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Legal Services T1

In Ronald Reagan's Washington: BILL OLSON AND THE POOR

On Bill Olson's office wall is a citation (center, top) from "The Office of the President-Elect" for his work on the transition team.

By Louis M. Peck '73
Photographs by Ann Stevens

It was New Year's Eve, 1981, and much of official Washington was headed for the party circuit. One of the few people on the job that day was William J. Olson '71. As it turned out, Olson was headed straight for controversy.

The day before, he had been appointed by President Reagan as acting chairman of the board of the Legal Services Corporation, created in the early 1970s to provide legal aid for the poor. Fearful that the spending power of the agency had been overextended by holdover appointees from the Carter Administration, Olson called an emergency board meeting for December 31 — fewer than twenty-four hours before new contracts between the Legal Services Corporation and approximately 335 grantees were due to go into effect.

Judged against the ceremonious standards by which deliberative bodies in Washington tend to operate, it was a highly unusual session. There was no formal public notice. Of the ten board members participating in the meeting, only four were physically present. The balance joined in by means of a conference call. Bolstered by Reagan's appointment of seven new board members — including Olson — the day before, the directors of the Legal Services Corporation acted to reduce spending for the month of January while curtailing the power of the corporation's staff to award new contracts.

The aftereffects of the December 31 meeting are still being felt months later, and have served to place Olson's name in the headlines and at the hub of a continuing controversy over the Reagan Administration's attitude toward legal services for the poor.

Critics of the White House have questioned whether the session violated the spirit, if not the letter, of the federal open meetings law. Several of the Carter appointees to the board of the Legal Service Corporation have filed suit, challenging the legality of Reagan's making "recess appointments" to the board while Congress was out of session. And the hard-line conservatism of the Reagan appointees has prompted some legal aid advocates to charge that Reagan is pursuing a familiar pattern: destabilizing from within programs he knows that Congress will not agree to do away with.

And the irony of the situation is that the December 31 meeting turned out to be duplicative; it was subsequently determined that the Carter-appointed board members had acted in early December to insure that spending levels did not exceed those authorized by Congress. "The corporation had already sent out reduced grants, so the action was not only unnecessary — in retrospect, it looked pretty silly," says Howard Eisenberg, executive director of the National Legal Aid and Defender Association.

Throughout all of this, Bill Olson has held to his position with the same tenacity he showed when he headed the hopelessly outnumbered Brown University Young Republicans in 1969 and 1970. He is offering no apologies. "We had a concern that the reduction in funding [for the Legal Services Corporation] had not been fully implemented by the corporation," Olson said recently of his decision to call the emergency board meeting. "In my opinion, it was the fairest thing we could do with the information we then had. What we did in that board meeting was exactly what we should have done."

Whatever the final outcome of the legal services controversy, Bill Olson's involvement is, in and of itself, significant. For it represents a coming of age for several campus conservatives of the late 1960s, who — having weathered the liberal tide then running through Eastern universities — have now achieved positions of influence in Ronald Reagan's Washington.

At least for the moment, the Minority has become the Majority.

Next to Bill Olson, David Stockman is a Sunshine Soldier. Stockman, now regarded as the personification of the Reagan philosophy, spent much of 1968 organizing anti-Vietnam War activities at Michigan State University.

That was the year that Olson headed Brown Students for Nixon-Agnew.

Less than a year and a half later, as the majority of the Brown student body mobilized behind a move to shut down the University in protest over the Nixon Administration's decision to invade Cambodia, Olson organized the Rhode Island Anti-Strike Coordinating Committee. Among its activities was a rally in downtown Providence in support of Nixon's policy in Indochina.

"We had some RISD students making posters for us," Olson recalled recently over a lunch of meat loaf and potatoes at the National Lawyers Club. "One of them was a 'Tell It to Hanoi' poster." He smiled at the memory.

In style as well as substance, Olson stood apart from many of his fellow Brown students of the late 1960s and early 1970s. His blond hair was as close-cropped then as it is now. While the uniform of the day was T-shirts and surplus Army jackets, Olson favored button-down shirts and an occasional blazer.

The leftish student majority would often react to his conservative parries by ignoring him — or worse. "The liberal activists on campus would generally respond to our position with a very effective political weapon — ridicule," he remembers with grudging admiration. And, unlike some activists on both sides of the spectrum, Olson was always affable and approachable — while never taking himself too seriously.

"You couldn't put great weight on how people viewed your philosophy or you wouldn't last too long. You had to keep a sense of humor, a sense of perspective. We felt we had a responsibility to advance a basic philosophy of government that was in line with what became known as the Silent Majority of the 1960s — and which provided the underpinnings in the 1970s of the Reagan revolution in government. And I think it was beneficial for students on college campuses to be exposed to conflicting views."

Despite being part of what he termed a "distinct minority" on the Brown campus, on several occasions Olson was able to use the element of surprise to score some political points — while catching both the Brown administration and the liberal student majority off-guard.

In early 1970, the Brown Young Republican Club prepared a report analyzing approximately thirty speakers who had appeared at University convocations during the previous two-and-a-half years. "Something like twenty-four of them would have been considered clearly liberal," Olson said. "There were perhaps two or three conservatives — and one of them was a student at URI. I felt that was totally contrary to the spirit of academic freedom."

'The question now is whether the Reagan philosophy can be implemented and shown to work'

The Young Republicans' report first surfaced on a Monday in March 1970 — in a page-one story in the *Providence Journal*. It was, in the view of some, a well-planned political sneak attack by the YRs. Neither University officials nor student leaders were contacted by the *Journal* for their response prior to publication of the story — a fact that prompted a letter of protest by eleven *Journal* reporters to the paper's management.

Olson now says that "to the best of my recollection" there was no agreement between the Young Republicans and the *Journal* that barred the University from being contacted prior to publication. But Jack Rose '70, then an officer in the YRs, told the *Brown Daily Herald* at the time that such an "agreement" had been struck to prevent "obfuscation" of the Young Republicans' position.

The *Providence Journal* was not the only newspaper that took notice; the report on convocation speakers at Brown became the subject of editorials in such conservative newspapers as the *Chicago Tribune* and the *Indianapolis News*. The editor of the *News* at the time was M. Stanton Evans, now a widely syndicated conservative columnist.

"Stan and I are now good friends," Olson said. "I worked for him when he was head of the American Conservative Union, and now I work for him as his lawyer sometimes." (In 1979, Olson filed suit on behalf of Evans' National Journalism Center, seeking the release of certain Commerce Department information relating to high technology exports to the Soviet Union).

Meanwhile, Olson was also making important contacts through the Young Republican network. From his post as president of the Brown Young Republicans, he went on to become director of the New England College Republicans. Among the others then active in the College Republicans at the time: Morton Blackwell, now a top staffer in the White House's public liaison office; Roger Stone, an influential political consultant who headed the Reagan campaign in the Northeast in 1980; and John (Terry) Dolan, who now heads the controversial National Conservative Political Action Committee (NCPAC).

(There was also a personal dividend: Olson met his wife, Janet, through the College Republicans. She is now executive director of the House Republican Conference, headed by Rep. Jack Kemp of New York).

After graduating from Brown in June 1971, Olson did stints at both the Nixon White House and the federal Department of Transportation before returning to Rhode Island in 1972 to work in the unsuccessful gubernatorial campaign of Republican Herbert F. DeSimone '51. He then returned to Washington to work in the Office of Economic Opportunity (OEO was then headed by Howard Phillips, a prominent figure in the New Right who has been a strong critic of federal legal services programs). In the fall of 1973, Olson went on to the University of Richmond Law School.

He graduated in 1976, moved back to suburban Washington, where he soon became chairman of the Fairfax County (Virginia) Republican Committee, and joined a law practice downtown. And then, following Ronald Reagan's victory in the 1980 election, Olson received a call one day from an old friend.

It was Loren Smith, who had been general counsel to the Reagan campaign. And he wanted Olson to head the task force on legal services during the Reagan transition.

It is the height of understatement to say that Ronald Reagan has never been a fan of the Legal Services Corporation. As governor of California, Reagan attempted in 1970 to block Legal Services Corporation funding from coming into his state — apparently because he felt that it was being used to further a host of liberal causes.

In the first year of his Presidency, Reagan asked that the program be abolished. It was only after Congress balked that Reagan named Olson and the six others on December 30 as recess appointments. (Subsequently, Reagan has formally submitted ten names to Capitol Hill to serve on the corporation board. The designated permanent chairman is Prof. William F. Harvey of the Indiana University Law School, with Olson nominated to one of the nine remaining slots on the board.)

Despite the appointments, Reagan has not given up trying to do away with the legal services program. His proposed 1983 budget submitted in January once again asks that the corporation be abolished.

According to several journalists who closely follow the area of legal services, the transition-team report drafted by Olson in late 1980 endorses the Reagan aim of doing away with Legal Services. Olson has steadfastly refused to comment on this, saying he is pledged not to discuss the contents of the report.

But, as an appointee to the Legal Services board, he says he is committed to continuing the program. "I believe that the people President Reagan has appointed should have the opportunity to try to effectively manage this corporation to maximize the benefit to the poor for the dollars spent," he said.

At the crux of the conservatives' complaint is that the legal services program has gone far beyond the scope of simply protecting the rights of the poor in civil cases. Instead, the conservatives charge, it has been used by socially minded attorneys to force an expansion in government programs by recourse to the courts.

"You cannot say that anybody who wants to effectuate change in government policy should have access to a governmental attorney," Olson contended. "It is not the role of the government to fund one philosophy of government over another. You can't fund lawyers who want to file certain kinds of lawsuits — and then go out looking for clients for these kind of lawsuits."

The liberals' response to this is that the federal government already funds these types of actions on the part of large corporations and conservative legal foundations — through the use of tax breaks. It therefore should make this type of opportunity available to the poor, even if it involves direct federal subsidies.

Such arguments bring out Olson's conservative instincts. "Those contentions are predicated on the belief that all money belongs to the government," he declared. "I don't accept that philosophy of government."

Neither, however, is Olson saying that the poor should be without the ability to sue the government. "You have a state monopoly on the justice system, and you have an obligation to insure that all citizens have equal access to that system. There are few cases where a lawyer is needed more than when an individual poor person is confronting the state or federal government."

The question then becomes one of how to protect the rights of the poor to sue government — while preventing such cases from becoming assaults on social and economic policy.

"It's very difficult to draw those lines," Bill Olson admitted. "I know I don't have all the answers."

It is at such moments that Olson is reminded that responsibility can be a sobering experience. As such, he shows no glee or smugness over the fact that he is now Mr. Inside — and that his one-time liberal adversaries from Brown days are on the outside. The early days of the Reagan Administration have taught Olson that it is often easier to acquire power than to use it or retain it.

"The question now is whether the Reagan philosophy can be implemented and shown to work," he reflected. "That's really the challenge."

Lou Peck is a reporter in the Washington bureau of the Gannett News Service.

File

LEGAL SERVICES CORPORATION
733 Fifteenth Street, N.W., Washington, D.C. 20005

Writer's Direct Telephone
(202) 272-4040

May 28, 1982

Mr. Robert Kabel
Office of Legislative Liaison
The White House
Washington, D.C. 20500

Dear Bob:

Enclosed you will find a resume for Diane Jenkins, an attorney from Baton Rouge, Louisiana.

Dennis Daugherty of my staff has known Diane since his high school years. He feels that she has the sensitivity and judgement to be a good addition to our Board of Directors. He says that she would deal with controversial subjects in the face of criticism graciously, but with determination.

Over 30% of the caseload handled by Legal Services Corporation grantees last year arose in the area of juvenile and family law. Mrs. Jenkins' extensive experience in this area, particularly in regard to child support enforcement, would be very helpful to this Board. She would in addition provide the Board with the perspectives not only of an attorney and a woman, but that of a journalist and a businesswoman (newspaper owner).

Dennis says that Mrs. Jenkins is a Democrat, but that she and her husband, State Rep. Louis E. (Woody) Jenkins, have supported many Republican candidates including President Reagan, Governor David Treen, and Congressman W. Henson Moore. Mr. Jenkins resigned as the state's Democratic National Committeeman in order to support President Reagan's election.

You should be aware that Mrs. Jenkins' husband has run for the United States Senate against both Senators Long and Johnston. Some of our grantees would be somewhat skeptical of her as well because Mr. Jenkins has chaired the state Conservative Caucus. He is a former chairman of the American Legislative Exchange Council (ALEC), a national organization of state legislators, and is active in a number of national conservative groups.

LEGAL SERVICES CORPORATION

I would appreciate your bringing Diane Jenkins' interest in serving on our Board of Directors to the attention of the proper members of the White House staff.

Sincerely,

Jerry

Gerald M. Caplan
Acting President

cc: William Harvey

Biographical Summary

DIANE A. JENKINS

May 1982

Personal Background

— Age 35; married; mother of three children

— Resident of Baton Rouge, Louisiana, for past 21 years

— Current address: 3684 Winnebago Street, Baton Rouge, La. 70805

— Phone: 504-383-6226 (office); 504-357-9874 (residence)

Education

— Honor graduate and secretary-treasurer of 1,800-member student body, Istrouma Senior High School, Baton Rouge, La. (1965)

— Juris Doctor degree in law, LSU Law School (1972)

— Graduate, Conference on Juvenile Justice, sponsored by the National District Attorneys Association, San Francisco, Calif.

— Graduate, National Child Support Training School, sponsored by the National District Attorneys Association, Phoenix, Ariz.

Government Service

— Assistant District Attorney and Chief, Family and Juvenile Division, District Attorney's Office, East Baton Rouge Parish, supervising staff of 24 attorneys, investigators and secretaries with 8,000 active cases, and having responsibility over all crimes by or against juveniles, criminal non-support cases and administration of the 4-D Program under the United States Department of Health, Education and Welfare (1976-1980)

  — Responsible for self-generated $1.5 million budget

  — First woman to present a capital case to the East Baton Rouge Parish Grand Jury (a true bill was returned)

  — Prosecuted several thousand criminal cases of all types, with an overall won-loss ratio of over 90 per cent; made oral arguments before the Louisiana Supreme Court

  — Member, Louisiana Child Support Advisory Board (1976-1979)

— Assistant Attorney General, State of Louisiana (1975-1976)

  — Youngest Assistant Attorney General in state history at time of appointment

- Member, Crimes Against Organized Government Section, with responsibility for prosecuting public officials accused of wrongdoing across the state

— Assistant District Attorney, East Baton Rouge Parish (1973-1975)

— Member, National District Attorneys Association

— Member, National Welfare Fraud Association

Private Legal Practice

— Attorney at Law (1973-1982)

— Private practice (1980-1982)

— Area of specialization: Immigration Law

— Member, Louisiana and American Bar Associations

Special Achievements in Law

— First Place Award, Annual Moot Court Competition, LSU Law School; chosen over 140 other senior law students in written and oral arguments before the Louisiana Supreme Court (1972)

— "Best Trial Presentation" Award, LSU Moot Court Competition

— Editor, The Constitution of Vietnam, a two-volume study of the South Vietnamese legal system (1972)

— Editor, The Civilian, LSU Law School student newspaper (1970-1971)

Business Activities

— Co-owner, Baton Rouge Advertising, a public relations firm (1972-1982)

— Managing editor, North Baton Rouge Journal, a community weekly newspaper (1966-1969)

— Member, Consumer Advisory Board, American Bank & Trust Company (1973-1974)

— Member, Board of Advisors, Baton Rouge Enterprise (1976-1978)

— "Outstanding Young Business Woman of Louisiana" for 1973, second place award, Louisiana Association of Business and Professional Women's Clubs

— "Outstanding Business Student Award" for East Baton Rouge Parish, Administrative Management Society (1965)

— "Outstanding Salesman Award," Baton Rouge Junior Achievement (1963)

Special Recognition

— Governor, Pelican Girls State, State of Louisiana (1964)

— "Americanism Youth Award" for State of Louisiana, Veterans of Foreign Wars (1965)

Foreign Language

— Spanish

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 22, 1982

The President has granted recess appointments to the following individuals as Members of the Board of Directors of the Legal Services Corporation:

HAROLD R. DEMOSS, JR., of Houston, Texas, is a partner with the law firm of Bracewell & Patterson. He was born December 30, 1930. He succeeds Steven L. Engelberg.

CLARENCE V. MCKEE, of Washington, D.C., is counsel with the law firm of Smith & Pepper. He was born November 16, 1942. He succeeds Hillary D. Rodham.

ANNIE LAURIE SLAUGHTER, of St. Louis, Missouri, was Director of Volunteers, Acting Administrative Assistant, and Director of Operations, Annie Malone Children's Home, from 1979 until May 1981. She succeeds Cecelia D. Esquer.

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File

March 5, 1981

I strongly recommend that the nominees submitted by the following people for the Legal Service Corporation Board be scrutinized with an eye toward elimination from consideration based on the disturbing information obtained by Congressman Sensenbrenner:

Howard Eisenberg
Bob Evans
Dan Bradley
Judy ________
Bernie Veney
Marty _______
Mario _______
William McAlpin

. JAMES SENSENBRENNER, JR.
NINTH DISTRICT, WISCONSIN

COMMITTEE ON THE JUDICIARY
COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

WASHINGTON OFFICE:
ROOM 315
CANNON HOUSE OFFICE BUILDING
202-225-5101

DISTRICT OFFICE:
333 BISHOPS WAY
BROOKFIELD, WISCONSIN 53005
414-784-1111

Congress of the United States
House of Representatives
Washington, D.C. 20515

February 4, 1981

The Honorable William French Smith
Attorney General of the United States
Department of Justice
Constitution Avenue and 10th St., N.W.
Washington, D.C. 20530

Dear Mr. Smith:

I am hereby requesting the Department of Justice to investigate the possible misuse of appropriated funds by the Legal Services Corporation (LSC).

It appears that appropriated monies have been used for political and lobbying purposes.

As evidence, written on LSC letterhead, I submit the two enclosed memoranda dated December 10, 1980, and December 29, 1980. They were written by Alan W. Houseman, Director of the LSC's Research Institute.

These documents clearly detail a plan for lobbying and political activity by the Legal Services Corporation, its employees and grantees to influence legislation reauthorizing that agency which the 97th Congress will be considering.

I look forward to your prompt attention to this matter.

Sincerely,

F. JAMES SENSENBRENNER, JR.,
Member of Congress

FJS:pkvt
Enclosure

LEGAL SERVICES CORPORATION

MEMORANDUM

DATE: December 8, 1980

TO: Coalition

FROM: Alan Alan

SUBJECT: Tasks for Survival - An Update

Below I have outlined what I understand to be the tasks assignments for survival. I have included both coalition and LSC staff. Also, I have set out future tasks and who I believe should be involved. We should discuss the latter to be sure there is agreement and make appropriate changes.

<u>Immediate Tasks - To Be Done During Next Several Weeks</u>

1. Transition Team and White House Contacts - Dan, Mary, Mario, Judy, Bill McAlpin and Howard.

2. Board Nominees - Howard Eisenberg, Bob Evans, Dan, Judy and Bernie.

3. Solidification and Strengthening of Local Political Base - Regional Meetings - Bucky, Bea, Alan, John McDonald, Mary, Denny Ray, Salvadore Tio, Marttie Thompson, Theron O'Connor and Steve Kostka. Joan Lieberman and John Arango are assisting as staff.

4. Dealing with Money Issues - Bruce, Bernie and:

   One-time Money - Gerry and ABC Committee.

   Drawdown Issues - Mario, Dan and Mary.

   Additional Resources for Emergencies - Alan and Gerry.

5. Private Bar Approach - ABC, Judy, Steve, Mario, Dan, Bruce, Bernie, De (John Dooley has assisted as staff).

6. LSC Board Position on Reauthorizing Legislation - Dan and Mary.

7. Support Center Grants - Andy and Mario.

Short-Term Activities - Started now but completed in January

1. Establishment of effective communications network.

   State Coordinators - Mary, De

   Other Communications - Tim, Andy

2. Analysis of New Congress - Office Government Relations (OGR); De, Dick

3. Committee Composition of New Congress - OGR; Dick

4. Blue Ribbon Panel - McAlpin, Dan, Core Group

5. Development of Affirmative Strategy on Legislation, White House and Congress - Mary, Judy, De, Bruce, Jim, Dick and Core Group.

6. Protective Actions re; Support and Policy Issues - Alan, Judy, Dave Madway, De, and Core Group.

7. Legal Support and Analyses including outside council - Mario, Denny, and Howard.

8. Basic Bureaucratic Vulnerabilities (Such as GAO, CBO, Fund Balances, Monitoring, Complaint Procedure, Weak Programs, Information Collection and Information on Puerto Rico Expenses) - Clint, Mario, Gerry and De.

9. Publications and Media - Public Affairs, NLADA.

10. Support for Supporters on National Level (Including Unions, Civil Rights Organizations, Bar Associations, etc.) - Judy, Jim Braude, and Bernie Veney.

11. Supporting Client Community - Bernie, Clint, and Bea.

12. Law Schools - Bea

13. LSC Staff Morale and Staying Power - Gerry, Clint, and Mario.

14. Information System - Andy, Dick

Long-Term Tasks - Begin now but take several months

1. Develop long-term outside organization to represent legal services in the long-term struggle - Howard, De, Bernie and Core Group.

2. Securing resources for long-term effort - Howard, Bruce, De, Gerry, Alan and Core Group.

3. Press Relations and Publications - Tim, Howard and Press Committee.

4. Relationships to local, state and national bar associations - Steve, Tim, Dan, Howard, Bill McAlpin, Bob Evans and Core Group.

5. Identifying staff and "getting on board" staff to work in long-term effort - Alan, Howard, De and Core Group.

6. Develop long-term strategies for national support - Dave Madway and Alan.

7. Develop long-term strategies for Clearinghouse - Andy, Alan.

8. Develop long-term strategies for training - Bea, De and Alan.

9. Develop long-term strategies for research - Alan.

10. Develop long-term strategies for regional offices - Clint, Bucky.

11. Develop long-term strategies for Reggie program - Willy, Clint.

12. Develop long-term strategies for state support - Alan, De, Clint.

13. Long-term funding theories - Gerry, Bruce, Alan and Core Group.

14. Long-term legislative advocacy strategies - Alan, De, Dick Skutt, Mary, Judy.

15. ABA Mid-Winter Meeting - Dan, Judy, Steve, Bernie, Bob and De.

LEGAL SERVICES CORPORATION

MEMORANDUM

DATE: December 29, 1980

TO: State Coordinators and Other Interested Parties JAN 5 1981

FROM: Alan W. Houseman Alan

SUBJECT: Summary of our Overall Activities, Strategy and Perspective

To assure that there is full knowledge among all critical actors in the effort we are undertaking to preserve aggressive legal services, I have prepared this summary of our activities, strategy and perspectives. Much of this comes from the oral remarks that have been given at the Regional Meetings and will not be new to most of you. Most of this information has been and will be supplemented in more detailed ways.

Overall Perspective

Today we face a severe threat to the continuation and growth of aggressive legal services. At stake is the survival of the legal services movement. By that I mean:

- Survival of committed, aggressive and political staff whether they are lawyers, paralegals, support staff or other advocates;

- Survival of aggressive advocacy, (i.e., advocacy which utilizes the full scope of representation including legislative and administrative representation, litigation and community education; advocacy which seek all possible remedies; and advocacy which is not restricted in what defendants can be sued, e.g., government entities);

- Survival of client involvement and control.

All three of these are essential to the legal services movement. All three of these are under attack and must be pressured and strengthened.

Far more is at stake than the survival of Legal Services. Many social benefit and entitlement programs that have developed during the 60's and 70's to provide concrete benefits to poor people are threatened. As we proceed in our fight, we must take all the steps necessary at national, local or state levels to assure the continuation of other social benefit and entitlement programs. It is essential that we join with others in preventing cutbacks in these programs, and preventing changes in other federal policies, such as affirmative action, which are essential to the continued development of poor people and minorities in this country. At no time must we let our own concerns override the more basic concerns of poor people.

<u>Basic Principles</u>

It is useful to repeat the basic principles which guide the actions that will be collectively taken to preserve legal services.

1. Using all methods of counseling and representation, legal services exists to provide highest quality legal services to all those unable to afford legal assistance in a manner which best enables poor people to assert their rights and interests and effect change in ways that they themselves choose.

2. LSC and the legal services community will continue to emphasize utilization of program resources in a manner that has the greatest

impact on the largest number of poor people.

3. Legal Services must be accountable to the low-income community in program governance, allocation of limited resources, and addressing the most pressing legal problems of a particular local community.

4. The staff attorney system of delivery is essential to effective legal services and will remain the core of our delivery system.

5. LSC and the legal services community will resist any and all efforts to dismantle effective, existing programs. We will never compromise the basic values and structures of this program and we will continue to resist efforts that would impose restrictions or undermine aggressive advocacy for poor people.

Scope of Potential Threat

We will certainly face serious efforts by opponents of aggressive legal services to:

(1) Appoint members to the LSC Board who are not supportive or even hostile to aggressive legal services and the staff attorney system. Currently five terms are up; in June, the additional six positions will be up for nomination.

(2) Add additional restrictions on the types of representation (legislative and administrative advocacy), on types of cases (aliens, education, abortion, suits against government entities), or on attorney fees, support and training.

(3) Reduce our appropriations and/or earmark existing or new funds.

(4) Increase control of legal services staff and advocacy through a hostile bureaucracy, through political pressure from Congress, or through local and state government.

(5) Substantially alter our current delivery system and reallocate current resources to judicare and other private attorney models of delivery.

(6) Increase the role of local and state governments in funding and overseeing legal services delivery.

There will also be attempts by the "far right" to dismantle or eliminate the legal services program. These proposals have surfaced during the transition and will also arise during consideration of our reauthorization in 1981.

We can not now predict what efforts will be made, by who and their timing to restrict or dismantle legal services. There are many possible scenarios that may develop both in the short and long run. What we are doing is to plan for every possible development.

Political Situation

We have a new administration headed by a President who has historically shown hostility to Legal Services. While Governor of California, President elect Reagan attempted to veto and dismantle California Rural Legal Assistance. He also sought to impose additional controls on aggressive advocacy by Legal Services attorneys.

The American Bar Association, though remaining steadfast in support of aggressive legal services, has moved to introduce legislation seeking to mandate the involvement of private attorneys in the delivery of legal services. We must not let this development affect their support for effective, aggressive advocacy.

Many of our allies are themselves politically weakened. Moreover, the organizations from which we traditionally received support have not yet made the survival of legal services a high priority. We may not have reached out sufficiently to other potential allies whether on a national or local level.

We have lost the support of large numbers of clients and poor people. Client involvement and control has not become a reality in most programs. Client organizations both on a local and national level have few resources to affectively advocate continuation of legal services.

We are not prepared for battle. We are not effectively united. The Legal Services Corporation has not had to face a major political crisis since its inception. The Legal Services Community has not had to face a political crisis of this severity since 1973. There are many new people in Legal Services. Some may not share the values of the community's leadership. Some may not be willing to take political risks to preserve aggressive advocacy.

On the other hand, we do not start from a position of weakness. We are stronger and more geographically diverse than ever before. We have able and committed staff working in programs throughout the country.

In the only public statement (in the <u>American Bar Association Journal</u>), the President-elect gave great deference to the pro bono efforts of private attorneys and called for an evaluation of the Legal Services Corporation to ensure "that it is serving the purpose for which it was intended." He went on to say: "Such a program should not be used to fund, at taxpayers expense, suits which are in reality attempts to force a judicial resolution of political and public policy issues properly left to the elective branch through its representatives in Congress... I would also like to explore possible alternatives to the monolithic federal approach to the legal problems of the poor. I believe there is room for increase activity on the part of local government and local bar associations."

Some of President-elect Reagan's senior advisers and key cabinet members are people who may not be particularly supportive of legal services and who lack understanding of our program.

We face a much more conservative Senate which is now controlled by Republicans and southern Democratics. Many of the newly elected Senators are idealogically opposed to legal services. While we have some strong support in the Senate Committee on Labor and Human Resources, we face severe problems with the entire Senate/

While the ~~White~~ House is still in Democratic control, it is much more conservative. Many believe there is now a majority of conservatives in the House which can block most liberal legislation. Although, our committee will remain supportive, we will continue to face, as we have in the past, severe problems on the floor.

The Legal Services Corporation is an independent entity. Many people on the Hill, in the administration and the press perceive LSC to be an efficient and well run institution.

We have more resources to devote to this effort than we have had in the past. We are more sophisticated politically at both national and local levels.

What we are doing to wage this battle

First, we are attempting to unite and join together in this struggle. We have formed a coalition with PAG, the National Clients Counsel (NCC), NLADA, the National Organization of Legal Services Workers (NOLSW) and the Minority Caucus. It will be expanding to include others from within the legal services community, such as National Association of Indian Legal Services (NAILS), migrant farm workers group, women's caucus, Organization Legal Services Backup Centers (OLSBUC), state support and others. It will also expand to include orgranizations who are allies and supporters of legal services.

The coalition members will be forming an outside entity to lobby and coordinate survival activities on behalf of the legal services community. This entity will be established soon and will begin to function early in 1981.

Second, we are expanding and strengthening our state coordination network. This is essential in order to assure effective communications within the community and for our congressional efforts.

Third, we are seeking to diversify and strengthen the base of local and state programs. It is essential to broaden the base. In the short run, a strong local political base will be critical if we are to successfully obtain support from Congress for the continuation of an aggressive legal services program. Effective lobbying in Washington will require local programs to establish credibility and a base in their communities and to develop allies who can and will assist them in persuading their Congressman and Senators to support legal services. In the long run, a strong local base will be necessary to survive possible efforts at local and state control through block grants or private bar control.

These plans involves a series of regional meetings that will attempt to help programs identify how to shore an up and strengthen their base of support including support from the private bar, increased support from organizations that can be effective allies, effective use of the media and improved relations with Congressional offices. In addition to the meetings, there will be technical assistance, training and other assistance available to local programs.

Fourth, we are strengthening our base of support nationally by developing closer ties and better relationships with Civil Rights, labor, elderly, consumer and many other organizations and individuals who have been allied with us in the past. We are also reaching out to new organizations as well to develop alliances and obtain support. Because legal services is only one of many issues with which these organizations are concerned, the National Support Centers and others will be joining with these organizations in common efforts to prevent benefit program reductions.

Fifth, we are addressing short-term issues that require immediate action. Through the National Legal Aid and Defender Association the coalition has identified potential nominess for the LSC Board of Directors who are supportive of legal services but also acceptable to the Reagan Administration. In addition, we are working to acquaint key people in the Reagan Administration and in Congress (including the new Senate leadership) with our program, its independence, and its achievements. We are shoring up and strengthening the support we have among some members of the Reagan team. We are identifying those who can influence members of the transition teams and the appointees of the new administration.

Sixth, we are taking steps to protect programs and our overall delivery system. We will address basic bureaucratic and programmatic vulnerabilities that have been identified by GAO reports and by others. We are also reviewing our entire support structure to make sure it is sufficiently insulated from political pressure and can function effectively in the future.

Seventh, we will be increasing the Washington lobbying efforts of the Corporation and our organizations. NLADA, for example, has hired a full-time experienced lobbyist to work on legal services and other matters. The new entity being formed will substantially expand our lobbying capacity.

Eighth, we are developing an affirmative legislative strategy to deal with the difficult situations we face in the next session of Congress with regard to both appropriations and reauthorization.

This year it will be necessary for us to get out reauthorization through Congress. The Senate will not approve our appropriations without a reauthorization. We will also need to work again with the Budget Committees in the House and Senate. Last year, the budget process played a major role in setting priorities on substantive legislation as well as appropriation levels. Finally, confirmation in the Senate of LSC Board nominees may require some efforts by the legal services community.

Although an affirmative political strategy has not yet been fully developed, it will include at least the following components:

1. Selling the merits of legal services to Congress, media and others at the local, state and national level. Much of this will be done by local people and local programs.

2. Developing a broad range of support from a wide sector of group and organizations and making it in the interest of these groups for legal services to continue without restrictions. This will require effective work at a local, state and national level by legal services programs around the substantive issues affecting the members of the groups and organizations from which we seek support.

3. Improving our relationships with the private bar. We are developing a concrete partnership with the American Bar Association and other bar associations to preserve and expand legal services. This will require full implementation of the Delivery System Study Policy Report and increased involvement of private lawyers in the delivery of legal services. As part of our strategy we are seeking increase funds for expansion in the Fiscal Year 1982 Budget request. By seeking funds from Congress, we believe we can obtain support for the maintenance and expansion of existing programs and prevent mandates in the Legal Services Corporation Act that would reallocate current resources.

4. Developing an affirmative response to Congressional efforts to impose restrictions on legislative representation and other limitations on the scope of representation to be provided to our clients.

To develop this affirmative strategy we are preparing at least two background papers for circulation and discussion. John Dooley is preparing a paper discussing the private bar issues and options to address them. We are also preparing a paper analyzing possible options to prevent legislative representation restrictions. We will be meeting with a number of people to discuss each of these issues and will be holding strategy discussions with the coalition members in early January.

In considering our affirmative strategy we are meeting with many advocates who are experienced in political and legislative strategy in Washington. We are seeking their views on how to take the initiative, how to best use the private bar issue and how to prevent restrictions on case types or the scope of representation.

Regardless of our efforts in Washington, an affirmative legislative strategy is dependent upon effective relations on a local level with congressional offices with state and local bar associations, and with organizations and individuals who are potential supporters and allies.

What Must be Done

Each legal services program must undertake the following:

1. Develop a specific action plan at state and sub-state levels. This plan should detail how each state will seek to maintain and improve or develop Congressional relations, relations with local and state bar associations, relations with allies and

supporters, and relations with local and state governmental entities. The plan must also discuss efforts to develop and improve media relations and develop new media contacts. Finally, the plan should specifically include concrete steps to maintain, improve and/or develop meaningful relations with poor people's organizations.

Many states have already developed such plans. Others are beginning to do so and will be completing the plans at the regional meetings.

These plans will require every program to shift program resources to undertake the efforts outlined in the plan and to change the priorities and work of project directors and staff.

2. Appoint a program coordinator or coordinators who will have overall responsibility for coordinating the implementation of the state and sub-state plans and assuring that all survival activities are carried out.

3. Develop timely and effective communications with the state coordinator. The state must assure that the coordinators have adequate staff and a means of communicating effectively and in a timely manner with all programs.

4. Develop effective internal communications networks that assure all staff with adequate and timely information about developments nationally and within state and local areas.

5. Continue to identify people who have contacts with officials of the Reagan Administration. State Coordinators and relevant Washington actors should be informed of these contacts. Please make sure I am informed of these contacts.

6. Continue to identify potential Board nominees who are supportive of legal services and yet potentially acceptable to a Reagan Administration. Names of potential nominees should be sent to Howard Eisenberg at NLADA.

7. Analyze new members of Congress from your area and review all old members of Congress. What is needed is carefully complied information about all members of Congress. This includes: attitudes, public statements and prior voting records toward legal services and other social benefit programs; their supporters and major contributors from within the bar and general community; possible contacts with their supporters; and their political base in the district or state. This information should be sent to the state coordinator and Office of Government Relations. OGR will develop an analysis of each Congressional person and office. The completed analysis will be sent to each state and program coordinator. The analysis will also include such information as prior Congressional voting records on legal services, positions on other poor people's issues, committee assignments, names and background of key staff, and which members influence this member.

The difficulties we will face now and during the next few years will require sacrifice and discipline by LSC and program staff. Among other things:

1. We must start taking this effort very seriously if we are to succeed.

2. When program coordinators are asked to do something by the state coordinator, by LSC or members of the coalition, they must act responsibly and without delay to see that the tasks are done or that we are immediately informed that they can be done so that we can take the necessary actions to see that they are done.

3. This is the time to act and act quickly to organize within each state and local program to shore up and strengthen the base of political support.

4. Coordinated activity is important. This is not a time to act totally independent of the effort that is being initiated. Project directors and staff will have many good ideas, practical suggestions, intelligence and experience to share with national actors and with other programmatic people. It is important to work together and keep in touch.

Coaliton Building

A critical means of strengthening the local political base is to develop coalitions and working relationships with local organizations and individuals who would see it in their interest to assure the continuation of an aggressive legal services program.

Effective coalitions and working relationships will involve programs assisting these groups and organizations in concrete ways. Merely acting in concert or seeking assistance will not be sufficient. The local program must actually assist groups, individuals and coalition members so that they have a real stake in the survival of the legal services program. The legal services program must become a integral part of their activities.

Usually coalitions and working relationships will evolve out of common work on substantive issues. Legal services should seek out others in the community who may be involved on similar issues of concern to the program and client community. They should also seek to participate in activities by others that affect issues and problems of the client community.

There are a variety of with whom local programs can develop relationships. Some are involved in advocacy for the poor (such as Community Action Programs); some are involved in services for the poor. Many are involved in common issues which affect both the poor and the members of the groups. (e.g., unions and food stamps; Associations of Retarded Persons and special education; elderly organizations, etc.). Many are involved directly in advocacy for populations which include the poor (civil rights, etc.).

In developing working relationships and coalitions on substantive issues, legal services programs and staff should not forget their principal role as advocates for the poor. The point of developing working relationships and coalitions is to strengthen the power of pooe people not to shift the program toward a different population. Legal services should not be viewed as compromising the interests of poor people for its own survival or for the broader good of the coalition. Moreover, legal services should seek to involve poor people directly in the coalitions and bridge relationships between poor people and individuals and organizations with common interests or issues.

The Broader Picture - The Needs of our Clients

The struggle for survival of aggressive legal services should never be perceived by us to be a higher priority than the struggles that poor people will face during the next several years as this new administration and Congress attempt to curtail social benefit and entitlement programs and civil rights activities. We must not under any circumstances stop using most of our resources and most of our energies to continue providing aggressive impact advocacy to improve the lives and power of poor people.

Moreover, we must take immediate steps to develop effective efforts within each state and on a national level to preserve the gains won by poor people and their advocates during the last 15 years. And we must continue to strive to increase social benefits, improve housing and health care, prevent arbitrary private and public actions, improve job and educational opportunities, and eliminate discrimination.

This will require targeting increased resources on substantive issues which will arise on a national and state level: development of more effective national and state networks of staff, clients and other advocates and allies; improved communications to each state about national developments and within each state about national, state and local developments; strengthening our capacity for legislative and administrative advocacy; and developing more effective strategies that use all of the tools available including more effective use of litigation as well as community education, legislative and administrative representation, networking and coalition building.

Working with national and state support projects, we are strengthening current efforts and developing new approaches that will assist local and state programs in undertaking these critically important activities for survival of poor people's basic needs. Although there are different networks that will be used to work directly on these "substantive" activities, (i.e., the substantive networks that have developed through national and state support projects), we will keep all state coordinators informed of national substantive developments

Thus, as we enter this struggle for our own survival, we must never forget that the purpose of our effort and the shift of some resources to our survival is not to save ourselves (or our jobs), not to save our current ways of doing things or even our current structures for that matter. Instead, the purpose of our efforts to preserve for poor people a force that they can call upon to use to improve their economic and social well-being.

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November 9, 1981

The President
The White House
Washington, D. C. 20500

Dear Mr. President:

In view of the recent votes in favor of funding for the Legal Services Corporation, we take comfort in your past pledge to veto any such legislation.

Our group has been studying the Republican Study Committee Fact Sheet prepared by Loren Bruce and dated April 24, 1981. It documents many of the abuses of the Legal Services Corporation, and provides a number of examples of how the Legal Services Corporation has spent much of its money: pursuing litigation which promotes a philosophy of government that has been repudiated at the polls as well as in legislative forum.

We intend to give our support to your promise to veto all continued funding for the Legal Services Corportaion.

Sincerely,

Judith F. Ryder

(Mrs.) Judith F. Ryder, President
Eagle Forum of Rhode Island

"They that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles; they shall run, and not be weary; and they shall walk, and not faint." Isaiah 40:31.

File
Legal
Services
Corp.

MISSIONARIES FOR LIBERALISM:
UNCLE SAM'S ESTABLISHED CHURCH

by Michael E. Hammond

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"...to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors, is sinful and tyrannical."[1]

-Thomas Jefferson, 1777

"Today we face a severe threat to the continuation and growth of agressive legal services. At stake is the survival of...committed, aggressive and political staff [and of] agressive advocacy..."[2]

-Alan W. Houseman,
Legal Services
Corporation, 1980

"Congress shall make no law respecting an establishment of religion..."

-First Amendment
U. S. Constitution

INTRODUCTION

Since the beginning of the Republic, Presidents and officers within each administration have engaged in activities which could legitimately be classed as "advocacy." This advocacy--which has frequently dealt with issues involving great controversy--was considered not only the right, but even the responsibility of the President.

Recently, however, recipients of Federal largesse have engaged in a form of advocacy which is qualitatively different from the "bully pulpit" which Roosevelt knew. The difference between Alan Houseman and Thomas Jefferson goes beyond Houseman's relative inarticulateness and the banality of his ideas.

Houseman's statements represent a new form of advocacy--an advocacy which is unresponsive to and uncontrollable by elected executive authority, attacks the religious beliefs of a substantial portion of Americans, is violative of the laws governing the program Houseman supervises, and consistently represents a specific ideological point of view.

This new form of "government ideology," transcending electoral results, is not unique to any single Federal agency.

Congress has established various "intervenor funding" programs for the purpose of financing studies and appearances by "consumer advocates" before agencies.[3] The Federal Trade Commission's program, for example, has handed millions of dollars to groups which are almost without exception, ideologically liberal, and which, in most cases, have substantial financial resources available.[4] This appears to be in direct violation of the FTC's charter, which prohibits "intervenor funding" for any group which could otherwise afford to participate in FTC proceedings.[5]

In areas such as Federal funding intended to benefit the handicapped, "protection and advocacy" mechanisms have been established by statutes like the Developmental Disabilities Act and the Rehabilitation Act of 1978.[6] Under these programs, outside groups are funded for the purpose of litigating and lobbying on behalf of what has turned out to be a consistently liberal set of ideological premises.[7] Although most "protection and advocacy" programs explicitly or implicitly prohibit lobbying the Federal government,[8] the recipients of "P&A" monies freely acknowledge that they have ignored these statutory restrictions.[9]

In addition to those programs expressly authorized to fund advocacy activities, there are many others which have had that unintended result.

For example, a House Appropriations Committee report found that Sam Brown's ACTION had supported union organizing, funded a training institute for community activists to the tune of $432,235, and assigned volunteers to work in the 1979 Arkansas primary election.[10]

LEGAL SERVICES ADVOCACY

But the Legal Services Corporation (LSC) is probably more extensively and exclusively involved in ideologically premised advocacy than is any other agency.

In 1981, this government-created, semi-autonomous entity received $321,300,000 in taxpayer funding. Like other advocacy programs, which operate through extra-governmental non-profit corporations, it is characterized by an organic statute which, while not saying so, has the effect of channelling funding to individuals and organizations on one end of the ideological spectrum.

It is an instructive indication of ideological coloration that a representative of the LSC-allied Food Research and Action Center,"[11] went unchallenged when she stated at a November, 1980 conference of the National Legal Aid and Defender Association:

> What all of us ultimately... care about--ultimately, is meaningful welfare reform, and a meaningful redistribution of wealth and income in this country. Well, getting from here to there is easier said than done. It so happens that there's not a maturity in this country or in Congress for doing that right now, and, what Congress has responded to is not giving low-income people dignity that comes with meaningful cash assistance--what they've responded to is these individual needs. We'll hand them some food stamps--we'll give them a section 8 certificate,...which all of us get frustrated about sometimes, because that's not really doing anything to eliminate poverty or change the conditions of poverty. In any event, you have Congress responding to individual needs. They're not responding to a Poor People's Platform--they're responding to individual needs. And, whether I like it or not because of my own personal political and social views I know that on the food issue I get the most mileage out of doing a bleeding heart, kind of churchie, feed-the-poor, kind of thing.[12]

Legal services attorneys have lobbied or litigated to secure disability payments to individuals because they were homosexuals,[13] the cessation of technological development of farm machinery because it would put migrant workers out of work,[14] the imposition of racial quotas in medical school admissions,[15] the turnover of large portions of the Eastern United States to persons of Indian ancestry,[16] the payment of supplemental social security benefits to alcoholics,[17] the establishment of "black English" as a separate language,[18] and the upgrading of Armed Forces discharges for persons thrown out of the service because of homosexuality.[19]

Most of these activities are not within the scope of litigation envisioned by Congress when it passed the Legal Services Corporation's 1974 charter. This intent was most clearly stated by Senator J. Glenn Beall (R.-Md.), when he said: "[The type of cases which the Legal Services Corporation will be handling] are not cases which reach headlines or front pages of newspapers. But to the poor, every one of these cases is important, whether it be the family being evicted or a mother having her child taken away. Thus the poor (will be) provided representation in difficult day-to-day problems in such areas as family law, landlord-tenant problems with employment and consumer cases."[20]

Whether various activities by Legal Services recipients are actually illegal under the specific prohibitions of the Act is difficult to judicially establish. In 1977, Congress added a provision to the Legal Services Act to prohibit a litigant against a Legal Services client from raising the validity of that representation in connection with the pending lawsuit. Instead, representation questions were to be referred to the Corporation for resolution and, presumably, were to be judicially reviewed, if at all, only under standards which assumed the validity of the Corporation's very broad determination of the scope of its jurisdiction.[21]

Suffice it to say that this costly and partial procedure for challenging LSC jurisdiction has virtually assured that representation decisions, however unlawful, have gone largely unchallenged.

In spite of the dearth of judicial decisions to provide guidance, however, there are a vast number of cases in which involvement by Legal Services recipients would seem to be clearly in direct violation of any of a dozen specific statutory restrictions.

THE ILLEGAL SERVICES CORPORATION

Section 1007(b) of the Legal Services Act states:

> No funds made available by the Corporation...may be used--
>
> (7) to initiate the formation, or act as an organizer, of any association, federation, or similar entity, except that this paragraph shall not be construed to prohibit the provision of legal assistance to eligible clients...

Since the creation of the Corporation, proponents of the politicized Legal Services Program have attempted to limit the scope of the words "initiate the formation" and "act as an organizer," contained in the section 1007 (b)(7) limitation. The House Education and Labor Committee's report attempted to draw a distinction between "prepar(ing) papers of incorporation" and performing comparable technical services, which it viewed as lawful, and acting as an impetus to organizing efforts, which even the House committee had to admit is unlawful.[22]

One thing should be clear to even the most ardent proponents of expansive LSC powers: A Washington-based effort to assist in forming a national coalition of special interest groups does not pass muster under the 1007 (b)(7) standard.

In the December, 1979, issue of Clearinghouse Review[23] Alan Houseman's Research Institute on Legal Assistance solicited members for a "national coalition, Citizens for Tax Justice (CTJ)"- a federation consisting of "the national public interest organizations," NAACP, National Consumer

Federation of America, the National Council of Senior Citizens, Mass Fair Share, Texas-ACORN, the Ohio Public Interest Campaign, the AFL-CIO, the International Association of Machinists (IAM), and the American Federation of State, County, and Municipal Employees (AFSCME).

Readers interested in membership were given the address and telephone number of the executive director of CTJ.[24]

The article went on to recommend that "those [LSC-funded] programs active in tax reform activities, but not interested in joining the coalition may want to consider contacting the coalition for technical assistance and information about coalition members who may be active in their local area." It also solicited suggestions and ideas about "other actions the legal services and client community could take in conjunction with the CTJ."[25]

In a strikingly similar case involving the same recipient, Houseman, in his December, 1980, lobbying strategy memorandum, advocated the same sort of coalition building. Stated Houseman:

> First, we are attempting to unite and join together in this struggle. We have formed a coalition with PAG [Project Advisory Group], the National Clients Counsel (sic)(NCC), NLADA [National Legal Aid and Defender Association], the National Organization of Legal Services Workers (NOLSW) and the Minority Caucus. It will be expanding to include others from within the legal services community, such as National Association of Indian Legal Services (NAILS), migrant farm workers (sic) group, women's caucus, Organization (sic) Legal Services Backup Centers (OLSBUC), state support and others. It will also expand to include organizations who are allies and supporters of legal services.[26]

In another instance, The Beacon Hill Update bragged that "(t)he four prominent prison reform groups - Family and Friends of Prisoners (F&F), the American Friends Service Committee Prison Project (AFSC), the Mass. Correctional Legal Services (MCLS), and the Self-Development Group (SDG) - are working towards building a coalition to strengthen their hand in opposition to [Massachusetts Governor Ed] King['s] administration policy [relating to prison construction]".[27]

If these efforts at organizing coalitions for political purposes are not in violation of section 1007(b)(7), it is hard to understand what is.

The Office of Management and Budget, in an opinion dated May, 1981, found widespread violations by the Corporation and its recipients of Federal laws prohibiting lobbying. Acting Comptroller General Milton J. Soclar held that:

> In summary, through the use of recipient organizations and their contacts at the State and local level, LSC had developed an extensive lobbying campaign to support reauthorization legislation for the corporation and related appropriation measures being considered by the Congress. This activity violates the anti-lobbying statutory and appropriation restrictions described above.[28]

The anti-lobbying provisions referred to are 18 U.S.C. §1913, sections 1006 and 1007 of the Legal Services Act, and appropriations restrictions on lobbying and propaganda.[29]

Unlawful lobbying activities by the Corporation and its recipients take a wide variety of forms. Some ostensibly arise out of client representation. However, in such cases, when the lobbying occurs without the client's knowledge or consent,[30] it suggests that the client was simply a device for the recipient to engage in a predetermined mode of policy advocacy.

In addition, however, there is a day-to-day mechanism where issues targeted by backup centers on a national level are systematically lobbied by legal services recipient organizations.[31]

The method by which issues are selected varies from case to case. In at least one case, a backup center has polled its mailing list for recommendations.[32]

After a decision is made to lobby on behalf of a given issue, the backup center phones local legal services offices. The local contact can be a state lobbying coordinator, as in the case of Marshall Cohen of Pine Tree Legal Services in Maine.[33] In other states, there may be no designated contact, and the national backup center simply phones each Legal Services office within the state.[34]

Contacts made through this system occur regularly. They involve issues which are seemingly unrelated to the Legal Services Corporation's authorizations or appropriations. They may be made in response to a poll or other Washington-based decision-making process, rather than the needs of a particular client. Nothing would appear to be more clearly in violation of all four major Legal Services lobbying restrictions.

It is against this backdrop that the Corporation, in 1980, launched a massive illegal lobbying effort to secure its reauthorization and, after the election of Ronald Reagan to the Presidency, to achieve the defeat of the Reagan economic package.

The lobby strategy memorandum by Houseman represents perhaps the most self-evidently illegal manifestation of this strategy. In it, Houseman lays down an eight-point plan for "waging battle" on behalf of not only reauthorizing legislation satisfactory to the Corporation, but also retention of other Federal agencies which President Reagan seeks to replace with block grants.[35] Because it deals with problems other than the Corporation's own authorization and because it represents a Washington-generated effort, this comprehensive lobbying plan is not protected by the two biggest loopholes in LSC's lobbying prohibitions -- the client representation loophole and the loophole dealing with lobbying on behalf of Legal Services funding.

Key passages include:

> . . . In the short run, a strong local political base will be critical if we are to successfully obtain support from Congress for the continuation of an aggressive legal services program.
>
> . . . we are strengthening our base of support nationally by developing closer ties and better relationships with Civil Rights, labor, elderly, consumer and many other organizations and individuals...
>
> ...we will be increasing the Washington lobbying efforts of the Corporation and our organizations. NLADA, for example, has hired a full-time experienced lobbyist to work on legal services and other matters. The new entity being formed will substantially expand our lobbying capacity.

There is ample evidence that the Houseman plan to defeat the Reagan budget is being vigorously pursued by a wide variety of funding recipients.

Beginning around the first week in March, 1981, hundreds of local newspapers began featuring curiously similar interviews with the heads of their local Legal Services programs, in many cases resulting from press releases emanating from those programs.

With a similarity of themes which makes coincidence unlikely, these articles bear titles such as "Legal aid lawyer says cuts would hurt rural poor worst,"[36] "Cuts Would End Legal Aid to Rural Poor, Director Warns,"[37] "President Reagan's Legal Aid Cuts Will Hurt North Dakotan's (sic) According to State Office News Release,"[38] "Local legal aid staff fears budget cuts will hurt clients,"[39] "Legal Services says cutbacks will hurt poor,"[40] and "Free legal aid may be taken from area poor."[41]

In each article, the director of the local Legal Services program laments the closing of his office which, he claims, will inexorably result from having to seek funds from block grant money which the Reagan administration would make available to the states. Many directors go on to paint a picture of frustrated poor people taking to the streets in a rebirth of the urban rioting of the 1960's.

Among the statements typically made in defense of Legal Services is a remark by Oakland attorney John Burris, who said: "[Reagan's Legal Services proposal is] totally insane, exhibiting a callous insensitivity to the needs and aspirations of the poor." Former National Bar Association president Robert L. Harris went on to add that "[b]lack America must rise up and confront the Administration on this proposed madness."[42]

In implementing the Houseman plan on the Washington level, the Food Research and Action Center and the LSC-funded Native American Rights Fund both joined a coalition of feminist groups signing a petition in protest of the President's budget cut proposals.[43]

In April, 1981, and on numerous other occassions, Corporation President Dan Bradley had stood with other Legal Services representatives in the reception room of the Senate chamber, accosting senators to encourage them to bust the President's budget resolution.

According to Budget Committee Chairman Pete Domenici (R-N.M.), the budget of the Legal Services Corporation was not at issue in connection with this legislation,[44] meaning that there was no section 1006 or 1007 justification which would render the lobbying activities lawful.

To staff this elaborate network of illegal lobbying activities, the Corporation and its recipients hire on the basis of political and legislative acumen, and actively fight for the retention of a politicized staff.

In May, 1977, the National Consumer Law Center bragged that it "has traditionally devoted a significant amount of its resources to legislative activity at the state and federal level, although its resources and willingness to be of assistance may not be generally known."[45] It went on to admonish that "...the willingness of Legal Services attorneys to contact (and have others contact) members of Congress can be crucial."[46]

Similarly, the Luzerne County Legal Services Association advertised in Clearinghouse Review for a "law reform specialist,"[47] and the Contra Costa Legal Services Foundation boasted to would be recruits of its "tradition of strong community involvement and aggressive participation in local political, social and economic battles on behalf of its client communities."[48]

Clearinghouse Review, which received $840,000 from LSC in Fiscal Year 1981, serves as a bulletin board for liberal legislative causes, alerting readers to Congressional status of liberal agenda items such as "intervenor funding" legislation[49] and the Domestic Violence Prevention and Services Act,[50] as well as harpooning conservative legislation such as the Family Protection Act.[51]

PRO-ABORTION ACTIVISM

It has become apparent with time that the Legal Services Act's prohibition on abortion litigation was intended to be more of a loophole than a proscription. Nevertheless, there are some abortion-related activities which the Corporation and its recipients clearly may not engage in.

The language of section 1007 (b)(8) prohibits two different types of abortion-related activities. First, it states that:

> No funds made available by the Corporation...may be used...to provide legal assistance with respect to any proceeding which seeks to procure a nontherapeutic abortion.

In spite of this language, recipients have engaged in proceedings to procure abortions which cannot reasonably be classified as "therapeutic." For example, in 1979, Michigan Legal Services filed an amicus brief on behalf of a governor's item veto of a provision barring state funds for nontherapeutic abortions.[52]

If Congress intended to go on record in opposition to the procurement of individual nontherapeutic abortions, it is highly unlikely that the Corporation or its recipients could successfully argue that actions to compel the financing of large numbers of nontherapeutic abortions could pass muster.

Section 1007(b)(8) also prohibits provision of legal assistance with respect to any "proceeding or litigation which seeks to...compel any individual or institution to...assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution."

Obviously, a state or local government which, reflecting the religious or moral convictions of its citizens, either by law or policy, restricts the use of its facilities and funds in connection with the performance of abortions, falls within the category envisioned by the statute. Hence, when in 1979 the Neighborhood Legal Services office in Pittsburgh forced a Pittsburgh jail to transport an inmate to a hospital for an abortion,[53] it was requiring that jail to make available its assistance in connection with the performance of an abortion, contrary to the religious and moral convictions of the community, as reflected in the rules, policies, and statutes governing the operation of the jail.

In another case, Preterm, Inc. v. Dukakis, Greater Boston Legal Services helped challenge a Massachusetts law limiting expenditure of state funds to abortions necessary to prevent the death of the mother.[54] The provision of those state funds were "assist(ance) in the performance of an abortion," contrary to the religious beliefs or moral convictions of the individuals who enacted the statute and the citizens of Massachusetts who elected them to engage in that law making determination.

Similarly, in Zbaraz v. Quern, the Legal Assistance Foundation of Chicago successfully sought an injunction against enforcement of an Illinois statute preventing state medical payments for abortions except when necessary to save the life of the mother.[55]

For those who would argue for a very narrow interpretation of this language based on a statutory purpose to protect the mother, rather than the fetus, it is important to note that Legal Services has actively worked on behalf of other nontherapeutic operations with ramifications for the mother's health as profound or more profound than the performance of a nontherapeutic abortion.

For example, in June, 1977, Michael Shepard of Utah Legal Services sued on behalf of a minor woman challenging HEW's policy of refusing to pay for nontherapeutic sterilizations of women under 21 years of age.[56] The court dismissed the case, finding that there was no "suspect classification" capable of sustaining a constitutional objection to the policy.[57]

Finally, Clearinghouse Review has contained articles advocating abortion-related activities in violation of abortion, organizing, politicking and lobbying restrictions in the Legal Services Act.

These included an article by feminist Sylvia Law on "Reproductive Freedom Issues in Legal Services Practice."[58] According to Law, "The problems of insuring poor women the right to reproductive choice are overwhelming... Work in this area can also provide legal services lawyers opportunities to form alliance with others, help develop community organization, and strengthen the political base for dealing with issues that critically affect the lives of their clients."[59]

In another article by an attorney employed by the LSC-funded National Center for Youth Law, analyzing the "abortion-without-parents'-consent" decision in Bellotti v. Baird,[60] the author states that "it is important that legal services attorneys devote considerable energy to opposing the imposition of burdensome parental consent and notification requirements, either through legislative advocacy or through litigation." He adds: "The National Center for Youth Law would be happy to assist with such efforts."[61]

Again, this is a legislative advocacy project which was initiated not as a result of client need as required by sections 1006 and 1007 of the Legal Services Act, but rather as a result of the legislative agenda of a backup center.

DIRTY TRICKS

The practice of collecting dossiers on members of Congress and their staffs is also encouraged centrally. Houseman suggested this when he stated:

> Analyze new members of Congress from your area and review all old members of Congress. What is needed is carefully complied (sic) information about all members of Congress. This includes: attitudes, public statements and prior voting records toward legal services and other social benefit programs; their supporters and major contributors from within the bar and general community; possible contacts with their supporters; and their political base in the district or state...The analysis (which will be prepared from this information) will also include such information as prior Congressional voting records on legal services, positions on other poor people's issues, committee assignments, names and background of key staff, and which members influence the member.[62]

This advice was echoed at the Legal Services conference in

San Juan, where one speaker advised:

> The more information we have about the congressional delegations from your state hopefully the less we would need to pester you for information. Anything that you can get into our hands makes our job easier...These are some of the ways that you can feel like you are involved in what happens in Washington, because God knows I know you all don't want to just sit home and read the newspapers passively about what Congress is going to do to poor people next year.[63]

TRAINING AND ORGANIZING THE CADRES

Legal Services training goes far beyond instructions on the simple gathering of political information. The January, 1979, issue of Clearinghouse Review contained an article entitled "An Advocacy Guide to the Community Development Block Grant Program," intended to advise Legal Services lawyers on how to obtain government funds.[64] States the article: "A community group's main consideration, for example, might be to back a sympathetic political faction or public agency over an unsympathetic one..."[65]

As for "labor or anti-labor activities, boycotts, picketing, strikes, and demonstrations," there is extensive evidence of Legal Services involvement in these as well. In Belle Glade, Florida, for instance, attorney Donald Mason of Florida Rural Legal Services[66] was active in organizing a rent strike against the local Belle Glade housing authority.[67] And Charles Fields of the American Farm Bureau Federation has charged that Legal Services lawyers have helped organize farm workers' unions in California, Florida, the Midwest, and New Jersey.[68]

CLASS AGAINST CLASS

The question of whether Legal Services is illegally shifting its entire set of priorities away from the statutorily mandated representation of individual poor people and toward representation of collective interests is of transcendent importance, though it is not as legally clear-cut as the question of whether Legal Services is unlawfully lobbying.

The first finding of section 1001 of the Legal Services Act of 1974 is a declaration that "there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances." Section 1007(a)(2)(C) mandates that the Corporation "insure that recipients...adopt procedures for determining and implementing priorities...taking into account the relative needs of eligible clients for such assistance."

In short, the statute envisions the creation of priorities which focus on individual legal needs and do not set macrocosmic interests of a diverse group of beneficiaries over the specific needs of eligible clients.

The Indian claims cases are one example of how recipients have used their mandate to represent the poor in a way which may be antithetical to the interests of the larger portion of their clients.

In some of those cases, Legal Services attorneys have sued to return major portions of Eastern states to the indigenous Indian population, without regard to the status of current owners of the land or the number of people who would be put out of work as a result of Indian acquisition of the land.

In Maine, Pine Tree Legal Assistance, Inc. litigated to return two thirds of the state to the Passamaquoddy and Penobscot Indians, potentially displacing 350,000 persons.[69]

On Cape Cod, it was the Native American Rights Fund which sued to return a large sector of the state of Massachusetts to the Indians.[70]

In Utica, New York, farmers are being sued on behalf of the Oneida Indians for return of roughly 5,000,000 acres of land.[71]

These cases pit poor landowners against poor Indians. They pit "economic development" and jobs for eligible clients against persons who are much less likely to use the land for purposes of development. Moreover, they rest on the notion that any eligible client who walks through the door can invoke Legal Services activity detrimental to the interests of most other eligible clients. Legal Services representation of the Ku Klux Klan is also illustrative of this final proposition.[72]

Ironically, this "impact litigation" against the interests of many poor people and on behalf of as little as a single eligible client has frequently resulted in an inability to adequately service other eligible clients seeking legal assistance. For example, Northeast Ohio Legal Services[73] turned away indigent would-be clients in order to pursue litigation designed to prevent United States Steel from closing its local plants or, alternatively, to require it to sell the plants to a worker-community group that would seek Federal funding.[74]

In North Carolina, Catawba Valley Legal Services, Inc., formally accepted only 587 of 1168 requests for legal services in 1980.[75] Yet, it spent substantial amounts of resources in a suit to limit the ability of public utilities to terminate services to financially heterogeneous groups for non-payment of utility bills[76] --a suit which, however meritorious or non-meritorious, does not strictly impact on the client community.

Similarly, California Rural Legal Services, litigated on behalf of 19 farmworkers to challenge the entire California system of publicly sponsored agricultural research to produce more efficient farm machinery, claiming it was displacing migrant farmworkers.[77]

The rationale for all of this litigation is curiously self-contradictory. On one hand, recipients are willing to engage in litigation resulting in substantial economic losses for the poor on the basis of a single eligible client. On the other hand, Legal Services recipient organizations freely turn away eligible indigent clients on the grounds of priority litigation on behalf of mixed groups of eligible and noneligible beneficiaries.

INCITEMENT OF LITIGATION

All of this raises the fundamental question of whether the types of litigation engaged in by LSC recipients are being determined by the needs of particular clients or the ideological predilections of taxpayer funded lawyers.

Section 1007(a)(10) of the Act requires that the Corporation "insure that all attorneys, while engaged in legal assistance activities supported in whole or in part by the Corporation, refrain from the persistent incitement of litigation and any other activity prohibited by the Canons of Ethics and Code of Professional Responsibility of the American Bar Association..."

Yet, there is extensive documentation that blatant and persistent incitement of litigation takes place.

For example, Bob Duren of the Legal Aid Foundation of Los Angeles advertised in a Los Angeles newspaper that six offices of his organization were open "to receive complaints from victims of police misconduct." The announcement went on to offer legal assistance and referral services for "any person complaining of police abuse or misconduct."[78]

Likewise, the Veterans Education Project advertised in Clearinghouse Review of the availability of material to help homosexuals thrown out of the Army upgrade their discharges.[79]

DISREGARD OF FORCED BUSING RESTRICTIONS

The list of presumably explicit proscriptions against Legal Services recipients covers several pages in the United States Code. And, for virtually every specific prohibition contained in the Legal Services Act, there are reported instances of abuse. While the major areas suggesting pervasive patterns of illegal activities have already been discussed, it would be unfair to suggest that unlawful practices have been limited to these.

Other highly questionable activities include: Preparation of a friend of the court brief in the Bakke case in favor of the University of California's unconstitutionally discriminatory admissions system,[80] in violation of the section 1006(c)(1) prohibition against LSC "participat(ion) in litigation unless the Corporation or a recipient of the Corporation is a party..."; and participation by the LSC-funded Center for Law and Education in a suit which led a Federal district court to place South Boston High School in receivership in order to accomplish integration,[81] in spite of the section 1007(b)(9) restriction on "legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system."[82]

INTERPRETING THE PUBLIC INTEREST

Section 1007(b)(5) makes it unlawful for the Corporation to make grants or enter into contracts with any private law firm which expends 50% or more of its resources or time litigating issues in the broad interest of the majority of the public. No one has yet defined with specificity what kinds of litigation fall into this category, and no inventory exists of the amount of "broad public interest litigation" that is annually engaged in by various recipients.

California Rural Legal Assistance brags that it spends 35% of its time litigating class action suits alone. As the following examples illustrate, moreover, class action suits represent only a small percentage of litigation proscribed by section 1007(b)(5). Hence, many of these lawsuits, while perhaps not falling within specific ambit of any other Legal Services Act prohibition, do represent controversial issues which may put the Corporation and its recipients in violation of section 1007(b)(5).

At any rate, these cases divert funds from the sort of landlord-tenant, business-consumer, and husband-wife suits which the Legal Services Act was intended primarily to address.

Massachusetts Law Reform Institute offers a revealing illustration of this problem when it lobbies for a graduated state income tax[83] or challenges efforts to reduce welfare fraud.[84] Both of these activities take enormous amounts of organizational time and represent a clear attempt by legal services officials to legislate their particular view of what is good for the poor as a class.

In the District of Columbia, the Migrant Legal Action Program[85] challenged the Secretary of Labor's failure to promulgate OSHA regulations for farm labor.[86]

Gabe Kaimowitz and Kenneth Lewis of Michigan Legal Services sued to compel the Ann Arbor school district to give special bilingual education in "black English."[87]

The Federally funded Western Center on Law and Poverty of Los Angeles and San Fernando Valley Neighborhood Legal Services of Pacoima, California[88] litigated to compel payment of Federal SSI benefits to alcoholics.[89]

The Legal Action Support Project of the Bureau of Social Science Research, Inc., studied food stamp recipients in order to lay the groundwork for a suit by Alaska Legal Services to require people to draw food stamps.[90]

In Florida, Legal Services recipients are engaged in lawsuits to strike down vagrancy laws[91]-- state criminal statutes-- presumably in violation of section 1007-(b)(2) of the Act, which prohibits legal assistance with respect to criminal proceedings.

In Dallas, Texas, Legal Services has been active in school desegregation litigation.[92]

In Tampa, Bay Area Legal Services filed suit challenging Florida high school competency testing.[93]

In In re Evans, Montana Legal Services Association successfully sued to obtain disability payments for a "biological male and emotional female who is presently attempting to pass in society as a woman." Ruling that ridicule of his/her transsexuality by fellow workers caused him/her "severe emotional trauma," an Administrative Law Judge found eligibility for Federal SSI and disability benefits.[94]

In Stevenson v. Stevenson, the Legal Aid Society of Louisville successfully sued to establish the principle that a mother's lesbianism is not sufficient grounds for changing custody of a child.[95]

All of the activities outlined above were brought by organizations directly Federally funded by grants from the Legal Services Corporation. But as has already been suggested, Clearinghouse Review also performs a very controversial function. A typical recent article was "Police Brutality," by the Research Institute on Legal Assistance.[96] According to this article: "Legal services lawyers and others continue to litigate these difficult cases and contribute to an evolving body of law regarding them. As part of this effort to combat [so-called] police abuse, several publications have been developed to assist both lawyers and clients." It proceeds to refer readers to a publication by the radical National Lawyer's Guild.[97]

REMEDIES

Politically, the response of the Legal Services Corporation and its proponents to complaints about these abuses does not suggest that they could be corrected by mere adjustments in the Corporation's statute.

In the first place, given that the problem is pervasive violation of the LSC statute, how is it possible to alter the statute and thereby correct the deficiency?

Second, the Corporation's illegal activities are effectively insulated by statute from judicial review. In 1977, ostensibly as a result of large numbers of motions challenging the legality of Legal Services representation decisions, the Senate Human Resources Committee reported a bill which would have almost totally divested the courts of jurisdiction to determine that a particular client could not be legally represented with Legal Services money or that a particular issue could not be litigated with Federal funds.[98] Although proponents agreed to remove the proposal from the Senate bill as a result of conservative pressure, the conference committee reported language which severely limited judicial scrutiny of unlawful Legal Services activities.[99]

Third, concessions making incremental changes in the Legal Services statute have never been regarded by the Corporation as imposing any permanent restrictions on its conduct. Invariably, as soon as the political climate improved, LSC was actively working to obliterate the last authorization's compromises. For example, in 1974, a pivotal portion of the compromise which allowed the passage of the Legal Services Act was the Green amendment, a provision prohibiting the establishment of "backup centers" for legal advocacy and research not directly related to the representation of clients.[100]

After having established a political base, the Legal Services Corporation proceeded to successfully work in 1977 for elimination of the Green amendment. As partially recounted herein, backup centers have subsequently been at the forefront of the illegal and politically questionable activities engaged in with Corporation funds. [see Appendix A]

Fourth, the LSC has thus far successfully resisted an in-depth impartial study of allegations of improper conduct, and the Senate has not been willing to investigate charges of illegalities. In 1980, the Corporation succeeded in defeating, with only 24 favorable votes, an amendment by Senator S.I. Hayakawa (R.-Calif.) to condition out-year funding for the Corporation on the performance of an audit by the General Accounting Office of alleged abuses and illegalities.[101]

One of the representations used to defeat the Hayakawa amendment was a promise that liberals on the Labor and Human Resources Committee would sign a letter requesting a GAO audit once the bill was passed. Yet, Senator Jacob Javits (R-N.Y.)--who had made such a commitment--subsequently refused to sign a letter requesting the audit when it was forwarded to his office.

Fifth, the very nature of the staff attorney system frees Legal Services attorneys from the economic constraints against high-profile litigation imposed on most law offices. When the client pays the lawyer's fee, he has a financial interest in keeping the litigation focused on his particular grievances. If too much energy and money is spent on issues with only broad social ramifications, the client will find another lawyer.

Because Legal Services recipients do not rely for their income on the poor people who come to them for help, they have been able to remain accountable to their own priorities and concerns, as well as those of backup centers and other ideological brethren.[102]

It is hard to understand how any client-responsive system could be structured under which recipients were not reliant on clients for funding.

Sixth, so long as the Legal Services Corporation and its recipients are allowed to engage in representation of groups as opposed to individuals, the practical political effect is the enforcement of an "iron triangle" in which liberal congressional committees, liberal outside groups, and liberal officials of Legal Services Corporation recipient groups join together to tie the hands of whatever titular overseers might be appointed by a hypothetical conservative administration.

President Reagan's political appointees in areas such as the Department of Justice already have seen how difficult it is to exercise any effective control over the monstrous liberal bureaucracies which they are appointed to supervise.

Additionally, political alliances involving Legal Services recipients have built a strong and dedicated constituency which is prepared to work politically in order to thwart any efforts to reign in the bureaucracy. These include homosexual rights groups, "tax reform" groups, "Indian rights" groups, anti-business groups, and any other movement which has benefitted from Legal Services representation.[103]

As long as the Legal Services Corporation continues to exist as a Federally-funded entity, it will represent a type of mechanism different from and in many ways more insidious than any other Federal governmental entity: it is a political apparatus, largely unresponsive to the American electorate, with a broad legal mandate (with which it cannot seem to comply) allowing it to engage in active lobbying and politicking for the purpose of retaining and expanding its status as an ideological free agent. The continued existence of this form of mechanism has severe ramifications for our system of democracy.

ALTERNATIVES TO THE LEGAL SERVICES CORPORATION

BLOCK GRANTS

The attraction of the comprehensive Social Services Block Grant approach is that state governments are permitted to set priorities among competing service bureaucracies. If enacted, state and local governments will be allowed to channel funds to those services which they feel are most urgently required.

If, as ABA Secretary and Legal Services Corporation board chairman F. William McAlpin contends, "it's not realistic to ask a welfare mother to take ten percent of the food out of the mouths of her children in order to pay for legal services," it may be equally "unrealistic" to require a diversion of funding from food and housing programs for the poor to a program that essentially puts money in the pockets of lawyers.

Apparently intimidated by President Reagan's recommendation that service providers be required to compete for resources under the control of state officials, Legal Services Corporation President Dan Bradley responded:

> I felt an atomic bomb had been dropped on the Legal Services Program for the poor ...I wouldn't be surprised if [Legal Services opponent] Howard Phillips were not over at the Supreme Court building today with a hammer and a chisel, chiseling out the words 'equal justice under law.' [If the Legal Services Corporation is not funded,] there will not be justice for 30 million poor people in America.[104]

The first problem with Bradley's exaggerated predictions of dire consequences is that Legal Services' current level of funding is historically unprecedented.[105] In 1965, the Office of Legal Services was created within the Office of Economic Opportunity with a budget of $1.3 million. By 1975, that figure had grown to $90 million, rising to $157.4 million in 1978, $261 million in 1979, and $321.3 million for 1981. The 1981 figure, therefore, was three and one half times the amount authorized only six years earlier.[106]

What McAlpin and his colleagues really fear is that states would not place legal services, as presently provided, high on the list of priorities for servicing the poor. New York Mayor Edward Koch indicated in a statement, "It has always been my policy that Federal financing of the Legal Services Corporation should be extended. But now priorities must be set. My highest priorities are mass-transit aid, the continuation of the food stamp program and aid under Title XX of the Social Security Act for the elderly and very young."[107]

Similarly, a spokesman for New York Governor Hugh Carey stated that the Governor had not included Legal Services among items on a list of proposed Federal budget cutbacks to which Carey would have serious objections.[108]

But, in other states, such as California, there is strong political support for local funding of legal services projects.

TAX INCENTIVES FOR LAWYERS

Congressmen Henry Hyde (R-Ill.) and John Ashbrook (R.-Ohio) have introduced H.R. 3929, a bill to provide tax incentives for the provision of free legal services to the poor. [See Appendix B]

Attorneys would receive a tax credit for voluntarily contributing legal services to the poor free-of-charge. The credit could not be invoked for types of representation which could not currently be funded by the Legal Services Corporation because of the restrictions contained in section 1007(b) of the Legal Services Act.

In addition, an individual could not take a legal services tax credit for representation of poor relatives, representation at criminal proceedings, or representation which would result in a credit exceeding 30% of the individual's tax liability for the taxable year.

The proposal would not be triggered until the attorney had given at least twenty hours of free services for which he received no tax advantage. After this initial $1000 worth of services had been provided, the attorney would be allowed to deduct fifty percent of the reasonable value of the legal services he provided free of charge to poor persons. A cap of $50 per hour, and a $1000 deduction ceiling would be imposed.

The advantage of the Hyde-Ashbrook tax incentive plan is that it would lead to a client-based, rather than a provider-based, system for assuring the poor equal access to our system of justice.

In other words, eligible indigent individuals would establish priorities for representation. This would contrast sharply with the present system, in which the officers and employees of Legal Services projects are able to set priorities, controlling, as they do, a monopoly on the supply of a "free" service, the demand for which is potentially unlimited.

ALTERNATIVE FUNDING

Even without Block Grant funds or a system of tax incentives for lawyers to contribute their services to the poor, there are numerous alternative private and public sources of financing, including the Administration on Aging, Revenue Sharing, Community Development Block Grants, Titles IX and XX of the Social Security Act, CETA, VISTA, United Way, and many more.

Los Angeles County Bar Association President and LSC supporter Joseph Mandel concedes that private contributions from individuals and entities such as the United Way can be expected to increase somewhat if Legal Services Corporation grants are eliminated.[109]

Prepaid legal insurance is another significant way of meeting genuine legal needs.

Private lawyers can also be expected to increase their already extensive provision of free legal services to the poor. Currently, for example, the Los Angeles Bar's Mandel estimates that members of his association are annually providing more than $2-million of free legal services to the poor.[110] The Columbus (Ohio) Citizen-Journal paraphrases a similar sentiment by Legal Aid Society of Columbus Executive Director Douglas Rogers: "Before the government got into the legal aid business, private lawyers provided the poor with free help."[111]

For some unexplained reason, Rogers felt that "times have changed," and that these private lawyers would be more reluctant to service the poor today.[112] If some members of the American Bar Association have their way, attorneys may not have a choice. A resolution currently under consideration by the ABA would require that lawyers provide a stipulated amount of pro bono work as a condition of practice.[113]

Other approaches are possible. In Sacramento, Democratic State Senator Nicholas Petris of Oakland introduced a state bar-sponsored bill which would allow interest on client trust fund accounts to be used to pay for legal services programs for the poor. The bill is similar to legislation which has been approved in Florida.[114]

In a commencement address to Widener University's Delaware Law School, Presidential Counsellor Edwin Meese III advocated "a variety of mechanisms such as the Judicare program in which individual lawyers render service and then present their bills to be recompensed as in the case of Medicare." He went on to discuss utilization of volunteer Legal Services by Legal Aid Societies, expansion of Legal Services provided by individuals on a pro bono basis, and the enhancement of law school clinical programs serving the poor.

Finally, in 1979, Congress enacted the Dispute Resolution Act, which was designed to fund experimental state programs to shift minor controversies out of courts and into more informal forums.[115] The notion was that, through the increased use of mediation, small claims courts, peer adjudication, and other methods of informal dispute resolution, the costs of resolving these minor disputes--in which attorneys fees often far outweigh the amount in litigation--could be considerably reduced.[116] This new program, which has not yet received Federal funding, should be given priority ahead of programs to fund more costly and formal methods of legal adjudication.

CONCLUSION

In considering the role of the Federal government in the provision of Legal Services, there are at least two important public policy questions to be addressed.

One of those questions relates to the inability of many Americans, not just the poor, to afford to sue because of economic constraint.

Contrary to the claims of Legal Services Corporation advocates, there must be some limits on the degree to which the American taxpayer, himself unable to afford legal services in many cases, must be required to hire lawyers for others.

Another equally, if not more important, public policy question is whether the fundamental accountability and legitimacy of our political system is undermined by subsidizing a group of advocates who, purporting to act in the interests of a class of the public, are accorded a specially subsidized place of influence in the arena of public policy debate.

The problems with the Legal Services Corporation can not be cured merely by the designation of a new board of directors, or the selection of a new headquarters staff.

The more than 323 organizations which are recipients of Legal Services funds enjoy a presumptive right to refunding which will not be affected by the appointment of Reaganites to vacancies on the Corporation Board. No recipient program can be closed down because of disagreement with its policy priorities, only on the basis of established violations of an Act which is itself admittedly full of loopholes. Even when violations occur, procedures are so arcane that it is virtually impossible to single out an abusive grantee for punishment or reform.

Nor would the appointment of a new board cure the fundamental structural problem in Legal Services: the staff attorney system.

No degree of regulation can adequately quard against the establishment of secular faith which results when some 17,000 individuals are given guaranteed annual salaries and authorized to engage in lobbying, litigation, grass roots organizing, media campaigns and the manipulation of Federal resources, to advance their particular notions of what constitutes justice for the public as a whole, or for a particular class.

FOOTNOTES

[1]Julian P. Boyd (ed.), Papers of Thomas Jefferson (Princeton, N.J.), pp. 545-547. This principle was adopted in 1786 by the Virginia General Assembly, and was incorporated in the First Amendment.

[2]Alan W. Houseman, Memorandum, December 29, 1980, p. 1.

[3]In addition, the Consumer Product Safety Commission is authorized to pay "offerors" who assist the Commission in the development of trade regulations.

[4]Funded groups have included, according to Don Lambro in Fat City, LSC's own National Consumer Law Center ($675,632 from the Legal Services Corporation in Fiscal Year 1980), the Sierra Club, with $6,473,418 in revenue in 1976; the Environmental Defense Fund, Inc., $1,788,309 in 1976; the Natural Resources Defense Council, $2,036,797 in 1976; Consumers Union, with assets of $10,000,000 in 1977 (Ryan K. Falconer, Jr., "Liberal Lobbyists on the Dole," Conservative Digest, October, 1979, p. 10.); and the National Council of Senior Citizens, which received $50,000,000 out of a $52,000,000 budget in Federal funds (Rochelle L. Stanfield, "'Defunding the Left' May Remain Just Another Fond Dream of Conservatives," National Journal, p. 1376).

[5]15 U.S.C. §57a(h).

[6]42 U.S.C. §6012.

[7]Most often, Federally financed litigation under this program takes the form of efforts to push for more extensive forms of custodial care for the handicapped. Active lobbying has occurred on behalf of increased funding for handicapped programs and various efforts to increase the responsiblity of the Federal government in this area.

[8]See, e.g., 42 U.S.C. §6012.

[9]In Louisiana, for example, despite enactment of the McClure amendment prohibiting "protection and advocacy" monies for the handicapped from being used to lobby the Federal government, recipients of such Federal funding freely conceded to me that they had subsequently engaged in such activities.

[10]Congressional Record, September 21, 1979, pp. S13138-S13145.

Footnotes, continued

[11]The Food Research and Action Center received from the Community Services Administration $645,000 in the twelve month period which will end 12/1/81, according to Larry Goldberg, Assistant Director for External Affairs Designate, September 11, 1981.

[12]Bari Schwartz, at a conference of the LSC-funded National Legal Aid and Defender Association (NLADA) in San Juan, Puerto Rico, November 9-14, 1980.

[13]In re Evans (Soc. Sec. Admin., Bur. of Hearings & App., Sept. 17, 1979). See also Clearinghouse Review, January, 1980, p. 715. See also supra.

[14]"Two Complaints," The New Republic, February 3, 1979, p. 5. See also supra.

[15]The 36-page amicus brief was filed on June 7, 1977, by Alice Daniel and James E. Coleman, Jr., on behalf of the Legal Services Corporation. The Regents of the University of California v. Allan Bakke, No. 76-811 (U.S.S.Ct., Oct. term, 1976). See also Congressional Record, June 27, 1977, p. H6540. See also supra.

[16]In one case in Maine, 350,000 people would have been displaced had the LSC lawyers prevailed with respect to the initially requested remedy. A similar suit brought by the LSC-assisted Wampanoag Tribe asserts ownership of the entire town of Mashpee, Massachusetts, or approximately 17,000 acres. See "Indians on the Lawpath," The New Republic, April 30, 1977, pp. 16-21. See also supra.

[17]Shirley Scheibla, "Bar Sinister: The Legal Services Corporation Stretches its Mandate," Barron's, January 24, 1977, pp.5, 12. See also supra.

[18]Reginald Stuart, "Court to Decide if Black English is a Learning Barrier," New York Times, June 12, 1979. See also supra.

[19]Clearinghouse Review, March, 1980, p. 878. See also supra.

[20]Congressional Record, January 31, 1974, p. S1626.

[21]Legal Services Act, section 1006(b)(1)(B).

[22]H. Rep. 93-247, June 4, 1973, p. 12.

Footnotes, continued

[23]Clearinghouse Review is the Legal Services Corporation's Federally financed in-house organ. According to Linda Perle, Assistant General Counsel of LSC's Washington, D.C. office, Fiscal 1981 funding was $840,000.

[24]Clearinghouse Review, December, 1979, p. 603.

[25]Ibid.

[26]Houseman, p. 7.

[27]"Advocates Want to Stop Prison Boom," The Beacon Hill Update, December 29, 1980, p. 4. The Beacon Hill Update is published by North Shore Community Action Center, Inc. which receives part of its funding from the Community Services Administration.

[28]Letter from Acting Comptroller General Milton J. Soclar to Congressman F. James Sensenbrenner, Jr., May 1, 1981, p. 12.

[29]The fundamental anti-lobbying statute at Federal law is 18 U.S.C. §1913, which seeks to prohibit direct or indirect payment for "any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner" any Federal legislation, except by communications to Congress through official channels. This section can be overridden with respect to a particular program by express statutory language to the contrary.

Section 1006(c) of the Legal Services Act makes it unlawful for the Corporation to "undertake to influence the passage or defeat of any legislation," but creates exceptions for legislation directly affecting the Corporation or Corporation testimony at the request of a legislative body or member. Section 1007(a)(5) of the Act makes it unlawful for a Legal Services recipient to lobby, but exempts activity on behalf of the Corporation's affairs, legislatively requested testimony, and activity on behalf of a client.

Finally, there is a provision in P.L. 95-431, October 10, 1978, which has explicitly been made applicable to the Corporation's appropriations each year since Fiscal 1979, which states:

> "...Provided, No part of this appropriation shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before Congress or any State legislature."

Footnotes, continued

Suffice it to say that the exceptions contained in the two Legal Services Act proscriptions are very broad. The ability of the Corporation and its recipients to lobby is, however, not limitless, even under the broadest possible interpretations of its organic statute. All four civil and criminal prohibitions in the act, for instance, would seem to apply to a Washington-initiated effort not directly related to the Corporation's affairs.

30Schwartz, infra.:

> ...And, make sure that everything is covered, so that we don't have the situations where you don't have the file on a client who you say you're representing and somebody calls this client - that happened to us in Georgia once, where the client said, "I had no idea that somebody was gonna go to the legislature for me. You know, I just knew I'd talked with somebody in the program.

Although the criminal penalties specified in the second paragraph of section 1913 deal specifically with "officer(s) or employee(s) of the United States or of any department or agency thereof," the first paragraph in no way limits the section 1913 prohibition to those personages. Rather, they apply to any person who appropriates his monies for any of the prohibited activities.

31Schwartz, infra.:

> ...there's around 17 national support centers now, and one of the encouraging developments of the last couple of years - again, as you all know - is that most of the support centers have now opened Washington offices, something that the Corporation has definitely encouraged and supported. All of us, in some way or another, have taken a lot of pains over the last few years to try to nurture the development of major national organizations of low income people around our different substantive issues. So, we relate to national groups as well as to all of your individual clients and state and local client groups.

32Schwartz, infra.:

> Every support center has a different mechanism for deciding priorities - for deciding what kinds of issues we're going to work on. A number of us have, over the last couple of years, developed questionnaires. FRAC, for example, sent out a major questionnaire this summer to everyone on our mailing list. We have about 4500 people on our mailing list. And we ask people to write the different

Footnotes, continued

> activities that we work on to - and, when I say activities I mean both substantive issues - we listed every possible substantive issue, generally falling under the rubric of food and hunger.

[33]Pine Tree Legal Services recieved $1,258,577 from LSC in Fiscal Year 1980.

[34]Schwartz, infra.:

> The way we've organized ourselves in Maine is you are supposed to call my office - I think Marshall's in the state capital in Maine - you're supposed to call my office - you're supposed to ask for me and I will then get the job done. This is the way we want it done in Maine. That is perfectly fine for us - that helped us out a great deal to know that. And that's the sort of thing you - I encourage you to think through in your states...I also want to make a point about how you can help us out to make people realize in your state that they do make a difference when we put out mailings, which I know you must get several each month from all the support centers - asking local people - local legal services people and clients - to try and get letters coming into Congress on different issues.

[35]Houseman, pp. 7-9.

[36]The Atlanta Journal, March 24, 1981, p. 1.

[37]The Grand Rapids Press, March 11, 1981.

[38]Park River, North Dakota, Press, March 18, 1981.

[39]Fredericksburg, Virginia, Free Lance-Star, March 7, 1981.

[40]Harrisburg, Pennsylvania, News, March 10, 1981.

[41]Knoxville, Tennessee, Journal, March 27, 1981.

[42]"Black Lawyers' Prexy Assails Budget Cuts," Sacramento, California, Observer, March 19, 1981.

[43]Bernard Weinraub, "Feminist Groups Attack Reagan Budget Cutbacks," New York Times, March 27, 1981. The Native American Rights fund received $238,337 from LSC in Fiscal Year 1980.

Footnotes, continued

[44]Congressional Record, April 1, 1981, p. S3180.

[45]Clearinghouse Review, May, 1977, p. 23. The National Consumer Law Center received $675,632 from LSC in Fiscal Year 1980.

[46]Ibid.

[47]Clearinghouse Review, March, 1977, p. 1006.

[48]Clearinghouse Review, March, 1977, p. 1003. The Contra Costa Legal Services Foundation received $471,158 from LSC in Fiscal Year 1980.

[49]Clearinghouse Review, May, 1977, p. 25.

[50]Clearinghouse Review, January, 1981, p. 955.

[51]Ibid.

[52]Stopczynski v. Milliken, No. 45458 (Mich. Ct. App., filed July 17, 1979). Clearinghouse Review, October, 1979, p. 457. The Michigan Legal Services received $317,235 from LSC in Fiscal Year 1980.

[53]Doe v. Jennings, No. 79-681D (W.D. Pa., May 23, 1979). Clearinghouse Review, October, 1979, p. 466. Neighborhood Legal Services of Pittsburgh received $1,504,638 from LSC in Fiscal Year 1980.

[54]Clearinghouse Review, April, 1979, p. 913. Greater Boston Legal Services received $2,285,187 from LSC in Fiscal Year 1980.

[55]Clearinghouse Review, March, 1979, p. 840. The Legal Assistance Foundation of Chicago received $3,986,657 from LSC in Fiscal Year 1980.

[56]Peck v. Califano, No. C 76 229 (D. Utah, June 30, 1977). Clearinghouse Review, November, 1979, p. 494. Utah Legal Services received $1,002,878 from LSC in Fiscal 1980.

[57]Ibid.

[58]"Reproductive Freedom Issues in Legal Services Practice," Clearinghouse Review, November, 1978, pp. 389-403.

[59]Ibid., p. 403.

Footnotes, continued

[60]99 S.Ct. 3035 (1979). The National Center For Youth Law received $625,158 from LSC in Fiscal Year 1980.

[61]Clearinghouse Review, February, 1980, p. 763.

[62]Houseman, p. 13.

[63]Schwartz, infra.

[64]Clearinghouse Review, January Supplement, 1979, pp. 601-679.

[65]Ibid., p. 641.

[66]Florida Rural Legal Services received $1,969,236 from LSC in Fiscal Year 1980.

[67]See Frederick Burger, the Miami Herald, March 25, 1981, where Mason is quoted as saying: "What this town needs is a good B-52 strike."

[68]Hearings on the Legal Services Corporation, Subcommittee on Courts, Civil Liberties and the Administration of Justice, House Judiciary Committee, March 25, 1981.

[69]Robert Levey, "Maine Indian land pact becomes law," the Boston Globe, October 11, 1980, p. 19. Scheibla, January 24, 1977, p. 12.

[70]"Trial Opening Today Could Decide If Indians Own Land on Cape Cod," New York Times, October 17, 1977.

[71]Walter C. Mehlenbacher, Castile, New York, News Release, undated.

[72]Bill Winter, "Klan Defense Raises Legal Aid Furor," American Bar Association Journal. "Legal Services Defends Klan," (National Lawyer's) Guild Notes, January-February, 1980.

[73]Northeast Ohio Legal Services received $496,351 from LSC in Fiscal Year 1980.

[74]John C. Boland, "Unholy Alliance: Church Groups, Legal Services Corp. Launch Attack on U.S. Steel," Barron's, June 2, 1980, pp. 9, 20-25, 31.

[75]Marla Carpenter, "Legal Services Agency Faces Fight For Existence," Hickory, North Carolina, Record, March 13, 1981.

Footnotes, continued

[76]Ibid.

[77]"Two Complaints," New Republic, p. 5. California Rural Legal Assistance received $4,797,568 from LSC in Fiscal 1980.

[78]Los Angeles, California, Southside Journal Wave, February 12, 1981. The Legal Aid Foundation of Los Angeles received $3,035,565 from LSC in Fiscal Year 1980.

[79]Clearinghouse Review, March, 1980, p. 878

[80]Filed June 7, 1977, by Alice Daniel and James E. Coleman, Jr., The Regents of the University of California v. Allan Bakke, No. 76-811 (U.S. S. Ct., October term, 1976).

[81]Shirley Scheibla, "Bar Sinister-Part II: How the Legal Services Corporation Thwarts the Will of Congress," Barron's, January 31, 1977, p. 20. The Center for Law and Education received $601,472 from LSC in Fiscal Year 1980.

[82]Congressional Record, April 1, 1981, p. S3177.

[83]Scheibla, January 24, 1977, p. 5.

[84]William F. Doherty, "Garrity stops King's welfare roll probe," the Boston Globe, April 4, 1979.

[85]The Migrant Legal Action Program received $565,827 from LSC in Fiscal 1981.

[86]National Congress of Hispanic American Citizens v. Usery, 554 F.2d 1196 (D.C. Cir. June 1, 1977). Clearinghouse Review, December, 1977, p. 506.

[87]Stuart, infra.

[88]The Western Center on Law and Poverty of Los Angeles received $1,076,198 from LSC in Fiscal Year 1980, and the San Fernando Valley Neighborhood Legal Services of Pacoima received $922,379 from LSC in Fiscal Year 1980.

[89]Scheibla, January 24, 1977, p. 12.

[90]Scheibla, January 31, 1977, p. 20. Alaska Legal Services received $1,448,196 from LSC in Fiscal 1980.

[91]Al French, "Legal Services' 'struggle for survival,'" Florida Agriculture, April 1, 1981, p. 2.

Footnotes, continued

[92]Terrence Stutz, "Judge Taylor quits Dallas desegregation suit," the Dallas Morning News, March 21, 1981, p. 1. Dallas Legal Services Foundation received $1,369,509 from LSC in Fiscal Year 1980.

[93]Debra P. v. Turlington, 474 F. Supp. 244 (M.D. Florida, July 12, 1979). Congressional Record, November 17, 1980, p. E4956. Bay Area Legal Services received $732,704 from LSC in Fiscal Year 1980.

[94]In re Evans, infra. Montana Legal Services received $990,119 from LSC in Fiscal 1980.

[95]Stevenson v. Stevenson, No. 79-CA-1588-MR (Ky.Ct.App., Nov. 7, 1979). Clearinghouse Review, January, 1980, p. 686. The Legal Aid Society of Louisville received $1,061,527 from LSC in Fiscal Year 1980.

[96]Clearinghouse Review, January, 1980, pp. 670-1.

[97]Ibid., p. 671.

[98]S. 1303, §6(a), 95th Congress.

[99]This is the current section 1006(b)(1)(B) of the Legal Services Act, which states:

> (B) No question of whether representation is authorized under this subchapter, or the rules, regulations or guidelines promulgated pursuant to this subchapter, shall be considered in, or affect the final disposition of, any proceeding in which a person is represented by a recipient or an employee of a recipient. A litigant in such a proceeding may refer any such question to the Corporation which shall review and dispose of the question promptly, and take appropriate action. This subparagraph shall not preclude judicial review available under applicable law.

[100]The Green amendment, which was enacted in section 1006(a)(3) of the Legal Services Act, which stated:

> ...the Corporation is authorized-
> (3) to undertake directly and not by grant or contract--
> (A) research,
> (B) training and technical assistance, and
> (C) to serve as a clearinghouse for information. (Emphasis added)

The 1977 amendments explicitly allowed all of these activities to be engaged in by grant or contract.

Footnotes, continued

[101]Congressional Record, June 13, 1980, pp. S6878-81.

[102]Schwartz, infra.

[103]For example, representatives of Welfare Rights Organizations from several states sit on the boards of directors of LSC National Support Centers, including the Center on Social Welfare Policy, the National Center on Women and Family Law, the National Health Law Program, and the National Senior Citizens Law Center. Maggie Kuhn of the Gray Panthers is also on the board of the National Senior Citizens Law Center as is a representative of the American Association of Retired People which receives $40 million per year in Federal funding (according to National Journal, op. cit., p. 1376). Representatives of the Youth Project funded by VISTA during the tenure of its former director Marge Tabankin, the Mexican American Legal Defense Fund, the Worker Rights Institute, and the United Construction Workers Association, all serve on the board of the National Employment Law Project. Alan Houseman, Director of the LSC-funded Research Institute on Legal Assistance, advises in his introduction to the "Information Directory on National Support Projects," that among the principle functions of LSC National Support Centers is "to coordinate and establish networks with...other advocate organizations...and organizations representing the poor." Margaret E. Wagner, ed., "Information Directory on National Support Projects," (Research Institute on Legal Assistance, Legal Services Corp.: 1979).

[104]WDVM-TV, Washington, D.C., March 7, 1981, 6:00 p.m.

[105]In addition to the $321.3 million the Legal Services Corporation distributes to grantees, information aquired by The Conservative Caucus Research, Analysis, and Education Foundation through use of the Freedom of Information Act has indicated that individual grantees have received funds from the Department of Energy, the Federal Trade Commission, the U.S. Department of Housing and Urban Development, ACTION/VISTA, the Community Services Aministration, the Equal Employment Opportunity Commission, and the U.S. Department of Health and Human Services' Office of Civil Rights.

[106]For an excellent summary of LSC's prodigious growth and recidivism, see Don Lambro, Fat City: How Washington Wastes Your Taxes, (South Bend: Regnery/Gateway, 1980), pp. 332-38.

[107]Angel Castillo, "Legal Services Lawyers Descry Plans to Halt Funds," New York Times, March 14, 1981.

[108]Ibid.

Footnotes, Continued

[109]Gene Blake, "Proposed Budget Cut May Drastically Curtail Legal Aid to Poor," Los Angeles Times, March 15, 1981.

[110]Ibid.

[111]Mary Carran Webster, "Legal aid attorneys fear cuts will leave poor defenseless," Columbus Citizen-Journal, March 20, 1981, p. 2. The Legal Aid Society of Columbus received $791,291 from LSC in Fiscal Year 1980.

[112]Ibid.

[113]See, e.g., the American Bar Foundation news release, "Mandatory Pro Bono Work the Legal Profession's Last Chance to Preserve Its Spirit of Public Service, Speculates an Attorney-Scholar," March 16, 1981.

[114]Alan Ashby, "Bar Bill Offered To Use Interest For Legal Aid Plans," the Los Angeles Daily Journal, March 20, 1981.

[115]Pub. L. 96-190, 94 Stat. 17.

[116]H. Rep. 96-492, September 28, 1979.

APPENDIX A

NATIONAL SUPPORT CENTER	FISCAL YEAR 1980 FUNDING
Center for Law and Education Cambridge, Massachusetts.	$ 601,472
Center on Social Welfare Policy and Law New York, N.Y..	691,258
Migrant Legal Action Washington, D.C..	565,827
National Center for Immigrants' Rights Los Angeles, Calif.	130,000
National Center on Women and Family Law New York, N.Y..	167,500
National Center for Youth Law San Francisco, Calif.	625,158
National Clients Council Washington, D.C..	550,000
National Consumer Law Center Boston, Mass.	675,632
National Economic Development Law Project Berkeley, Calif.	423,669
National Employment Law Project New York, N.Y..	520,760
National Health Law Program Santa Monica, Calif..	630,061
National Housing Law Project Berkeley, Calif.	740,234
National Legal Aid and Defender Association Washington, D.C..	53,000
National Senior Citizens Law Center Los Angeles, Calif.	609,079
National Social Science & Law Center Washington, D.C..	317,090
Native American Rights Fund/Indian Law Support Center Boulder, Colo..	238,337

I

97TH CONGRESS
1ST SESSION

H. R. 3929

To amend the Internal Revenue Code of 1954 to provide a credit for the provision of certain charitable legal services.

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 1981

Mr. HYDE (for himself and Mr. ASHBROOK) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1954 to provide a credit for the provision of certain charitable legal services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits against tax) is amended by adding at the end thereof the following new section:

"Sec. 44F. Credit for charitable legal services.

"(a) ALLOWANCE OF CREDIT.—

"(1) GENERAL.—In the case of a qualifying person (as defined in subsection (d)(2)), there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 25 percent of the value of charitable legal services (as defined in subsection (d)(1)) provided by such person during the taxable year in noncriminal proceedings or matters to an eligible client, other than are described in subsection (b)(3).

"(2) AMOUNT.—The value of charitable legal services shall be an amount equal to the reasonable fixed or contingent fee that would have been charged to a similarly situated client paying for such services.

"(b) LIMITATIONS.—

"(1) GENERAL RULE.—The credit allowed by subsection (a) shall not exceed 30 percent of the liability for tax for the taxable year.

"(2) NO CREDIT AGAINST CERTAIN TAXES.—The credit allowed by subsection (a) shall not be allowed against the tax imposed by section 56 (relating to minimum tax for tax preferences), Section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), section 408(f) (relating to additional tax on income from certain retirement accounts), and section 402(e) (relating to lump-sum distributions).

"(3) NO CREDIT FOR SERVICES PROVIDED TO CERTAIN RELATIVES.—The credit allowed under this section shall not be allowed with respect to charitable legal services provided to an eligible client who bears any of the relationships described in paragraphs (1) through (8) of section 152(a) to the taxpayer, or, if the taxpayer is a professional corporation, to any stockholder of such corporation, or if the taxpayer is a member of a partnership, to any other member of such partnership.

"(4) NO CREDIT FOR CERTAIN SERVICES.—The credit allowed under this section shall not be allowed with respect to—

"(A) charitable legal services rendered, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, or State proposals by initiative petition, except where—

"(i) representation by a qualifying person for any eligible client is necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities (which shall not be construed to permit a qualifying person to solicit a client, in violation of professional responsibilities, for the purpose of making such representation possible); or

"(ii) a governmental agency, legislative body, a committee, or a member thereof requests the qualifying person to testify, draft, or review measures or to make representations to such agency, body, committee, or member, or is considering a measure directly affecting the activities for which a credit is allowable under this section;

"(B) any political activity, or any activity to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with the election (other than legal advice and representation), or any voter registration activity (other than legal advice and representation);

"(C) legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought about against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction;

"(D) support for or conduct of training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, including the dissemination of information about such policies or activities, except that this paragraph shall not be construed to prohibit the training of attorneys or paralegal personnel necesary to prepare them to provide adequate legal assistance to eligible clients;

"(E) initiating the formation, or organizing, of any association, federation, or similar entity, except that this subparagraph shall not be construed to prohibit the provision of legal assistance to eligible clients;

"(F) legal assistance with respect to any proceeding or litigation relating to abortion unless such abortion is necessary to save the life of the mother, or support in whole or in part of any legal assistance activity of any attorney in connection with any proceeding or litigation relating to abortion unless such abortion is necessary to save the life of the mother;

"(G) legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system;

"(H) legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act [50 App. U.S.C. 451 et seq.] or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior corresponding law;

"(I) legal assistance for or on behalf of any individual who is known to be an alien in the United States in violation of the Immigration and Nationality Act or any other law of the United States, or convention or treaty to which the

United States is a party, relating to the immigration, exclusion, deportation, or expulsion of aliens; or

"(J) legal assistance for any litigation which seeks to adjudicate the legalization of homosexuality.

"(c) CARRYOVER AND CARRYBACK OF UNUSED CREDIT.—

"(1) ALLOWANCE OF CREDIT.—If the amount of the credit allowed under subsection (a) for any taxable year exceeds the limitation provided in subsection (b)(1) for such taxable year, such unused credit shall be—

"(A) a charitable legal services credit carryover to each of the three taxable years following the taxable year during which such unused credit occurs,

"(B) a charitable legal services credit carry back to each of the three taxable years preceding the taxable year during which such unused credit occurs

and shall be added to the amount allowable as a credit by subsection (2) for such years.

"(2) LIMITATION.—The amount of the unused credit which may be added under paragraph (1) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by subsection (b)(1) in such taxable year exceeds the sum of—

"(A) the credit allowable under subsection (a) for such taxable year, and

"(B) the amounts which, by reason of this subsection, are added to the amount allowable for such taxable year.

"(d) DEFINITIONS.—

"(1) CHARITABLE LEGAL SERVICES.—The term 'charitable legal services' shall mean legal services (including all ordinary and necessary expenses paid or incurred with respect thereto for which no deduction under section 162 has been taken by the taxpayer) performed by a qualifying person for an eligible client, from which no net earnings accrue to the benefit of such qualifying person.

"(2) QUALIFYING PERSON.—The term 'qualifying person' means—

"(A) an individual admitted or otherwise authorized by law, rule or regulation, to practice law under the laws of any state or the District of Columbia, or

"(B) a professional corporation all of whose stockholders are individuals described in subparagraph (A).

"(3) ELIGIBLE CLIENT.—The term 'eligible client' means any person financially unable to afford legal assistance as determined by the Secretary under subsection (e).

"(e) ELIGIBILITY GUIDELINES.—The Secretary shall establish, in consultation with the Director of the Office of Management and Budget, guidelines setting maximum income levels (taking into account family size, urban and rural differences, and substantial cost-of-living variations) for eligible clients under this section. Such guidelines shall insure that the eligibility of clients will be determined on the basis of factors which include—

"(1) the liquid assets and income level of the client,

"(2) the fixed debts, medical expenses, and other factors which affect the client's ability to pay,

"(3) the cost of living in the locality, and

"(4) such other factors as relate to financial inability to afford legal assistance, which may include evidence of a prior determination that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an unemployment situation."

SEC. 2. The table of sections for part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 is amended by adding the following at the end thereof:

"Sec. 44F. Credit for charitable legal services."

SEC. 3. The amendment made by the first section of this Act shall apply to legal services rendered after September 30, 1981.

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