938, in *Johnson v. Zerbst*, the US Supreme Court reaffirmed Amendment VI of the US Constitution which guaranteed the rights of criminal defendants to a speedy trial, impartial jury, notice of accusation, and “In all criminal prosecutions the accused shall enjoy the right...to have the assistance of counsel for his defense.”³⁴

As early as 1853, the Indiana Supreme Court, in *Webb v. Baird*, (6 Ind. 13) recognized a right to an attorney for criminal defendants. However, the right was based on “the principles of

³² Ibid., 14.

³³ “‘You Have the Right to an Attorney’... We All Know the Hollywood Version, But What's the Real Story?,” American Civil Liberties Union and the ACLU Foundation, accessed December 4, 2014, http://www.nlada.org/About/About_HistoryDefender.

³⁴ U.S.C.A. 6.

a civilized society," rather than constitutional law. According to the NLADA today, "The right to counsel in federal proceedings was well-established by statute early in the country's history... The *Webb v. Baird* decision however, was the exception rather than the rule in the states."³⁵ In 1932, in the *Scottsboro Case*, the Court held that defendants were entitled to an attorney in State capital cases. In the opinion, Justice George Sutherland strongly supported the need for an attorney,

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman...requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.³⁶

The Court's view suggested a possible extension of Sixth Amendment rights to states in the future. However, ten years later in *Betts v. Brady* (1942) the Court chose not to extend those rights. Although Justice Owen Roberts and others recognized a need for counsel, Roberts was "unable to say that the concept of due process incorporated in the Fourteenth Amendment obligates the States...to furnish counsel in every such case," he argued that, "the states should not be strait-jacketed in this respect."³⁷

The Warren Court believed that the right to counsel in criminal cases *was* "so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the States."³⁸ *Gideon v. Wainwright* (1963) overruled *Betts v. Brady*. The decision emphasized the fact that governments which spent large amounts of money to try defendants and defendants, who spent large amounts of money to hire the best attorneys, considered the

³⁵ "History of Right to Counsel," National Legal Aid & Defender Association, accessed December 3, 2014, http://www.nlada.org/About/About_HistoryDefender.

³⁶ *Powell v. State of Alabama*, 287 U.S. 45 (1932).

³⁷ *Gideon v. Wainwright* 372 U.S. 335(1963).

³⁸ *Betts v. Brady* 316 U.S. 455 (1942).

aid of a lawyer absolutely necessary. In delivering the opinion, Justice Hugo Black asserted, “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”³⁹

The *Gideon* decision required that all governments, federal, state and local, provide public legal counsel in all criminal cases. As a result, states began expanding their role in the representation of indigent defendants with public defenders. Until 1963, other than the rare public defenders in the larger cities, the poor relied on either volunteer or Pro Bono attorneys or no one at all.

Gideon only offered the American poor the right to counsel in felony cases. Consequently, in civil matters such as unlawful evictions, wage claims, child custody, etc., the poor relied on underfunded and exclusively private legal aid programs unable to meet demand. By 1962, only five municipal legal aid bureaus existed, four fewer than in 1919, and seven fewer than in 1932.⁴⁰ With less than \$4 million in total funding for legal aid programs, legal services leaders and others began looking for government help. The Kennedy Administration at the time pushed for increases in social security benefits and other anti-poverty legislation, but it was not until Johnson’s administration and a desire to eradicate increasingly visible poverty, that more substantial funding came in the form of the OEO.

Poverty Becomes Visible

According to historian James T. Patterson, “[The] shift of poverty to the North and the cities was the most significant change in modern American history. By the mid-1960s it helped make poverty visible again and facilitated community organization and political pressure from

³⁹ *Gideon v. Wainwright*.

⁴⁰ Johnson, 17.

the poor.”⁴¹ Continued immigration and business cycles only enlarged the indigent population in America’s cities. Technological advancements in agriculture, specifically the mechanical cotton picker in 1943, eventually displaced over 2.3 million family farm workers in the South, resulting in a net loss of 2.2 million inhabitants in the 1940s and 1.4 million in the 1950s.⁴² Migration to urban areas resulted in noticeable areas of poverty. Discrimination and racism exacerbated urban poverty. Civil rights activist Walter White of the National Association for the Advancement of Colored People (NAACP) noted that “between 1935 and 1950, while approximately 2,761,000 dwelling units were built under the FHA insurance program, no more than 50,000 of them were available to nonwhites.”⁴³ Discrimination by the FHA on economic grounds denied loans to blacks and other minorities looking to live in better areas. Restrictive covenants, redlining, blockbusting, and white flight created predominantly poor black neighborhoods and perpetuated the spiraling cycle of decreasing property values, underfunded schools, lack of education, growing unemployment, rising crime, and increased incarcerations.⁴⁴ White middle class city residents fled to the suburbs to escape these problems as well as congestion, increasing numbers of minorities, rising taxes, and other issues. By 1960 fifty-five percent of America’s poor lived in cities and thirty percent in small towns.

⁴¹ James T. Patterson, *America’s Struggle against Poverty 1900-1994* (Cambridge, Massachusetts: Harvard University Press, 2000), 78.

⁴² *Ibid.*, 78.

⁴³ White Memorandum, to the NAACP board, July 9, 1952.

⁴⁴ Restrictive covenants prevented blacks and other minorities from purchasing homes in white neighborhoods. Redlining refers to the red line that banks drew on maps to identify areas that they did not find profitable, or should not invest in. Many of these economically challenged areas that were not “suitable for investment” were in black inner city neighborhoods. Known as blockbusting, real estate agents scared white property owners into selling their homes at low prices with the threat that blacks and other minorities would soon be buying homes in their area. Ultimately, segregation cordoned off blacks and minorities from whites promoting a policy of race containment.

The extent of poverty had become visible as the rest of the nation enjoyed affluence and a rising standard of living.

Postwar social scientists knew surprisingly little about poverty. Due to the prosperity of the 1940s and 1950s, poverty-related research and publication had hardly advanced. The postwar return to prosperity led many middle class white Americans to forget the Great Depression and return to the boundless optimism of the 1920s. Now with social security and other safeguards, the cultural mindset believed a strong economy would pull most of the needy out of poverty and end the need for welfare. Some optimism was not unfounded, as economic growth steadily lowered the percentage of those living below or at the government's poverty line. Based on economist Herman Miller's definition of a minimum subsistence or a life of "decency and health," poverty "rose from 40 percent in 1929 to 48 percent (61 million people) in 1935-1936 and then fell steadily to 33 percent (44 million) in 1940, 27 percent (41 million) in 1950, and 21 percent (more than 39 million) in 1960."⁴⁵ Average personal income also increased from \$3,343 in 1936 and \$5,150 in 1946, to \$6,193 in 1960. Still, by the 1950s, despite increases in personal income and decreases in the percentage of poverty, a multitude of social problems remained; nearly 40 million people, or one-fifth of the American population were impoverished, with a growing number of urban poor.⁴⁶

War on Poverty

"By the early 1960s," Patterson held, "reformers echoed Herbert Hoover and the optimists of the 1920s in assuming poverty was un-American and could be abolished."⁴⁷ But

⁴⁵ Patterson, 77.

⁴⁶ Ibid., 76.

⁴⁷ Ibid., 77.

Michael Harrington's 1962 bestseller, *The Other America*, claimed otherwise. Harrington found "new," hard-core poverty in America, comprised of old people, female-headed households and minorities. "Tens of millions of Americans are, at this very moment, maimed in body and spirit, existing at levels beneath those necessary for human decency," stressed Harrington, "If these people are not starving, they are hungry, and sometimes fat with hunger, for that is what cheap foods do. They are without adequate housing and education and medical care."⁴⁸ This perpetual culture of poverty would not be easily abolished.

Harrington's book inspired Lyndon B. Johnson, who as president implemented a "War on Poverty," following the death of JFK. With 30 years in public life, a network of allies, a liberal majority in Congress and a visible poverty, Johnson asked the country in 1964 to build a "Great Society" and join in the "War." Johnson sought a program that would fulfill every American's basic hopes,

his hopes for a fair chance to make good; his hopes for fair play from the law; his hopes for a full-time job on full-time pay; his hopes for a decent home for his family in a decent community; his hopes for a good school for his children with good teachers; and his hopes for security when faced with sickness or unemployment or old age.⁴⁹

In response, Congress passed the Economic Opportunity Act, which created the Office of Economic Opportunity (OEO). In turn, the OEO created the Community Action Program (CAP) to fund local community-based anti-poverty programs also known as Community Action Agencies (CAA). All types of proposals were eligible for CAP funding, with millions of federal dollars available. "It was as if the task force, lacking time to draft creative legislation," Earl

⁴⁸ Michael Harrington, *The Other America: Poverty in the United States*. (New York: Macmillan, 1962), 2.

⁴⁹ State of the Union Address, Lyndon B. Johnson, January 8, 1964.

Johnson said, “hoped that creativity would surge during the implementation stage of the act.”⁵⁰ CAP offered opportunities for both new programs with new ideas, and much-needed money for established programs. Under the leadership of Director R. Sargent Shriver, the OEO funded multiple programs such as Head Start, Job Corps, Domestic Peace Corps and the Legal Services Program, which, modeled after the Neighborhood Lawyer Programs, offered a new approach to legal aid designed to fight a war on poverty.

Neighborhood Lawyer Programs

The lessons learned from the early failures and later successes of the neighborhood lawyer programs helped develop the model for President Johnson’s Legal Services Program (LSP). Sharing a commitment to reducing poverty, these programs embraced different philosophies and used various approaches in social reform. According to Earl Johnson, “they were after something more palpable than procedural due process.”⁵¹ For example, under a Ford Foundation grant, the Community Progress, Inc. (CPI)⁵², in New Haven, Connecticut, offered a decentralized approach to social rescue. The plan involved a team of social workers and lawyers to “diagnose, refer, and coordinate the legal problems of the poor.”⁵³ The New Haven proposal sought to fix the clients’ psychological, social, and or educational deficiencies with the goal of helping them become more self-sufficient and partake of the nation’s affluence. Unfortunately, CPI had little opportunity to succeed. A controversial rape case

⁵⁰ Earl Johnson, 40.

⁵¹ Ibid., 34.

⁵² William Pincus died on May 15th, 2014. He worked tirelessly to provide legal assistance, first in criminal cases and later in civil cases. As an employee in the government and law division of the Ford Foundation Pincus made grants to provide financial support for pioneering efforts and new directions in legal education and for research in improving the administration of justice.

⁵³ Johnson, 22.

involving a young black defendant created a negative backlash.⁵⁴ Seven weeks later, after pressure from local residents and community leaders, CPI suspended its services. Although never funded, a second New Haven proposal influenced the model of LSP with its focus on poverty and the idea that the lawyer and legal activities would be coordinated with a wide variety of community services.

In a similar decentralized approach, the Mobilization for Youth (MFY),⁵⁵ in New York's lower East Side, offered another approach to law reform. Influenced by social welfare planner Elizabeth Wickenden, Director Edward Sparer used lawsuits and test cases to challenge the welfare system. The New York proposal sought to change the rules and practices that divert funds away from the poor class. MFY almost suffered a similar fate as CPI.⁵⁶ Due to MFY's controversial test cases which included attacks on the Welfare Department, the latter withdrew its support and pressured representatives of other public agencies on MFY's board to investigate the legal unit. The Welfare Commissioner and Deputy Administrator Henry Cohn complained that lawyers were jeopardizing relationships vital to MFY's overall purpose. This behavior, they argued, did not promote the cooperative effort envisioned in the proposal. Marvin Frankel, Chairman of the Faculty Advisory Committee of MFY's legal unit, convinced the

⁵⁴ Jean Cahn, an employee of CPI, accepted the rape case and served as co-counsel to the public defender. When the public defender left the case, Cahn became sole counsel. Based on her client's claim, Cahn asserted that the white girl consented to the sexual advances of the black defendant. She took the argument to the newspapers. But, incited by accusations that one of their girls consented to sex, the New Haven community displaced its anger from the rapist to CPI.

⁵⁵ MFY was an anti-delinquency program sponsored by President's Committee on Juvenile Delinquency. Initially it was difficult to argue for the need for legal services in preventing juvenile delinquency. When experience proved that a definite need existed for juveniles and their families, the MFY board recommended the establishment of an advisory committee for the creation of a legal unit.

⁵⁶ MFY test cases involved complaints to the Welfare Department. The Welfare Department withdrew its support and pressured representatives of other public agencies on MFY's board to shut the program down. Sparer argued for the legal unit's independence, pointing to a court order authorizing the legal unit and its prohibition against interference by lay members.

Board that interference by officers or lay members regarding a lawyer's conduct of a case was prohibited.⁵⁷ Moreover, the Canon of Legal Ethics protected the client-lawyer relationship from such violations. The MFY Committee on Direct Operations agreed. MFY was saved. More importantly, the board of MFY permanently recognized the independence of the program's lawyers.

In May 1964, in a large anti-poverty effort, the United Planning Organization (UPO), (formed by the Ford Foundation to undertake broad missions) established three neighborhood service centers in Washington DC. UPO wanted lawyers to demonstrate the synergistic effects of teamwork.⁵⁸ Some poor, they believed, only talked to lawyers because talking with social workers and psychologists implied illness or weakness. In any case, UPO looked to add legal services to its new Neighborhood Legal Services Program (NLSP). Learning from New Haven and MFY, NLSP chose a separate board of local lawyers to decentralize and insulate it from direct controversy. The board established criteria for certain cases and referred others to other legal services programs. The program provided specialized legal assistance and worked with other organizations and disciplines. It pursued two major goals: establish unmet legal needs and therefore justify NLSP's existence, and "rescue" or lift individuals and families out of poverty.⁵⁹

⁵⁷ Judge Florence Kelley upheld the "importance of maintaining the purity of the relationship between a lawyer and his client", even if it meant jeopardizing the organization's relationships and envisioned efforts. (Johnson, *Justice and Reform*, 25).

⁵⁸ UPO adopted the idea of "synergy" from author Don Michaelis' book *Synergy*. Synergy implied that programs such as legal services and social work could accomplish more together than separately. The combined effect would be greater than the sum of its parts.

⁵⁹ This was based on the idea that legal services programs were neither located within nor meeting the legal needs of individuals in chronic poverty areas.

In July, 1964, Jean and Edgar Cahn published “The War on Poverty: A Civilian Perspective”. The Cahn Thesis, as it was known, analyzed the strengths and weaknesses of the neighborhood lawyer programs and suggested a new type of firm with a “Civilian Perspective.” This thesis proposed the use of Community Action Agencies (CAAs) comprised of local private and public non-profit organizations. To be more responsive to poor residents’ needs, boards included some as members, the idea being that, poor persons could better identify the needs of the poor. At a minimum, the agency would have someone providing a voice from the impoverished. The “Civilian Perspective” addressed the concerns of the New Haven and New York programs over lawyers being subordinate to social workers, and clients being subordinate to lawyers. “The concept,” held Johnson, “would serve as the powerful voice through which a local poverty community would exert influence over the agencies responsible for distributing income and opportunity to that community.”⁶⁰

Thus, the Legal Services Program embodied ideas about, and the lessons learned from, the neighborhood lawyer experiments. LSP required that representatives of the poor, or low-income members, sit on the boards of local programs [Cahn Thesis on Citizen Participation]. The programs would work with organizations helping the poor [CPI & NLSP]. Lawyers would represent clients in all areas of law, excluding criminal defense. And LSP programs would participate in reforming regulations, statutes, and administrative practices [MFY].

⁶⁰ Johnson, 34.

Connection to Poverty

How did legal services become part of the “War on Poverty”? The connection of legal services to the OEO began with Jean and Edgar Cahn.⁶¹ The Cahn Thesis and Edgar’s speech-writing ability allowed him to work with Shriver’s top aide Adam Yarmolinsky, and ultimately work as a key assistant to Shriver. When Shriver created a special task force to “assess the potential role that lawyers might play in the antipoverty effort,”⁶² the members consisted largely of the Cahns’ original creative group. The Cahns and others convincingly argued that legal aid was a vital part of the War on Poverty. The Thesis advised that “Wars require recruitment, mobilization, internal discipline, a careful assessment of objectives, and a comprehensive strategy for victory. The War on Poverty is no exception.”⁶³ Lawyers were ideal combatants for this war. They were well-equipped for all the intricacies of social organization. By working with lawyers, the poor felt empowered. “There is no self-demeaning implication,” the Cahns held, “or taint of helplessness and internal confusion in requesting the services of an attorney.”⁶⁴ Further argument concluded that due to the nature of the profession, lawyers did not have to be apologetic about class status. They did not have to be “one of them.” Lawyers were also in the business of suing for redress of grievances. They had the power to exact a response from reluctant public officials, welfare institutions, private service agencies, local businesses and more. Furthermore, the advocacy orientation of the profession allowed the lawyer to act independently of the pressures of the institution they worked for. Due to the “case-oriented” nature of legal aid, lawyers could also identify real problems. This was a

⁶¹ Drafts of Cahn’s thesis were circulated for comment which reaped a double benefit: many helpful suggestions and the formation of a creative group.

⁶² Johnson, 40.

⁶³ Johnson, 32.

⁶⁴ Edgar S. Cahn and Jean C. Cahn, “The War on Poverty: A Civilian Perspective,” *The Yale Law Journal* 73, no. 8 (July, 1964): 1334, 1335.

positive contradiction to organizations articulating the problems themselves. Last but not least, the poor needed legal help.

Many of the problems faced by slum dwellers are either legal in nature or have legal dimensions. Divorce, eviction, welfare frauds, coerced confessions, arrest, police brutality, narcotics convictions, installment buying—all involve legal problems, at least by the time a crisis arises. Further, nothing destroys the momentum of a militant community effort more than alleged technicalities of law or the alleged statutory inability of an official to redress a grievance.⁶⁵

In the end, the OEO and the powers that be, agreed that a concerted, comprehensive attack on the sources of poverty must include legal problems among the economic, educational and psychological problems of the poor.

The Movement and Poverty

The social reform movement consisting of the Ford Foundation-funded Neighborhood Lawyer Programs was a separate movement from the legal aid movement involving the hundreds of legal aid societies. Boards and Directors of legal aid societies felt no fault and shared little guilt in the existence of poverty, defining legal aid as an ameliorant rather than a cure. They were not insensitive, but they failed to make a direct connection between denial of justice and economic inequality. They were also leery of federal money and saw no connection with its services and the OEO's goal of eliminating poverty. At first, members of the ABA and NLADA, (associated with the legal aid movement) were unwilling to endorse the OEO Legal Services Program (OEO-LSP).

Lewis Powell, President of the ABA, foresaw that Great Society funding for legal aid would happen. In response, Powell, with help from Chairman William McCalpin and others,

⁶⁵ Ibid., 1335.

managed to secure an ABA resolution endorsing the OEO.⁶⁶ The endorsement seemed mutually beneficial. The ABA, through influential roles in policymaking, would meet its responsibility and become a leader in making legal services available to all who needed them, and the OEO would leverage the ABA's national "muscle" to help promote its own agenda. One must remember that, as Earl Johnson noted, at the time "the concept of prepackaged so-called 'National Emphasis' program [such as Headstart and Upward bound] was still unknown to the nascent war on poverty."⁶⁷

By 1964 there were two distinct legal assistance movements in the US. The 89-year-old legal aid movement consisted mostly of established middle-aged lawyers and was financed by charity at approximately \$4 million a year. The ideal driving this movement was equal access to justice. The other movement, financed by the Ford Foundation and federal funds, was only two years old. The younger lawyers who spearheaded this movement were more concerned with social reform. Their efforts in fighting poverty aligned with President Johnson's 1964 State of the Union Address that declared: "Our aim is not only to relieve the symptom of poverty, but to cure it and, above all, to prevent it." Within 18 months, with the ABA endorsement, the two movements became one crusade that led to a federal program of legal assistance to the poor, the OEO-LSP.

As part of the war on poverty, the two movements merged to become the Legal Services Program under the Community Action Program of the OEO. Thus, OEO-LSP was born from two separate movements with different missions. The new board of LSP would have to

⁶⁶ William McCalpin was the Chairman of the ABA Standing Committee on Lawyer Referral.

⁶⁷ Johnson, 54.

prioritize its goals: to provide equal access to justice and due process for low-income Americans, and seek social change through law reform.

Summary

As noted earlier, the landmark decision of *Gideon v. Wainwright* guaranteed the right to counsel, but only under “special circumstances,” cases involving felony charges. Civil and non-felony criminal matters were not included. Justice Tom Clark, who upheld the *Gideon* decision, concurred, “There is no reason to apply that protection in certain cases but not others.”⁶⁸ Born out of indignation, and throughout its progressive proliferation, legal aid from its earliest days provided the right to counsel for civil matters, but only as a matter of charity. In 1965, the Great Society uprooted that idea by providing federal funding for legal aid.

The OEO employed a comprehensive approach to combating poverty. Many legal services reformers saw an opportunity for the creation of a federal program for legal aid within this comprehensive structure; and by 1965, the Legal Services Program was launched with a dichotomous mission: to provide equal access to justice and fight in the “War on Poverty.” American statesman Elihu Root had long declared “it is the proper function of government to secure justice, in a broad sense that is the chief thing for which government is organized.”⁶⁹ 88 years after Der Deutsche Rechtsschutz Verein, the U.S. government formed the OEO-LSP and the nation finally took a step toward securing that justice.

Concerned about the federal government’s growth, many Republicans, especially conservatives have attacked the LSP—seeing the federally-funded program as a form of

⁶⁸ *Gideon v. Wainwright*, The Oyez Project at IIT Chicago-Kent College of Law. 09 December 2014. <http://www.oyez.org/cases/1960-1969/1962/1962_155>.

⁶⁹ Smith, Foreword by Elihu Root.

welfare—it was anathema to many voters and politicians. Thus the argument over the LSP was largely related to the idea of welfare and to the traditional view that legal aid should remain a private charity institution. LSP's tumultuous history is filled with conservative and occasionally liberal opposition, especially when LSP-funded programs engaged in law reform.

The Legal Services Program

It is one thing to rhapsodize about new, vague approaches at pleasant luncheon meetings. It is another to make tough choices and alienate powerful people in order to implement your rhetoric.

—Earl Johnson Jr., 1974

Introduction

The Legal Services Program of the Office of Economic Opportunity (OEO-LSP) was designed to provide equal justice for the poor and attack poverty through law reform. The idea of “law reform” was never fully accepted by the legal aid societies, the American Bar Association (ABA), the National Legal Aid Defenders Association (NLADA) or local bar associations across the nation. The deadlines imposed by the federal government to spend funds forced the OEO-LSP administration to offer grants without fully vetting their recipients. Thus government funds designed to attack poverty through holistic efforts were primarily used to fund the early legal aid societies and their primary mission of legal representation. The OEO-LSP enjoyed some early success in promoting law reform, but the controversy LSP-funded programs created, threatened the entire program. Law reform was the last straw for many conservative members of Congress who believed legal aid was a charity. It was one thing for the government to provide funds for equal justice for the poor, but quite another to attack the prevailing system on their behalf. It was particularly controversial when legal aid advocates questioned government authority or attacked businesses that supported political campaigns. Consequently, powerful opponents began working toward curtailing law reform and eliminating the OEO-LSP altogether. The OEO-LSP history foreshadowed the ongoing struggle the future Legal Services Corporation (LSC) would have by championing LSP's philosophy of reform. Since

its creation in 1974, LSC has become a product of compromise in Congress and a program of increasing regulations affecting the poor's access to justice.

This chapter covers the mission of the OEO-LSP and the funding of legal services programs across the nation. It describes how the OEO-LSP attempted to promote law reform, how it found independence, and how law reform ultimately created controversy and powerful opponents. Finally, the chapter addresses the end of the OEO-LSP and the decline of law reform—considered by many liberals the greatest weapon in the fight against poverty. After these events, Legal Services lawyers would never experience a more favorable environment to “dismantle the inequalities that kept the poor entrenched in poverty.”⁷⁰

OEO-LSP

On September 24, 1964 E. Clinton Bamberger Jr. became the first Legal Services Director.⁷¹ He soon chose Earl Johnson Jr. as his deputy. Johnson is a key figure in LSP history, because he later became the director and published his account of the OEO in his book *Justice and Reform*. According to Johnson, it was an exciting time. A great legal adventure was to take place as attention turned to the creation of a network of legal aid offices across the nation. Now that the OEO, NLADA, ABA and legal aid societies had finally agreed to work together, the task of translating goals into actual grants at the local level began. Johnson described the arduous task:

It absorbed scores of ABA officials and staff members and occupied the time of literally thousands of local bar leaders, community action workers, and poverty representatives

⁷⁰ Felice Batlan, *Women and Justice for the Poor: A History of Legal Aid, 1863-1945* (New York, New York: Cambridge University Press, 2015), 221.

⁷¹ Earl Johnson describes Bamberger, “Possessed of the credentials of an establishment lawyer, Bamberger was no tool of the establishment. He brought a fresh, open mind capable of embracing the reformers as well as the proponents of legal aid, the concepts of due process justice and social-economic reconstruction.”, (Johnson, *Justice and Reform*, 69).

during the months their local communities were forming Legal Services agencies. Each grant was the culmination of a difficult, often prolonged, political process. If the funds were given to an existing legal aid society, fundamental structural changes and reforms had to be negotiated. If not, an entirely new political entity had to be created. In either case, it took a political feat of some magnitude.⁷²

Along with the demanding task of identifying and creating new agencies, the LSP also battled with major policy decisions. Should law reform that attacks poverty be a priority, or should legal services lawyers focus mainly on individual client cases? The board evaluated the OEO initiatives of social rescue, economic development, community organization and law reform. In the end, LSP set five goals: provide individual representation to individual clients, advance community legal education, engage in law reform litigation, engage in legislative administrative advocacy to change the laws effecting poor people, and engage in community economic development. LSP chose law reform as one of its goals as part of its effort to end poverty.

The OEO focused on fighting poverty. But why did the existing legal aid programs, with their primary focus on access to justice, become OEO recipients? According to Johnson, Bamberger needed to create 75 local agencies by June 30, 1966, and “the most direct way was to engender enthusiasm...among the existing 242 legal aid societies... already organized...with boards, staffs, and clients.”⁷³ The plan to use existing programs worked. By April 1966 the OEO made 34 grants to Legal Services, totaling over \$6 million, and by end of fiscal year added another 70 grants totaling \$11 million. Funding for programs had increased from

⁷² Johnson, 82.

⁷³ Ibid., 74.

approximately \$5 million in 1965 to more than \$25 million for legal services.⁷⁴ Bamberger easily met his goal with 130 grants to communities for legal aid programs and another 25 to law schools, bar associations and other groups providing legal support and training. As grants increased and word of mouth spread, more communities began to look at the benefits of government funding: LSP readily added \$15 million to the budget, funding an additional 145 agencies. Within 18 months (January 1, 1966 to June 30, 1967) the OEO helped fund over 300 Legal Services organizations with an annual budget of \$42 million. As Johnson noted, “Every state except Alabama and North Dakota had at least one Legal Services Agency,” and there were more than 800 neighborhood law offices in 210 communities, with almost 2000 newly funded lawyers.⁷⁵

To fulfill its mission and create cohesiveness among grantees, the OEO also funded “back-up centers,” which kept local field programs abreast of new developments in regulations and funding, as well as national changes in such relevant legal topics as welfare, housing and juvenile law. According to NLADA, OEO funding helped create “a national information clearinghouse, a national training program, and specialized programs to work in areas [for] particular client populations such as Native Americans and the elderly.”⁷⁶

Unfortunately, as it turned out, LSP only had eighteen months to fund its programs. By 1967, due to President Johnson’s growing need to cater to the right wing for Vietnam War funding and the election of many conservatives to Congress in 1966, the OEO budget was slashed. Perhaps more unfortunate for LSP was the fact that less than a quarter of the legal aid

⁷⁴ Ibid., 94, 95.

⁷⁵ Ibid., 99.

⁷⁶ “History of Civil Legal Aid,” National Legal Aid & Defender Association, accessed January 13, 2015, http://www.nlada.org/About/About_HistoryCivil.

programs it funded actually pursued social change. According to surveys, “only 23 percent of the Legal Services boards supported the use of agency resources to achieve legal change.”⁷⁷

Earl Johnson felt LSP paid a price for its urgency—not all grantees were screened or fully vetted to meet the OEO’s philosophical orientation and antipoverty mission. It seemed likely that LSP would require law reform—it was politically feasible, had potential to make a large impact, and was the most relevant priority for legal expertise—but shaping programs into institutions that promoted social progress by attacking poverty through law reform would have to happen later, if at all.

The OEO infused much-needed money to expand legal services. In 1965, the year before any federal funding had begun, the combined total of legal aid societies expended approximately \$5.4 million and staffed roughly 400 full-time lawyers. By June 30, 1968, the annual operating expenditures of the OEO-LSP exceeded \$40 million and staffed over 2000 positions. In 1971, the OEO increased its contribution to over \$56 million. The increase in funds was significant for legal services: LSP-funded programs expanded their staff and widened their range of services provided. In 1965, counting all legal aid societies, NLADA reported 426,457 applicants needing assistance. By 1971 there were 1,237,725 applicants with an increased percentage in welfare related cases. With added funds, LSP also expanded the reach of legal services across the nation. By 1972, there were 2,660 staff attorneys manning over 850 offices in more than 200 communities, with only one of the 50 largest U.S. cities lacking a legal services program.

⁷⁷ Johnson, 102.

According to Johnson, “the tenfold expansion in the financial investment from 1965 to 1971, and the five-fold enlargement of the lawyer force did not result in a commensurate increase in the number of clients served.”⁷⁸ Programs needed a certain amount of funds for administrative costs and overhead; in addition, programs offered more quality type services involving law reform. Although the numbers were a large improvement, these added costs account for the disproportionate numbers, and highlight the fact that programs began to focus on quality rather than quantity. It became increasingly obvious that law reform was the touchstone of a quality program.

Promoting Reform

In March 1969 Harvard Law School held a Law and Poverty conference. With over 400 in attendance, including ABA officials and representatives from almost all legal services agencies across the country, keynote speaker Earl Johnson spoke about the value of law reform. He declared,

it has become apparent that the estimated \$400 million to \$600 million necessary to provide services to every indigent is not going to be available today or in the immediate future...I believe law reform is vital because it is the means by which we can provide more for the poor than in any other way with less expenditure of time and money.”⁷⁹

Rather than handle a multitude of cases with the same problem, law reform saved both time and money by implementing changes in laws that created the problem to begin with. Thus all client cases could be positively resolved with one change in the law. Programs engaging in class actions (representing a group of people), lobbying, research, and reform activities had the potential to exact change through: repeal or getting rid of laws, making changes to existing

⁷⁸ Johnson, 188.

⁷⁹ Ibid., 133.

laws, or creating new laws; as well as challenging the rules and regulations that have similar effects as laws. The OEO-LSP recognized that law reform was an effective means to enhance justice for the poor, and shortly after Johnson's speech, made it a top priority.

The fact that only 23 percent of the boards of legal services considered law reform an essential goal, made it difficult for LSP to achieve its mission. Many directors hired employees who aligned with their personal legal aid philosophy, be it liberal or conservative.⁸⁰ The conservative South, in particular, largely held to the belief that legal aid was a form of welfare that only expanded government's role and thus opposed it. Receiving only a small portion of LSP funding, the South had the greatest number of poor people, and the fewest legal aid lawyers, which was a setback for the war on poverty. Moreover, the OEO's stance on local initiative only exacerbated the problem. As mentioned, the OEO looked to expedite grant spending through legal aid societies of which the South had few. Conservative local bars and the legal profession in general had long resisted charitable funds for legal aid, and without their support, few Community Action Agencies qualified for grants. In hopes of circumventing the problem of local conservatism, the OEO funded *regional* legal services programs. Usually, somewhere within the entire state, a liberal element existed to promote the action. Unfortunately, the idea did not surface until fiscal year 1968, and by then funding for new programs were drying up, thanks to the Vietnam War and an increasingly conservative Congress and apathetic electorate. Ironically, when the money was available, applications in the South were not, and when the applications were available, the money was not.

⁸⁰ The philosophy of legal aid and type of help offered was a question of whether and how much one believed that those in need required assistance or whether they were personally responsible for their own needs. A more conservative director might accept federal funds, but be reluctant to use them to help the poor beyond providing due process. A liberal director might be more inclined to promote law reform.

LSP sometimes used the threat of less funding to encourage or coerce programs to comply with certain recommendations. LSP rewarded compliant agencies with increased budgets and punished non-compliant agencies with cuts. This seemed to do the trick. Johnson notes that LSP was extremely reluctant to terminate grants; after all, it was the poor who suffered when budgets were cut to programs. Poor services were better than no services.

Funding did not, however, guarantee a good agency. Staffing was often the difference between effective or weak programs. “Of all the decisions made by the director of the board of a local agency,” Johnson concedes, “none ranks in importance with the selection of the staff attorneys—the operating personnel who deliver the service to the customer.”⁸¹ In short, good attorneys equaled good programs; still, local programs found it notoriously difficult to recruit talented attorneys. Johnson argued that agencies “seldom sought out high caliber attorneys. Moreover, that kind of lawyer frequently would not accept employment with such an agency even if he were offered a position.”⁸² How then could the OEO-LSP upgrade the quality of Legal Services programs? The OEO, LSP, ABA, local bar associations and almost everyone responsible for CAAS and local legal aid programs opposed the idea of federal recruitment or federal control over the local hiring process. And, LSP lacked the authority to set hiring criteria. In response, Earl Johnson and LSP introduced national initiatives such as the Reginald Heber Smith Fellowship and the use of “back-up” centers to promote the reform philosophy and improve overall program quality. With the help of these back-up centers and “Reggie” recipients, the OEO took an activist stance. In the end, a 40% increase in average salaries and an activist image associated with the OEO helped entice the participation of top-tier attorneys.

⁸¹ Johnson, 178.

⁸² Ibid., 178.

The “Reggie”

The Reginald Heber Smith program funded law schools to establish one-year fellowships.⁸³ Nicknamed the “Reggie,” this program helped place the “best and brightest” students and lawyers into local legal aid programs. A prestigious award, the “Reggie” offered training in such obscure subjects as housing and welfare law, consumer protection and test case litigation. “Fellows were exposed not only to academicians but also practicing poverty lawyers, community organizers and ghetto [sic] residents.”⁸⁴ In 1967, 50 Fellows were assigned to 39 separate agencies as University employees.

The idea behind the “Reggie” was to attract the best lawyers and enable them to pursue the OEO’s goal to end poverty—at least on the legal aid front. The program circumvented the problems associated with local control. Former Executive Director of Nevada Legal Services and “Reggie” recipient Wayne Pressel began his career with Georgia Legal Services. According to Pressel, “the Reggie was a great idea because you could take these little legal aid societies, all over the place, and instantly give them a law reform component...and sort of step over the little legal aid society and local County Bar association-governed framework.”⁸⁵ “Reggie” recipients did not take on regular caseloads, but instead focused on work with a broad effect and impact on poverty. The program proved successful. According to Johnson, programs with Fellows were responsible for more law reform than all the agencies combined. One report found that 80 percent of LSP recipients believed the Reginald Heber Smith Program made a significant difference in the increase in law reform. Fellows also considered their work to be very

⁸³ The Fellows included top students from the University of Chicago, Harvard, University of Pennsylvania as well as some top Wall Street lawyers. The University of Pennsylvania offered the first fellowship.

⁸⁴ Johnson, 179.

⁸⁵ Interview with Wayne Pressel by Todd Ashmore, April 13, 2014.

satisfying, as is evidenced by 85 percent of interns who continued their work in legal services after their fellowship ended. 800 Fellows, including top-ranked attorneys and editors of law reviews, joined legal services between 1967 and 1972. In 1968 alone, seven legal services employees were editors of the *Stanford Law Review*. In essence, the “Reggie” increased the effectiveness of the antipoverty strategy by promoting reform and luring high caliber attorneys. Johnson considered it one of his most important achievements as director of the OEO legal services programs.⁸⁶

Back-up Centers

The so-called “back-up” centers played a key role in the process. These centers included such entities as: national training programs, an information clearinghouse, and casework specializing in areas of substantive law such as welfare and housing, and other subjects unavailable in law schools but vitally important for legal aid attorneys. Other programs focused on specific client populations such as Native Americans and the elderly. According to NLADA, “this unique national infrastructure of centers engaged in national litigation and legislative and administrative representation of eligible clients, while providing support, assistance, and training to local programs.”⁸⁷ These national agencies also worked on legislative reform. Outside of local boards, the agencies used test cases to advocate reform and, based on the prototype of Edward Sparer’s Center for Social Welfare Policy at Columbia, magnified the LSP’s social impact. In addition, these centers initiated lawsuits and pushed legislative proposals in communities with agencies adverse to law reform and provided the time and manpower for

⁸⁶ Diane Curtis, “Judicial Giant Honored as Architect of Legal Services,” *California Bar Journal* (February, 2004), <http://archive.calbar.ca.gov/Archive.aspx?articleId=54803&categoryId=54503&month=2&year=2004>.

⁸⁷ “History of Civil Legal Aid,” National Legal Aid & Defender Association, accessed January 27, 2015, http://www.nlada.org/About/About_HistoryCivil.

agencies bogged down by caseloads, while also providing specific training and research materials. In short, they shared their expertise. Backup centers also promoted a sense of unity among programs. Attorneys felt as if they were part of a national program rather than just someone from a local agency.⁸⁸

As a result of the Regional programs, the “Reggie” program, and back-up centers, LSP elevated the quality of local programs and services which awarded it more of a national presence. Bamberger and LSP’s success in securing funds for programs across the nation and establishing quality programs was not only a local fight, but an administrative one, too. Ultimately, to safeguard its mission the LSP, under the aegis of the OEO, had to fight for independence and control over its own funding.

Fight for Independence

From 1964 to 1969, three major departments—VISTA, Job Corps and CAP—administered OEO activities. VISTA, or Volunteers in Service to America, the nation’s “domestic peace corps,” used 3 to 5 percent of the OEO budget. Job Corps, which offered residential retraining and employment programs (based on the Civilian Conservation Corps) accounted for 25 percent of the agency’s budget, and CAP, the largest program of all, acquired almost 70 percent of the remaining money. CAP, which funded the community-based programs, was also responsible for LSP.

As mentioned, Bamberger and LSP successfully recruited existing legal aid programs to meet and exceed the former’s expenditure deadlines. Not as successful, CAP found it difficult to find and fund CAAs. Its “local initiative” plan was failing, and local CAP programs or CAA’s

⁸⁸ Johnson, 176, 177.

found it difficult to provide solutions to significantly reduce poverty. Under political pressure to spend the year's appropriations, the OEO and Sargent Shriver devised pre-packaged components that local CAA's could "buy" such as Headstart and Upward Bound. Pre-packaged or "National emphasis" programs proved more successful than the "local initiative," as CAA applications suddenly increased. By the end of fiscal year 1964, CAP spent 20 percent of its budget on Headstart.

Increased spending on CAP programs led to a sort of antagonism with LSP over its expenditures. CAP, which was responsible for the LSP, also managed LSP's funding. In fact, from the beginning LSP fought with CAP over money and autonomy. LSP's fight for independence was arduous.⁸⁹ According to Johnson's account, CAP Director Ted Berry exacerbated problems by attempting to unilaterally lower the amount of grant money available to LSP from \$20 million to \$15 million. It seemed to many observers that CAP was deliberately thwarting LSP growth. CAP wanted to contain LSP, and LSP wanted independence from CAP and administrative autonomy. The fight continued until 1969 when Donald Rumsfeld, the first Republican OEO director, abolished the CAP administration and elevated LSP's status. While President Nixon dismantled the OEO, LSP gained temporary independence, reporting directly to Rumsfeld. Nixon affirmed his decision, declaring that the office "will take on central responsibility for programs which help provide advocates for the poor in dealing with social institutions...This goal will be better served by a separate Legal Services Program."⁹⁰

⁸⁹ At one point, LSP was given its own board and promised more autonomy, but in November [1965] at the annual NAC meeting, Bamberger, it seems was forced to compromise with Shriver and CAP. LSP would remain part of CAP. The Director of LSP would report to the Director of CAP, and regional directors would report to regional CAP managers. To complicate matters, both directors would jointly select legal services representatives. This resulted in bureaucratic obstacles that stalled the application process for new legal aid programs.

⁹⁰ Johnson, 162.

Independence for legal services, with independent boards, was crucial. Early Neighborhood Lawyer programs such as CPI found out the hard way. Law professor Soia Mentschikoff argued that representation of an interest or client

may involve warfare with medical services, the educational services, the entire political structure of the city which is involved, and with every social service agency in the city...legal services cannot, should not and must not rest on an integration of general community programs.⁹¹

The elimination of the CAP administration defused some of LSP's internal challenges, but LSP by its very nature created powerful enemies by the type of work it was designed to undertake. The legal aid attorneys, in their quest for law reform not only challenged government at all levels but also large corporations and businesses that contributed to political campaigns. By attacking the very institutions that funded powerful individuals, they created powerful opponents. Each successful attack contributed to growing efforts in Congress to curtail LSP's so-called "hand-biting" activities.

Opponents of LSP

In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law; seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue, or defense.
--Canon 7, ABA Code of Professional Responsibility

LSP programs helped change the legal circumstances of low-income Americans. Thanks to legal representation, clients improved their lives by securing a range of benefits from income support, employment, and housing, to better working and living environments. Over time, legal

⁹¹ Ibid., 143.

aid programs created political enemies in the process.⁹² This was a real threat. Political opponents, including members of Congress, wielded influence over members of the Congressional oversight committees, who in turn held the power to end legal services in America.⁹³ Political interference exposed the vulnerability of local programs. Such was the case when California Rural Legal Assistance (CRLA) brought suit against Governor Ronald Reagan and successfully blocked his attempts to cut welfare programs. In response, Reagan vetoed a \$1.8 million refunding grant to CRLA.

Reagan's veto was based on a report by Lewis K. Uhler, whom the governor had appointed director of California's OEO. Uhler's report, *A Study and Evaluation of California Rural Legal Assistance*, listed 127 allegations of misconduct including inciting riots, the misuse of OEO funds, and an attorney brazenly walking barefoot into court. Some Democrats considered Uhler's appointment and report to be politically motivated, a result of earlier tension between Reagan and CRLA. In 1967, CRLA successfully blocked his attempts to cut California's welfare programs, but Reagan's veto highlighted the vulnerability of Legal Services programs to political attacks. A Republican-backed amendment to the Economic Opportunity Act (42 U.S.C. § 2834) in 1970, awarded governors veto power over state OEO expenditures. Once vetoed, only the Director of OEO could override the action. In response to Reagan's veto, CRLA and supporters launched a campaign to save the program. After an all-out effort by CRLA and others to overturn the veto, the OEO commission ultimately absolved CRLA of any

⁹² As an example, in 1970, as an OEO recipient at the time, Clark County Legal Services represented welfare recipient Ruby Duncan and the Clark County Welfare Rights Organization. As chronicled by Annelise Orleck in *Storming Caesars Palace*, the CCWRO mounted a number of public protests. (See Chapter four).

⁹³ The Senate committee on Health, Education, Labor and Pensions, and the House of Representatives Judiciary Subcommittee on Court, Commercial and Administrative Law provide congressional oversight of LSC.

misconduct.⁹⁴ But an important lesson was learned—publically funded legal services programs were vulnerable to political interference. According to NLADA, “The CRLA controversy, along with similar fights in other states, made it increasingly clear that political interference would continue so long as the program remained within the Executive Branch.”⁹⁵

Influential opponents, such as Vice President Spiro Agnew and Howard Phillips, also spoke out against legal services. Agnew grew incensed with legal services after the *Camden Coalition v. Nardi* case, in which OEO-funded Camden Regional Legal Services (CRLS) secured a preliminary injunction against the city of Camden, New Jersey. CRLS proved that the city had violated federal law by failing to provide low-income replacement housing for displaced tenants after their apartments were destroyed. According to Jerome Falk, Agnew’s allegations “might have been lifted bodily from the now infamous Uhler report.”⁹⁶ Agnew claimed that legal services officials involved themselves with social issues unrelated to ending poverty such as women’s rights, anti-war protests, free-speech movements and prisoners. Agnew also accused these programs of allocating resources for these causes at the expense of the poor. Indeed, he charged these “ideological vigilantes” with turning away clients with more urgent concerns such as eviction notices. Agnew asked OEO-LSP director Fred Speaker to investigate. After the investigation, including an on-site visit, review of court documents, and interviews from both

⁹⁴ Jerome Falk Jr. and Stuart Pollak, “Political Interference with Publicly Funded Lawyers: The CRLA Controversy and the Future of Legal Services.” *Hastings Law Journal* 24 (1972-1973): 599,600. According to Falk and Pollak, “the governor’s decision triggered an extraordinary battle to overturn the veto... the controversy was pursued not only in unique hearings before the commission, but quietly in the upper echelons of Washington, raucously in the press, and ultimately in the courts.” In the end, the commission found no fault, and Reagan was persuaded to withdraw his veto.

⁹⁵ “History of Civil Legal Aid,” National Legal Aid & Defender Association, accessed December 3, 2014, http://www.nlada.org/About/About_HistoryCivil.

⁹⁶ Jerome Falk Jr. and Stuart Pollak, “What’s Wrong with Attacks on the Legal Services Program,” *ABA Journal* 58, no. 12 (December, 1972): 1287.

sides, Speaker submitted his report exonerating the Camden Legal Services lawyers. In his report Speaker emphasized that “It is essential to remember we are lawyers in an adversary system with judges the final authority”⁹⁷

In 1973, a Baltimore grand jury found evidence of bribery and extortion involving Agnew while Baltimore County executive, Governor of Maryland and Vice President. Agnew dodged indictment by pleading no contest to one count of tax evasion.⁹⁸ Agnew resigned on October 10, 1973, only ten months before Nixon, but not before his spirited crusade intimidated local legal services program officials and led to Fred Speaker’s resignation.⁹⁹ “For many,” said Earl Johnson, “Fred Speaker was seen as a casualty of the vice president’s war against legal services lawyers and their challenges to government policies detrimental to the clients they served.”¹⁰⁰ The following year, the Maryland Court of Appeals disbarred Agnew, characterizing his actions as “morally obtuse.”

Conservative columnist for *Human Events* Howard Phillips targeted OEO-LSP. Johnson credits Phillips with “stirring up” much of the opposition, especially from the far right community, to the program. In 1971 Phillips became the Assistant Director for Program Review at the OEO. After Nixon vetoed the bipartisan Mondale-Steiger bill, an attempt to remove Legal Services from the Executive Branch of government, Phillips proposed a “revenue-sharing”

⁹⁷ Earl Johnson Jr., *To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States* (Santa Barbara, California: Praeger, 2014), 372.

⁹⁸ George Hodak, “Spiro Agnew Disbarred,” *ABA Journal* 95, no. 5 (May, 2009): 72.

⁹⁹ Speaker recommended the federal government no longer pursue the Camden matter. Agnew refused to accept Speaker’s proposal; in fact, he seemed reenergized to fight LSP. Agnew’s campaign against LSP involved investigations by the Office of Management and Budget, a speech at the National Governor’s conference, and a public TV appearance on NBC’s *Today* show. According to Johnson, Agnew moved farther to the political right of the Nixon administration. He no longer wanted LSP or a future LSC. Eventually, due to disagreement and increased tension, Speaker resigned his position as OEO-LSP Director.

¹⁰⁰ Johnson, 373.

program. In an effort to appease the conservative wing of the Republican Party, the Nixon administration considered the plan, but ultimately dropped it, opting instead to modify the initial committee bill.¹⁰¹ Two years later, skirting Senate approval, Nixon appointed Phillips as Acting Director of the OEO.

In 1973, at the beginning of his second term, Nixon announced that the OEO would be disbanded within a year. LSP's future suddenly became uncertain. With Phillips' background and his polemical stance against OEO-LSP, Nixon knew the Senate would not approve of Phillips' far right conservative politics. He appointed him anyway. Phillips adopted a hard-line approach by immediately abolishing the OEO-LSP Notational Advisory Committee, issuing an edict ending law reform, and moving legal services programs and some support centers from annual to 30-day funding.¹⁰² From month to month, program officials worried about their existence. Constrained by concerns over funding, programs stopped accepting new cases. Ultimately two lawsuits brought an end to Phillips' attacks on LSP. In a consolidated case, *American Federation of Government Employees v. Howard Phillips, et al.* (1973), Judge William B. Jones found in favor of the OEO employees. The court ruled that Nixon's failure to include OEO funding in the 1974 budget did not give Phillips the authority to cut or refuse funding to grantees. In effect, the court held that Congress, not the executive branch, appropriates funds,

¹⁰¹ The revenue-sharing plan involved giving federal funds to state governments for the purpose of providing legal aid to the poor. States would be left to decide what type of aid, if any, they would provide. However, within this plan, conservative states could create their own types of regulated programs. For example, if a Southern state created a program that denied racial discrimination claims, it could still receive funding.

¹⁰² Created by Shriver, the National Advisory Committee (NAC) provided policy advice to OEO staff. Many bar associations took their appeals to the ABA. The ABA's Legal Aid committee, some of whose members sat on the NAC to the LSP, received a majority of the complaints. The NAC often preferred to focus on policy rather than individual grant applications.

so the presidential budget request did not take precedence over appropriations.¹⁰³ In *Williams v. Phillips* (1973), District Judge William B. Jones declared Nixon's appointment of Phillips illegal. Together, both cases invalidated everything Phillips had done, but not before he fired director Terry Lezner, director and 1969 "Reggie" fellow Ted Tetzlaff and deputy director Frank Jones; and not before he installed a group of conservative allies into key positions within the OEO, which proved disastrous for many grantees.¹⁰⁴

Following Reagan's veto, Agnew's investigations, Nixon's determination to dismantle OEO, and Howard Phillips' purge, it was clear to many supporters that legal services needed to be insulated from further attacks. The ABA House of Delegates and the National Legal Aid Defenders Association both passed resolutions calling for an independent legal services program.

Evaluation

What did the OEO-LSP accomplish in its short life? "If judged by the ambitions of some of its more brilliant and optimistic pioneers, such as Edward Sparer," Johnson argues, "the lawyers OEO funded had largely failed."¹⁰⁵ Millions lived in poverty in 1974, just as millions did in 1965. Where was the widespread reform of the welfare system? Where was the constitutional right to the necessities of life? Johnson maintains that OEO-LSP funded lawyers

¹⁰³ Nixon issued line-item vetoes which impounded money designated by Congress for certain programs. Nixon's tactic delayed or impounded funds to programs he did not agree with. Later, in *Train v City of New York*, the Supreme Court declared that Nixon could not "frustrate the will of Congress" by impounding appropriations meant for specific programs. In 1974, Title II of the Congressional Budget and Impoundment Control Act (P.L. 93-344), created the Congressional Budget Office, taking more congressional control of the budget from the President and the Office of Management and Budget (OMB).

¹⁰⁴ Phillips chose consultants who purposely delayed approving refunding grants. Without money, grantees could not pay their staff, make rental payments, or fully operate. Employees resigned, and many programs stopped taking new clients out of fear the program might end.

¹⁰⁵ Johnson, 432.

brought justice to millions of poor people. Poverty may not have been ended, but lawyers helped reduce the poverty income gap and mitigated the degree and consequences of poverty.

As he explained,

Lawyers won victories that put money in the pockets of individual poor people and occasionally entire classes...they saved clients from losing their apartments or forced landlords to make repairs...they removed barriers to economic advancement such as racial discrimination.¹⁰⁶

Legal services attorneys won landmark cases such as *Shapiro v. Thompson* (1969), *King v. Smith* (1968), and *Goldberg v. Kelly* (1970) that not only increased eligibility and rolls for public assistance, but also helped secure dignity for their clients as well. The *Shapiro* case involved nineteen-year-old Vivian Thompson, an expecting mother, who had recently moved from Massachusetts to find that she did not meet Connecticut's one-year residency requirement; as a result, Welfare Commissioner Bernard Shapiro denied her application for aid. Officials argued that needy citizens moved to this state to obtain better benefits, and without a one-year residency the State was unequipped to budget properly for welfare expenses. The U.S. Supreme Court found in favor of Thompson, ruling that by denying aid based on residency states unfairly restricted welfare recipients of their fundamental right to freedom to travel.¹⁰⁷

The welfare system in the 1960s wielded control over recipients by the threat of denying benefits. Oftentimes, rules were placed on recipients in an effort to control moral behavior. In 1967, state, city, and county welfare departments held the power to remove

¹⁰⁶ Ibid., 433.

¹⁰⁷ The *Thompson* case was decided together with *Washington v. Legrant* and *Reynolds v. Smith*, which also denied benefits to those who did not meet the residency requirements in the District of Columbia and Pennsylvania respectively.

children from mothers with “multiple instances of illegitimacy.”¹⁰⁸ The Aid to Families with Dependent Children (AFDC) program also endorsed the “man in the house” regulation, which denied benefits to mothers who cohabitated, either inside or outside their homes, with “able-bodied” men, aka “substitute fathers.” Caseworkers dropped by unannounced and rifled through closets and drawers looking for signs of a man in the house. This action not only denied the mother of the child privacy and discretion over her personal life, but often split up homes with unemployed fathers. For example, the State of Alabama denied Mrs. Sylvester Smith and her four children aid, based on her sexual relations with Mr. Williams. Williams, who visited Smith on the weekends, was not the father of any of her children and did not support them. In the case of *King v. Smith*, the U.S. Supreme Court held that Alabama did not meet its obligation to furnish aid. Moreover, Alabama’s “substitute father” regulation, which was designed to discourage illegitimacy and sexual impropriety, had no relation to the need of a child. A “substitute father” such as Williams was not a parent with a state-imposed duty of support.¹⁰⁹ The Court’s decision set a precedent giving AFDC mothers a semblance of dignity to have sexual relations without fear of losing their welfare benefits.

In 1967 John Kelly, on behalf of welfare recipients in New York, challenged AFDC’s procedure for notice and termination of benefits, which offered no official notice and did not allow recipients any opportunity to plead their case before scheduled terminations. In the case of *Goldberg v. Kelly* (1970), the U.S. Supreme Court held that welfare benefits are statutory entitlements; as such, recipients had a right to due process. The decision required hearings for

¹⁰⁸ Annelise Orleck, *Storming Caesar’s Palace: How Black Mothers Fought their Own War on Poverty* (Boston: Beacon Press, 2005), 96.

¹⁰⁹ *King v. Smith*, 392 U.S. 309 (1968).

welfare recipients to present evidence, question adverse parties, and argue their case with or without counsel before being removed from the rolls.¹¹⁰

Legal services lawyers also made accessible additional money and benefits for the poor. Despite county opposition, lawyers in twenty-six states sued to secure federal food aid such as the Commodity Distribution and Food Stamp programs, to feed hungry welfare claimants. In 1971 Ed Polk from the Dallas Legal Services Foundation and Ronald Pollack from the Center on Social Welfare Policy at Law in New York, brought action against Nixon's Secretary of Agriculture to implement one of the two federal food programs in the state of Texas. In the case of *Jay v. Department of Agriculture* (1971), the Fifth Circuit Court of Appeals required 108 reluctant Texas counties to join the food programs. In time, one county after another relented. "This campaign alone," noted Johnson, "yielded a dividend of several hundred million dollars in food benefits to millions of the poor."¹¹¹ Between 1967 and 1971, over 8 million people were added to the food stamp rolls and the associated budget increased from \$296 million to \$2.7 billion.¹¹² According to Johnson, "legal services lawsuits sought to force local governments to enlarge their school lunch programs for low-income children."¹¹³ These lawsuits also prodded Congress to enact the National School Lunch Program in 1970. Too often in states like Texas and Alabama, whose economies profited mightily from the cheap labor provided by a large population of African American and other minority workers as well as poor whites, the ruling white majority at the state and county levels tried to penny-pinch the poor on food, with the courts having to intervene. Indeed, poor Americans in all parts of the nation, but especially in

¹¹⁰ *Goldberg v. Kelly*, 397 U.S. 254 (1970).

¹¹¹ Johnson, 434.

¹¹² *Statistical Abstract of the United States*, 1972, 87, Table 133.

¹¹³ Johnson, 434.

the South and Southwest, needed welfare advocates to help them periodically to combat conservative officials in states that routinely exploited cheap labor while skimping on programs that helped supplement their meager incomes.

The Western Center on Law and Poverty, on behalf of not only John Serrano, the parent of a Los Angeles Public School student, but all California public-school pupils, brought a class action suit against the California State Treasurer, Ivy Priest, challenging the Golden State's method of funding its public schools. The distribution of funding showed large disparities between districts. In the wealthiest district, the funding per pupil averaged \$2,586, compared to the poorest district at only \$407.¹¹⁴ Adding to the problem, California raised property taxes in individual districts to meet a minimum level of educational funding for their respective schools. This meant that property owners in poorer districts could be taxed at higher rates than those in more affluent districts. In *Serrano v. Priest* (1971), the Superior Court of Los Angeles held that California's public-school funding based on local district taxes from real property and state aid, which led to inequalities in educational expenditures, violated the equal protection clause of the Fourteenth Amendment. The court also found no compelling interest to bind a pupil's education to property values. The Serrano decision helped ameliorate the problem of unequal school funding for students in poor neighborhoods. California thus injected outside money to help subsidize its impoverished communities.¹¹⁵

Legal aid attorneys continued making important strides by winning cases that enforced minimum wages and hours for women and children agricultural workers, *Rivera v. Division of*

¹¹⁴ Ibid, 434.

¹¹⁵ A Federal District Court judge in Texas also affirmed the unconstitutionality of district funding based on property taxes; unfortunately on appeal, the appellees in the US Supreme Court Case of *San Antonio Independent School District* (1973) failed to convince the court that education was a constitutional right under the Fourteenth Amendment. Serrano II, as it was known, reversed the lower court's decision.

Industrial Welfare (1968), eliminated illegal lending practices, *Clermont v. Secured Investment Corp.* (1972), increased consumer protections in contracts, *Jefferson Credit Corp v. Marcano* (1969), and prevented price gouging, *Jones v. Star Credit* (1969). In *Sniadach v. Family Finance Corp* (1968) and *Fuentes v. Shevin* (1972), the US Supreme Court outlawed wage garnishments and repossessions until debtors received hearings.

Through these actions legal services lawyers helped to reduce the poverty income gap, the amount of money to raise millions of lower income Americans up to and over the poverty line. In 1964, when the War on Poverty began, the gap amounted to \$15.6 billion; six years later it narrowed to \$10 billion.¹¹⁶ According to a Congressional Budget Office report, during the 1965-1975 periods, poverty declined by sixty percent.¹¹⁷

Legal services lawyers also opened up more opportunities for minorities. By LSP's practical launch in 1965, *Brown v. Board of Education* was over a decade old. The Civil Rights Act of 1964 had been passed and under Title XII the U.S. Equal Employment Opportunity Commission, designed to eliminate employment discrimination, was enacted. By September President Johnson signed Executive Order 11246 requiring government contractors to establish non-discriminatory practices in hiring. Given the history of race/color and sex-based discrimination in the U.S., Johnson's administration pushed affirmative action to promote better job opportunities for minority groups and women. "In many respects, equal opportunity was a joke for millions of those living in the United States," declared Earl Johnson, "as were their chances of

¹¹⁶ U.S. Department of Commerce, *Statistical Abstract of the United States* (87 Table 133), 1972.

¹¹⁷ Johnson, 435.

getting a decent job and scaling the economic ladder.”¹¹⁸ Nevertheless, lawsuits were integral in supporting affirmative action by suing for enforcement of civil rights and eliminating job discrimination barriers. In one case, Herbert Nowlin from the Legal Aid Association of Ventura County and Joel Edelman from the Western Center on Law and Poverty on behalf of Latino and black elementary school students successfully brought a class action suit against the Oxnard School District’s policy of racial segregation, *Soria v. Oxnard School District*, (1974). The court ordered California school boards to correct the racial imbalance. When intelligent Spanish-speaking students were placed in remedial courses, lawyers challenged English IQ placement tests in local schools. Even before *Diana v. California State Board of Education* (1970) made it to court, the State Board of Education responded by implementing a system that allowed students to take the test in a language of their choice. California Rural Legal Assistance successfully struck down English literacy tests used in voting; in doing so, thousands of Spanish speaking citizens gained suffrage, *Castro v. State of California*, (1970). Then in 1972, a San Diego Federal Court judge ordered Imperial Irrigation to implement affirmative action, *NAACP, et al. v. Imperial Irrigation District*, (1972).

From 1959 to 1971, legal assistance for America’s poor increased ten-fold. LSP helped finance 250 local legal services programs employing more than 2,600 attorneys and instituted an “impact work” philosophy that transcended the routine processing of individual client claims. LSP recorded a 17 percent litigation record. “During its nine-year tenure, 1965 through 1974” says Lawrence, “LSP attorneys brought 164 cases to the Supreme Court on behalf of the

¹¹⁸ *Ibid.*, 435, 436.

poor, 119 of which were accepted for review.”¹¹⁹ Lawrence’s study of LSP’s Supreme Court cases reveals that 74 percent of cases involved challenges to state or local laws where state or local governments were the opposing party. “In 84 percent of cases, in which the LSP was the respondent, state governments were challenging the Program’s lower court victories.”¹²⁰ By having an LSP attorney to file an appeal in lower courts, opposing parties gained better access to the U.S. Supreme Court. Before LSP, only one appellate case, *Heydenreich v. Lyons*, challenged residency requirements. “By the time *Shapiro* got to the Supreme Court,” reports Lawrence, “cases challenging residency requirements had been filed in 15 or 20 jurisdictions.”¹²¹ In the end, LSP won 62 per cent of its Supreme Court cases.

According to Johnson, these victories were only part of the story. For every Supreme Court case there were scores of lesser appellate cases. And for every federal or state appellate court case there were hundreds of cases in trial courts. OEO-funded legal service lawyers won approximately 60 percent of their lesser appellate cases and over 70 percent of their trial cases. In addition to success in the courts, these lawyers “persuaded local governments and administrative agencies to adopt policies favorable to the poor, educating poor people about their legal rights and responsibilities, and even teaching them how to represent themselves.”¹²²

NLADA statics show that in 1971 approximately 2,500 lawyers served 1.2 million clients annually.¹²³ A majority of casework involved family law (36.6 percent) followed by economic (15.9 percent) and housing (14.4 percent) issues, with 11.2 percent of cases dealing with

¹¹⁹ Susan E. Lawrence, “Legal Services before the Supreme Court,” *Judicature* 72, no. 5 (February, 1989): 267.

¹²⁰ Susan Lawrence, 269.

¹²¹ *Ibid*, 269.

¹²² Johnson, 439.

¹²³ See Appendix.

welfare and social security.¹²⁴ Based on these numbers, during its seven-year existence LSP served over seven million clients in matters not unlike the early charitably-funded legal aid programs. In addition to the seven million, a million to three million clients benefitted from reform via class actions and court victories.

If viewed as an interest group seeking widespread welfare reform, LSP fell short of success. However, if one measures quality by defense of a client, legal services did well. OEO-funded legal services programs litigated 11 percent more of their cases than programs prior to OEO.¹²⁵ Evidence of the result is in the drop from 54 percent to 42 percent of legal aid clients receiving only advice. There had not been a single case that made it to the U.S. Supreme Court during the 89-year history of the legal aid movement from 1876 to 1965. In contrast, from 1967 to 1972, 217 cases involving the rights of the poor were decided, with 73 wins. Of course, in the 1960s and '70s America was more sympathetic to the plight of the poor, a condition that LSP lawyers fully exploited. Lawrence reasoned that "If LSP is viewed as a mechanism by which a new class of litigants was able to place its civil claims before the Supreme Court and influence the policy decisions emanating from that institution, LSP can be characterized as a success."¹²⁶

According to a report by a consulting firm in 1971, "Both the quantity and quality of the individual services rendered by Legal Services projects far exceeded that generally offered by

¹²⁴ Family law cases involved divorce, child custody, guardianship and support. Economic cases involved consumer, employment, and working conditions issues. Housing cases involved eviction defense, and housing code enforcement. Cases in administrative law dealt with welfare and social security issues. The remainder of cases (approximately 21 percent), was categorized as "other." Earl Johnson Jr., *To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States* (Santa Barbara, California: Praeger, 2014), 439.

¹²⁵ In 1959, legal aid societies litigated 6 percent of their cases. In 1971, Legal Services managed 17 percent.

¹²⁶ Susan Lawrence, 272.

their predecessors...and in most instances at least equals that provided by private attorneys to paying clients.”¹²⁷

It is difficult to measure the full impact the OEO-LSP funded lawyers had. Cases such as *Shapiro v. Thompson*, *King v. Smith*, *Goldberg v. Kelly*, *Jay v. Department of Agriculture*, *Serrano v. Priest*, and others like *Castro v. State of California*, and *Rivera v. Division of Industrial Welfare* greatly improved the daily lives of millions of poor people. With the creation of LSP, the nation made a commitment to providing the impoverished with access to civil courts. With the formal adoption of law reform as a program priority in 1969, LSP, in its brief history, provided counsel and spurred appellate challenges. When met with problems related to reluctant or resource-limited programs unfocused on law reform, LSP worked to provide solutions such as “Reggies,” back-up centers and clearinghouses. LSP faced a challenge in seeking reform in a hostile environment full of obstacles that included opposition from grantees themselves, since not all legal services attorneys supported reform. In fact, according to Susan E. Lawrence, “broader support for the Program rested on normative beliefs of equal access to justice.”¹²⁸

Nevertheless, according to Lawrence, “LSP reduced the poor’s *de facto* exclusion from the judicial process which culminates in the U.S. Supreme Court.”¹²⁹

The OEO-LSP tasked itself with overcoming the inherited deficiencies of early legal aid societies such as underfunding, unrealistic caseloads, untrained attorneys and the questionable professional independence of volunteers. But even with ten times the money, five times the staff, and triple the caseload, it still fell short of serving all the poor. A study by Gresham Sykes

¹²⁷ Earl Johnson Jr., *Justice and Reform: The Formative Years of the OEO Legal Services Program* (New York: Russell Sage Foundation, 1974), 189-190.

¹²⁸ Susan Lawrence, 272.

¹²⁹ *Ibid.*, 267, 268.

in 1969, revealed that 6 to 10 million poor a year needed help, far more than the million being served.¹³⁰ The financial truth is that even with dramatic improvement in talent and greater program impact, legal services attorneys could not handle 38 million people. Without additional funds, one lawyer would have had to represent 15,000 people annually, an impossible task. What lawyers did accomplish, however, was an incredible amount of legal reform and social welfare in a relatively short time. Lawyers were harassed, threatened, and even terminated for their success. In the end and in the name of the poor, they created enemies bent on ridding the government of OEO-LSP. "I was proud of the young lawyers who turned down fat, corporate practices to work for the poor," Sargent Shriver declared, "and proudest of them when they dared to challenge state and federal procedures and win."¹³¹ The Office of Economic Opportunity was abolished in 1981 in the early days of President Reagan's presidential administration.

The End of LSP

According to NLADA, "The CRLA controversy, along with similar fights in other states, made it increasingly clear that political interference would continue so long as the program remained within the Executive Branch."¹³² Recognizing a short life-span and possible future demise of the OEO, the ABA, NLADA and others such as the Cahns began looking for a new home for LSP as early as 1970. But where could LSP go?

¹³⁰ Gresham M. Sykes, "Legal Needs of the Poor in the City of Denver," *Law & Society Review* 4, no. 2 (1969): 255, 262-264.

¹³¹ Earl Johnson, Jr., *To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States*, (Santa Barbara, CA: Praeger, 2014), 431.

¹³² "History of Civil Legal Aid," National Legal Aid & Defender Association, accessed December 3, 2014, http://www.nlada.org/About/About_HistoryCivil.

In 1969 President Nixon and his new administration created a six-member Advisory Council on Executive Organization, nicknamed the “Ash Council,” which worked to reorganize a number of organizations, including OEO. By 1973, Nixon’s administration dismantled and transferred all but three OEO programs: legal services, economic development and community action. Transfer of these programs required an act of Congress.

According to Johnson, “Legal services supporters, and presumably the Nixon administration itself, wanted to divorce the program and its lawyers from the executive branch of government.”¹³³ ABA committee lawyers such as William Klaus and John Douglas recommended an independent organization resembling the Public Broadcasting System (PBS), called the Legal Services Corporation.¹³⁴ The NLADA recommended that the Justice Department house legal services. Edgar and Jean Cahn suggested first the federal judiciary, and then an independent entity. In the end, the Ash Council approved the Cahns’ second choice, an independent entity. The council’s choice for an independent, non-profit corporation also placed Nixon and the ABA in agreement.

In 1974, the administration’s budget contained no funds for OEO. The three programs that remained received \$185 million for community action, \$71.5 million for legal services, and \$39.3 million for economic development.¹³⁵ In 1974, with the Economic Opportunity amendments, Congress disbanded, but did not completely abolish, the OEO and created the Community Services Administration (CSA) to handle the remaining programs. Most OEO programs and their employees moved to existing old-line agencies.

¹³³ Johnson, 359.

¹³⁴ Klaus was the chair of the ABA Individual Rights and Responsibilities (“IR&R”) Section’s legal services committee. Douglas headed the The ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID).

¹³⁵ “Complete Dismantling of OEO Halted in 1973,” *Congressional Quarterly Almanac* 29, (1973): 585-86. <http://library.cqpress.com/cqalmanac/cqal73-1227214>.

On May 11, 1974, after two attempts at earlier legislation including a presidential veto of the Mondale-Steiger bill in 1971 and a conference committee withdrawal in 1972, Nixon proposed a second Legal Services bill. Ominously, the Senate Select Committee began its Watergate hearings six days later. On July 27, 1974, Nixon signed the LSC Act creating the Legal Services Corporation (LSC). On the historic evening of August 8, Nixon told Americans in a national television address, "I shall resign the presidency effective noon tomorrow."¹³⁶ LSC was the last act he signed as President.

End of Reform

Opponents of LSP had gained some ground in the political battle over federal funds. LSC's pyrrhic victory toward independence came at a cost to the poor. Legal services eliminated the controversial initiatives of the OEO from the statute.¹³⁷ Thus began LSC's departure from the "War on Poverty," and the waning of a comprehensive approach to ending poverty. Earl Johnson noted that "It was the last time lawyers representing the poor would have such a favorable climate for leveling the legal landscape through the courts and in the country's legislatures."¹³⁸ The U.S. Supreme Court majority that favored such a liberal climate changed. Johnson contends that appeals won in the late 1960s through the mid-1970s would have been lost in the 1980s; in addition, legislative advocacy in the 1960s was more popular at the time thanks to the liberal Congress. With the transfer of LSP to LSC, the lawyer's mission

¹³⁶ Richard M. Nixon, *Richard Nixon's Resignation Speech*, video, 3 minutes, August 8, 1974, <http://www.history.com/topics/us-presidents/richard-m-nixon/videos/richard-nixons-resignation-speech>.

¹³⁷ The initiatives involved social rescue, economic development, community organization and law reform. With the 5 goals as a guide, Legal Services programs 1) provided individual representation to individual clients. (2) Advanced community legal education, (3) engaged in law reform litigation, (4) engaged in legislative administrative advocacy to change the laws effecting poor people, and (5) they engaged in Community economic development.

¹³⁸ Johnson, 446.

changed. Programs were no longer evaluated on their effectiveness in reducing poverty. Rather, it became a numbers game as the “access to justice” phase of legal services began.

The Legal Services Corporation

The deal was we would tone it down, make it something beholden to the paternalism of the American Bar Association. And that's how we got the Legal Services Corporation.

—Wayne Pressel, 2014

Introduction

Although the Legal Services Corporation (LSC) greatly increased the amount of funds available to Legal Services programs, its new campaign "Access to Justice" marked a movement away from quality legal services. LSC rescued Legal Services from the dying Office of Economic Opportunity (OEO), but it came at a price for the poor as the controversial initiatives of the OEO Legal Services Program (LSP) were eliminated. LSC's criteria for funding were so strict that some legal services programs were split or "spun-off" of LSC-funded programs to continue less restricted work. In the 1970s and afterward actions by the Republican-dominated Congresses, (gaining complete control of Congress in 1994) and other conservatives have increased restrictions on LSC funds to the point where Legal Services programs began turning into a Private Attorney General for State governments—upholding the law rather than challenging it. The result has been diminished capacity in providing access to justice for the poor. LSC and the American Bar Association (ABA) initiatives such as Private Attorney Involvement (PAI), alternative delivery methods such as Pro Se, and the push for non-LSC funds promoting a return to the private charitable days of legal aid societies, were all favourable events for those believing legal aid is a form of welfare. An increased reliance on private funds and Pro Bono is a concern for many who believe that more government assistance is required to fill the widening gap between justice and the poor. LSC restrictions create a costly and inefficient

overlap of legal services, making it difficult to coordinate the patchwork of legal services entities providing our make-shift civil Gideon today.¹³⁹

This chapter outlines the political problems associated with LSC. It discusses the "minimum access" strategy, and the issues related to a poverty line. The chapter also covers LSC's susceptibility to politics, the increasing restrictions on using LSC funds, and LSC's push for alternatives such as private attorney involvement and the use of non-LSC funds. Next it discusses the "Republican Revolution" of the 1980s, which resulted in the greatest restrictions on funding and ultimately ended the controversial "Support Centers" and the "Reggie" program. It also describes the changes LSC-funded programs were forced to make. Finally, the chapter will offer an analysis of "diminished capacity" for lawyers and whether civil legal representation will become a matter of right.

Legal Services Corporation

LSC was supposed to deliver LSP from U.S. government control, but it came with historical controversies and ongoing debates over the mission of federally-funded legal services and the looming threat of defunding.¹⁴⁰ Ideally, the program would be kept free from political pressure, and attorneys would have full freedom "to protect the best interests of their clients,"¹⁴¹ but LSC was only quasi-independent. Congress failed to heed the lessons learned by the early neighborhood lawyer programs; as a result LSC did not have a truly independent

¹³⁹ A "civil Gideon" refers to a civil equivalent to the 1963 U.S. Supreme Court Case *Gideon v. Wainwright*, wherein the Court decided that criminal representation for the poor was mandatory.

¹⁴⁰ The debate over LSC's mission has largely focused on the anti-poverty activities adopted from the Legal Services Program of the Office of Economic Opportunity. The debate is over whether or not legal services should focus on class actions and legislative and administrative advocacy to combat poverty, or return to the earlier days of the legal aid movement that dealt strictly with individual problems on a case by-case basis.

¹⁴¹ Legal Services Corporation Act of 1974, 42 USC 2996, Section 1001. In protecting their clients, lawyers had to keep with Code of Professional Responsibility and the Canon of Ethics.

board. Congressional control over budgets and presidential appointments of the board left the federally-funded program, however insulated, vulnerable to political attacks; and, in keeping with the Code of Professional Responsibility, lawyers would no longer represent controversial clients, as that population of the poor was simply restricted from accessing legal services *beforehand*.

Access to Justice

According to Jon Sasser, the ABA, as a champion of Legal Services, recycled the term “Access to Justice” as part of a political strategy. The idea of access to justice for the entire nation meant expanding vending for legal services—deciding how many lawyers were needed for a city or county’s poverty population of poor residents. “Now the ABA could say,” noted Sasser, “we’ve got vast areas of the country that have very little to no legal services coverage.”¹⁴² Thus, by assuming a generic and amorphous goal for the entire nation, LSC could go to Congress each year and report, “we still don’t have equal access to justice.”

The OEO-LSP used incentive-based funding to help ensure quality programs. But under the LSC Act, which recognized a need to provide equal access to the system of justice, LSC could no longer justify denying funds to all poor people in the name of quality; especially those living in areas without representation. Thus, shortly after LSC finally took responsibility of legal services from the Community Service Administration in October 1976, the board adopted a “minimum access” plan. The “minimum” plan targeted two lawyers per 10,000 poor people.¹⁴³ According to Earl Johnson, “The ‘law reform’ banner had done its job and run its course, as had

¹⁴² Interview with Jon Sasser by Todd Ashmore, March 13, 2014.

¹⁴³ Alfred Corbett, credited with LSC’s funding strategy calculated a \$7 per poor person budget equaling a \$250 million annual budget, plus another \$28 million for support centers. LSC also looked at an “adequate access” strategy involving four lawyers per 10,000 poor persons.

the War on Poverty. It was time to abandon that tattered banner and raise a new and different one—Access to Justice.”¹⁴⁴

Minimum Access

In 1976, Congress appropriated \$88 million plus a \$4.5 million supplement for LSC, just shy of LSC’s request for \$96 million. This was \$21.5 million more than LSP received.¹⁴⁵ For fiscal year (FY) 1977 Congress appropriated \$125 million for LSC. Between 1976 and 1981, with increased funding and support, LSC significantly expanded legal services to cover every county in the nation. According to legal aid consultant, John Arango,

Every year the corporation would prepare a map showing all the counties in the United States, and which counties were covered by a legal services program. This proved to be a very effective tool for congress, because they would look at the counties that were in their congressional district and see that the counties weren’t colored in, and so they would make an effort to get a legal services program.¹⁴⁶

By 1981, LSC achieved its “minimum access” goal.

The increase in available funds stirred controversy over the “minimum access” strategy. The primary concern was quantity versus quality. “It was certainly a shift away from the OEO principles, we would make legal services a national movement, but they were going to have a legal aid lawyer in every chicken pot,” argued former Nevada Legal Services Executive Director Wayne Pressel, “so you wound up with this huge expansion of legal services in rural areas, western places...but in that expansion a whole lot was lost.”¹⁴⁷ For Pressel, LSC was simply

¹⁴⁴ Johnson, 473.

¹⁴⁵ The CSA temporarily managed LSP until a new corporation was established. Congress froze CSA-LSP’s annual budget at \$71 million. Thus, CSA-LSP operated on a stagnant \$71 million dollars annually for five years until LSC took over in late 1975.

¹⁴⁶ *LSC Board Training, John Arango*, directed by Nevada Legal Services (August, 2012), Video.

¹⁴⁷ Interview with Wayne Pressel by Todd Ashmore, April 13, 2014.

providing a nationwide blanket of untrained legal aid lawyers. Legal Services' focus now fell on the means rather than the ends, providing "access" rather than abolishing "poverty."

According to Sasser, "Access to Justice" had advantages and weaknesses. It helped the poorly underfunded programs in the West, which was good. "It was bad," conceded Sasser, "in that funding did not go to the existing established programs doing all the great work...taking cases to the U.S. Supreme Court like *Goldberg v. Kelly*."¹⁴⁸ In short, all the new money went to programs in the West that lacked the quality and experience of programs in the East. "Also, those out West didn't have the five goals of the Act to sort of push them," said Sasser, "Those of us that were old-timers always believed that we took the five goals out of the statute for political reasons, but they were still what legal services programs were all about—what they were supposed to do."¹⁴⁹

Poverty Line

The controversial minimum access strategy, which helped determine the number of attorneys needed per poverty population, spurred concern over the nation's calculated poverty line. The Social Security Administration (SSA) established a poverty threshold in 1959, but with the national expansion of legal services and increased funding into new areas, the poverty line issue gained traction.¹⁵⁰ Since the war on poverty began Earl Johnson observed, "We have become accustomed to defining the poor by recourse to a fixed income standard, a so-called poverty line."¹⁵¹ Beginning with OEO-LSP, LSC continued using poverty guidelines to determine client eligibility for legal services. Those living within 125 percent of the poverty line were

¹⁴⁸ Interview with Jon Sasser by Todd Ashmore, March 13, 2014.

¹⁴⁹ Ibid.

¹⁵⁰ In 1959, American economist and SSA employee Mollie Orshansky developed a poverty threshold. The poverty guidelines used by LSC are not the same as the US Census uses to determine the number of poor.

¹⁵¹ Johnson, 196.

eligible for services. In 1965, the SSA poverty guidelines for a family of four were \$3,130; in other words, a family of four making less than or equal to \$3,130 a year qualified for services. By the time LSC assumed its role in 1975, the poverty line for a family of four increased to \$5,050.¹⁵²

Another concern over the “access” strategy was the distribution of money based on poverty populations in accordance with a set national poverty line. The strategy did not account for changing costs of living. According to the early model, \$7 for one person or an annual income set at 125 percent of the national poverty represented more purchasing power in one area of the country than another. Cost of living varied depending on whether one lived in the North, South or another region or sub-region, and whether they lived in an urban or rural setting. The Institute for Research on Poverty identified the cost of living problem along with other problems associated with a poverty line.¹⁵³ “It does not reflect modern expenses and resources, excluding significant draws on income such as taxes, work expenses, and out-of-pocket medical expenses.”¹⁵⁴ The unequal weight and arbitrary line of poverty widened the gap between qualifying for legal services and the affordability of a private attorney. LSC drew the line at X amount. If a family of four earned \$5,051 in 1975, one dollar over the guideline,

¹⁵² “Poverty Guidelines for Families of specified Size, 1965-2014 (in dollars),” *U.S. Social Security Administration: Office of Retirement and Disability Policy*, Annual Statistical supplement, 2014, table 3.E8, <http://www.ssa.gov/policy/docs/statcomps/supplement/2014/3e.html#table3.e8>.

¹⁵³ IRP identified five problems with a poverty cutoff: (1) Its “headcount” approach identifies only the share of people who fall below the poverty threshold, but does not measure the depth of economic need; (2) It does not reflect modern expenses and resources, excluding significant draws on income such as taxes, work expenses, and out-of-pocket medical expenses, excluding resources such as in-kind benefits (e.g., food assistance); (3) It does not vary by geographic differences in cost of living within the contiguous United States; (4) It is not adjusted for changes in the standard of living over time; and (5) Its strict definition of measurement units—“family”—as persons related by blood or marriage does not reflect the nature of many households, including those made up of cohabitators, unmarried partners with children from previous relationships, and foster children.

¹⁵⁴ “How is poverty measured in the United States?,” Institute for Research on Poverty, accessed March 5, 2015, <http://www.irp.wisc.edu/faqs/faq2.htm>.

did that suddenly mean it could afford the costs associated with a private lawyer? According to AnnaMarie Johnson, Executive Director of Nevada Legal Services, “They have never put in leeway for a person that just makes a dollar over that amount. These days,” Johnson explained, “most people can’t afford a lawyer, even those that are deemed middle class.”¹⁵⁵

Another issue with the poverty line is that it is an approximation, an estimate designed to identify the amount of income required to maintain a minimal standard of living for shelter, food and clothing, etc. Thus, poverty would be eliminated if everyone were elevated above an arbitrary line. However, poverty could also be based on a nation’s affluence—a percentage of the nation’s total goods and services.¹⁵⁶ In other words, the degree of poverty is relative to the surrounding wealth of the community. Whether one fell barely above the line, regardless of the depth of economic need, cost of living or out-of-pocket expenses, or did not qualify for reasons such as being an unmarried partner, they were not entitled to legal services. Based on one’s definition of poverty, most low to middle class American families were denied access to justice.

Minimum Access Continues

By the start of Jimmy Carter’s presidency in 1977 the number of legal services programs had increased from 258 in 1975 to 320. From 1977 to 1981, the Carter administration supported the “minimum access” strategy, while promoting national support centers. Notably, a favorable 1977 amendment to the LSC Act lifted the ban on representing juveniles. The Carter Administration and his LSC appointments worked to relax restrictions on grants to back-

¹⁵⁵ Interview with AnnaMarie Johnson by Todd Ashmore, March 25, 2015.

¹⁵⁶ As early as 1904, Robert Hunter, in his study of poverty in America, argued that industrial life demanded higher standards of living as well as increasing judgments of economic differentiation; essentially, poverty had a greater effect and was felt more painfully in an affluent society.

up centers and the prohibition against legal aid lawyers organizing groups. Clients of Legal Services were also appointed to local boards.

Had the larger social questions affecting clients subsided? Research tracing 102 lawyers who left a major legal services program in Chicago between 1965 and 1974 found that 40 percent continued on with some type of legal activism. They moved to other legal services programs, created “impact” private law practices, taught legal clinics, joined public interest law firms, or worked in government jobs enforcing civil rights.¹⁵⁷ It seems the original draw of law reform was not easily diminished. Nevertheless, the external pressure created by outside organizations such as local Community Action Agencies to address issues of poverty had diminished. As one LSC staff member complained, “Many legal services programs no longer address the underlying political questions that affect their clients.”¹⁵⁸

In 1978 the Carter Administration appointed prominent attorney and Arkansas Democrat Hillary Rodham Clinton as chair of the board of LSC. “We believed it important not to spread the program so thinly while we were trying to provide access,” she noted, “However, if we were to hold up expansion until...quality was in place and the backup systems were available, then that didn’t make sense either.”¹⁵⁹ Under Carter’s administration, Clinton successfully lobbied Congress for LSC increases, which rose to \$205 million in 1978, \$270 million in 1979 and \$300 million in 1980.¹⁶⁰ In 1981 the LSC budget hit a high watermark of \$321

¹⁵⁷ Jack Katz, “Lawyers for the Poor in Transition: Involvement, Reform, and the Turnover Problem in the Legal Services Program,” *Law and Society Review* 12, no. 2 (1978): 287.

¹⁵⁸ Bryant Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (Alphen Aan Den Rijn: Sijthoff & Noordhoff, 1980), 46. Reference to Michael Trister’s discussion paper *Next Steps for the Legal Services Corporation* (1977).

¹⁵⁹ Johnson, 477.

¹⁶⁰ “Funding History: Annual LSC Appropriations 1976-2013 in Constant 2013 Dollars,” *Legal Services Corporation*, accessed March 10, 2015, <http://www.lsc.gov/congress/funding/funding-history>.

million. (During President Obama’s first year, LSC received \$440 million, which is equivalent to an inflation-adjusted amount of \$178 million). By 1981, LSC supported 325 grantees with 1,450 offices including 6,200 lawyers and 3,000 paralegals. Legal services covered all 50 states, plus the District of Columbia, Puerto Rico, and the Virgin Islands.

Expansion of legal services proved difficult. According to Clinton, “There was opposition, including speeches on the floor of the House and resolutions in local bar associations.”¹⁶¹ It was especially difficult in the South. Earl Johnson praised Dan Bradley, Bucky Askew and Clint Lyons among others for their work in the South. Bradley became President of LSC in 1979, and helped thwart the Reagan Administration’s attack on the program in the 1980s. Later, he became a leading advocate of gay rights. Askew, the OEO-LSP deputy regional director in 1970, was appointed to LSC’s Board of Directors by Bill Clinton in 1994. Lyons served as acting LSC President, and then headed the NLADA. Interestingly, both Bradley and Lyons were “Reggies.” Their combined efforts led to 13 new legal services grantees, the first of 30 grantees in the South. Grantees included Legal Services of Alabama, Georgia Legal Services, and Rural Legal Services of Tennessee, as well as statewide support centers in all 10 Southeast Region states.

Under Attack

According to Wayne Pressel, Legal Services gradually became beholden to the American Bar Association. “Almost every ABA president had legal services as his or her first priority agenda item for years,” said Pressel, “we were protected by the ABA, but we were becoming

¹⁶¹ Johnson, 486.

the parent-children.”¹⁶² According to Nevada Supreme Court Justice Michael Douglas, the ABA “is a national organization with clout because they donate to political campaigns, individually and sometimes collectively.”¹⁶³ As the governing body of the legal profession, the ABA composed of trial lawyers, consumer lawyers, bankruptcy lawyers and others grudgingly supported legal services. Pressel described fights with the ABA, which generally resisted his “old-time” legal services approach. “By old time,” said Pressel, “I mean now OEO Legal Services types that would be embarrassments to the ABA.”¹⁶⁴ He expanded on the problem of being the ABA’s protected child,

There was nothing institutional about legal services before the Legal Services Corporation; and by institutionalized I mean more concerned with its own existence than the purpose from which it was formed. That's my hallmark of an institution or bureaucracy...more concerned about its own self-perpetuation than the purpose. LSC was no longer willing to risk its life for its mission. And that was a subtle set of changes, and it was always attacked by the right, and as our defense became less and less radical and became more of an ABA defense, we wound up giving up ground, to giving up ground, to giving up ground. And so at first there were restrictions on what we could do in lobbying but it was fairly minor, and then it became more major.¹⁶⁵

Thus LSC began providing “minimum access” across the nation in 1977 with minor restrictions prohibiting “representation involving non-therapeutic abortions, school desegregation, the military draft and some juvenile cases.”¹⁶⁶

LSC survived with the ABA’s “Access to Justice” strategy, but the lack of an independent board left it vulnerable to attacks. By adopting the ABA defense, LSC attenuated its effectiveness in representing clients. With constant Congressional threats and major funding

¹⁶² Interview Wayne Pressel by Todd Ashmore, April 13, 2014.

¹⁶³ Interview with Justice Michael Douglas by Todd Ashmore, May 1, 2015.

¹⁶⁴ Interview Wane Pressel by Todd Ashmore, April 13, 2014.

¹⁶⁵ Ibid.

¹⁶⁶ “History of Civil Legal Aid: OEO Legal Services and the Passage of the Legal Services Corporation Act,” *National Legal Aid and Defender Association*, accessed March 9, 2015, http://www.nlada.org/About/About_HistoryCivil.

cuts in 1982, 1996 and 2012, LSC continued to compromise to survive. Thus access to justice began to constrict and narrow. As a result, 1981 was the first and last year the LSC met its “minimum access” goal.

The Reagan Years

If Legal Services lawyers considered the Nixon administration unsympathetic to legal services, the Reagan administration was openly hostile. The Republicans of Nixon’s years were different from those of Reagan’s. “Legal assistance for the poor, when properly provided, is one of the most constructive ways to help them to help themselves,” said Nixon. He added, “Justice is served far better and differences are settled more rationally within the system than on the streets.”¹⁶⁷ Nixon had at least signed the LSC Act. Reagan wanted to eliminate LSC altogether. In fact, he chose not to reauthorize the corporation, and his budget request did not include any money for LSC. Ultimately, Reagan was unable to sever LSC’s financial lifeline and his “zero funding” plan failed.¹⁶⁸ Other than packing the board with antagonists, LSC was insulated from the Executive Branch; and failure of reauthorization did not deny Congress the right to appropriate funds. LSC survived in 1982, but suffered from a 25% cut in funding. Congress decreased funding from \$321 million to \$241 million for the fiscal year. Many Legal Services offices closed or reduced staff, resulting in a major reduction in services. According to the NLADA, in 1980 there were 1,406 local field program offices, employing 6,559 attorneys and 2,901 paralegals. In 1982 only 1,121 offices remained; and by 1983, employed only 4,766

¹⁶⁷ Thomas Erlich, “Save the Legal Services Corporation,” *American Bar Association* 67 (April, 1981): 436.

¹⁶⁸ Due to Reagan’s decreasing approval rating in 1982, approximately 49% at the time, he was unwilling to veto the massive continuing resolution Congress submitted, which included appropriations, not only for LSC, but for the Justice Department [FBI], federal courts and other government functions.

attorneys and 1,949 paralegals.”¹⁶⁹ The loss of legal services occurred at the worst time. The energy crisis of 1979 and ensuing US recession resulted in reduced federal welfare support.¹⁷⁰ By mid-1981 the US unemployment rate reached double digits. High unemployment and reduced government support led to an increased poverty population and demand for legal services.

Unable to abolish LSC directly, Reagan packed the board with fiscally conservative allies. By December 30, 1981 they held a majority, and began a string of attacks. The first attack came in the form of a grant “freeze.” Convening on New Year’s Eve, the board voted to hold all grants for 1982. The “freeze” came too late. Foreseeing an attack, President Dan Bradley pre-approved the grants in November, just before his term ended. Missing that opportunity, the Reagan board voted to refund all field programs, with the exception that funding for support centers last only a few months. Congress rejected the board’s actions. Intent on sustaining funding for LSC programs, a Democratic-controlled Congress implemented a set of “riders” which ensured funding for grantees and support centers for 1983 at FY1982 levels.¹⁷¹

In 1983, the conservative board used a different tactic. LSC President Donald P. Bogard created two new headquarter offices: Compliance and Review and Program Development. The Office of Compliance and Review (OCR) assumed responsibility for monitoring field programs. The new program’s goal was to identify violations of rules and regulations. Based on violations, the OCR had the power to sanction programs and terminate their grants. To fully investigate

¹⁶⁹ “History of Civil Legal Aid: The Reagan Era,” *National Legal Aid and Defender Association*, accessed March 9, 2015, http://www.nlada.org/About/About_HistoryCivil.

¹⁷⁰ During the recession, federal assistance programs such as food stamps, disability, income maintenance and more were reduced.

¹⁷¹ “Affirmative riders” protected legal services lawyers. Each grantee, including support centers, were to be funded. “Negative riders” included restrictions on services provided to clients with LSC funds, (i.e., class actions against government and representation of aliens).

any violations, the OCR required more information. Bogard and the board began scrutinizing the activities of grantees by increasing the complexity of the grantee refunding forms and requiring that grantees produce detailed answers to new questionnaires.¹⁷² These new forms and questionnaires, amounting to volumes of documentation, were given to Senators Orrin Hatch (R-UT) and Jeremiah Denton (R-AL). Armed with new information, Hatch, Denton, and the General Accounting Office (GAO) set out to uncover illegal activities within legal services programs. Bogard proceeded to raid the programs. According to John Arango,

[There was] very intensive and hostile monitoring. Big teams would come out with former FBI agents to monitor the programs, they'd stay for a week, they were very difficult people to deal with; they frequently invented regulations on the spot. It was a very hard time for program boards and staff, particularly those that were committed to providing high quality aggressive representation.¹⁷³

Programs in violation could be defunded within 90 days, (Senators Orrin Hatch of Utah and Jeremiah Denton of Alabama were responsible for streamlining the defunding process).

Hatch and Denton presented their findings in a booklet, *Robber Barons of the Poor?* They claimed to find secret lobbying slush funds, an illegal grass roots political apparatus, and proof that funds were being diverted from the poor to promote radical social agendas. "Politicians dwell on the promise of the programs, not their performance;" warned Hatch, "the Legal Services Corporation was an unknown entity...there was no uniform record keeping...no systematic records of the number of clients served, the types of cases handled, or the cost of litigation."¹⁷⁴ Following up at the Senate Labor and Human Resources Committee, the GAO reported, "we didn't have authority to settle the accounts of the Corporation, and it is possible

¹⁷² Questionnaires asked for items such as a list of bar or union dues paid by grantee, and a list of any class actions suits brought by the program.

¹⁷³ *LSC Board Training, John Arango*, directed by Nevada Legal Services (August, 2012), Video.

¹⁷⁴ Orrin G. Hatch and Jeremiah Denton, *Robber Barons of the Poor?* (Washington: Washington Legal Foundation, 1985), 4.

for the Corporation to willfully violate the law...there is not significant enforcement authority.”¹⁷⁵ Hatch then asked Congress to amend the LSC Act to include criminal and civil procedures against any program engaging in prohibited activities.¹⁷⁶

In 1984, the conservative LSC added more restrictions and greater scrutiny on eligibility.¹⁷⁷ LSC required programs to report large expenditures and to begin including local private bars when setting program priorities. LSC also prohibited grantees from lobbying on their behalf.¹⁷⁸ According to Earl Johnson, “LSC staff...sought to close down some of the programs that supported a broader vision of access to justice.”¹⁷⁹ That same year, LSC’s discovery of a discrepancy in funds controlled by the “Reggie” program administrator led to full investigations. These investigations, bordering on attacks, forced Howard University to rid itself of the program. After a 14-year run that enlisted the service of more than 2,300 high-quality lawyers, the Reggie program came to an end.

Bogard and LSC staff also attacked the controversial Western Center of Law and Poverty (WCLP), a program that vowed to provide “legal representation before every institution that shapes their [clients] lives.”¹⁸⁰ Five years earlier, Senator Hatch asked the GAO to investigate the Center over violations of legislative activities. No wrongdoing was found. In 1984, Bogard made a similar claim that the Center was violating LSC restrictions. After looking into the

¹⁷⁵ *Ibid.*, 13.

¹⁷⁶ In his essay, Senator Hatch also asked for greater restrictions on the use of federal funds for lobbying, politically-oriented trainings, the purchase of real estate, payments of dues to lobbying organizations, and the collection of attorney’s fees against federal, state and local defendants.

¹⁷⁷ In 1979, when Florida Rural Legal Services sought damages from the Federal Immigration Services for the unlawful detention of Haitian refugees, Congress passed an amendment barring representation of “known” aliens.

¹⁷⁸ The LSC Act “prohibits the retention of private counsel for the purpose of influencing legislation.”

¹⁷⁹ Johnson, 598.

¹⁸⁰ “Mission & History,” Western Center on Law & Poverty, accessed October 21, 2015, <http://wclp.org/about-us/mission-history/>.

matter Judge Ralph Drummond, a neutral Administrative Judge, disagreed, ruling that the Center only gathered information and had not violated any restrictions. Bogard denied funding anyway. Congress was forced once again to add “affirmative riders” for FY1985, this time to guarantee funding for the WCLP. Shortening the leash, a perturbed Congress also required LSC to notify the House and Senate before proposing any new regulations.

Reagan won his second election in a landslide. On the eve of Reagan’s second administration, Don Bogard resigned. LSC had survived a conservative LSC president, and “for a fifth year in a row,” said Johnson, “LSC would limp into 1985 with a board of ‘recess appointees.’”¹⁸¹ (“Affirmative riders” restricted the full power of “recess appointees.” Thus the board’s power was limited in restricting activities of grantees). By July, 1985 Reagan had a confirmed board; however, because confirmation occurred after January 1, 1985, the appropriations bill, including the “affirmative riders” and guaranteed funding, stood. Congress increased the LSC budget by 10.9%, a total of \$305 million.

Johnson credits the Preservation of Legal Services for the Poor for influencing members of Congress to defeat the LSC board’s attempt to restrict program lawyers. Appalled at how LSC conducted its public meetings and how hostile the board treated others, three State Bar Presidents, Michael Greco from Massachusetts, Jonathan Ross of New Hampshire, and William Whitehurst of Texas, and bar executive Gail Kinney formed the Preservation. “What we were seeing,” Ross recalled, “were Ronald Reagan nominees to the LSC Board who were basically trying to bring about an end to the LSC.”¹⁸² The new “bar leaders” organization managed to get

¹⁸¹ Johnson, 597.

¹⁸² Lisa Segal, “Jon Ross on Legal Services from a National Perspective,” *New Hampshire Bar Association, Bar News* (March 7, 2003): 1. <https://www.nhbar.org/publications/archives/display-news-issue.asp?id=844>.

every State Bar Association to support them. This “grass roots” effort at advocacy could not be barred by any restrictions from LSC or Congress. According to Earl Johnson, every year more and more senators and Congressmen voted to support continuation of LSC funding, a trend attributable to bar leaders for the Preservation of Legal Services for the Poor. Johnson also credits Senator Warren Rudman (R-NH) for protecting Legal Services. Rudman used staff member Tom Polgar to attend and report on LSC board meetings. Whenever LSC planned anything detrimental to legal services, Rudman introduced “affirmative riders” to reverse board decisions. Hence the Senate micromanaged the LSC board. This was the case in 1986, when board member Pepe Mendez proposed a restructuring and defunding of support centers.¹⁸³ The motion passed. Appropriations legislation for FY1987 effectively rescinded the vote with an affirmative rider requiring funding of national and state support centers (back-up centers) at FY1986 levels.

In 1987, Congress added a “negative rider” that prohibited Legal Services lawyers from representing any kind of abortion case. That same year, the Shumway Amendment from the House attacked LSC funding. “With an accumulated debt of well over \$2 trillion,” argued Norman Shumway of California, “I believe that we have a solemn obligation to subject every program which is sponsored or subsidized by the Federal Government to the very strictest kind of scrutiny.”¹⁸⁴ With a 90 rating on John Birch Society’s conservative index, Shumway represented California’s San Joaquin Valley, home of large agricultural businesses and opponents of CRLA as well as thousands of poor migrant farm workers who needed LSC

¹⁸³ Mendez’s motion reduced national support to \$2.4 million, and transferred state support funding to field programs. In short, field program leaders would choose and pay for what types of support they needed.

¹⁸⁴ Congressional Record-House H5985 (July 1, 1987), p. 18641.

services. He argued that LSC had never been reauthorized by Reagan. Shumway lost the vote by a 2-to-1 margin. Shortly after the House attack, LSC Chairman Clark Durant proposed defunding support centers, with all funding going only to direct legal services for the poor. The motion passed. Yet again, however, the full Congress instructed LSC to fund the support centers for FY1988 at FY1987 levels. For FY1989, the Reagan administration made a budget request of only \$250 million, an amount \$55 million dollars less than the previous year—the exact amount needed to fund the support centers. The Reagan administration planned to deplete LSC monies by first subsidizing field programs and then reasoning a lack of funds for support centers.

In a last ditch effort, Reagan used the earlier “McCollum amendment” to curb LSC activity. The 1982 amendment mandated that LSC grantee boards (comprised of a majority of lawyers) consist only of those lawyers chosen by state and local bar associations. Furthermore, Bar Associations had to represent the majority of lawyers in the area. This rule specifically excluded lawyer members suggested by the NAACP, law schools and Community Action agencies. On December 30, 1988, LSC President Terry Wear put all grantees on short funding. Instead of annual grants, field programs received four-month grants. “Twenty-two field programs and 10 national support centers were placed on two-month funding because they didn’t comply with the new McCollum amendment...another eight...received one-month funding because of ‘discrepancies’.”¹⁸⁵

Although Reagan’s term ended in January 1989, his appointees continued to attack the LSC. In 1989, Board Chairman Michael Wallace hired the Cooper Law firm to investigate the

¹⁸⁵ “Legal Services Corporation authorizes temporary program funding to insure compliance with LSC regulations,” *PR Newswire*, December 30, 1988.

constitutionality of LSC. Wallace spent \$100,000 of the corporation's money to do so.

Ultimately, the board was pressured to withdraw the challenge. On August 8, an article in the *Washington Post*, "Stop us before we sue again" summarized the Reagan administration's attempt to abolish LSC, "The President should appoint a new board that won't be ashamed to serve," read the article, "as for the rest...its time they were retired and replaced by those who will spend their energies, and the public money, meeting the needs of the poor."

Wear continued four-month short-funding into 1989, with support centers on a month-to-month basis. Wear believed in the idea of competitive bidding, and reasoned that private law firms could replace current programs. In short, he aimed to substitute judicare for salaried programs. In any case, his plan would eliminate funding to established legal aid programs, especially those programs still advocating for the poor. According to an article in the *New York Times*, "competitive bidding, would in fact supplant aggressive local programs with tamer grantees."¹⁸⁶ "The last of the Reagan boards," Johnson observed, "sought to restructure the delivery system to narrow the range of services it offered poor people before handing it over to an unknown commodity, the first Bush board."¹⁸⁷ Reagan's forces had succeeded in narrowing access to justice by limiting legal aid lawyers who engaged in class action suits or administrative and legislative advocacy, as well as placing restrictions on abortion and undocumented immigrant litigation.

In a 1986 response to Senator Phil Gramm's (R-TX) unsuccessful proposal to defund LSC, Senator Paul Simon (D-IL) made a strong case for the continuance of LSC for future generations to come,

¹⁸⁶ "The Enemies within Poverty Law," *The New York Times*, September 4, 1989.

¹⁸⁷ Johnson, 631.

My friend from Texas cites abuses. He could get two of his students to write a book about abuses in the field of agriculture...in any field. Obviously, you can get a book about abuses in the field of religion...The gauge of something is not whether there are occasional abuses but whether the program as a whole is a good program and a needed program...I think there are ways of solving our budget problems without reaching down to the poorest of the poor, as this amendment does.¹⁸⁸

Together, with negative riders, a constitutional challenge, and the ABA's silence, the Reagan administration used zero-based budgeting, aggressive and intimidating investigations, swift enforcement of violations, and short-funding tactics to successfully narrow the range of legal services available to the poor. In addition to thwarting the effectiveness of LSC-funded programs, efforts were made to establish alternatives to legal aid such as judicare and private attorney involvement. Thus, in the late 1980s LSC began eliminating its programs' reliance on federal funds, as its officials searched for private non-LSC funds such as IOLTA and pushed for private attorney involvement as an alternative to the legal aid attorney.

IOLTA

LSC President Bogard created Program Development (PD) in 1983 to promote the use of outside funding and find alternative means to providing legal services. Considered a positive alternative funding source, "Interest on Lawyers Trust Accounts" (IOLTA) emerged during the Reagan administration.¹⁸⁹ IOLTA won bipartisan support because it increased money for legal aid programs but did not require federal funding to do so. Gaining traction in 1983 in Florida and then in California, IOLTA had become the leading private supplier of funding for legal

¹⁸⁸ Johnson, 600. Senator Simon is responding to Senator Gramm's proposal that \$300 million from LSC be transferred for use in soil and water conservation, a concern Gramm deemed more important. Senators Strom Thurmond, Jesse Helms, and Jeremiah Denton co-sponsored the amendment.

¹⁸⁹ IOLTA uses the generated interest from combined funds in client accounts (that contain escrow deposits, lawsuit recoveries etc.) for the poor. Before IOLTA, money in client accounts was held in non-interest-bearing accounts. Combining accounts led to a substantial amount of money and interest-making potential.

services. To date all 50 states and the District of Columbia have IOLTA. Notably, IOLTA is dependent upon interest rates, consequently during recessions and in deflationary periods when interest rates drop, so do the amounts of IOLTA money.

Private Attorney Involvement (PAI)

According to Houseman, most legal services programs used a staff attorney system; however, in the early 1980s, the ABA and LSC looked to add Private Attorney Involvement (PAI) in providing legal services.¹⁹⁰ In a nod to Reagan, the ABA adopted a resolution urging an LSC amendment to include opportunities for private attorneys in delivering legal services to the poor. Beginning in 1981, before Congress could act, the LSC board and staff directed grantees to include PAI. Originally requested at 10 percent of funds, by 1984 LSC required grantees to spend 12.5 percent of their funds on PAI. Most programs increased their Pro Bono activities while some bolstered private contracts and or judicare. In 1979, “sixteen experimental judicare programs were being funded at a total cost of over \$1.5 million.”¹⁹¹ According to Houseman, PAI reduced the hostility of private lawyers, the ABA, and state and local bars toward the LSC. In 2004 LSC-funded programs closed 102,972 PAI cases of which approximately 71% were Pro Bono. As of 2013, Pro Bono cases constituted over 82% with contracts and judicare closing 16,910 cases. A total of 30,465 attorneys accepted referrals.

Other Services

During the Reagan Administration, the ABA also looked for alternative delivery methods such as “self-help, legal clinics, pre-paid and lawyer referral services, alternative

¹⁹⁰ The original LSC Act required a study of delivery systems. According to the “Delivery System Study,” the best method was the staff attorney model. The study included other viable forms of delivery such as Judicare, contracts with law firms and Pro Bono programs.

¹⁹¹ Garth, 44.

dispute resolution, and arbitration.”¹⁹² Other than lawyer referral services which matched issues with attorneys for fees, these approaches provided alternatives to legal aid attorneys. Together, private non-LSC funds, PAI, and self-help employed Reginald Heber Smith’s suggestions of: Pro Se or “representing one’s self,” making the attorney’s services unnecessary, and providing an attorney through charitable means. Other than legal clinics, most methods of these approaches are still in use today.

Over time, additional IOLTA funds, more attorneys through PAI, and alternative delivery methods increased LSC program resources, which ultimately expanded the reach of legal services in general. Another development, the use of Paraprofessionals also helped meet the demand for legal services. Paraprofessional services involving paralegals existed before LSC and Program Development’s search for alternatives. By 1978 “the total number of...paralegals involved in legal services work in the United States [was] reported to be 1,500, compared to 3,700 lawyers.”¹⁹³ The use of paralegals under the umbrella of an attorney greatly increased manpower by cutting down on employee costs.¹⁹⁴

The Bush Administration

According to the NLADA, “By 1990, the poor were served by many fewer legal services attorneys than in 1981, when the modest level of minimum access was briefly achieved.”¹⁹⁵ In

¹⁹² Caroline RothertBoch, “The ABA Standing Committee on the Delivery of Legal Services: Three Decades of Commitment to Meeting the Legal Needs of Moderate Income People,” *American Bar Association*, accessed March 18, 2015, http://www.americanbar.org/content/dam/aba/migrated/legalservices/delivery/downloads/history_of_the_delivery_comm.doc.

¹⁹³ Legal Services Corporation, *Annual Report 1978* (Washington, D.C., Legal Services Corporation, 1979a).

¹⁹⁴ For example, instead of paying for five full-time attorneys, a program could fund one full-time attorney and four full-time paralegals. For a percentage of salary costs, paralegals can provide services under the supervision of an attorney.

¹⁹⁵ “History of Civil Legal Aid: The Reagan Era,” *National Legal Aid and Defender Association*, accessed March 9, 2015, http://www.nlada.org/About/About_HistoryCivil.

other words, Reagan succeeded in narrowing access to justice below the minimum access levels. By President George H.W. Bush's Administration, a concerned ABA took an active role in vetting board nominees in favor of LSC's future. The ABA assigned the Standing Committee on Legal Aid to conduct confidential reviews. Although not overtly hostile, President Bush tried to flat line the LSC budget each year while Congress continued to appropriate greater amounts. By contrast, Bush's nominees greatly eased the tension between the LSC and its grantees. Senator Rudman, who had done so much to help LSC, described the new nominees as "fair-minded people who did not show antipathy for legal services."¹⁹⁶ Board Chairman George Witgraff was integral in building better relations between LSC, private lawyers, and LSC grantees. Witgraff invited legal aid lawyers, board members, and clients throughout the country to attend scheduled board meetings. The meetings provided presentations and important information about what LSC was all about. By providing new information, LSC helped many board members realize that LSC lawyers were not "bomb throwers" but hardworking professionals. Even Norman Shumway (an earlier opponent) spoke about the learned benefits of LSC. He pointed out three major LSC accomplishments: appropriations had grown from \$295 million in 1990 to \$357 million in 1993; LSC had increased oversight of programs (leading to decreased paperwork); and LSC and grantees developed better relationships—a result of annual joint conferences by Witgraff. In addition, LSC began basing some grants on merit and innovation, a nod to the OEO days.

¹⁹⁶ Neil A. Lewis, "Bush Replaces Leadership of Legal Services for the Poor," *The New York Times*, January 24, 1990, A. 14.

Republican Revolution

In 1992 proponents believed that President Bill Clinton's election would mean greater funding and security for LSC. After all, his wife had served as an LSC chairperson. With Clinton's nominees supporting a strong and broad role for LSC, along with a huge increase in appropriations reaching \$400 million for FY1994 and FY1995, the future looked bright. Unexpectedly, the "Republican Revolution" changed everything. During the 1994 congressional elections, Republicans gained 54 seats in the House and 8 in the Senate. By January 1995 Republicans won control of both houses for the first time since 1952. Speaker of the House Newt Gingrich (R-GA) spearheaded the revolution.

The following year, Congress passed the greatest restrictions on legal aid delivery in LSC history. Former Executive Director of the Center for Law and Social Policy (CLASP) Alan Houseman described the political parallel.¹⁹⁷ "In much the same way as the Reagan Administration in the early 1980s, the leadership of the new Congress, under Gingrich, committed itself to the elimination of LSC and ending federal funding for legal services."¹⁹⁸

Described as the "glide path to elimination," Gingrich and the House planned to eventually eliminate funding for LSC.¹⁹⁹ A bipartisan majority in Congress supported funding for LSC, but not before a compromise with major reforms was struck. Both the House and Senate

¹⁹⁷ Alan Houseman is considered a leader of legal services for the poor. Houseman took part in writing the LSC Act of 1974 as well as the amendments in 1977, which defused many of the political activities' restrictions. Houseman's work in helping LSC grantees defeat the Reagan Administration's plan to end LSC spurred Senators Hatch and Denton to launch their own attacks. In their booklet, *Robber Barons of the Poor?*, Houseman is quoted as saying, "We will not let the OEO, the Congress, ABA, or the President in any way prevent us from continuing the present anti-poverty program."

¹⁹⁸ Alan Houseman, and Linda Perle, "Securing Equal Justice for All: A Brief History of Civil Legal Assistance," *Center for Law and Social Policy* (Revised January, 2007): 36 <http://www.clasp.org/admin/site/publications/files/0158.pdf>.

¹⁹⁹ "Glide to Elimination" described the House of Representative's plan to eliminate LSC funding by one-third in FY1996 and another third in FY1997 and thereafter until funding was eliminated.

added prohibitions to the appropriations bill. Restrictions included prohibitions on such political activities as voter registration and organizing activities within labor unions, etc. Grantees could not lobby government offices, agencies, or legislative bodies. Lawyers could not solicit clients. With the exception of Indian Tribal Courts, lawyers could not take criminal cases, abortion cases, military cases, assisted suicide cases, or cases involving the desegregation of schools. Lawyers could no longer perform class actions. Lawyers could no longer represent prisoners, people evicted from public housing due to criminal charges of illegal drugs, and with limited exception, could not represent aliens. Congress also prohibited most activities promoting welfare reform and other liberal agenda items.²⁰⁰

Houseman's *Securing Equal Justice for All* details additional changes. Funding for grantees was to be based solely on a census of the poor and the staff needed to administer a timekeeping system. Grantees were restricted from receiving attorney's fees, and could no longer use funds to pay dues or to sue LSC. In addition, the Office of Inspector General (OIG) was granted greater power to perform audits, and LSC was given greater access to client records.²⁰¹

Along with the restrictions, Congress slashed LSC's budget by more than 30 percent. FY1996 appropriations for LSC included \$269.4 million for basic field programs, \$1.5 million for the OIG and \$7.1 million for management and administration. Cuts in funding led to a loss of 300 local programs, and 900 attorneys—an estimated loss of 300,000 cases annually.

²⁰⁰ "About Statutory Restrictions on LSC-funded Programs," *Legal Services Corporation*, accessed April 4, 2015, <http://www.lsc.gov/media/fact-sheets/about-statutory-restrictions-lsc-funded-programs>.

²⁰¹ In 1988, an amendment to the Inspector General Act required LSC to establish its own Office of Inspector General. In its FY1996 appropriations, Congress considered OIG as the primary source for monitoring grantees. The OIG has the authority to conduct its own "compliance" review of grantees, but typically audits are performed by independent public accountants under OIG guidance. OIG maintains it is not an adversary of LSC management.

To make matters worse, Congress not only placed restrictions on LSC-funded money, but prohibited LSC recipients from using public or private funds for LSC-restricted activities as well.²⁰² In other words, any program receiving LSC funds must apply LSC restrictions to all non-LSC funds. “Congress...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,” noted Houseman, “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.”²⁰³In addition, Congress eliminated funding for support centers.

End of Support Centers

Before the LSC bill passed, the House Committee tacked on the “Green Amendment.” Congresswoman Edith Green argued that research, training, technical assistance, and information clearinghouse services should not be part of the lawyers’ position, but a service by LSC if necessary. In this manner, law reform could be reined in and ultimately eliminated. In short, the amendment ended grants and funding for back-up centers. But due to vague wording, it did not have the effect Republicans thought it would. It did not prohibit back-up centers or legal research on behalf of litigation; after all, research was part of a lawyer’s work. In the end, the LSC board agreed to conduct training and technical assistance as well as provide clearinghouse services in house. As for research, LSC began referring to back-up centers as “support centers” and offered contracts instead of grants to continue their work. In this manner, LSC held some control over the research. During the Reagan years, these centers

²⁰² Other public funds from federal, state, and local governments, as well as private funds from charities, donations, bar associations, and more were included in the restrictions.

²⁰³ Alan Houseman and Linda Perle, 37.

survived mainly because of “affirmative riders” attached to the LSC appropriations bills. These “riders” and LSC-funding for support centers lasted until the “Republican Revolution” and ensuing major attack on LSC. New restrictions ended funding for the support centers. Without federal money only a few of the national support centers survived; by expanding their focus beyond poverty they were able to attract other financing. As of 2007 only 12 state programs were former LSC-funded support centers. According to Houseman,

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.²⁰⁴

The link had been severed.

State-based Planning

In anticipation of federal cuts, LSC embarked on a new approach that emphasized statewide delivery systems. The plan involved a unified state justice system that included LSC and non-LSC service providers—Pro Bono programs, law schools, private bars and others working in collaboration. Focus shifted from local control to a state’s collective responsibility for providing legal services. LSC promoted the use of centralized telephone systems, a sense of equitable distribution among programs and areas, and access to both urban and rural clients to achieve the goal of this new state-level advocacy system.

With new restrictions on non-LSC funds, many states developed separate non-LSC funded legal services providers. In fact, many of today’s non-LSC funded programs are “spin-offs” of LSC recipients. By remaining unrestricted, “spin-off” programs could continue engaging

²⁰⁴ Ibid., 41.

in class actions, working on welfare reform, assisting aliens and prisoners, and more, so long as their new funders allowed them to. Thus many states offered parallel legal services programs. In 2007, 16 states operated parallel programs and in some jurisdictions the private bars provided basic legal services.

LSC also encouraged states to consolidate multiple local LSC-funded programs into regional or statewide programs, a process described as “merger mania.” Due to mergers and overall reconfiguration, the number of programs decreased: from 1995 to 1998, the number of LSC basic field and Native American programs fell from 288 to 261, as 27 programs were merged.²⁰⁵ In 1995 there were 325 programs; by the end of merger mania in 2006, there were 138. In 2015 there were 134 programs.

Program Changes

Since the statewide initiative began, an increasing number of states have created “Access to Justice” commissions, which include representatives from the courts, bars, legal services and more.²⁰⁶ Thus, as part of access to justice, many programs work with a partnership of stakeholders within the justice system of each state. Many programs have also looked for new sources of money. Aside from private sources, programs sought and received new sources of non-LSC funding under VAWA, (Violence Against Women Act), the Housing and Urban

²⁰⁵ Don Saunders, “Building State Justice Communities: Where Do We Go From Here?,” *National Legal Aid & Defender Association*, accessed March 18, 2014, http://www.nlada.org/Civil/Civil_LSC/LSC_State.

²⁰⁶ A state’s Access to Justice Commission may be selected from the collaboration of providers or the state’s Supreme Court.

Development (HUD), the IRS, and other federal agencies. Programs also secured money through state and local governments or agencies.²⁰⁷

Programs also changed the manner in which they delivered services. In the 1990s programs created telephone hotlines to “screen cases, provide legal advice or brief service, and make referrals to private attorneys and other sources of legal assistance.”²⁰⁸ In the twenty-first century, with the advent of the information age and internet growth, access improved further, as programs built websites to provide substantive legal information (in multiple languages), online intake systems, online forms, videos, chat capability and simplified step-by-step instructions. In addition, many courts offered similar services along with electronic filing and payment options. Not surprisingly, while technology played a large role in facilitating access to legal services, it has not dramatically increased access to justice.

In the 1990s a grass roots effort to improve access to justice for the poor slowly coalesced into a nascent movement dubbed “Access 2 Justice.” Stakeholders realized that adding more lawyers was not reducing the justice gap.²⁰⁹ Founder and leader of Access 2 Justice (A2J) Richard Zorza worked with stakeholders and existing programs to leverage technology in promoting information, and supporting self-represented litigants. From this early movement emerged A2J, Pro Bono Net, and Law Help, which together provide interactive

²⁰⁷ Programs receive private funds from various sources including foundations, individual philanthropy, United Way, private bar, fee-for-service projects and more. Programs also engage in fundraising activities to increase donations. Sources of funding also include, but are not limited to contracts with agencies for assistance with establishing eligibility of clients for federal benefits such as Supplemental Security Income, Social Security Disability and Medicaid. Programs also receive money from surcharges or fees from court filings, attorney registration or state bar dues, etc.

²⁰⁸ Houseman, 45.

²⁰⁹ Jake Hertz, “Speaking with the Master: Part One of Our interview with Richard Zorza,” *Pro Bono Net*, accessed March 24, 2015, <http://www.connectingjusticecommunities.com/speaking-with-the-master-part-one-of-our-interview-with-richard-zorza/2014/04/>.

online document assembly, Pro Bono information including a pleading bank, program portals, and websites respectively. Joining the technology boom in 1997, the ABA committee on the Delivery of Legal Services started its first email listserv. By 1988, the OIG supported an A2J project, which led to LSC's Technology Initiative Grant or TIG program. According to LSC, the technology initiative has funded 570 projects totaling \$46 million. The program is effective in promoting the goal of access to justice.²¹⁰

Programs also provide other services such as legal education workshops, referral services, and Pro Se self-help materials. In 2013 grantees made referrals to over 233,000 other legal service providers, over 285,000 lawyers (LRIS & individual), and over 52,000 (non-legal) human or social services programs. Over 305,000 people attended legal education presentations, and 49,672 people went to Pro Se clinics or workshops.

The End of Restrictions

The Republican Revolution and ensuing restrictions buttressed the Reagan era initiatives of private funding, private attorney involvement, and alternative delivery methods of Pro Se and self-help as programs fought to continue providing the same level of access to justice for clients. With decreased funding and added restrictions, Access to Justice required a comprehensive safety net for the poor—something other than LSC-funded programs.

No new restrictions have been implemented to date. Opponents continue with moderate attacks on LSC, but after the 1996 prohibitions, growing oversight, and monitoring of

²¹⁰ Technology grants are given to programs to help provide access to justice for the poor. Grants have been used to create a national network of legal aid websites, which include legal forms, interactive document preparation, online intake, and Pro Bono portals that help lawyers connect with clients.

program performance, there is little left to contest.²¹¹ According to LSC, “since 1996, bipartisan support in Congress for LSC has continued to grow.”²¹² From the \$278 million in FY1996, appropriations for LSC slowly increased to \$283 million the following year, with strong increases in FY1996, FY2001, FY2007, FY2009, to a recalibrated high-water mark of \$420 million in 2010. Notably, LSC removed restrictions on collecting attorney’s fees in 2010.

According to Alan Houseman and Linda Perle, the LSC restrictions of 1996 diminished the capacity of legal services programs and staff to “effectively represent low-income persons in the courts and before other forums that affect their rights and responsibilities.” However, they argue that “over 95% of the work done in legal services in 1995 can continue today and over 98% of the cases brought to court in 1995 can still be brought.”²¹³

Diminished Capacity

Although Houseman’s and Perle’s statistics indicate that LSC programs can continue doing 95 percent of their work and bring 98 percent of their cases, they do not diminish the catastrophic impact that restrictions have had on narrowing the poor’s access to justice. “Not being able to do class actions means that there is a whole level of remedy that is not available to clients,” says AnnaMarie Johnson, “there are things that we would like to correct, but you can’t do it with one individual.”²¹⁴ For instance, Johnson describes a major problem currently afflicting the process:

²¹¹ Program performance involves many aspects, including reporting and compliance. Since programs use government funds, it is the responsibility of the OCE, OPP, OIG and LSC to make sure money is spent effectively and in support of providing legal services in an efficient manner.

²¹² “Twenty-Fifth Anniversary: 1988-1999 Annual Report,” *Legal Services Corporation*, last modified 1999, http://www.lsc.gov/sites/default/files/LSC/pdfs/LSC_1998-1999_Annual_Report.pdf.

²¹³ Alan Houseman and Linda Perle, “What Can Be Done,” *National Legal Aid Defender Association*, last modified August 9, 2001, http://www.nlada.org/Civil/Civil_LSC/LSC_Developments.

²¹⁴ Interview with AnnaMarie Johnson by Todd Ashmore, March 25, 2015.

There is a nationwide organization that is scamming people on foreclosure and foreclosure assistance... what they can do with the one client is moot them out by giving them their money back and correcting the problem...what we need to do is have a class action...so you can actually get at their business practices and put them out of business.²¹⁵

A restriction on class actions prevents programs from effectively combating such problems as consumer fraud and predatory lending practices, as well as any other act that adversely affects a multitude of clients. Her example describes a real inability for legal services to stop corrupt practices, and so the scam continues.

Restrictions on lobbying also limit a program's ability to help their clients. "Sometimes our clients' voices need to be heard at the legislature," as Johnson correctly observed, "the problems and issues that the legislature is putting through, how it affects the poor and what they can do to help the poor is not being heard...they have affectively silenced us on that."²¹⁶

According to Jon Sasser, who currently lobbies on behalf of the poor in Nevada, much of the 2015 state legislative session involved defensive work. Sasser worked to "cure" or amend Assembly Bill (AB) 386, Senate Bill (SB) 58, and AB 195, among others. AB 386 established procedures to deal with squatters, but made unintentional changes to landlord tenant law. Sasser consulted with tenant advocates while working closely on drafting and amending the bill with interested parties. SB 58 initially allowed additional parties to view information related to children within the juvenile court system or in protective custody. Sasser worked to successfully limit the bill to only those people within the jurisdiction of the juvenile court. AB

²¹⁵ Ibid.

²¹⁶ Ibid.

195 removed requirements on deficiency judgments in foreclosures.²¹⁷ His work also limited the scope of judgment to commercial property only.

Sasser labels bills as “cured,” “concerned” and “killed”. In 2015, under this taxonomy he was concerned about SB 239, SB 193 and other bills. SB 239 shortened the timeline after foreclosures to sue for wrongful foreclosure, and SB 193 removed requirements to pay overtime for hours worked in excess of 8 hours in any workday for minimum wage workers. Sasser also helped to “kill” bills such as SB 123, AB 228, AB 102 and SB 255. SB 123 would have removed restrictions on payday lenders, AB 228 would have allowed GPS tracking devices to be installed in cars for people with poor credit, and AB 102 would have allowed an initial waiver of reasonable efforts to be used as proof in a termination of parental rights trial, while SB 255 would have required putative fathers to register with the state or forfeit parental rights.²¹⁸

Sasser’s work provides examples of how legislative advocacy is critical in protecting the poor and Nevadans in general. Without advocacy to amend or terminate harmful laws, the problems of the poor will only multiply and legal services programs will be further taxed to meet the increased demand for their services regarding family, juvenile, employment, consumer, and housing issues. Today, LSC prohibits recipients from engaging in legislative lobbying activities including agency rulemaking or advocacy training. Unless recipients are

²¹⁷ A deficiency judgement allows lenders to collect money from lendees if the sale price of the foreclosed home is less than the amount owed on the mortgage.

²¹⁸ Nevada law places certain restrictions on licensees of check-cashing, deferred deposit loan, high-interest loan, and title loan services. Licensees are exempt from certain requirements if they comply with certain conditions such as an agreement not to commence civil action or process an alternative dispute resolution on a defaulted loan. (NRS 604A.480) SB 123 would have eliminated that condition. With concern for AB 102, Nevada law requires agencies that provide child welfare services to make reasonable efforts to reunify a family before placing a child in foster care. Both AB 102 and SB 255 would make it easier to terminate parental rights.

invited to participate in providing an opinion on behalf of the poor, they are restricted from advocating for them.

Additional restrictions limit the number of eligible clients. According to Johnson, “there are plenty of organizations to take up restricted cases such as abortion, or euthanasia,” but funding and resources are limited.²¹⁹ There still remains a section of the poor unable to afford representation such as the military, prisoners, criminals, those charged with possessing illegal drugs, and immigrants. In such cases, for example, vulnerable immigrants have no legal recourse against workplace abuses and “efforts to help prisoners reenter society are needlessly postponed.”²²⁰ Ultimately, an LSC program’s survival and ability to service all clients relies on funding, and the restrictions placed on that funding diminishes the legal services attorney’s capacity to effectively represent the poor in court and other forums.

Together, inadequate funding and added restrictions negatively affect access to justice for the poor. As Chair John G. Levi remarked at the LSC Board of Directors meeting in 2015, “In its first year...the fledgling LSC was allocated—in inflation-adjusted terms—more than \$468 million, rising three years later to its all-time high of what today would be \$880 million.”²²¹ In 2013, Congress appropriated \$340,876,165 for LSC, well below the 1976 level. The effect is stark. In 1971 the OEO-SP served approximately 1.2 million clients annually with an inflation-adjusted \$320 million. In 2013 LSC programs closed a cumulative 758,689 cases with

²¹⁹ Interview with AnnaMarie Johnson by Todd Ashmore, March 25, 2015.

²²⁰ “Why we need to fix the Legal Services Restriction on State, Local, Private and other Money,” *Brennan Center for Justice, New York University School of Law*, accessed March 30, 2015, <http://www.brennancenter.org/sites/default/files/analysis/LSCOnePager2010.pdf>.

²²¹ “Remarks by Chairman John G. Levi at LSC Board of Directors Meeting,” *Legal Services Corporation*, accessed March 21, 2015, <http://www.lsc.gov/remarks-chairman-john-g-levi-lsc-board-directors-meeting-miami-fl-january-23-2015>.

appropriations of \$340.8 million. According to Levi, in 2013 nearly one in three Americans, or 96 million people qualified for LSC services.²²²

How is it that funding and poverty population increased while the number of cases closed decreased? Since statistics reflect no major change in the type of casework being done since the OEO-LSP days, the answer lies primarily in funding and reporting.²²³ Ominously, in 2013 the entire \$340.8 million allocated never reached the field programs.²²⁴ The appropriations act reduced total funding to \$316 million. Notably six percent of the money allocated went to migrant and Native American work—the types of cases that require more travel and research, as clients are difficult to locate and are typically in distant rural areas.

Lower case numbers also reflect a decreasing number of LSC-funded cases.²²⁵ From 1996 to 2013, the percentage of LSC funds to non-LSC-funds provided to programs overall decreased from 59.67 percent to 38.73 percent. An increase in non-LSC funds is generally considered to be good, but non-LSC funds are particularly vulnerable to market conditions. In 2010, non-LSC funding reached its highest point at approximately \$578.7 million. Since the sub-prime mortgage crisis in 2009, non-LSC funds have fallen, due largely to a decline in real estate

²²² In 2013, 125% of the federal poverty line equaled an annual income of \$14,363 for an individual and \$29,438 for a family of four. Approximately 63.6 million people's yearly income fell below 125% of the federal poverty line; with an additional 32.4 million falling below for more than two consecutive months.

²²³ In 1971, the OEO-LSP percentage of casework was 36.6 in family law, 15.9 in consumer and employment, and 14.4 in housing. Nationally, in 2013 most of the work done was in Family law (32.93%), followed by cases dealing with Housing (27.36%), Income Maintenance (12.12%) and Consumer (11%). Overall, changes in casework do not account for the decreased numbers. In fact, from 2000 to 2013 programs show a decrease of approximately 4.7 percent in family law cases, which are usually more time-consuming. Litigation cases during the same period remained below 2 percent. In 1971, the OEO-LSP percentage of casework was 36.6 in family law, 15.9 in consumer and employment, and 14.4 in housing. Nationally, in 2013 most work was done in Family Law (32.93%), followed by cases dealing with Housing (27.36%), Income Maintenance (12.12%) and Consumer issues (11%).

²²⁴ P.L. 113-6, the Consolidated and Further Continuing Appropriations Act of 2013 implemented a funding rollback. The rollback included a 5% sequester of funds and 2% in rescissions [revoked funds].

²²⁵ Reports to LSC only include cases closed under LSC grants. They do not include non-LSC funded cases or those closed under other federal grants, such as HUD, VAWA, and others.

transactions made by lawyers, which contributes the largest amount to IOLTA accounts. IOLTA accounts also rise and fall with the federal rate, which the Federal Reserve slashed in response to the recession. Thus IOLTA, the second largest contributor to legal services, declined dramatically. Along with the decrease in IOLTA funds, federal, state and other non-LSC funds decreased. By 2013, non-LSC funding fell to \$542 million, of which IOLTA accounted for only 5.6 percent.

LSC's restriction on the use of non-LSC funds extends further each year, as LSC's percentage of contribution to total funds diminishes. According to the Brennan Center, "the restriction is an unnecessary federal overreach that interferes with choices of state, local and private charitable donors about how to spend their money."²²⁶ This long reach into non-LSC funds not only places restrictions on programs, but can affect the efficiency and effectiveness of legal services in general. As mentioned, in 1996 many "spin-off" programs were created in response to that particular restriction, leading to parallel legal services within states. As part of the Nevada Access to Justice Commission, Justice Douglas meets with providers regularly in an effort to fill gaps, and prevent overlap or duplication of legal services. Why? Because an overlap signifies an ineffective use of money and manpower, which could be used to provide missing services. Justice Douglas would prefer a unified statewide legal services program, but describes the problem associated with it,

One can't do it by itself. In one case, if we had nothing but pure open-ended providers doing it right now, we wouldn't be getting the federal money. And if we didn't have

²²⁶ "Why we need to fix the Legal Services Restriction on State, Local, Private and other Money," *Brennan Center for Justice, New York University School of Law*, accessed March 30, 2015, <http://www.brennancenter.org/sites/default/files/analysis/LSCOnePager2010.pdf>.

those folks who are doing it without the federal restrictions, they would have more money but then there would be a number of things they couldn't do.²²⁷

Without restrictions, programs could augment rather than cut their services. By sharing funds, they could eliminate unnecessary overhead, administrative, and personnel costs, and put their cost-savings into filling gaps in services.

Another argument against restrictions is that they implement internal contradictions that may diminish professional capacity. Lisa Wirtz argues that "Professionalism requires lawyers to transcend the bottom-line orientation of their profession and to serve such overarching goals as social justice and public interest...Professionalism highlights qualities including autonomy and honesty."²²⁸ Her opinion suggests a conflict between LSC restrictions and a lawyer's Canon of Ethics. This dilemma first surfaced with MFY, the Neighborhood Lawyer Program, when lay members attempted to interfere with a lawyer's conduct. As noted earlier, in 1963 Judge Florence Kelley upheld the "importance of maintaining the purity of the relationship between a lawyer and his client," even if it meant jeopardizing the organization's relationships.²²⁹ This raised an important question: does a denial of clients' rights due to ineligibility satisfy the requirements of a legal services attorney's canon of ethics?

A Matter of Right

When Justice Earl Johnson, Jr. (Ret.) delivered his keynote speech at the Pathways to Justice Conference in 2008 he was struck by a certain symmetry: "44 years of justice for the poor being a matter of private charity, followed by another 44 years of justice for the poor

²²⁷ Interview with Justice Michael Douglas by Todd Ashmore, May 1, 2015.

²²⁸ Lisa Q. Wirtz, "The Ethical Bar and the LSC: Wrestling with Restrictions on Federally Funded Legal Services," *Vanderbilt Law Review* 59, no. 3 (April, 2006): 974.

²²⁹ Johnson, 25.

being a matter largely of *discretionary* government funding.”²³⁰ And on the horizon, he believed, was a third phase: justice for the poor as a matter of right.

A year later, LSC issued a Justice Gap report identifying the gap between available resources for legal services and the legal needs of the poor, in other words, the unmet civil legal needs. The report stated that “nationally, on average, only one legal aid attorney is available to serve 6,415 low-income people,” well below the minimum access goal of two lawyers per 10,000 people.²³¹ In 2009, the report indicated that for every client helped by an LSC-funded program one person was turned away. “That’s a low statistic today,” says AnnaMarie Johnson, “It’s much higher. I think that for every one person assisted five are turned away.”²³² The report also tracked an increasing number of poor people appearing in state courts without attorneys, with an increasing number of unrepresented litigants in family and housing courts.²³³ The majority of the poor were not receiving counsel. Finally, the report recognized that not all of the poor’s legal problems were even addressed with the help of an attorney.

On what horizon did Justice Earl Johnson see justice as a matter of right? Did he imagine a civil Gideon? According to Sasser, “None of the legal aids, since *Gideon v. Wainwright*, have gotten any kind of funding, to my knowledge, to do criminal work...there was already a funding mechanism for criminal as the public defenders offices.”²³⁴ A liberal

²³⁰ Johnson, Earl Jr. “Three Phases of Justice for the Poor: From Charity to Discretion to Right.” Closing Keynote Speech, Pathways to Justice Conference, Los Angeles, CA, June 7, 2008.

²³¹ “Documenting the Justice Gap in America: An Updated Report of the Legal Services Corporation,” *Legal Services Corporation*, last modified September 30, 2009, <http://www.lsc.gov/media/press-releases/lsc-releases-updated-report-justice-gap-america>.

²³² Interview with AnnaMarie Johnson by Todd Ashmore, March 25, 2015.

²³³ “Documenting the Justice Gap,” 27.

²³⁴ According to Jon, the NLADA and programs such as the legal aid society of New York provide both types of representation, but they have separate criminal and civil arms. Their lawyers are separated within those branches. Only a few programs have both under their umbrella.

Democrat, lobbyist, and lifelong legal aid attorney, Sasser believes in implementing a civil Gideon. “If you are in civil law and not criminal law there is not a uniform right to have an attorney appointed to you. So there are those radicals out there that would like to see there be a civil Gideon. Then you have a right to an attorney in all kinds of cases.”²³⁵ When asked if he would like to see a civil Gideon, Justice Douglas responded, “I would. I don’t think I will.” Douglas believes it is a money issue. “California has attempted it. I see a number of states trying to get a civil Gideon,” says Douglas, “We barely commit sufficient resources to a criminal Gideon, in the true sense. And we keep trying to figure out ways to limit [that]...to keep the cost down.”²³⁶ When asked if a civil Gideon was on the horizon, former Executive Director of Nevada Legal Services (NLS), Carolyn Worrell predicted, “Not in our lifetime are we going to see a Civil Gideon, unfortunately.” Current Executive Director of NLS, AnnaMarie Johnson answered, “I do. I have no idea how to make that work in a real world manner. But I do believe in it. I think we can make it work.” Similar to the others, Johnson’s response seemed to support the undertaking, but a civil Gideon, at least in the sense of a criminal Gideon with a right to an attorney, did not seem a present reality. According to Justice Douglas, the closest civil Gideon is some kind of legal services program:

What was put out there, whether it is funded by the United States government or by the state in some form: state direct grant of money or money from various filing fees, that appears, at least in the present, the way were are going to have a civil Gideon. We will provide attorneys for people who are below this, and then by putting a Pro Bono position we can deal with those people who are actually above the cap limit, if they have certain kinds of cases falling in certain areas.²³⁷

²³⁵ Interview with Jon Sasser by Todd Ashmore, March 13, 2014.

²³⁶ Interview with Justice Michael Douglas by Todd Ashmore, May 1, 2015.

²³⁷ Interview with Justice Michael Douglas by Todd Ashmore, May 1, 2015.

Without the right to civil legal representation, the duty of access to justice falls mainly upon legal services providers. As the major funder of legal services programs in the United States, LSC's mission is to "promote equal access to justice in our Nation and to provide high quality civil legal assistance to low income persons."²³⁸ How well do LSC's initiatives provide access to justice for the poor? There are problems associated with the current corporation's initiatives, which promote the use of non-LSC funds such as IOLTA, Private Attorney involvement or PAI such as Pro Bono, and Pro Se or self-help for clients with some form of legal education and information.

LSC's restrictions on non-LSC funds harken back to the days of the Republican Revolution in the mid-1990s and have resulted in parallel programs with independent boards and administrations. Aside from the additional overhead needed to operate multiple programs, more action is needed to coordinate legal services. Justice Douglas explained the difficulty of cooperation,

Each legal services organization, on both sides, is fighting for dollars. They are fighting for their survival. We know they get LSC money; they should be entitled to some of the state dollars. We have one provider on the other side that says, "No, they get that money, they shouldn't need any of this." But it's like wait a minute, you're not providing that service that they provide. So we have stepped in...trying to coordinate and nurture, convince them to do it a different way.²³⁹

LSC restrictions have resulted in parallel programs fighting with each other over money.

LSC's Pro Se and Pro Bono initiatives also remind one of the Nixon, Reagan and Gingrich years, when Republicans, conservatives and others attacked the OEO-LSP and LSC respectively. They viewed federally-funded programs as welfare and promoted private-charity ideas such as

²³⁸ "Mission," *Legal Services Corporation*, accessed March 10, 2015, <http://www.lsc.gov/about/what-is-lsc/mission>.

²³⁹ Interview with Justice Michael Douglas by Todd Ashmore, May 1, 2015.

PAI. Pro Se initiatives pushed for self-reliance based on the assumption that a person did not require assistance, because they were responsible for their own needs. These initiatives deny the fact that some poor Americans require assistance from a federally-funded program.

The problem associated with Pro Se is that it does not secure justice for the poor. The use of technology has increased the amount of information available to clients, and legal education from classes to pamphlets help educate them, but there is no guarantee that it results in a strong Pro Se defense. According to Justice Douglas, litigation is very difficult for the poor, because they are always at a distinct disadvantage. Not only must they understand formal pleadings, but if there is an attorney on the other side, they must know the procedure and rules of court. “It’s like a three year-old playing a twelve year-old in basketball, and there is a height advantage,” mused Douglas, “You know the outcome before it starts.”²⁴⁰

Self-representing clients because they do not know the procedures or rules of the court also slow down the court’s docket. According to Bankruptcy Judge Linda Riegler, “sometimes clients just need someone to listen to them and tell them of their options, sometimes they need an attorney.”²⁴¹ Judge Riegler who spends a majority of her time advising Pro Se litigants about their rights and the correct procedures, urged the use of attorneys to help streamline the court process.

LSC’s PAI initiative promotes the use of Pro Bono, but there is no guarantee that private attorneys will take the case, let alone be knowledgeable in that field of law. “We have a lot of lawyers who say they are native domestic Pro Bono,” said Douglas, “Well, we have high powered attorneys, but not in family law.” In other words, there is an educational process or

²⁴⁰ Interview with Justice Michael Douglas by Todd Ashmore, May 1, 2015.

²⁴¹ *Pro Bono Award, Judge Linda Riegler*, directed by Nevada Legal Services, February, 2006, video.

learning curve for Pro Bono. He continues, “Whether it’s just divorce, child custody or termination of parental rights, they need a mentor to get them through this.” Therefore, some attorneys willing to take a case Pro Bono run the risk of inadequately representing clients or in some cases committing malpractice. According to Douglas, sometimes Pro Bono is just a matter of a private family law attorney taking a Pro Bono case in family law. He doesn’t see any comparatively better skill from a legal services attorney representing the poor, but recognizes, that “what they have is specialized knowledge in a specific area, where in some cases, the traditional for profit attorney doesn’t.”²⁴² The concern for added reliance on private attorney involvement and less reliance on legal aid attorneys is that legal aid attorneys dedicate time and effort and increasing experience in resolving issues specifically related to the poor. This is not always the case with private attorneys.

LSC’s PAI and Pro Bono initiatives, the push for Pro Se or self-representation, and the assumed reliance on non-LSC funds are all part of the meshwork of civil legal representation for the poor. The increased reliance on non-LSC funds, PAI and self-help suggest a legal services trajectory more in line with the private charity days of the early legal aid movement than the ideal of justice as a matter of right.

LSC’s vulnerability to political opinion, largely between two dominating political parties, the Democrats and Republicans, result in a clash between liberal and conservative viewpoints as well as a range of opinions in between. According to Douglas, “part of the society we live in says ‘well you made your bed, so what?’ And the other says ‘the so what is, you have a right to

²⁴² Interview with Justice Michael Douglas by Todd Ashmore, May 1, 2015.

be treated fairly and equally before the law.”²⁴³ The historical battles over LSC resulted in a hobbled program; indeed, the early goal of “minimum access” is still not being met.

Meanwhile, restrictions, limited LSC-funds, and an increasing percentage of non-LSC funds tied to economic downturns narrow equal access to justice for the poor.²⁴⁴ Nixon’s 1971 message to Congress, is still relevant today: it is the poor who pay for LSC’s indecision,

Here each day the old, the unemployed, the underprivileged, and the largely forgotten people of our Nation may seek help. Perhaps it is an eviction, a marital conflict, repossession of a car, or misunderstanding over a welfare check—each problem may have a legal solution. These are small claims in the Nation’s eye, but they loom large in the hearts and lives of poor Americans.²⁴⁵

To date, LSC is the largest funder of civil legal aid for low-income Americans. To fulfill its mission, the corporation distributes over 90 percent of its funding to 134 independent non-profit legal aid programs throughout the nation. As noted earlier, LSC provides funding through a competitive grant process, basing the size of grants upon the number of people living in poverty in a given state or geographic area. Thus, LSC grantees exist in every state of the Union to provide America’s poverty population with legal counsel for civil issues. Nevada Legal Services is the sole LSC recipient in Nevada.

²⁴³ Ibid.

²⁴⁴ The number of poor increase during economic depressions, thus funding for legal services is needed most during recessions.

²⁴⁵ <http://www.lsc.gov/about/what-is-lsc/history#sthash.AA9wLsN0.dpuf>.

Nevada Legal Services

The only thing less popular than a poor person, these days, is a poor person with a lawyer.

—Jon D. Asher, Legal Aid Society of Denver, 1995

If you're in a position where you can't afford to attain an attorney, you're not a full citizen.

—Justice Michael Douglas, 2015

Introduction

The history of Nevada Legal Services (NLS) parallels much of the history of the national movements from the legal aid societies to LSC-funded programs today. NLS is a concrete example of how Congress and LSC limited access to justice by curtailing programs and the effective attorneys who attempted to challenge inequality and combat deep-rooted poverty in America. Legal services attorneys were more effective in fighting poverty before the LSC restrictions of the 1970s and later decades. The days of legal services, before the restrictions, demonstrate how legal services attorneys were more influential when the entire toolkit for lawyers was available. Annelise Orleck's *Storming Caesars Palace* describes the humiliation Las Vegas welfare mothers were subjected to and the animosity they met when attempting to secure federal and state aid. At the time, legal services served as an empowering venue for clients such as Ruby Duncan who fought for justice and demanded greater rights for the poor.

A closer look at NLS reveals a group of legal services attorneys who believe in a civil Gideon and in their unique ways still fight a "War on Poverty." NLS today provides access to justice, but not as well as it did before Congress and LSC stifled the program's effectiveness by placing restrictions on the type of legal activities attorneys could engage in and the kinds of clients they could represent.

This chapter provides the history of the Clark County Legal Aid Society (CCLAS) and its association with Ruby Duncan and the Clark County Welfare Rights Organization (CCWRO), specifically with their work in the late 1960s to mid-1970s welfare rights movement. It follows CCLAS during the OEO-LSP and LSC changes, up to its merger in 1982 with the Nevada Indian-Rural Legal Services program to form Nevada Legal Services. It addresses the LSC restrictions and the eventual "spin-off" of the Clark County Legal Services program (CCLS), which created parallel programs in Nevada. Next, a history of general access to justice is provided to describe the work NLS has done through Nevada's population boom and housing crisis. It then offers a brief examination of the dedicated employees and people who have provided legal services. Finally, it addresses the limitations of access to justice and the purging of effective legal services leaders such as former Executive Director Wayne Pressel.

Clark County Legal Services

Sponsored by the Clark County Bar Association (CCBA) and initially funded by Justice of the Peace Art Olsen, the Clark County Legal Aid Society (CCLAS) formed in 1958 near the end of the legal aid movement.²⁴⁶ Before any OEO funding was available, CCLAS, like other legal aid societies, met the growing need for legal services through charitable donations by the United Fund, hosted fundraisers, and private donations of time and money.²⁴⁷ Within its first year, CCLAS screened approximately 575 applicants. According to Jon Sasser, "[In] 1960 more than

²⁴⁶ CCLAS was located at 515 S. 5th St, LV 89101. Justice of the Peace Art Olsen donated a month of wedding receipts toward the CCLAS startup. The society began with President John Foley and executive secretary Mrs. Jacqueline Sylvester. The bar association selected the 10-member Board of Trustees annually.

²⁴⁷ When CCLAS first moved its location to 1622 S St., and later to 214 Maryland Parkway, the wives of the attorneys donated furniture and their time in decorating the offices. The wives also used fund-raising activities such as home tours to help support legal aid. Thirteen wives donated their time to the operation of the program to allow the executive secretary, Mrs. Gerry Hyland to take vacation.

1000 applicants had been processed with service provided to 350 individuals.”²⁴⁸ CCLAS began as a Pro Bono program. The only paid position, the Executive Secretary, screened calls and referred prospective clients to volunteer CCBA members. CCLAS also created a lawyer referral service for those who could afford services (1961). “In 1963 over 700 people were interviewed,” said Sasser, and in 1964, “844 persons sought aid [while another] 325 were directed to a panel of 43 [volunteer] attorneys.”²⁴⁹ A year later, future Governor and U.S. Senator Richard Bryan joined the board.²⁵⁰ Notably, Bryan was the first public defender in Las Vegas (1966).

In 1966, in response to the war on poverty, a neighborhood legal assistance program formed in Clark County. Staffed by two volunteer attorneys, the neighborhood program offered after hours (6 PM to 9PM) legal services to three low income neighborhoods within Las Vegas. With applications of 1,000 to 1,200 annually, the program became a strong candidate for OEO funds. Nevertheless, LSP chose to fund CCLAS. Why did OEO-LSP Director Bamberger, with an urgency to meet his funding deadline, choose CCLAS over a Great Society program? Although the neighborhood program was designed to fight poverty, it was hardly established in the legal arena. With a proven track record of helping the poor and a well-established and ongoing relationship with the local bar, CCLAS was the better choice, at least as a program that could be administered by attorneys.²⁵¹ True to legal aid form, CCLAS struggled with the idea of using government funds. In 1967, “after a bitter fight among members,” says Sasser, “the Clark

²⁴⁸ Jon Sasser, *NLS History*, document, (2008), 1.

²⁴⁹ *Ibid.*, 2.

²⁵⁰ The board elected its officers annually, and in 1968, chose Bryan to be president. In the 1960s, presidents included: Paul Larson (1960), Lexter Berkson (1961), John Peter Lee (1962), Charles Deaner (1963), Franklin Smith (1964), Norman Hilbrecht (1965), Terry Jones (1966), Owen Nitz (1967), and Jack Perry (1969).

²⁵¹ The governing body of CCLAS consisted of a ten-member Board of Trustees. Each year the local bar association elected officers for the board.

County Legal Aid Society applied to OEO for \$20,000 in federal funds.”²⁵² The OEO awarded a \$22,000 joint grant to CCLAS and the Clark County Economic Opportunity Board. Together, the programs would use the grant to serve the 7,000 Clark County families with incomes of less than \$3,000 a year.

In 1968, with OEO funds, CCLAS became a major program in Southern Nevada’s War on Poverty, with 13 attorneys and 8 low-income clients, the new board adopted the “Citizen Perspective.” Mario Ventura, a staff Judge Advocate at Nellis Air Force Base, became the first paid CCLAS staff attorney. With a full-time attorney and legal secretary, CCLAS offered a minimum of sixty-four hours of monthly service at anti-poverty centers located in the Westside, North Las Vegas and Henderson areas. According to Ventura’s report, CCLAS helped 153 clients in the last quarter of 1968.²⁵³ Based on client needs, Ventura dealt with an increase in insurance and Social Security claims, as well as a rise in landlord/tenant issues. Fourteen of Ventura’s cases went to court.²⁵⁴ In 1969, with Don Poole and future Director Mahlon Brown III, CCLAS officially offered a Pro Bono program and increased staff to meet the growing demand for legal aid.²⁵⁵ In 1970 CCLAS officially changed its name to Clark County Legal Services (CCLS). That same year, quelling any concern that it might not be fighting a war on poverty, CCLS agreed to represent Ruby Duncan and thousands of other welfare recipients.²⁵⁶

²⁵² Jon Sasser, *NLS History*, document, (2008), 2.

²⁵³ According to the report, 340 persons used the legal aid service. Of the 153 clients that received help, 60 achieved positive results.

²⁵⁴ Of the fourteen cases, Ventura won eight and settled four.

²⁵⁵ According to Jon Sasser, the Pro Bono program reported 63 attorneys offering services. Within one year of accepting OEO money, CCLAS received 1350 requests for legal aid. “Of the 945 accepted cases,” says Sasser, “716 were handled by the staff attorneys and 229 by the volunteer attorneys.”

²⁵⁶ Orleck, 131.

Bogeyman and Bogeywoman

Welfare was anathema to the rugged individualist self-image and libertarian tradition that many white Silver State residents and politicians cherished. In 1955, Nevada was the last state in the Union to accept Aid to Dependent Children (ADC).²⁵⁷ Although the ADC had its own issues, it offered some relief to poor single mothers.²⁵⁸ In 1967, Nevada once again was the last to institute the Federal Work Incentive Program (WIN). Not until the Department of Health, Education and Welfare (HEW) threatened to withdraw millions of federal funds, did Nevada offer an employment and training program for welfare recipients. Nevada's state government also resisted the Food Stamp program.²⁵⁹ According to Orleck, food stamps spared welfare recipients from a humiliating experience, as relief money was often used as a political patronage fund. As late as 1967, rations of surplus food were handed out at the Clark County courthouse. This staged ritual, designed to perpetuate a debt of gratitude for county commissioners, left welfare recipients standing in the Las Vegas heat without water or restrooms. Food stamps offered recipients some dignity and the simple utility of purchasing nutritious foods, something other than cheese and peanut butter.

Nevada's fear and loathing of welfare harkened back to the sixteenth and seventeenth centuries when Queen Elizabeth's Laws were enacted to repress vagrancy and provide a means to publicly punish sturdy and able beggars in Britain and its colonies. According to Lawrence

²⁵⁷ The ADC was created under the Social Security Act of 1935. By 1962, the program included unemployed fathers, and changed its name to Aid to Families with Dependent Children (AFDC).

²⁵⁸ A form of hypocrisy prevailed. The program encouraged middle-class women to stay home with their children while poor women were expected to leave their children and enter the workforce. African American women, who were socially and economically required to work, were ineligible for such aid. Maya Miller, President of the Nevada League of Women Voters, saw "the AFDC as earned compensation for the economically valuable work of mother." (*Storming Caesars Palace*, 93).

²⁵⁹ The Food Stamp Act of 1964 was designed to replace the federal commodities food program; however, many state governments resisted the program well into the 1970s.

Friedman, in America “the sturdy beggar was one of the (mostly mythical) bogeyman of the nineteenth century.”²⁶⁰ Thus distinctions between the impotent and able-bodied were made in order to identify the “idle poor” and keep their hands out of government coffers. The bogeyman existed well into the 1960s. In 1966, California gubernatorial candidate Ronald Reagan claimed welfare encouraged poor behavior; it was “pay for play.” Unfortunately, the exaggerated focus on the few who exploited the welfare system resulted in an undignified response to the many in need. Politicians and conservatives firmly embraced the ideas of “less eligibility” and David Ricardo’s “Iron Law of Wages,” which promoted the idea that conditions for the poor should be worse *on* welfare than *off* welfare, and pushed the amount of aid below subsistence levels for fear welfare would promote dependency.²⁶¹ Thus, the nineteenth century mindset that pauperism was a result of laziness, immorality, or some moral defect, thrived in the Las Vegas heat, through the scrutiny, embarrassment, and stigma of welfare. “In 1967, Congress gave Welfare departments power to remove children of AFDC mothers ‘with multiple instances of illegitimacy.’”²⁶² Before cases such as *King v. Smith* (1969), caseworkers dropped by unannounced and rifled through closets and drawers looking for signs of a man in the house. According to Ruby Duncan,

Investigators would investigate your home. They would bust in, knock on your door at midnight and bust in. They were all up in your closet, all under your bed, everywhere,

²⁶⁰ Friedman, Lawrence, *A History of American Law*. (New York: Simon & Shuster, 2005), 150.

²⁶¹ Ricardo’s Iron Law of Wages (1817) introduced the theory that the lowest wage could never fall below subsistence levels, an idea that conservatives firmly embraced. Challenging the idea that poverty was a choice, Progressive Era social workers asserted that poverty was a social and structural problem. Poverty was due to unemployment, intermittent employment, and low wages. The realization that poverty was a structural flaw in the capitalist system was integral to challenging poor laws and myths about the poor, and ultimately in understanding the need for expanding the Welfare State. The same was done of the fact that in the twentieth century the national government through its monetary and fiscal policies as well as its business regulatory practices was partly responsible for economic downturns and caused unemployment. This was not only true in the 1930s but also in the 1950s, and during the Great Recession of 2008-13.

²⁶² Orleck, 96.

and you wondered what the world is going on. Your children are being frightened...That's why a lot of women began pulling together and saying this has got to stop.²⁶³

The “sturdy beggar” was not alone in disparaging welfare recipients. Maurice Davie in *Negros in American Society* (1949) described the “black bogeywoman.” “[The] black mother spent grocery money on movies and dance halls, where she met men with whom she could easily have sex. She produced legions of unwanted children, on whom she took out her frustrations.”²⁶⁴ As Emma Stampley, a poor black woman from the South, argued, “I would have preferred to have fewer children, but there wasn’t any birth control on the market for black peoples like they had for whites. There was no place to go.”²⁶⁵ Despite its popular reputation as a moral wasteland that defied America’s traditional religious values, Las Vegas was a tough place for women to practice birth control. As a Catholic, Stampley’s doctor refused to provide her with contraception. Even after *Griswold v. Connecticut* (1965), a Catholic- and Mormon-dominated Nevada made it difficult for married women to obtain contraception advice and devices; unwed women had to wait until 1973. Married women also needed their husband’s consent to have their tubes tied.²⁶⁶

In *A Profile of the Negro American* (1964) Thomas Pettigrew blamed black women for breaking up families, claiming they drove away husbands and damaged the self-esteem of their sons. Hence the matriarch ruled the roost. Later, the emasculated boys turned to violence to prove their manhood. So it was Ruby Duncan who defied the prejudiced view of the

²⁶³ Interview with Ruby Duncan by Claytee D. White, February 13, 2007. <http://digital.library.unlv.edu.99e>.

²⁶⁴ Orleck, 80.

²⁶⁵ *Ibid.*, 30.

²⁶⁶ In *Griswold v. Connecticut* (1965), the Supreme Court invalidated a Connecticut statute prohibiting the use of counseling and medical measures for the purpose of preventing conception. According to the Court, the statute violated a marital right to privacy.

“bogeyman,” the racist myth of the “black bogeywoman” and Nevada’s political ritual of patronage, when she demanded relief.

Welfare Rights Movement

What they want from Legal Services is our best advice. They don’t come here for me to tell them they don’t have the capacity to do something. They can make their own assessment as to whether they can do it.

—Jack Anderson, 1973

“Protests in the streets, and negotiations in the suites,” emphasizes Orleck, “were two arms of NWRO’s strategy for reforming the welfare system.”²⁶⁷ The National Welfare Rights Organization (NWRO), with legal advisor none other than former MFY director Ed Sparer, sought to establish a guaranteed minimum income and eliminate the punitive and humiliating regulations of welfare. According to Orleck, law students, influenced by Sparer’s ideas, went on to “blaze new legal paths in the fields of domestic violence, immigration, women’s rights, health and consumer care, and the rights of the elderly.”²⁶⁸ Many joined the legal services programs surfacing across the nation to address the poor’s immediate needs.

In 1969, in response to Nevada’s continued reluctance to provide social services for the poor, Ruby Duncan and a group of Westside mothers formed the Clark County Welfare Rights Organization (CCWRO), a chapter of the NWRO. That same year, according to historian Eugene Moehring, “continued segregation in area grade schools, coupled with a relative lack of city and state funding for Westside poverty programs, led to a full-scale riot.”²⁶⁹ At the time, most black residents including Ruby Duncan lived in West Las Vegas, where the rioting began. The CCWRO had formed at a critical time, just as the tide of national politics turned against the poor.

²⁶⁷ Orleck, 115.

²⁶⁸ *Ibid.*, 115.

²⁶⁹ Eugene P. Moehring and Michael S. Green, *Las Vegas: A Centennial History* (Reno: University of Nevada Press, 2005), 202.

Governors Nelson Rockefeller in New York and Ronald Reagan in California were currently investigating welfare fraud and cutting benefits respectively. In 1970, Nevada welfare administrator George Miller abruptly reduced more than half of the grants going to women and children receiving welfare. According to legal aid attorney Jack Anderson, “prior to this action...CCRWO had not grown a great deal...But this was war!”²⁷⁰ CCLS Director Mahlon Brown agreed to help Ruby Duncan and to represent every family cut off the welfare rolls. Brown hired Anthony Diamond and fellow Howard Law school graduate Jack Anderson (paid for by the “Reggie” program), to deal with the flood of termination notices. CCLS filed a class action suit in Federal District Court, *Woods v. Miller* (1970). Despite a Temporary Restraining Order, Miller continued terminations.²⁷¹ According to Anderson, Mrs. Duncan and the CCWRO responded by organizing a “campaign such as Nevada had never seen, the NWRO...declared Nevada a welfare battleground.”²⁷² With hundreds of people accessing CCLS, Anderson and Brown forged Operation Nevada, “a legal assault on Nevada in the courts, combined with a series of carefully targeted mass protests designed to bring the state’s economy and government to its knees.”²⁷³ The Operation involved an emergency “lawyers brigade” of approximately 40 lawyers and 70 law students led by Ed Sparer. Ronnie Pollack, a lawyer in *Goldberg v. Kelly*, signed on as co-counsel for *Woods*. The legal team assisted with requests for hundreds of fair hearings. They

²⁷⁰ Jack Anderson, “Can Welfare Mothers Do Community Economic Development?,” *Clearinghouse Review* 13 (April, 1980): 929, 930.

²⁷¹ In October 1970, Federal Judge Roger Foley granted a temporary restraining order to halt the welfare terminations. According to *Goldberg v. Kelly*, welfare recipients deserved fair hearings prior to any action. George Miller refused to restore any benefits. In December, Miller sent his entire staff of 200 to perform door-to-door checks on welfare recipients. By January he terminated 3,500 families and reduced the benefits of another 4,500.

²⁷² Anderson, 929, 930.

²⁷³ Orleck, 141.

created a logjam by holding 72 hearings a day, lasting 15 minutes long. Then began the mass protests,

Hundreds of organizers, legal services attorneys, law students and sympathizers poured into Nevada. Ruby Duncan, with Dr. Wiley, Ralph Abernathy, Jane Fonda, Florence Kennedy, Gloria Steinem and David Dellinger at her side, led thousands of protestors on a march down the Las Vegas Strip in March 1971. [Other famous people included, actor Donald Sutherland, United Farm Workers leader Cesar Chavez, and Dr. Benjamin Spock.] The Casinos which had never closed came to a standstill when hundreds of poor women and children decided to stage eat-ins.²⁷⁴

Duncan used local television to chastise liberal Democratic Governor Mike O'Callaghan for his "lack of concern" over the 7,500 Nevada welfare recipients hurt by welfare cuts.

Targeted protests by CCWRO, with the help of NWRO and CCLS, led to national media coverage which put pressure on Nevada's Welfare division.²⁷⁵ According to Franciscan Father Louis Vitale, the first priest to be arrested in Nevada, "The city was supposed to be an escape for people. They didn't want to come all the way here and be reminded of all the problems of the 60s and 70s. They didn't want to face the question of the poor, and blacks."²⁷⁶ Shortly after the march, Judge Roger D. Foley ruled the welfare cuts illegal, and all recipients were reinstated. According to Mahlon Brown, "It established citizens' rights to fair hearings in conflicts with government agencies across the US...from employment security to motor vehicles it spread across the country."²⁷⁷ In response to the ruling, Miller and O'Callaghan increased their scrutiny of welfare fraud. Conservatives in the Nevada assembly pushed for legislation

²⁷⁴ Anderson, 929, 930.

²⁷⁵ After the 300 mother march on March 6th, 250 mothers staged a sit-in at the Sands. Notably, New York attorney Ron Pollack spurred a federal investigation of the Welfare division, claiming it had violated Fourth Amendment rights.

²⁷⁶ Orleck, 161.

²⁷⁷ *Ibid.*, 166.

that would imprison, for up to ten years, without parole, those engaging in welfare fraud.²⁷⁸

The legislation smacked of the Poor Laws, the “sturdy beggar” and the days of imprisoning the poor.

Operation Nevada was the last major initiative for Welfare Rights in Nevada. Realizing that economic, political and legal power could not be separated, Duncan and CCWRO applied for grants to create a program that effectively addressed the physical and social deterioration of the Westside. The program offered services for the poor such as daycare, job training, medical clinics, a variety of counseling, and free breakfasts for children; Mahlon Brown suggested the name “Operation Life”.²⁷⁹

CCLS continued to work with CCWRO throughout the 1970s. In 1971, CCLS filed a class action against the Clark County School District (CCSD) to force participation in the National School Lunch Act. In 1972, Anderson successfully represented Duncan and other Westside mothers on felony charges after they staged “eat-ins” at the Stardust hotel.²⁸⁰ In 1973, CCLS helped Operation Life (OL) secure the Old Cove Hotel to house their services. Notably, CCLS had grown to fourteen employees, including four attorneys and two VISTA attorneys. In April 1973, after prodding from Governor O’ Callaghan, the state legislature finally passed a bill to fund its share of the federal food stamp program, making Nevada the last state to do so.²⁸¹ That same year OL opened a Community Health Center, with physicians, nurses, dentists, and

²⁷⁸ Miller’s Welfare Department had created a “cheaters report” of welfare recipients. The report listed five reasons for termination: “man living in the home, failure to report earnings adequately, unemployment benefits, changes in childcare costs, and changes in rent.”

²⁷⁹ Operation Life centralized social services in the Westside. By 1980 the program had almost 100 employees, most of them former welfare recipients.

²⁸⁰ Anderson managed to get the case dismissed. The Stardust paid for the cost of the eat-in and formally apologized to Ruby Duncan.

²⁸¹ Although Duncan chastised O’Callaghan, he was a liberal Democrat. In 1971 O’Callaghan finally got an open-housing bill out of the state legislature.

optometrists providing healthcare for children.²⁸² OL also worked to establish the West Las Vegas library, and in 1974 brought the first Women, Infants and Children (WIC) program to Nevada.

During the Mahlon Brown and Jack Anderson period, Operation Life, with help from CCLS, gave the community food, medical care, a library and a community center. The program had fought for food stamps, WIC, job training, public service employment, the right to Medicaid benefits on jobs without medical coverage and more. Through a number of appeals, CCLS had managed to overturn client disqualifications from AFDC benefits in *Miller v. Munger* (1972) and *Parson v. Miller* (1974); as well as, establish prorated benefits between the Aid to the Blind program and AFDC in *Miller v. West* (1972), and secure unemployment benefits after wrongful terminations in *Lellis v. Archie*, (1973).²⁸³ In 1974 Mahlon Brown III became a Justice of the Peace, and later served as a US Attorney for Nevada.

By 1976, LSC on a national scale had taken over the OEO-LSP responsibility of funding legal services programs. That same year CCLS divided into specialty units to offer services through a senior law project, a lawyer referral service, a welfare law unit, and housing and consumer sections. Notable litigation cases at the time involved wrongful seizure of a tenant's property, *Adams v. Sanson Inv. Co.* (1974), pretrial detention conditions, *Bishop v. State of Nevada* (1976), attempts to block welfare cuts, *Coby v. Miller* (1977), and a revision to asset requirements for welfare eligibility in *Brey v. Miller*.

²⁸² It was the only Early Periodic Screening and Diagnostic Testing ("EPSDT") clinic run by poor people for poor people. The clinic's motto was "For the Poverty Community, in the Poverty Community."

²⁸³ Within the casino industry there are more profitable stations or areas for certain types of employees to earn tips. In an effort to deter employees from taking days off or requesting leave, the hotel floorman would rotate change girls from most desirable station to the least desirable. Such was the case in 1971 with Adelin Lellis, a change girl at the Desert Inn Hotel, who after objecting to a station change, was fired by her floorman.

Ruby Duncan served as Operation Life's Executive Director until 1990. She successfully brought in tens of millions of federal dollars to Nevada through: WIC, EPSDT, food stamps and other economic development grants. Duncan also served as Vice Chair of the Clark County Democratic Party, which gave her critical access to Governor O'Callaghan, Harry Reid, Howard Cannon, State Senator Floyd Lamb and other Democratic luminaries. In addition, President Carter appointed her to his National Advisory Council on Economic Opportunity in 1979. Together, CCLS and Duncan represented the poor, but not in the traditional sense; this time the poor found the venues available to articulate their needs and make their own demands. CCLS, like so many other legal services programs in the 1970s, "promoted the distinctive treatment of the poor by state" by helping to turn poverty into "an officially sanctioned, routinely administered legal status."²⁸⁴

Another program that emerged in the 1970s, the Nevada Indian Legal Services (NILS), helped provide legal assistance to Native Americans. According to AnnaMarie Johnson, "When [President] Johnson included the idea of free legal assistance for the poor...Native Americans were probably the segment of the population with the greatest poverty and the greatest lack of access to justice."²⁸⁵ Incorporated in March 1973, NILS began providing legal services for Tribal members. Until that time, none of the federal money Indians received was for legal aid.

Nevada Indian Legal Services

When I leave an Indian Community I nearly always leave depressed. —Dr. William Carmack²⁸⁶

²⁸⁴ Kris Shepard, *Rationing Justice: Poverty Lawyers and Poor People in the Deep South* (Baton Rouge: Louisiana State University Press, 2007), 23.

²⁸⁵ AnnaMarie Johnson, "Nevada Legal Services Tribal Court Advocate Training Project," *Nevada Lawyer* (August, 2011): 32.

²⁸⁶ Dr. Carmack was Assistant to the Commissioner of the Bureau of Indian Affairs (BIA) for Community Development. He later became the Executive Director of the National Council on Indian Opportunity during the Johnson Administration, with Vice President Hubert Humphrey as chair.

Self-determination for Indians began well before President Nixon's message on Indian policy reform in 1970. The Indian Civil Rights Act of 1968, which incorporated significant portions of the US Bill of Rights to Indians and their lands, and the Indian Self-Determination and Education Assistance Act of 1975, which administered funds and grants to Indian tribes, were responses to the Indian unity movement that included rising Indian activism in the 1960s. Some Indians, like other minority groups, habitually fought *white* assimilation—they fought for identity. The vicious circle of racism, harassment, unemployment, and underground attempts to escape poverty economically, via illegal trade, or psychologically via addiction, were both *producers and products* of poverty. Native Americans were pushed onto reservations that could not sustain their earlier ways of life nor provide a life without poverty.

At the time, the Nevada Indian Agency managed federal Indian money and expenditures, but Nevada Governor Paul Laxalt wanted control of all federal funds in his state. At Lake Tahoe in 1969, the National Council on Indian Opportunity (NCIO) held a Federal-State Indian Affairs Conference. Chair of the NCIO, Vice President Spiro Agnew, was also the newly appointed Commissioner of Indian Affairs. Laxalt submitted his proposal to make state agencies responsible for managing federal funds. He argued against the Indian Agency, which managed a payroll of approximately \$750,000 annually. It was his position that the agency was "accounting for far too great a share of the tax dollar appropriated for the Indian."²⁸⁷

Considering Nevada's conservative stance on welfare at the time (as Ruby Duncan and so many others experienced), having state control over Indian money seemed self-defeating.

²⁸⁷ "Federal-State Indian Affairs Conference," *National Council on Indian Opportunity*, Sahara Tahoe Hotel, Lake Tahoe, Stateline Nevada (Washington: Office of the Vice President, 1969), August 19-21, p. 45. <http://babel.hathitrust.org/cgi/pt?id=mdp.39015003942979;view=1up;seq=2>.

“In my State, the Indians are opposed to an attempt by a State to assume jurisdiction on Indian Affairs,” said John Rainer of New Mexico. “We hear recognition of the Indian problems in the States of Arizona and Utah and New Mexico and other places, but I have not heard one delegate saying that the State is willing to spend a dollar to cure these problems.”²⁸⁸

In 1973, Charles Zeh, Executive Director of the Washoe County Legal Aid Society (WCLAS), created Nevada Indian Legal Services (NILS). Located in Carson City, the new program fell under the umbrella of WCLAS. At the time, WCLAS received federal grants from LSP, CETA (the Comprehensive Employment and Training Act), and money from Washoe County filing fees from civil cases. According to Zeh, his work began when he signed up with the Reno Indian Athletic Association to play fast-pitch softball. He described his involvement as a “feet on the ground” affair: by being in the company of fellow sportsmen, their friends and families, he began to hear of the many legal problems facing Nevada Indians. As an attorney he felt fortunate to be able to help with divorces, repossessions, landlord tenant problems, and other legal issues.²⁸⁹ With no state funds in Nevada to help Indians, NILS provided legal aid with grants from LSP and then LSC. The Indian program operated for only nine years before LSC forced a merger.

The Merger

The LSC Act of 1974 provided three programs in Nevada with federal funds for legal services, Clark County Legal Services (CCLS), Washoe Legal Services (WLS), and NILS.²⁹⁰ Don Pope, who started as a VISTA volunteer in 1973, served as the next Executive Director of

²⁸⁸ Ibid., 73,75.

²⁸⁹ Interview with Charles “Chuck” Zeh by Todd Ashmore, May 19, 2015.

²⁹⁰ Founded in 1965, the Washoe County Legal Aid Society (WCLAS) changed its name to Washoe Legal Services in 1976. In 2001 the Volunteer Lawyers of Washoe County merged with WLS. Paul Elcano Jr. is the current director of WLS.

NILS.²⁹¹ Current Justice of the Peace and former Reno Mayor Pete Sferrazza continued Zeh’s and Pope’s work as director from 1976 to 1978, followed by Fred Lee as director in 1979 until the program’s merger.²⁹² Just prior to the merger and in response to LSC funding for rural populations, NILS changed its name to Nevada Indian-Rural Legal Services (NIRLS) in 1981. That year—Reagan’s first year in office—LSC officials chose to visit Nevada and inspect the LSC-funded programs. During their “visit”, LSC charged NIRLS program officials with poor management and use of LSC funds. Based on an account by Carolyn Worrell (an LSC grant manager at the time), LSC received multiple complaints from NIRLS’s staff. Worrell emphasized how inadequate funds limited the basic core of services and stifled the program. At the time, LSC officials were pushing states into consolidating organizations with the idea that centralized administration would be cost effective—Reagan’s 25% cut in funding for FY1982 was fast approaching. In a separate visit to the CCLS program, LSC uncovered a history of “financial irregularities” from the office bookkeeper. Without Director N.N. Singh’s knowledge, large amounts of money were unaccounted for. With added operational control and the power to require reports, record keeping, and financial audits of grantees, LSC established ample illegal activity at CCLS, and unsatisfactory management at NIRLS—giving Reagan’s appointees the leverage they needed to consolidate the two programs. Why wasn’t WLS forced to merge? “The regional office didn’t have the goods on them,” recalled Worrell.²⁹³ So evidently, unable to find fault with WLS, the Reagan-packed board of LSC decided the merger would have to

²⁹¹ Don Pope passed away on May 6, 2012. Pope graduated from Golden Gate University School of Law in San Francisco in 1973. He became a VISTA volunteer as a founding staff attorney for NILS. Pope served as a Reno Justice Court Judge from 1985-1993. Published in *Reno Gazette-Journal* from May 17 to June 7, 2012, <http://www.legacy.com/obituaries/rgj/obituary.aspx?pid=157662642#sthash.mCR5iECd.dpuf>.

²⁹²William Trombley, "Nevada Congressional Race Draws Out Exotic Politicians," *Los Angeles Times*, October 10, 1992. Judge Sferrazza served as Mayor of Reno from 1981 to 1995.

²⁹³ Interview with Carolyn Worrell by Todd Ashmore, April 16, 2015.

happen without them. Sasser described LSC's stick-first-then-carrot approach. "Merge or else, we are going to basically fire all of you," recalls Sasser, "pull all the money out from your boards and put together another program."²⁹⁴ LSC then encouraged the deal by offering additional money from a state support grant.²⁹⁵ The merger allowed the new regional office to utilize Indian money to service the rural non-Indian population and expand its coverage of legal services. At the time of the merger, only the Indian office covered the rural areas: this included all Nevada counties except for Washoe and Clark, which were served by WLS and CCLS respectively.²⁹⁶ (Due to geography, CCLS also served Nye County).

Described as a "shotgun" wedding, in 1982, CCLS and NIRLS merged to become a new statewide program, Nevada Legal Services.²⁹⁷

Nevada Legal Services

Our goal at Nevada Legal Services is obviously to assist our clients in the best manner possible and provide the highest quality of legal services that we can.

—Rhea Gertken, NLS Directing Attorney, 2014

NLS began just as President Reagan's cutbacks hit legal services programs across the nation. By now, LSC had shifted the focus of the earlier LSP from quality to one of observation and training. It was evident that the "strings attached to federal funding under the Legal Services Program were minor compared to LSC's oversight."²⁹⁸ Ironically, with the new state support grant, NLS was one of the few programs to operate with increased funding. Carolyn

²⁹⁴ Interview with Jon Sasser by Todd Ashmore, March 13, 2014. Clarification: Sasser's account is based on hearing other accounts after moving to Nevada in 1982.

²⁹⁵ Based on Carolyn Worrell's account, there was an influx of money prior to Reagan. Concerned about the mismanagement of LSC money, the LSC regional office located in San Francisco withheld the money until the merger.

²⁹⁶ In theory NIRLS covered all the counties, but in practice the lack of funds made it difficult to do so.

²⁹⁷ Both programs, NIRLS in the North and CCLS in the South, kept their local boards of directors with each board selecting a certain number of representatives to go on the statewide board.

²⁹⁸ Shepard, 117. Shepard's statement is based upon Gary Bellow and Jeanne Kettleson, "From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice," *Boston University Law Review* 58 (1978): 337.

Worrell, who had headed LSC's Quality Improvement Program in Washington D.C., became the first Executive Director.²⁹⁹ She used the state support grant to hire Sasser as the Coordinator of Litigation and Training and staff attorneys John Morrell and future Nevada Supreme Court Justice Michael Douglas for the new program.³⁰⁰

As a statewide program, NLS formed task forces in public benefits, housing and Indian law. Did the new merger hurt the access to justice for Native Americans? According to NIRLS staff attorney Dick Olson the merger involved many heated board meetings. The hard-core Indian law staff was very concerned that the services to Indians and tribal organizations would suffer; especially considering the size disparity between CCLS, which was larger and more powerful than the smaller Indian Legal program. "The LSC was bludgeoning all programs into consolidating," stated Olson, "LSC wanted one program per state to deal with."³⁰¹ Staff concerns were not unfounded: NIRLS' Winnemucca and Elko offices were closed down, leading to a reduction in services. According to Worrell, the merger benefitted Nevada Indians. She explained that "with the larger program, the administrative costs are shared, which means more resources can go into services; ...absolutely, I think the merger increased services."³⁰² NLS did keep an Indian Law component, but as Kim Robinson, an NLS staff attorney for the Indian Law Project, added "what was lost in the process was the board of directors which was made

²⁹⁹ The growing LSC bureaucracy's push for consolidation and "professionalization" did, however, make it easier for new public interest attorneys to learn the practice. LSC and programs themselves offered training in family, consumer, employment, and other areas of law. New lawyers acquired litigation skills in state and federal courts, while paralegals and support staff learned how to advocate for the poor via community education in public assistance, housing, and more. Attorneys received manuals and training guides to advance their knowledge. One of LSC's programs the Quality Improvement Project or QIP produced video tapes for programs to use in training. QIP also offered grants to programs with innovative ideas. One such grant went to NILS.

³⁰⁰ Justice Douglas also served as a directing attorney of the office, followed by Ray Rodriguez, Justin Clouser, and Ruth Herch.

³⁰¹ Interview with Dick Olson by Todd Ashmore, July 9, 2015.

³⁰² Interview with Carolyn Worrell by Todd Ashmore, April 16, 2015.

up of people who were trying to direct the program to meet the local needs of the Indians...now we have maybe one Native American on the statewide board.”³⁰³ Currently, NLS has no Native American on its board.

After the merger, with shared overhead and added resources, the statewide program secured many favorable changes in the rules and regulations of the institutions and agencies their clients relied upon. Although the Reagan board soon moved to restrict these activities, it was still possible for programs such as NLS to actively engage the Nevada legislature. Based on Sasser’s account,

The program was instrumental in having benefit levels for the Aid to Dependent Children program raised from a low of \$199 a month for a family of three in 1983 to \$348 by 1992. In 1985, major revisions to the Landlord/Tenant Act and legislation authorizing Pro Se TROs in domestic violence cases were passed. In 1987 uniform standards and judicial review for county medically indigent programs were enacted. 1989 saw the creation of the Low Income Housing Trust Fund and the defeat of a bill to overturn the *Newkirk* decision.³⁰⁴

NLS also engaged in a number of class actions which struck down excessive public housing charges and rent (*Brown v. Housing Authority of the City of Las Vegas & Ortiz v. Housing Authority of the City of Las Vegas*), secured welfare benefits of recipients involved in personal injury settlements (*Johnson v. Nevada State Welfare Division*), prevented automatic denial of general assistance to those deemed “employable” (*Clark County Social Serv. Dep't v. Newkirk*), and blocked general cuts in ADC benefits (*Adams v. Griepentrog*). Taking test cases to the Nevada Supreme Court, NLS lawyers expanded due process for housing tenants facing summary

³⁰³ Interview with Kim Robinson by Todd Ashmore, May, 19, 2015.

³⁰⁴ Jon Sasser, *NLS History*, document, (2008), 7.

eviction.³⁰⁵ The Nevada Supreme Court also favorably settled case-by-case appeals involving unemployment compensation.³⁰⁶

In 1985, Worrell handed leadership over to Wayne Pressel, the second Executive Director of NLS. During the 1970s and 1980s, many distinguished Nevadans served on the NLS board, including Nevada Supreme Court Justices Bill Maupin, Michael Cherry and Nancy Becker, as well as Ninth Circuit Court of Appeals Judge, Johnnie Rawlinson.

According to Sasser, for the first half of the 1990s, NLS continued to make “significant progress in the courts, the legislature and in community advocacy.”³⁰⁷ In the early 1990s, the organization enjoyed a number of victories.

In 1991, the Low Income Housing Trust Fund was created using an increase of 10 cents for each \$500 of value in the real estate transfer tax, which in SFY '08 generated \$13.3 million. Also, the largest ADC increase was passed raising the grant temporarily to \$367 per month...The Governor was persuaded to veto a bill allowing evictions with 3 day notice from weekly tenants...The 1993 legislature required that 15% of redevelopment authority funds in Las Vegas be set aside for low income housing.³⁰⁸

These achievements in the 1980s and 1990s exemplify why restrictions on lobbying are so detrimental to the poor.

Successful class action suits required the Welfare Division to make decisions on ADC and Medicaid applications within 45 days, (*Hamilton, et al. v Griepentrog, et al.*), raised a reasonable defense that vocational schools failed to offer meaningful educations to student loan recipients, (*Hernandez, et al. v. Alexander, et al.*), forced libraries to accept homeless

³⁰⁵ Cases included *Hillyard v. Regatta Bay Apartments*, *Esposito v. Justice Court of Henderson Township*, and *Hillyard v. Eighth Judicial District*.

³⁰⁶ Unchallenged for decades, the Employment Security Department of Nevada narrowly defined eligibility for unemployment compensation. NLS made it easier for clients to receive benefits, especially in cases of wrongful termination: *Nevada Empl. Sec. Dep't v. Serino*, *Fremont Hotel and Casino v. Esposito*, and *Nevada Employment Security Dept v. Nacheff*.

³⁰⁷ Jon Sasser, *NLS History*, document, (2008), 9.

³⁰⁸ *Ibid.*, 10.

patrons (*Southern Nevada Homeless Coalition v. Clark County Library Board*), and successfully sued a large landlord for locking tenants out without due process (*Meyer v. Eighth Judicial District Court*). NLS also took appeals to the Nevada Supreme Court to successfully argue that disqualification from unemployment compensation due to misconduct must be based on an element of wrongfulness, *Kolnik v. The Nevada Empl. Sec. Dept.* (1996), and there was a right of appeal from summary eviction notices, *Lippis v. Peters* (1996). Some of the examples proved that case-by-case successes can also change the law to benefit Nevada's poor population as a whole.

“Spin-off”

The last year NLS could lobby and bring class actions on behalf of the poor was 1995. “That’s when we, in Nevada restructured legal services so that CCLS and WLS would have no LSC money,” Wayne Pressel recalled, “to insulate a couple of the established organizations to do reform work.”³⁰⁹ Effective January 1, 1996, in response to increased restrictions, CCLS, like other programs across the nation, “spun off” its LSC-funded program.³¹⁰ NLS staff member Barbara Buckley, who successfully ran for the Nevada Assembly and later served as the first female speaker, became the Executive Director of CCLS the following year. What began as a legal aid society in 1958 would continue on as CCLS in 1996 and later become the Legal Aid Center of Southern Nevada [2008], with NLS giving CCLS rights to the civil filing fee money in order to fund them. According to Pressel,

that was my major career decision in legal services...I virtually gutted Nevada Legal Services and gave the guts to Barbara...and I would stay with the dead-imperiled half-

³⁰⁹ Interview with Wayne Pressel by Todd Ashmore, April 13, 2014.

³¹⁰ CCLS and NIRLS were revitalized as separate corporations to continue a “full-range of advocacy services” without the use of LSC funds and associated restrictions. By 1997 NIRLS transferred all its cases to WLS and closed its doors.

living, walking dead...She took the best lawyers, all the equipment, took the library, took all the machines, took anything she wanted, and let me do the rest. She was going to do reform work.³¹¹

By the year 2000, NLS had operated for four years, adjusting to major LSC restrictions. NLS had two main offices in Las Vegas and Carson City, as well as two lawyers in Reno. Carson City handled outreach and rural cases in Northern Nevada. The offices closed a combined 476 cases. The majority of cases involved either Brief Service or Counsel and Advice (CNA), with approximately 54 percent housing, 21 percent income maintenance and 10 percent consumer issues. NLS provided a multitude of services in categories such as housing, (mostly dealing with Federal Subsidized Housing or landlord/tenant), income maintenance, (mostly involving SSI, Unemployment Compensation and Food Stamps), consumer, (predominately involving collections, repossessions and garnishments), family, (involving mostly divorce, separation or annulments), health, (Medicaid), and miscellaneous issues (including wills and estates, and Indian/Tribal law).³¹² Clearly, the depth and quality of service had been affected. After 1996, the majority of cases involved only brief service and advice.

In 2000 NLS expanded its services by adding a Self-Help Center (at the Clark County Family Court) and a Tenant's Rights Center. In 2003, NLS opened an office in Reno, and a

³¹¹ Interview with Wayne Pressel by Todd Ashmore, April 13, 2014.

³¹² LSC Case Statistical Reports (CSRs) categorize substantive areas of law and the type of service provided. The Case Management System (CMS) used the following Legal Problem Code categories and subcategories: **Consumer** (Bankruptcy/Debtor Relief, Collect/Repo/Def/Garnishment, Loans/Installment Purchases (Not Collections)), **Family** (Custody/Visitation, Divorce/Sep./Annul, Adult Guardianship/ Conservatorship, Name Change), **Health** (Medicaid, Other Health), **Housing** (Federally Subsidized Housing, Homeownership/Real Property (Not Foreclosure), Private Landlord/Tenant, Other Housing), **Income Maintenance** (TANF, Food Stamps, Social Security, SSI, Unemployment Compensation, Worker's Compensation, Other Income Maintenance), **Misc.** (Indian/Tribal Law, Wills and Estates), and **Other Miscellaneous**. The CMS also categorized the type of service offered, aka the "Reason Closed": A- Counsel and Advice, B-Brief Services (other than Counsel and Advice), Client Withdrew or Did Not Return, Court Decision, F-Negotiated Settlement (without Litigation), G-Negotiated Settlement (with Litigation), H-Administrative Agency Decision, Insufficient Merit to Proceed, Other, and R-Reject.

satellite workplace in Elko. Thanks largely to Las Vegas, between 2000 and 2010 Nevada led the nation in growth, as its population soared 35 percent from 2 million to 2.7 million people. Nevada added its second congressional seat in 1983, a third in 2003, and a fourth in 2010. During the decade, NLS grew in response to Nevada's economic growth and the flood of new residents, including many impoverished migrants seeking employment. NLS dealt with a tide of clients as it responded to Nevada's population "boom" and a greater wave of clients after an unforeseen "bust".

Boom and Bust

In the 1970s environmental historian Donald Worster warned of an American ethos that bred unbridled optimism.³¹³ The ethos stemmed from an upward mobile society bent on the inevitability of progress and "getting ahead". In a laissez-faire market, without a check on this ethos, disasters such as the Dust Bowl, speculations such as the Dotcom "bubble," and economic recessions and depressions were unavoidable.³¹⁴

Just as the dotcom recession was ending, a widespread and overly optimistic perception of home values based on an unrealistic view of America's future, created a housing "bubble." Peaking in 2006, the bubble collapsed, spawning a credit crisis. As a result, the nation plummeted into a severe recession from 2007 to 2009. Harvard's State of

³¹³ Donald Worster, *Dust Bowl: The Southern Plains in the 1930s* (Oxford: Oxford University Press, 1979), 4-7.

³¹⁴ On March 10, 2000 the NASDAQ peaked at 5,132.52. Investor overconfidence in the stock market and speculation of public internet companies, spurred by an increased supply of venture capital, resulted in a dot.com "bubble". In one account by Andrew Beattie, "The IPOs of internet companies emerged with ferocity and frequency, sweeping the nation up in euphoria." The collapse of the bubble led to an economic recession in 2001. From peak to bottom, the Nasdaq Composite fell from 5046.86 to 1114.11, approximately 78% of its value. Notably, the September 11th attacks expedited the market crash. The U.S. unemployment rate rose from 4.2% in February 2001 to a high of 6.3% in June 2003. Andrew Beattie, "Market Crashes: The Dotcom crash," *Investopedia, LLC*, accessed April 6, 2015, <http://www.investopedia.com/features/crashes/crashes8.asp>.

the Nation Housing report (funded by the Ford Foundation) summarized the subprime mortgage debacle that inflated the bubble,

In the hope of higher returns, lenders extended credit to borrowers previously unable to qualify for loans. Subprime mortgages rose from only 8 percent of originations in 2003 to 20 percent in 2005 and 2006, while the interest-only and payment-option share shot up from just 2 percent in 2003 to 20 percent in 2005.³¹⁵

Predatory lenders offered interest-only and balloon payment mortgages, which saddled borrowers with expensive and inflated mortgages.³¹⁶ The cycle of relaxed lending increased the supply of borrowers, which increased demand and artificially drove house prices upward. Overpriced housing with stagnant pay scales and general wages left many borrowers “house poor”, with little to no money left after making their monthly mortgage payments. Thus the general economy suffered. Predatory lending left the state of economy unsustainable.³¹⁷

The collapse of the housing bubble hit Nevadans especially hard. One article mused that the desert metropolis of Las Vegas suddenly found itself underwater. According to an article in the *American Bankruptcy Journal*, “Filings in Nevada increased at a faster rate than in nearly every other state from 2006-10 (+446 percent).”³¹⁸ As historian Eugene Moehring observed, by the Spring of 2009 “land values valley-wide had crashed, falling by 74 percent

³¹⁵ “The State of the Nation’s Housing,” Joint Center for Housing Studies of Harvard University, (Cambridge: Graduate School of Design, 2009), 2, www.jchs.harvard.edu.

³¹⁶ Borrowers with interest-only loans, never pay on the principal of their loans, they pay only on the interest accrued. Based on this type of loan, borrowers will never pay off their loans. They are in theory perpetual renters. Balloon mortgages do not fully amortize over the term of the loan, thus a final payment known as a “balloon” payment is due at maturity.

³¹⁷ Predatory lending involved fraud, deception, equity stripping, unjustified high interest rates, and loan flipping. Unsustainable loans often resulted in default and foreclosure.

³¹⁸ Anjan Gewali, Maria Michelle Nisce, and Michael S. Alires, “Nevada's Boom and Bust,” *American Bankruptcy Institute Journal* 33, no. 7 (July, 2014): 40.

from their all-time high just a few years earlier.”³¹⁹ By May 2010 Nevada’s unemployment rate reached a high of 14.2 percent. The *Las Vegas Review-Journal* reported that Nevada led the nation in unemployment. As Chief Economist with the state Department of Employment, Training and Rehabilitation, Bill Anderson noted, “If you’d asked me two years ago, when Nevada had essentially been the fastest-growing state in the nation for two decades running, one couldn’t have imagined that things would deteriorate this far.”³²⁰ LSC’s 2009 Justice Gap revealed the problems legal services programs such as NLS were seeing; “the current economic crisis, with its attendant problems of high unemployment, home foreclosures and family stress, has resulted in legal problems relating to consumer credit, housing, employment, bankruptcies, domestic violence and child support, and has pushed many families into poverty for the first time.”³²¹ According to a report by UNLV’s Center of Democratic Culture,

In 2009, about 3% of the Clark County population (52,458 people) was homeless at some time during the year. 85% of mortgage holders in Las Vegas have negative equity in their homes. Housing permits in Southern Nevada have dropped from a peak of 39,012 permits in 2005 to a 30-year low of 5,734 in 2009. Some 40% of Nevadans are renters, ranking the state 47th in the nation.³²²

Just as Donald Worster warned over thirty years earlier, if left unchecked, the American ethos would lead to economic disasters and environmental catastrophes. Countless foreclosures left

³¹⁹ Eugene Moehring, *Reno, Las Vegas, and the Strip: A Tale of Three Cities* (Reno, Nevada: University of Nevada Press, 2014), 176.

³²⁰ Jennifer Robison, “Nevada Leads the Nation in Unemployment,” *Las Vegas Review-Journal*, June 18, 2010.

³²¹ “Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans,” *Legal Services Corporation*, last modified September 30, 2009, http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

³²² Dahn Shaulis, Kathleen Fairchild, and Kurt Borchard, “Housing Availability and Homelessness in Nevada,” in *The Social Health of Nevada: Leading Indicators and Quality of Life in the Silver State*, ed. Dmitri N. Shalin (Las Vegas, Nevada: University of Nevada Las Vegas, Center of Democratic Culture, 2012), 1.

backyard pools in Las Vegas green with algae—at a time when the West Nile Virus was declared endemic.³²³

Unemployment greatly increased Las Vegas' poor population, forcing NLS to work harder than ever. In 2000 it closed 476 cases; by 2010 the number jumped to 7,681 cases. The greatest shift in casework involved private landlord/tenant issues. In 2000 landlord/tenant represented 23.5 percent of NLS casework; by 2005 it rose to 30.9 percent. In 2009 landlord/tenant amounted to 58.1 percent of casework, and rose to 60.3 percent by 2010. Interestingly, the rise in landlord/tenant issues in 2005 can be attributed to the economic boom. In 2005, the unemployment rate hit a low of 3.9 percent. With employment comes more demand for rental housing. This demand pushes rents higher, which leads to increased evictions for the poor; oftentimes unlawfully. The demand and pricing for rent typically drops during economic slumps, but this was not the case in Nevada, much less in Las Vegas. Indeed, the housing crisis pushed many previous homeowners onto the "renters" market. NLS therefore dealt with an even greater number of landlord/tenant issues. In 2007, 8.5 percent of cases involved divorce and separation, becoming NLS's third top issue. Unemployment Compensation (6.9 percent) and collections/repossessions/garnishments (4.0 percent) reached the top third and fifth spots respectively in 2009. By 2010, Unemployment Compensation accounted for 7.5 percent of casework, while collections totaled 3.2 percent.

³²³ The Southern Nevada Health District states that the "West Nile virus is now Endemic in Clark County." According to the District, stagnant water and green swimming pools are breeding sources for the infected mosquito. "West Nile virus is now endemic in Clark County," *Southern Nevada Health District*, accessed April 7, 2015, <http://southernnevadahealthdistrict.org/west-nile/index.php>.

We Do What We Can

NLS celebrated its 30th anniversary in 2012. NLS merged at a time when the state's entire population was less than 600,000; by 2012, about 2 million people lived in the Las Vegas Valley alone. NLS grew in response to Nevada's population of impoverished residents in need of legal services. According to the 2010 census, 41% of Nevadans were living at poverty levels. "Between 2008 and 2012," AnnaMarie Johnson recalled that "we went from a staff of 29 to a staff of 45."³²⁴ In response, NLS offered a multitude of programs to serve all seventeen counties of the state as well as specific populations: the Indian Law Project served 23 Indian reservations; the Low Income Taxpayer Clinic helped clients with IRS tax issues, (most surprisingly, Nevada had the highest number of Pro Se litigants in tax court in the nation); NLS also revived its Pro Bono Program in 2008.³²⁵ During her 30th anniversary presentation, NLS Executive Director Johnson reiterated the need for legal services in Nevada,

We do what we can...We lost some LSC funding in 2012...but we're tightening our belt and getting by...we're doing what we can through our direct representation and through all of the various programs and clinics that we have, but still the need is great.³²⁶

In the sense that access to justice means providing an attorney for a client, NLS attorneys and advocates have, from 2000 to present, handled well over 61,000 cases, helping over 136,000 household members. They have also provided services for over 1.3 million people with non-case matters.³²⁷ Since NLS revived its Pro Bono program in 2008, over 1,612 cases

³²⁴ *LSC Presentation*, directed by Nevada Legal Services, 2012, video.

³²⁵ Pro Bono programs maximize services through recruitment of private attorneys. In an interview Jon Sasser described the benefit: "if you got a couple million bucks, you can only hire so many lawyers, but if you take one of those people and their job is to recruit private attorneys to also help poor people, and you take some more money and you setup self-help clinics then you can help more. Basically, it's just another way of getting more "bang for your buck." Interview with Jon Sasser by Todd Ashmore , March 13, 2014.

³²⁶ *LSC Presentation*, directed by Nevada Legal Services, 2012, video.

³²⁷ Issues may involve casework or non-case matters. In July 2001, grantees began collecting information on non-case matters, which included community legal education, Pro Se assistance, referrals, and outreach. This involved

have been accepted. NLS recovered approximately \$7.75 million for clients through help with probate, divorce, bankruptcy, costs associated with a private attorney, and other benefits. Notable cases by NLS involved clarifying Native American rights in *In re Phillip A.C.* (2006), and *State Engineer v. S. Fork Band of the Te-Moak Tribe* (2000), reinterpreting unemployment compensation in favor of those disabled on the job, *Anderson v. State Employ. Sec. Div.* (2014), and enforcing legitimate SSI claims, *Bohland v Barnhart*, (2002).

Employees

The NLS-related cases mentioned, required the efforts of attorneys Raymond Rodriguez, Jon Sasser, David Olshan, Barbara Buckley, Dan Wulz, Jordan Savage, and Heather Anderson-Fintak, to name a few. It is important to remember that NLS employees and employees of all legal services programs provide the service. From the “Reggie” programs, back-up centers and legal aid programs across the nation employees who produced law reform and represented clients before the courts made the programs effective. “Of all the decisions made by the director of the board of a local agency,” asserts Earl Johnson, “none ranks in importance with the selection of the staff attorneys—the operating personnel who deliver the service to the customer.”³²⁸ AnnaMarie Johnson, who began her role as Deputy Director of NLS in 2006, recognizes that a quality program requires a good staff. “This is a truly wonderful staff that we have. They’re dedicated, they’ve had the opportunity—I know there have been people out there trying to poach them away—but they stay and they do a great job.”³²⁹ Many outstanding attorneys choose public over corporate interest.

workshops, presentations, brochures and other materials, public service announcements, television spots, training of non-legal advocates such as social workers, and indirect services involving mediation, and notary services.

³²⁸ Johnson, 178.

³²⁹ *LSC Presentation*, directed by Nevada Legal Services, 2012, video.

Access to Justice

Legal Services still plays an important role in combatting poverty. As part of a network of legal services providers, LSC-funded programs comprise an integral part of today's patchwork-way of providing a civil Gideon. Nevertheless, a significant justice gap remains in the provision of civil legal services. Federal funding involves regulation that ultimately limits the scope of client services. NLS provides services that help the poor in their fight against poverty, but with LSC restrictions and regulations, it cannot provide them with the kind of access to justice envisioned at its inception.³³⁰ Do LSC restrictions limit access to justice? "Yes," responds Carolyn Worrell, "until a Legal Services attorney can provide the same kind of representation that private attorneys can, it does limit it."³³¹ When Justice Douglas began his work as a staff attorney for NLS in 1982, his goal was to provide legal resource for people who couldn't afford an attorney, there were no restrictions. "What does that do?" he asked, "It gives those individuals, full rights to citizenship. If you're in a position, where you can't afford to attain an attorney, you're not a full citizen, because what you have to do to defend yourself is deemed criminal in most cases."³³²

Houseman and Perle spoke of a "diminished capacity" for legal services, but the real problem lies in the fact that without class action suits and legislative advocacy, NLS can never

³³⁰ According to the National Legal Aid Defender Association, "Major Supreme Court and appellate court decisions in cases brought by legal services attorneys recognized the constitutional rights of the poor and interpreted statutes to protect their interests in the areas of government benefits, consumer law, landlord-tenant law and access to health care, among others. Advocacy before administrative agencies assured effective implementation of state and federal laws and stimulated regulations and policies that helped shape programs that affected the poor. Advocacy before legislative bodies helped the poor redress grievances that were otherwise not addressed by the courts. Equally important, representation before lower courts and administrative bodies helped individual poor clients enforce their legal rights and take advantage of opportunities to improve their employment, income support, education, housing, and working and living conditions."

³³¹ Interview with Carolyn Worrell by Todd Ashmore, April 16, 2015.

³³² Interview with Justice Michael Douglas by Todd Ashmore, May 1, 2015.

prevent the practices and legislative acts that perpetuate poverty. Oftentimes legal problems would best be answered by a class action suit, because the source of the problem affects multiple clients. Without class actions and legislation that champions the poor, illegal business practices, harmful rules and regulations, slum lords and other factors will continue to exploit the poor. Other conditions also narrow access. “The restriction that by far had the most impact,” noted Worrell, “was denying the programs the ability to request attorney’s fees, because that frequently was a very important negotiating tool. When we lost that, it was like one hand tied behind our back.”³³³ Court decisions frequently resulted in capped or limited monetary penalties. By adding attorney’s fees, the cost of losing a case increased dramatically. Increased costs acted as a deterrent for opposing counsel—they had much more to lose. Legal Services programs also benefitted from the additional funds earned by fee generating cases.³³⁴ The culmination of restrictions on class actions, legislative advocacy, and attorney’s fees were exacerbated by restrictions on non-LSC funds. According to Worrell, “Attorney’s fees restriction and the fact that the restrictions apply not just to legal services funding but to any funding that an LSC program receives...was a very heinous restriction.”³³⁵ The work CCLAS, CCLS and NLS did on reform prior to 1996 was more effective, held greater depth, and was more beneficial than just access to justice. “The shift went from OEO, which was reform, to total access to justice meaning that we have legal aid, omnipresent, doing much less for everybody,” remarked Wayne Pressel, “You kind of went from being the Stanford ‘Think Tank’ for new

³³³ Interview with Carolyn Worrell by Todd Ashmore, April 16, 2015.

³³⁴ Restrictions on attorney’s fees lasted for fourteen years, until LSC removed them in 2010.

³³⁵ Interview with Carolyn Worrell by Todd Ashmore, April 16, 2015.

medical breakthroughs and made it into Medicare. So it had a value, but it's remembered, now it's Medicare.”³³⁶

Conservatives in Congress, attacks from the far right, the ABA’s willingness to concede, and LSC’s coercion, have made access to justice what it is today—a passing of responsibility to the private sector, narrowing of the passage to the courts, and restrictions that perpetuate poverty and injustice. As Pressel observed, “back then, legal services would have been front and center in foreclosure work, we'd be front and center in equal pay for women, and front and center in minimum wage.”³³⁷

Casualties of War

“In every period, society makes some attempt to care for its weaker members.” ~ Lawrence Friedman, 2005

When asked if he joined legal services to fight the War on Poverty, Justice Douglas replied, “No, I was there to provide legal representation for those who couldn’t, plain and simple.”³³⁸ He described his experience,

People would come and see me...I’d say where are you living? They’d say I’m living in my car. It was July; it was over 100 degrees out there. So you have a man and a woman and their two small kids living in their damn car. If you have any kind of sensibility, you realize their entitled to something. I don’t think you have to start out as being a crusader, but if you believe people deserve a fair shot, yeah, it gets to you real quick. I didn’t start as a crusader; it became a crusade because of the injustices that were being done.³³⁹

There still exist leaders in Nevada who believe in the earlier initiatives of OEO; indeed, they are still fighting a war on poverty. Although the language has changed, former NLS

³³⁶ Interview with Wayne Pressel by Todd Ashmore, April 13, 2014.

³³⁷ Ibid.

³³⁸ Interview with Justice Michael Douglas by Todd Ashmore, May 1, 2015.

³³⁹ Ibid.

Executive Directors Worrell and Pressel, Executive Director of the Legal Aid Center of Southern Nevada, Barbara Buckley, and others such as Jon Sasser, Justice Douglas and Executive Director AnnaMarie Johnson each fight poverty in their own way. “Part of the outrage over the restrictions,” argues Worrell, “is that Legal Services attorneys are frequently seen as Private Attorneys General...we help to enforce the law.”³⁴⁰

Excuse me bad debt collection firm, you screw up and we’re going to come after you under the Fair Debt Collection Act which provides treble damages for clients and attorney’s fees for attorneys. So when private attorneys won’t take those cases, then the legal services programs can and will. And so again, it’s the Private Attorney General concept rather than talking about getting people out of poverty...Hopefully the end result is the same.

Jon Sasser is currently involved in legislative advocacy, providing a voice for the poor during legislative sessions. Barbara Buckley heads the Legal Aid Center, whose mission is “dedicated to providing civil legal services to the most vulnerable in our community.” Johnson and her staff do what they can to provide the best legal services available. Justice Douglas co-chairs the Access to Justice Commission, which works to coordinate legal services in the state. Pressel is now a private attorney, but his practice closely parallels legal services. His work in foreclosure focuses on the long-term plan and ultimate wealth of the client. Rather than keep clients in refinanced, overpriced, and underwater mortgages, Pressel suggests clients defer payments and put their mortgage money into savings. Of course the client will lose their home, but not until Pressel forestalls the foreclosure process for years, giving his clients enough time to obtain a reasonably priced home with their savings. The escape from being house-poor results in less debt, increased long-term wealth, and more money for a life plan. In short, all these advocates

³⁴⁰ Interview with Carolyn Worrell by Todd Ashmore, April 16, 2015.

for the poor use the law to fight for clients in unemployment, housing and consumer cases, which ultimately becomes an extra-legal issue of money and quality of survival.

During their work with LSC-funded programs, these veterans of legal aid often came to loggerheads with the increased regulations. Some continued working within the regulations as best they could, while others opted out of using LSC funds altogether. Some fought the regulations and managed to skirt vague restrictions; some simply moved on; while others fought and lost. Since 1969, all legal aid advocates have had to cope with budget cuts, restrictions, and other roadblocks to quality thrown up by staunch conservatives, many of whom have no fondness for legal aid. The Nixon Administration worked to disband the OEO and eliminate law reform activities. The Reagan Board managed to cut funding and successfully end the “Reggie” program. The Republican Revolution bought an end to Support Centers in 1996—the very centers designed to provide legal services—without which programs lacked training, dexterity and know-how to provide effective access to justice for the poor.

Eliminating successful and contentious leaders of legal aid on a national, state and local level was also an effective tactic in curtailing the value of legal services in general, a sort of culling of the herd, if you will. Vice President Spiro Agnew forced the resignation of Fred Speaker. Howard Phillips fired LSP Directors Terry Lezner and 1969 “Reggie” recipient Ted Tetzlaff, and Deputy Director Frank Jones. On June 1, 1984, Marttie L. Thompson, Director of LSC’s regional office in Philadelphia resigned, citing “a ‘cumulative’ series of actions by the corporation’s management, which...hampered his effectiveness and harmed the ‘interest of the poor.’”³⁴¹ Thompson simply grew tired of the way LSC treated legal aid programs, barring their

³⁴¹ Stuart Taylor, “Legal Services Official Quits, Citing Reagan Aides,” *The New York Times*, June 2, 1984.

advocates from talking to news organizations and “raiding” programs’ budgets and rummaging through their files in search of supposed misconduct. How many others were fired or pressured to resign? In 2008, Pressel was fired from NLS.

Wayne Pressel

Used as a buzzword, “Manhattanization” described the burgeoning development of high-rises in Las Vegas. During the boom, developers looked to promote their condo investments by locating them on or near Las Vegas Boulevard. Close to downtown Fremont Street, the “condo craze” included projects such as the Juhl, Manhattan, Newport and Ogden. The land NLS occupied at 530 S. 6th St. was close enough to the Strip to be included in such a high-rise development. In 2006, a developer approached NLS. Realizing property values were extremely high, Pressel and the NLS board agreed to sell the building. Unfortunately for the developer, an adjacent property included in the plan, was tied up in litigation. The time needed to resolve the issue, required the developer to extend the contract with NLS. Ultimately, after multiple extensions, NLS received a total of \$300,000 in earnest money from a failed sale. Although the windfall went back into the NLS program, Pressel allocated the money as unrestricted non-LSC funds. In response, LSC claimed he stole the money. Pressel argued that the NLS building, which earned the earnest money, was originally purchased with non-LSC funds prior to 1995, so the money was not connected to an LSC source.

The collapse of the United States housing bubble and the ensuing Great Recession from December 2007 to June 2009 brought more scrutiny of U.S. government spending. As a result, Congress closely watched the practices of LSC and its grantee-recipient programs across the nation. The Office of Compliance and Enforcement (OCE) and the Office of Inspector General

reviewed and audited various grantees, including NLS, for compliance and performance. In 2008, prior to a full investigation into allegations of wrongdoing, members of LSC's OCE held a meeting with NLS Board members. With unsubstantiated claims, LSC transferred its pressure from Congress to NLS Board members. With innuendos suggesting embezzlement, NLS board members terminated Executive Director Wayne Pressel. Described by Pressel as a prolonged and expensive "witchhunt," LSC investigated its own misappropriation of funds claim and found no monies unaccounted for. After 23 years of service, without fanfare or salute, Pressel was unceremoniously fired from NLS, although no wrongdoing was ever found. Clearly, the termination was politically motivated.

According to Pressel, his departure from Nevada Legal Services began much earlier when Congress started increasing restrictions in 1996. Although at odds with the restrictions, Pressel stayed with NLS. As an attorney who supported the War on Poverty, he was reluctant to give up the fight and continued to look for ways to use restricted funding to help the poor. "I was always trying to slowly find ways out," Pressel recalled, "And that's what really brought about my demise... [LSC] hated me when I was there. That was because I kept on pushing the limits." Pressel found ways to increase access to justice by using creative means to sidestep regulations,

I would say that we could provide legal assistance without income determination because we were only providing counsel and advice, and there was a loophole that said that when you provided counsel and advice as opposed to brief service on a case that you didn't have to take an income determination. So I set up this huge counsel and advice telephone system...just to circumvent... and it made them...crazy.³⁴²

³⁴² Interview with Wayne Pressel by Todd Ashmore, April 13, 2014.

Pressel, like other attorneys during the War on Poverty days, reminds us that the caring and dedication of those carrying the tattered banner of reform extends far beyond shuffling clients through the courts. Access to justice meant something different; it meant equality for the poor among society. Pressel's fervor for reform and his ultimate departure from legal services begs the question, without all of the government restrictions, how effective could NLS be in providing full equality rather than mere access to justice for the poor?

Appendix A

E. Dimensions of Civil Legal Assistance 1959, 1965 and 1971

Table 1-6: Dimensions of Civil Legal Assistance—1959, 1965 and 1971

	1959 ¹	1965 ²	1971 ³
TOTAL BUDGET	\$2,084,125	\$5,375,890	\$7,272,716
SOURCE OF BUDGET:			
Government	141,001	*	80,848,725
Community Chest	1,148,246	2,468,293	3,767,262
Bar Association	264,002	891,823	2,275,412
Other	528,817	,994,664	10,371,311
NUMBER OF LAWYERS	292	*	3,534
TOTAL CASES	447,096	426,487	1,237,275
TYPES OF CASES:			
Family	42%	*	36.6%
Economic	28%	*	15.9%
Housing	15%	*	14.4%
Administrative	*	*	11.2%
Other	15%	*	21.9%
DISPOSITION OF CASES:			
Referred	72%	*	17.0%
Advice Only	54%	*	42.0%
Litigated	6%	*	17.0%
Service without Court Action	13%	*	17.3%
Administrative	*	*	2.2%
Withdrawn	*	*	4.5%
Partial Service	5%	*	*

*Figures not available

SOURCES: 1 BROWNELL, LEGAL AID IN THE UNITED STATES, Supplement (Washington: Lawyers Co-operative, 1961), pp. 37, 44, 47, 62
 2 1966 SUMMARY OF PROCEEDINGS of the 44th ANNUAL CONFERENCE (Chicago: NLADA, 1966) pp. 46-47
 3 1971 STATISTICS OF LEGAL ASSISTANCE WORK (Chicago: NLADA, 1972), pp. 1-33

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