# Securing Equal Justice for All

## A Brief History of Civil Legal Assistance in the United States

**Alan Houseman & Linda E. Perle** | Revised May 2018

CLASP
Policy solutions that work for low-income people

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National Legal Aid & Defender Association

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# ACKNOWLEDGMENTS

This short history is based on the previous written work of Justice Earl Johnson, Justice John Dooley, Martha Bergmark, and the authors. This is the fourth revision to our first history originally written in 2003 and revised in 2007 and 2013.

The Center for Law and Social Policy (CLASP), which promotes policies to improve the lives of low-income persons, served as counsel to the National Legal Aid and Defender Association (NLADA) and its member programs between 1982 and 2012.

The National Equal Justice Library (NEJL), housed at Georgetown University Law Center's Law Library, is a repository of archival papers, oral histories, photos, and memorabilia about the history of civil legal aid and indigent criminal defense in the United States. See, **http://www.ll.georgetown.edu/nejl/** The governing entity responsible for the creation, oversight and funding of the National Equal Justice Library is the Consortium for the National Equal Justice Library.

The National Legal Aid & Defender Association (NLADA), founded in 1911, is the oldest and largest national nonprofit organization whose resources are exclusively dedicated to advocating for equal access to justice for all Americans and to promoting excellence in the delivery of legal services to those who cannot afford counsel. NLADA has more than 800 civil legal aid and public defender program members that collectively represent thousands of attorneys in the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands.

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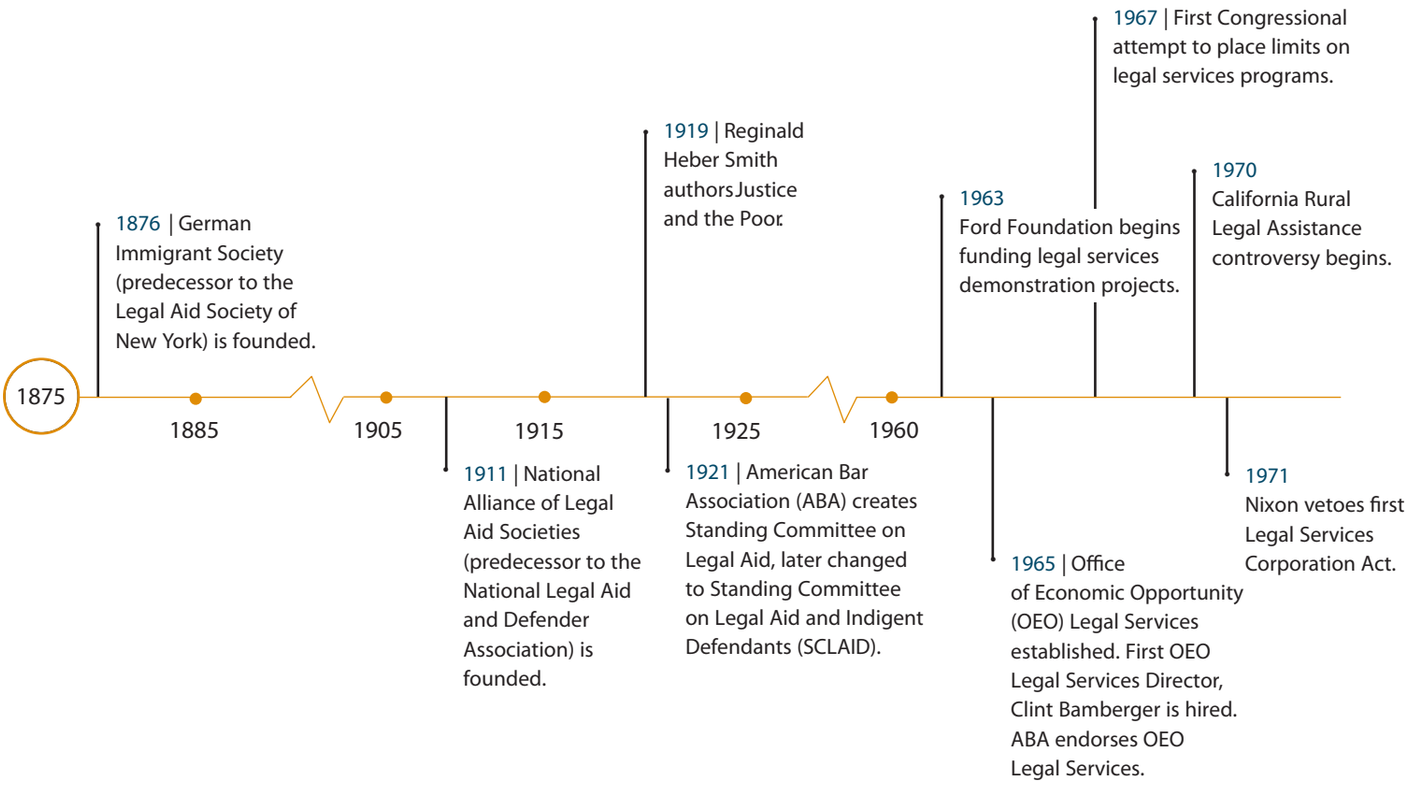
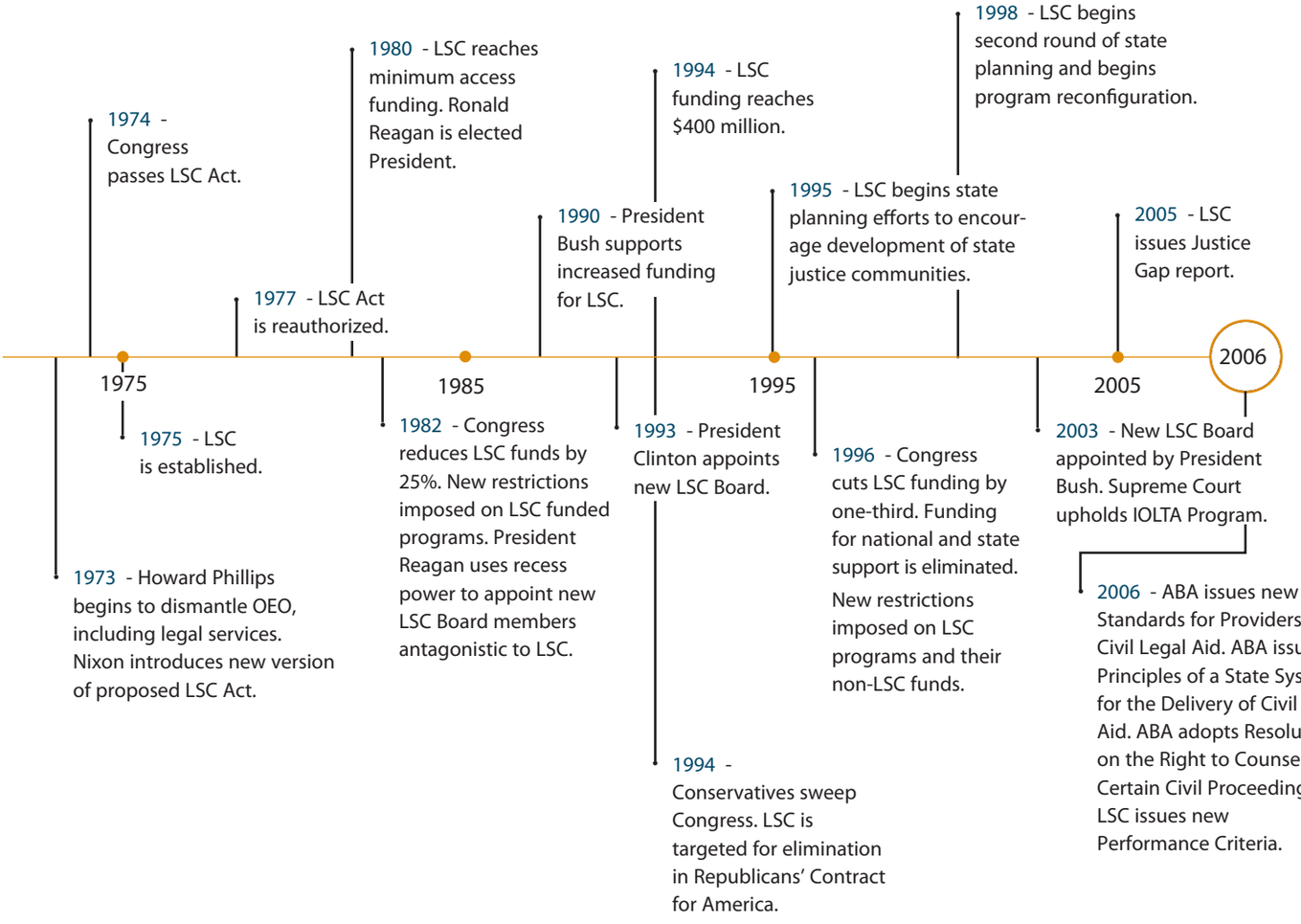
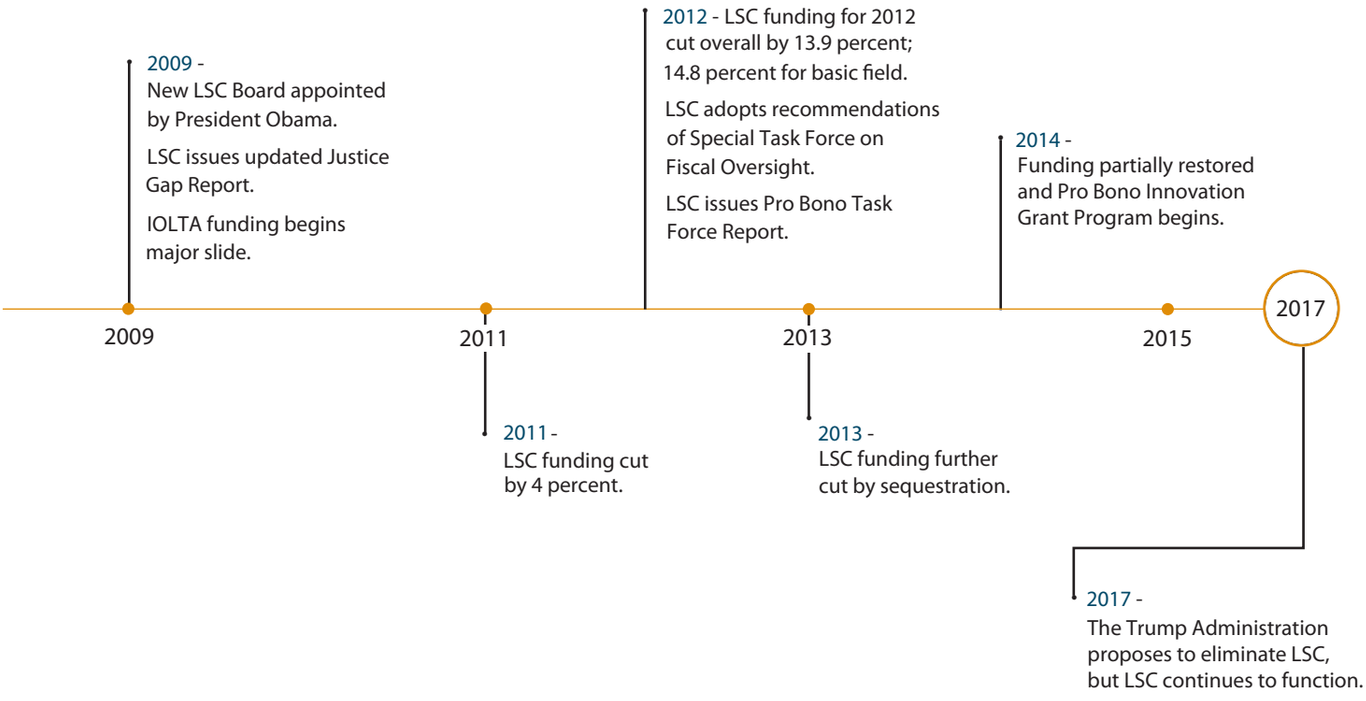
# Civil Legal Assistance History Timeline




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


2009 -
New LSC Board appointed by President Obama.
LSC issues updated Justice Gap Report.
IOLTA funding begins major slide.
2009
2011
2011 -
LSC funding cut by 4 percent.
2012 - LSC funding for 2012 cut overall by 13.9 percent; 14.8 percent for basic field.
LSC adopts recommendations of Special Task Force on Fiscal Oversight.
LSC issues Pro Bono Task Force Report.
2013
2013 -
LSC funding further cut by sequestration.
2014 -
Funding partially restored and Pro Bono Innovation Grant Program begins.
2015
2017
2017 -
The Trump Administration proposes to eliminate LSC, but LSC continues to function.

# INTRODUCTION

Civil legal assistance helps low-income people navigate various civil matters like housing evictions, home foreclosures, predatory lending, child support, and domestic violence. It also helps people access government benefits like Social Security, Veteran's Benefits, disability, unemployment insurance, food stamps, cash assistance, and health insurance. Without the services of a lawyer, low-income people with civil-legal problems may have no practical way of protecting their rights and advancing their interests.

The program to provide legal services to the poor has never been without controversy. Depending on the how the political winds have blown, support for legal services in the United States has waxed and waned. Regardless of politics, however, the civil legal assistance[1] program has a long history of effective representation of low-income persons and has achieved many significant results for the low-income community from the courts, administrative agencies, and legislative bodies. With the addition of federal funding more than 50 years ago, the legal assistance program has expanded access to legal representation throughout the country and provided significant relief to millions of low-income and vulnerable persons. Without the civil legal assistance program, there would be virtually no access to civil justice for low-income persons in the United States, and the goal of equal justice for all would be only a distant dream. Although equal access to justice is far from complete, the legal services program provides vital legal assistance to our nation's low-income community.

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

# THE EARLY YEARS OF LEGAL AID 1876-1965

Prior to sustained, institutionalized efforts to provide legal aid to the poor, organizations and individual lawyers provided legal assistance to those who could not afford an attorney. The Freedman's Bureau (1865-1872) provided legal assistance in civil cases, such as debt collection, domestic violence, divorces, and labor contracts. Nineteenth-century women's clubs and settlement houses developed a holistic approach to legal assistance for working women. For example, in Chicago, the Protective Agency for Women and Children (PAWC) pioneered an especially expansive model of legal aid. Like its counterparts in other cities, PAWC handled wage claims, but it also helped women with a range of other issues: domestic violence, sexual assault, household debt, spousal abandonment, and even, although only in extreme circumstances, divorce.

Sustained efforts to provide civil legal assistance for poor people in the United States began in New York City in 1876 with the founding of the German Immigrants' Society, the predecessor to the Legal Aid Society of New York. In 1889 the Society's outreach was extended to all low-income New York residents, and its role expanded from serving individual clients to engaging in legislative advocacy. Its once-narrow focus grew into a new mission: to promote measures for the protection of all individual poor people.

Over the years, the legal aid movement caught on and expanded into many urban areas. Between 1920 and 1930, 30 new legal aid organizations were created. Annual caseloads increased from 171,000 in 1920 to 307,000 in 1932. By 1965, virtually every major city in the United States had some kind of legal aid program, and the 236 legal aid organizations employed more than 400 full-time lawyers with an aggregate budget of over $5 million.

The only national legal aid structure that existed prior to the 1960s was the National Alliance of Legal Aid Societies (predecessor to the National Legal Aid and Defender Association [NLADA]), which was founded in 1911. Despite the existence of this association, most programs operated in isolation from their counterparts in other jurisdictions. With no national program or commonly accepted standards or models, the legal aid world was very heterogeneous. Many legal aid programs were free-standing private corporations with paid staff; others were run as committees of bar associations, relying primarily on private lawyers who donated their time. Still others were units of municipal governments or divisions of social service agencies, and others were run by law schools.

Regardless of the structure, these programs shared many common characteristics. First and foremost, no legal aid program had adequate resources. It has been estimated that during its early years, legal aid reached less than 1 percent of those in need.

Many areas of the country had no legal aid at all, and those legal aid programs that did exist were woefully underfunded. For example, in 1963, the legal aid program that served the city of Los Angeles had annual funding of approximately $120,000 to serve more than 450,000 poor people. In that year, the national ratio of legal aid lawyers to eligible persons was 1 to

120,000. In addition, most legal aid programs only provided services in a limited range of cases and only to those clients who were thought to be among the "deserving poor" (i.e., those who were facing legal problems through no fault of their own).

## The American Bar Association's Initial Involvement

In 1919, Reginald Heber Smith, a young Harvard Law School graduate who had become Director of the Boston Legal Aid Society, received a grant from the Carnegie Foundation to research the current legal system and its effect on the poor. Smith wrote *Justice and the Poor,* a book that challenged the legal profession to ensure that access to justice was available to all, without regard to ability to pay. "Without equal access to the law," he wrote, "the system not only robs the poor of their only protection, but it places in the hands of their oppressors the most powerful and ruthless weapon ever invented." The American Bar Association (ABA) responded to Smith's call in 1920 by devoting a section of its 43rd annual meeting to legal aid and by creating the Standing Committee on Legal Aid, later changed to the Standing Committee on Legal Aid and Indigent Defendants (SCLAID), to ensure continued ABA involvement in the delivery of legal assistance to the poor. Many state and local bars responded by sponsoring new legal aid programs.

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

## The Need for "Something New"

In the early 1960s, a new model for civil legal assistance for the poor began to emerge. This model was influenced by the "law reform" efforts of organizations such as the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund and the American Civil Liberties Union (ACLU), which had successfully used litigation to produce changes in existing law. In addition, private charitable foundations, particularly the Ford Foundation, began to fund legal services demonstration projects as part of multi-service agencies, based on a philosophy that legal services should be a component of an overall anti-poverty effort. This new model also called for the programs' offices to be

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

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

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

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

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

# THE OEO ERA

## The Early Development

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

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

In late 1964 and early 1965, those elements of crucial support began to converge. Jean and Edgar Cahn convinced Sargent Shriver, the first director of OEO, to include legal services in the package of activities that could be funded by the agency, since legal services was not mentioned in the original Act. In 1966, civil legal services was added to the Economic Opportunity Act Amendments of 1966 and was made a special emphasis program in the Economic Opportunity Act Amendments of 1967.

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

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

Support from the ABA was critical to the success of the federal legal services program, and it was achieved with much less difficulty than most thought was possible. Under the progressive leadership of ABA President (and later Supreme Court Associate Justice) Lewis Powell, F. William McCalpin (then Chairman of the ABA Standing Committee on Lawyer Referral and later to become Chairman of the Board of Directors of the Legal Services Corporation and one of its longest serving members), and John Cummiskey (Chair of the Standing Committee on Legal Aid), the ABA House of Delegates in 1965 passed a resolution endorsing the OEO legal services program. Although the resolution was adopted without a dissenting vote, the ABA conditioned its support on the organized bar

having a policy role in formulating and overseeing the legal services program and the understanding that traditional legal ethics were to be considered as an integral part of the program's operations.

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

Having secured the endorsement of the ABA, OEO faced the critical and much more difficult task of generating the local programs that would actually deliver the services to low-income clients. While the designs for the individual programs would be developed locally and set out in funding proposals submitted by entities that were organized in local service areas, OEO had the responsibility to provide potential grantees with guidance regarding the kinds of programs that it would fund and to decide whether the proposals should be modeled after traditional legal aid societies or the foundation-funded experiments. The overall design for the program was fleshed out by E. Clinton Bamberger, the first director of OEO Legal Services and his deputy (and later the second director) Earl Johnson. Bamberger came to OEO from private practice with the strong endorsement of the ABA leadership but with little experience in legal aid for the poor. Johnson had been the deputy director of the Washington, D.C. foundation-funded legal services program but had never worked in a traditional legal aid office.

In developing the overall design for the OEO legal services program, Bamberger and Johnson worked with the National Advisory Committee. This group produced the OEO *Legal Services Guidelines,* which were supplemented by the OEO staff's *How to Apply for a Legal Services Program*. The *Guidelines* took the middle ground on most of the controversial design issues. However, consistent with the statutory requirement that the poor be afforded "maximum feasible participation" in the operation of OEO programs, the *Guidelines* required representation of poor people on the boards of local legal services programs and encouraged the formation of client advisory councils. This provision turned out to be perhaps the most controversial section of the *Guidelines* and required constant oversight by OEO to ensure its implementation. The *Guidelines* did not set national financial eligibility standards but did permit poor people's organizations to be eligible for representation. The *Guidelines* prohibited legal services programs from taking fee-generating cases but required local programs to provide service in all areas of the law except criminal defense and to advocate for reforms in statutes, regulations, and administrative practices. They identified preventive law and client education activities as essential components of local programs. The *Guidelines* required program services to be accessible to the poor, primarily through offices in their neighborhoods with convenient hours.

Unlike the legal aid systems that existed in other countries, which generally used private attorneys who were paid on a fee-for-service basis, OEO's plan for the legal services program in the United States utilized staff attorneys working for private, nonprofit entities.[2] OEO's grantees were to be full-service legal assistance providers, each serving a specific geographic area, with the obligation to ensure access to the legal system for all clients and client groups. The only specific national earmarking of funds was for services to Native Americans and migrant farmworkers. Programs serving those groups were administered by separate divisions within OEO and had separate delivery systems. The presumption was that legal services providers would be refunded each year unless they substantially failed to provide acceptable service or to abide by the requirements of the OEO Act.

In addition to local service providers, OEO also developed a unique legal services infrastructure. OEO funded a system of national and state support centers, training programs, and a national clearinghouse for research and information. This system would provide the legal services community with leadership and support on substantive poverty law issues and undertake litigation and representation before state and federal legislative and administrative bodies on issues of national and statewide importance.

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

## Initial Opposition to Legal Services

Although OEO was able to generate proposals for federal funding from organizations eager to provide legal assistance, the legal services program also generated substantial opposition within the legal profession, mainly from local bar associations that represented private attorneys practicing in the areas that would be served by the new programs. Their concerns fell into three categories: 1) competition for clients, particularly with personal injury lawyers represented by the American Trial Lawyers' Association, from publicly supported legal services programs; 2) the impact that representation of the poor might have on their clients, primarily local businesses and governments that might be the subject of lawsuits by legal services programs; and 3) the perceived threat of the expansion of public financial support for, and governmental regulation of, the legal profession, which had been characterized by its independence and self-regulation.

One common response that arose out of local opposition to legal services programs was an effort to seek OEO funding for judicare—a delivery system in which attorneys in private practice are paid on a fee-for-service basis for handling cases for eligible clients, similar to the way doctors are paid for handling Medicare patients. However, OEO refused to fund judicare programs as the primary model for legal services delivery, agreeing to fund only a few programs, primarily in rural areas.

Bamberger felt that a nationwide judicare system would be prohibitively expensive and would not provide the aggressive advocacy required to adequately represent the low-income community. This fundamental policy decision has shaped the civil legal aid program to this day.

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

In addition, local political figures (such as Mayor Daley of Chicago) often attempted to interfere with legal services proposals. Many of the OEO-funded programs were controversial because they had sued both government agencies and powerful private

business interests. For the first time, social welfare agencies, public housing authorities, hospitals and mental health facilities, public utilities, large private landlords, banks, merchants, school districts, police departments, prisons and jails, and numerous other public and private institutions were subject to challenge by lawyers advocating on behalf of low-income people.

In spite of the initial external controversy, bureaucratic in-fighting, and general skepticism by the establishment, within nine months of taking office, Clint Bamberger and his staff had completed the Herculean task of funding 130 OEO legal services programs. Many local lawyers, progressive bar leaders, community activists, and traditional legal aid societies sought and received federal funds to establish legal services programs. In the end, despite their initial misgivings, the OEO legal services program obtained the support of many local and state bar associations, CAAs, and local politicians. By the end of 1966, federal funding grew to $25 million for these local programs and national infrastructure programs established to provide litigation support, training, and technical assistance.

## Growth and Development

By 1968, 260 OEO programs were operating in every state except North Dakota, where the governor had vetoed the grants. The legal services budget grew slowly but steadily from the initial $25 million in 1966 to $71.5 million in 1972.

In 1967, OEO legal services' second director, Earl Johnson, made a second fundamental policy decision that would also have long-term implications for the civil legal assistance program.

The local OEO-funded legal services programs were facing impossible demands from clients for services with inadequate resources to meet the need. In response to this growing problem, Johnson decided to require that programs set local priorities for the allocation of resources but established "law reform" for the poor as the chief goal of OEO legal services. He made clear that OEO would give priority in funding to proposals that focused on law reform.

In addition, Johnson wanted to create a cadre of legal services leaders who would then use peer pressure to encourage programs to provide high-quality legal services. In order to achieve this goal, OEO funded the Reginald Heber Smith Fellowship program to attract "the best and the brightest" young law graduates and young lawyers into OEO legal services. This program provided a summer of intensive training in various law reform issues, and then placed the "Reggies" in legal services programs throughout the country for one- or two-year tours of duty. Many of the Reggies became leaders in their local legal services communities, as well as on the national level. Others went on to become respected lawyers in private practice and academia, as well as important political leaders and well-known public figures.

A large investment was also made in "back-up centers"—national legal advocacy centers, initially housed in law schools, that were organized around specific substantive areas (e.g., welfare or housing) or a particular group within the eligible client population (e.g., Native Americans or elderly). These centers co-counseled with, and provided substantive support for, local programs that were engaged in key test case litigation and representation before legislative and administrative bodies on behalf of eligible clients and groups, as well as engaging directly in advocacy in significant cases with national impact.

The back-up centers also provided research, analysis, and training to local legal services programs that were working on cases within the centers' areas of expertise. These centers engaged in specialized representation and developed knowledge and expertise that were essential to the emergence of new areas of poverty law. They also provided leadership on key substantive issues and worked closely with the national poor people's movements that had evolved during the early years of the legal services program (e.g., the National Welfare Rights Movement and the National Tenants Organization). The work of the back-up centers was memorialized in numerous national publications, including the *Clearinghouse Review* and *The Poverty Law Reporter*, which featured articles on poverty law developments and national training and technical assistance programs.

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

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

- The first element was the notion of responsibility to all poor people as a "client community." Local legal services programs attempted to serve, as a whole, the community of poor people who resided in their geographic service area, not simply the individual clients who happened to be indigent and who sought assistance with their particular problems.
- The second element was the emphasis on the right of clients to control decisions about the priorities that programs would pursue to address their problems. The legal services program was a tool for poor people to use rather than simply an agency to provide services to those poor people who sought help.
- The third element was a commitment to redress historic inadequacies in the enforcement of legal rights of poor people caused by lack of access to those institutions that were intended to protect those rights. Thus, “law reform” was a principal goal for the legal services program during the early years.
- The fourth element was responsiveness to legal need rather than to demand. Through community education, outreach efforts, and physical presence in the community, legal services programs were able to help clients identify critical needs, set priorities for the use of limited resources, and fashion appropriate legal responses, rather than simply respond to the demands of those individuals who happened to walk into the office.
- The fifth and final element was that legal services programs were designed to provide a full range of service and advocacy tools to the low-income community. Thus, poor people were to have at their disposal as full a range of services and advocacy tools as affluent clients who hired private attorneys.

## Early Major Accomplishments

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

Legal services attorneys won landmark decisions, such as *Shapiro v. Thompson*, 394 U.S. 638 (1969), which ensured that welfare recipients were not arbitrarily denied benefits, and *Goldberg v. Kelley*, 397 U.S. 254 (1970), which led to a transformation in the use of the concept of due process. These seminal cases were hardly the only cases brought to the Supreme Court by legal services attorneys. A study by Professor Susan Lawrence reviewed the 119 Supreme Court cases between 1966 and 1974 that were brought by legal services attorneys. Legal services attorneys secured victory in 62 percent of those cases, second only to the record of the Solicitor General of the United States.[3]

Creative advocacy by legal services lawyers expanded common law theories that revolutionized the law protecting poor tenants and consumers, including innovative concepts, such as retaliatory eviction and implied warranty of habitability. Legal services attorneys also worked to enforce rights that existed in theory but were honored only in the breach and to ensure that federal law enacted to benefit the poor was actually enforced on behalf of their intended beneficiaries. Cases like *King v. Smith,* 392 U.S. 309 (1968), radically changed poverty law by providing remedies in federal and state courts against those who administered the federal welfare program Aid for Families with Dependent Children (AFDC), the Food Stamp Program, public housing, and other public benefit programs.

Legal services lawyers also played critical behind-the-scenes roles in enacting or modifying federal, state, and local legislation. Legal services advocates significantly influenced the enactment of the Food Stamp Program, the Supplemental Food Program for Women, Infants and Children (WIC), and Supplemental Security Income (SSI), and they were instrumental in making changes to key federal housing legislation, Medicaid, consumer legislation, and nursing home protections. Legal services advocates were also on the forefront of regulatory developments on AFDC; SSI; Medicaid; Early Periodic Screening, Diagnosis and Treatment (EPSDT); food programs; Hill-Burton Act's uncompensated health care and community services requirements; regulations to implement the provisions of Truth in Lending legislation; federal housing; energy assistance and weatherization programs;

Individuals with Disabilities Education Act; legislation protecting migrant farmworkers from actions by growers and farm labor contractors; Fair Debt Collection Practices Act; and numerous others.

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

Legal services programs were on the forefront of the efforts to assist women who were victims of domestic violence and to ensure that police and prosecutors took their complaints seriously and treated them as victims of criminal acts by their abusers rather than simply as parties to domestic squabbles.

## Political Efforts to Curtail OEO Legal Services

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

### *Murphy Amendments*

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

### *CRLA Controversy*

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

When Governor Reagan announced his veto, he cited "gross and deliberate violations" of OEO regulations. In January 1971, the director of the California Office of Economic Opportunity, Lewis K. Uhler, released a 283-page report, which was to serve as a justification for Reagan's earlier veto of the annual grant to CRLA.

The Uhler report itemized some 150 charges of alleged misconduct by CRLA, including disruption of prisons, disruption of schools, organizing labor unions, criminal representation, and representation of ineligible, over-income clients.

In response to this report, OEO appointed a blue ribbon commission composed of three retired State Supreme Court justices from states other than California to examine and determine the validity of the charges in the Uhler report. Despite Uhler's refusal to present evidence to the commission and his demands that testimony be given in executive session, the commission conducted public hearings on all of Uhler's charges and heard evidence from 165 witnesses from across California. Much of the anti-CRLA testimony came from the California Farm Bureau, an organization of agricultural employers, which was frequently at odds with CRLA and the farmworkers it represented.

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

### *Lenzner-Jones Firing*

In 1969, during the very early days of the Nixon Administration, the legal services program was elevated within OEO with the creation of the Office of Legal Services (OLS), headed by an associate director of OEO who reported directly to the OEO director. Terry Lenzner, a young Harvard Law School graduate who had worked at the Justice Department, became the new director of OLS. He hired as his deputy Frank Jones, a former Reggie who had worked in legal services programs and who later became the executive director of NLADA.

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

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

### *The Reign of Howard Phillips*

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

While Phillips' effort to decimate legal services was ultimately thwarted by the courts, his assault made it clearer than ever that, in order for the program to survive, a new legal services structure, separate from the Executive branch and protected from vagaries of the political process, was essential.

# LEGAL SERVICES CORPORATION

## The Gestation Period

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

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

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

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

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

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

The Conference Report passed both houses, although the vote in the House was very close. Nevertheless, conservatives made their continued support of President Nixon in the impeachment hearings contingent on his veto of the LSC bill unless an amendment that they thought would eliminate the back-up centers was added to the bill. The President demanded that the LSC bill include the so-called "Green amendment" (named after Rep. Edith Green, a conservative Democratic Congresswoman from Oregon). However, the actual language of the Green amendment was not successful in eliminating major impact litigation and national advocacy and only placed certain limited restrictions on training, technical assistance, and research. Therefore, LSC supporters did not withdraw their support of the bill even though the Green amendment was added. President Nixon signed the bill into law on July 25, 1974. (See Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378, 42 U.S.C. §2996 [1994]). The Legal Services Corporation Act of 1974 was one of the last bills that President Nixon signed into law before he resigned from office in August 1974.

## How Legal Services Has Made a Difference: Important Cases

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

For example, legal services attorneys won landmark decisions, such as *Shapiro v. Thompson*, 394 U.S. 638 (1969), which ensured that legal welfare recipients were not arbitrarily denied benefits. Perhaps the greatest victory was *Goldberg v. Kelley*, 397 U.S. 254 (1970), which led to the due process revolution. *Goldberg* required the government to follow due process when seeking to terminate benefits. A series of later cases expanded due process to large areas of public and private spheres. *Escalero v. New York City Housing Authority*, 425 F.2d 953 (2d Cir. 1970), required public housing authorities to provide hearings before evictions from public housing; and later decisions, such as *Fuentes v. Shevin*, 407 U.S. 67 (1972), ensured that private parties must follow due process when seeking to recover possessions, such as automobiles.

Equally significant were judicial decisions that expanded common law theories on retaliatory evictions and implied warranty of habitability. These decisions were stimulated by the creative advocacy of the lawyers involved. For example, legal services helped develop the theory that tenants could not be evicted in retaliation for asserting their legal rights. In *Edwards v. Habib*, 397 F.2d (D.C. Cir. 1968), the Court held that the landlord's "right" to terminate a month-to-month tenancy "for any reason or no reason at all" did not include the "right" to terminate because the tenant complained of housing code violations. Today, the doctrine of retaliatory eviction is the rule in most states and is endorsed by the *Restatement of American Law of Property*. Similarly, legal services developed the doctrine of implied warranty of habitability in *Javins v. First Nat'l Realty Corp*., 428 F.2d 1071 (D.C. Cir. 1970). This doctrine is also the major rule, reflected in the Uniform Residential Landlord-Tenant Act, and is the rule of the *Restatement of American Law of Property*.

Legal services attorneys also effectively enforced rights that were theoretically in existence but honored only in the breach. Legal services representation ensured that federal law benefiting the poor was enforced on behalf of the poor. *King v. Smith*, 392 U.S. 309 (1968), led to the enforcement of federal statutory law not only in the legal welfare area but also, until recently, set the framework for enforcement of federal law across the board. And legal services programs won *Sullivan v. Zebley*, 493 U.S. 521 (1990). Because of this case, hundreds of thousands of families with disabled children now receive Supplemental Security Income benefits. Another example is *Olmstead v. L. C.* , 527 U.S. 581 (1999) in which the Court found that under the Americans with Disabilities Act, or "the ADA," it is against the law for the state to discriminate against a person based on his or her disability.

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

People with disabilities had the right to receive support in the community rather than in institutions when three conditions were met: (1) the treating medical professionals determined that a community setting was appropriate; (2) the person with a disability did not object to living in the community; and (3) the provision of services in the community was a reasonable accommodation.

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

## The Early LSC Era: Growth and Expansion

The LSC Act created a private, nonprofit corporation that was controlled by an independent, bipartisan Board, appointed by the President and confirmed by the Senate. No more than six of the Board's 11 members could come from the same political party. The initial selection of Board members was delayed by President Nixon's resignation. It took almost a year for President Gerald Ford to appoint and the Senate to confirm the first LSC Board of Directors.

Opponents of LSC urged the President to appoint several leading critics of the program to the Board. On July 14, 1975, the first of Board of Directors of LSC was sworn in by Supreme Court Justice Lewis Powell, who had led the ABA in endorsing legal services. The Board was chaired by Roger Cramton, Dean of Cornell Law School and former Chair of the Administrative Conference of the U.S., and included, among others, Robert Kutak, who later headed the ABA Committee that drafted the Model Rules of Professional Conduct, and Revius Ortique, Jr., a prominent lawyer from New Orleans who had been on the original National Advisory Committee and had been President of the National Bar Association. The first LSC Board included both liberal and conservative members, but all were supportive of the basic goals of the legal services program, the delivery of effective and efficient legal services to poor people. Ninety days after the Board was confirmed, on October 12, 1975, LSC officially took control of the federal legal services program from the Community Services Administration, the successor to OEO.

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

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

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

Initially, there was some tension between the legal services field programs and the LSC staff and Board. Several field leaders were worried that LSC would serve simply as the enforcer of restrictions. Nevertheless, the relationship shortly evolved into one of close collaboration, quite similar to the relationship that had existed between field programs and OEO. LSC related to legal services programs through regional offices, training programs, technical assistance, and substantive law conferences.

The regional offices played a critical role in expanding the legal services program to previously unserved areas of the country, and they worked closely with the leaders of local programs in their regions. While LSC was somewhat more bureaucratic than OEO had been, the new LSC, like OEO, de-emphasized its regulatory compliance role in favor of incentives, encouragement, assistance, and a spirit of partnership.

President Jimmy Carter appointed a new LSC Board to replace those members who had been appointed by President Ford. The new Board was chaired by Hillary Rodham, then a private practitioner and the wife of the young Governor of Arkansas, Bill Clinton. The Board also included F. William McCalpin, who had been instrumental in garnering ABA support for the legal services program, and Mickey Kantor, a successful lawyer and political activist who had been a legal services lawyer and a staff member at OEO. In 1978, the LSC Board named Dan Bradley to replace Tom Ehrlich as LSC President. Bradley was a former legal services attorney who had once served as the LSC regional director in Atlanta and as special assistant to the director of the Community Services Administration, which replaced OEO when it was dismantled in 1972.

### *Expansion*

Most of the initial efforts of the new Corporation went into obtaining increased funds for the program from Congress. LSC conducted a study of the funding levels of local programs in relation to the population they served and found that over 40 percent of the nation's poor people lived in areas where there was no legal services program at all, and many of those living in the remaining areas had only token access to legal assistance. On the basis of that report, the Corporation developed a "minimum access" plan, with the goal of providing a level of federal funding for LSC programs in every area of the country, including those where no programs had been established, that would support two lawyers for every 10,000 poor persons, based on the U.S. Census Bureau's definition of poverty.

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

### *Private Attorney Involvement*

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

In response to those urgings, Congress included in the original LSC Act a provision that required LSC to conduct a study of alternatives to the staff attorney system to determine whether private attorneys could provide high-quality, economical, and effective legal services to eligible low-income clients.

The Delivery System Study, which LSC conducted between 1976 and 1980, found that none of the alternative delivery models tested performed better than the staff attorney model. The study also found that independent judicare programs that included staffed components, contracts with law firms, and organized pro bono programs met all of the feasibility and performance criteria to be judged viable for the delivery of publicly funded legal assistance to the poor. LSC initially responded to the study by proposing a policy to encourage, but not require, private attorney involvement (PAI), particularly through pro bono programs. However, the ABA, which was then leading an unprecedented effort to prevent the Reagan Administration from eliminating LSC and funding legal services through social services block grants, adopted a resolution at its 1980 annual meeting urging Congress to amend the LSC Act "to mandate the opportunity for substantial involvement of private lawyers in providing legal services to the poor." In a 1981 LSC reauthorization bill, the House of Representatives incorporated the ABA position, but the legislation was never taken up by the Senate.

Before Congress could act, the LSC staff and Board responded with a 1981 instruction directing its grantees to use a substantial amount of their funds to provide opportunities for the involvement of private attorneys in the delivery of legal assistance to eligible clients. LSC later clarified this instruction to mandate programs to use an amount equivalent to 10 percent of their LSC funds for PAI activities. In 1984, LSC adopted a formal regulation that raised the required PAI allocation to an amount equal to 12.5 percent of a program's LSC grant. Most PAI activities went to increase pro bono efforts, although many programs used judicare, contracts, or other compensated arrangements as components of their PAI efforts. Private attorneys began co-counseling with legal services attorneys on large cases and accepting individual client referrals from legal services programs. By exposing private attorneys first-hand to the realities of legal services practice and by creating partnerships between private attorneys and legal services advocates, hostility to LSC and its programs diminished substantially, and private lawyers across the country have, along with the ABA and state and local bar associations, become staunch allies of LSC and its local legal services programs. Today, approximately 150,000 private attorneys participate in pro bono programs across the United States.

### *Accomplishments*

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

- Local legal services programs were established to provide service to poor people in every county in the country.
- A network of migrant and Native American programs or units of local programs was created, covering most areas where those special client populations lived or worked.
- A system of state support began to emerge.
- Several new national support centers were established.
- LSC began a national training program for lawyers.
- The number of legal services program staff around the country increased significantly.

- LSC funding rose dramatically from $92.3 million in 1976 to $321.3 million in 1981.
- In 1977, Congress reauthorized the LSC Act for an additional three years.

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

With the growth of the legal services program came significant changes in the ways in which poverty advocacy was conducted and in the manner in which services were delivered, along with changes in the role of LSC. At the local and state level, advocates became more specialized. Separate units for "law reform" work that had been the hallmark of OEO-funded legal services programs were incorporated into the general framework of the program, and efforts were made to better integrate law reform and basic service work. Local program staff received more and better training, and coordination between and among programs increased. New fields of poverty law emerged, such as advocacy for persons with disabilities, veterans, nursing home residents, the institutionalized and other groups with special problems of access to legal services. Paralegals developed into full-fledged advocates and included among their numbers many former clients, as well as former social workers and community activists. Quality improved, but national standards were not fully developed until 1986 when the ABA promulgated *Standards for Providers of Civil Legal Services to the Poor*. Programs and advocates became more professional. Increased attention was devoted to supervision of legal work, case reviews, evaluation, and other methods of ensuring high-quality representation.

As the legal services program expanded nationally, a new focus also developed at the local level. Local control became the new legal services mantra. Local priority setting required by the LSC Act became a central tenet in determining how each program would decide which substantive areas to emphasize and which types of cases to accept for representation.

LSC made no effort to directly set national substantive goals, but its staff conducted research and analysis to enable it to provide programs with options and ideas for local consideration. LSC created the Research Institute, which provided poverty law research, conducted seminars on emerging poverty law issues, and developed new issues. The Office of Program Support conducted an extensive training program and produced a large number of substantive and skills manuals. National support centers continued to engage in both support and direct representation, but their influence on local substantive work waned as the number of major constitutional and statutory cases declined and regulatory and law enforcement practice that required sustained advocacy at the state and local level increased. Many more local and state advocates emerged as new national leaders on substantive areas of law, often working in conjunction with advocates from state and national support centers.

# THE STRUGGLE FOR SURVIVAL

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

## The Late 1970s and the Beginnings of a Backlash

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

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

### *The Reagan Era*

The election of President Ronald Reagan in 1980 was a critical turning point in the history of federally funded legal services, ending the years of expansion and growth of political independence for LSC and its grantees. The Reagan Administration was openly hostile to the legal services program. Reagan initially sought LSC's complete elimination and proposed to replace it with law student clinical programs and a judicare system funded through block grants. In response to pressure from the White House, Congress reduced funding for the Corporation by 25 percent, slashing the appropriation from $321 million in FY 1981 to $241 million in FY 1982.

The cut represented an enormous blow to legal services providers nationwide, which were required to go through a painful period of retrenchment planning to decide how to allocate the 25 percent funding cut.

Programs were forced to close offices, lay off staff, and reduce the level of services dramatically. In 1980, there were 1,406 local field program offices; by the end of 1982 that number had dropped to 1,121. In 1980, local programs employed 6,559 attorneys and 2,901 paralegals. By 1983, those figures were 4,766 and 1,949, respectively. Programs also cut back significantly on training, litigation support, community education, and a host of other efforts. LSC was forced to eliminate the Research Institute and to significantly downsize the Office of Program Support, both of which had been invaluable resources for the legal services community. LSC also began a contraction of its regional offices, which had played a crucial role in the expansion of the legal services program during the late 1970s and had served as a repository within LSC for much of the history of local program development and the knowledge about the critical actors on the state and local levels.

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

At the end of 1981, President Reagan replaced a majority of the LSC Board, originally appointed by President Carter, with new recess appointees (appointments made when Congress is in recess and thus not available to confirm them). The balance of the Carter Board members was replaced in January 1982. The Senate refused to confirm these individuals when the Reagan Administration formally nominated them, and for much of the Reagan presidency, LSC was governed by a series of Boards consisting of recess appointees and holdover members.

Many of the Board members who served during that period, including William Harvey and Clark Durant who served as Board Chairmen, expressed outright hostility to the program they were charged with overseeing. Several sought to totally revamp legal services into a judicare-based program that did no significant litigation and did not engage in any policy advocacy. Others professed to support the concept of legal services for the poor, but advocated changes that would have eviscerated the program. For example, some board members advocated expansion of PAI allocations to 25 percent of a program's LSC funding, elimination of all funding for national and state support services, lowering financial eligibility limits from 125 percent to 100 percent of the official poverty line and permitting service only to those individuals who had no assets.

Several Board members wanted to preclude programs from engaging in any legislative and administrative advocacy. Many LSC Board members, including Operations and Regulations Committee Chairman Michael Wallace, expressed open disdain for the organized bar, particularly the ABA, which had emerged as a vigilant protector of the legal services program. Despite the hostility of the majority of the Board, throughout the Reagan Administration, several Board members remained steadfastly supportive of the program they had been appointed to oversee, although they were almost always outvoted by their more hostile colleagues. Thomas Smegal, who served on the Reagan Board and was later reappointed by President Clinton, was a consistent voice in the wilderness in support of the program during the darkest days of the Reagan Administration.

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

The new LSC staff began a highly intrusive and exhaustively detailed program of monitoring for compliance. Monitoring visits were conducted in an extremely adversarial atmosphere and required the local programs to expend extraordinary amounts of time and resources during the visits and in responding to the findings of the monitoring teams. LSC monitors often demanded access to client files and other confidential information, placing program attorneys at odds with their ethical obligations to their clients. There was no emphasis in the program monitoring on the quality of client representation or program performance. In some instances, LSC withheld funds from programs or provided only short-term funding because of minor technical violations, such as board vacancies, and attempted to reduce funding levels for a number of programs that LSC found were out of compliance with new and often unannounced policies and previously unarticulated interpretations of the LSC Act and regulations.

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

On the legislative front, LSC staff members actively lobbied Congress and paid others to lobby against LSC appropriations. LSC hired a consultant to write a legal opinion expressing the view that the Corporation was unconstitutional.

LSC staff and Board members developed a series of new regulations and policies designed to restrict legal services activities far beyond the Congressionally imposed limitations of the LSC Act and subsequent appropriations riders. Despite these efforts by LSC and the continued hostility of the Reagan Administration and some members of Congress, bipartisan support for the mission of LSC continued to grow, and by the mid-1980s, Congress, which earlier in the decade had cut LSC funding and imposed new restrictions, had become the protector of the legal services program.

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

LSC to award 12-month grants; prohibited the use of competitive bidding and a proposed timekeeping system; overturned regulations on fee-generating cases, lobbying, and rulemaking; and eliminated restrictions on the use of private non-LSC funds.

Congressional supporters also led an unprecedented effort to prevent the Reagan Administration from eliminating LSC and replacing it with funding through social services block grants. Legal services supporters adopted provisions that limited LSC's rulemaking authority. By 1994, there were 22 riders on the LSC appropriation, most of which limited LSC's authority to take action.

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

## The Legal Services Community Weathers the Storm

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

In addition to the ABA, acting through SCLAID, and state and local bar associations, other bar-led entities emerged in support of the legal services program, including Bar Leaders for Preservation of Legal Services, founded by key bar leaders Jonathan Ross from New Hampshire, Michael Greco from Massachusetts, and Bill Whitehurst from Texas.[4] The organized bar and these bar-led legal services support groups, working with NLADA, PAG, and the Center for Law and Social Policy (CLASP), were able to effectively advocate before Congress to prevent implementation of many of the hostile policies that the LSC Board and staff had attempted to impose.

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

Also during the early 1980s, a completely new source of funding for civil legal assistance was created. Interest on Lawyer Trust Account (IOLTA) programs were first conceived in Florida, after changes were made in the federal banking laws permitting interest to be paid on certain kinds of bank accounts. IOLTA programs were instituted by state bars, courts, and legislatures, in cooperation with the banking industry, to capture pooled interest on small amounts or short-term deposits of client trust funds used for court fees, settlement proceeds, or similar client needs that had previously been held only in non-interest-bearing accounts.

Since these deposits were permitted to be pooled, interest could be earned in the aggregate, even though individually these nominal or short-term deposits would not earn interest for the client. Throughout the 1980s and 1990s, more and more states adopted IOLTA programs, and by 2000, every state, plus the District of Columbia and Puerto Rico, had an IOLTA program. While resources created by IOLTA are used to fund a variety of public service legal and law-related activities, most IOLTA funding has gone to civil legal services programs, and IOLTA quickly became the second largest source of funding for LSC grantees.

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

## A Slight Resurgence

The 1990s began with a small but significant improvement in the situation of the legal services community. The Corporation's appropriation, which had been stagnant for several years, began to move upward, to $328 million for FY 1991 and $350 million for FY 1992. The first Bush Administration abandoned the overt hostility to legal services and the efforts to reduce or eliminate funding and to restrict legal services advocacy. The Bush Administration instead consistently recommended that Congress continue to appropriate money for the Corporation, albeit at level funding. The first President Bush appointed a Board with a majority of legal services supporters, breaking from the tradition of the Reagan Administration. Under the leadership of Board Chairman George Wittgraff and Operations and Regulations Chairman Howard Dana, the LSC staff, led by President John O'Hara, also took a more conciliatory stance and began to work somewhat more closely with the organized bar and with the leaders of the legal services community, reducing the level of the overt hostility that had characterized the previous eight years.

The LSC Act had last been reauthorized in 1977, and that authorization had expired in 1980. Despite the fact that Congress had not reauthorized LSC, legal services funding continued to be appropriated under a waiver of the rules that ordinarily prohibited such appropriations. In the early 1990s, for the first time in many years, Congress began to consider reauthorization of the LSC Act. In the summer of 1992, the House adopted legislation reauthorizing LSC and incorporated many of the changes that supporters of the program had proposed.

However, it was not clear that the Bush Administration would support this legislation, and the Senate failed to act on the bill.

With the election of President Bill Clinton, the legal services community anticipated an end to the long period of insecurity and inadequate funding. Congress increased the LSC appropriation to $400 million for the 1994 fiscal year, the largest increase since the early years of the Corporation. Congress also prepared to take up the LSC reauthorization bill again, starting from where the House had left off.

With the majority of Congress in favor of a broad role for federally funded civil legal assistance and a supportive president in the White House, it seemed likely that a new statutory framework for the program could be enacted that would carry the legal services program through the rest of the 1990s.

Clinton's appointees to the LSC Board, confirmed in late 1993, were uniformly supportive of a strong, well-funded LSC. They included Chairman Douglas Eakeley, former Board members F. William McCalpin and Thomas Smegal, and Hulett "Bucky" Askew who had served as Atlanta regional director and as deputy director in the Office of Field Services at LSC. The Board hired a well-known New York lawyer, Alex Forger, to be LSC president, and he assembled a number of respected legal services leaders that included Martha Bergmark and John Tull to serve in key LSC staff positions.

The new LSC administration initially focused on redesigning the monitoring system. In lieu of the old system that was focused only on compliance and was intended to intimidate programs, the new system was designed to ensure that LSC grantees both complied with Congressional mandates and regulatory requirements and provided high-quality services. By late 1994, the Corporation had completed a new system for compliance monitoring and enforcement that relied, as did other federal agencies, on auditing by independent CPAs and ending the intrusive on-site monitoring by LSC staff and consultants of the previous decade. LSC also developed a new peer review system designed to evaluate program performance and improve quality—objectives that the Corporation had made no serious effort to achieve since 1981. Finally, together with the ABA and organizations representing legal services programs, the Corporation, under the leadership of Operations and Regulations Committee Chair LaVeeda Morgan Battle, began an effort to revise and update all of the key LSC regulations affecting grantee operations.

## The 104th Congress

With the 1994 congressional elections, the Corporation suffered a dramatic reversal of political fortune. Conservatives included the elimination of LSC in the infamous "Contract for America." In much the same way as the Reagan Administration in the early 1980s, the leadership of the new Congress, under House Speaker Newt Gingrich (R-GA), committed itself to the elimination of LSC and ending federal funding for legal services. The House leadership sought to replace LSC with a system of limited block grants to the states that would severely restrict the kind of services for which the funds could be used. The House of Representatives adopted a budget plan that assumed that LSC's funding would be cut by one-third for FY 1996, another third in FY 1997, and completely eliminated thereafter. Opponents of legal services dubbed this funding plan "the glide path to elimination." It seemed possible that the federal commitment to equal justice might be abandoned altogether.

Despite the efforts of the House leadership, a bipartisan majority in the Congress, led by Senator Pete Domenici (R-NM), remained committed to maintaining a federally funded legal services program. Nevertheless, key congressional decision makers, led by Congressmen Bill McCollum (R-FL) and Charles Stenholm (D-TX), determined that major "reforms" in the delivery system would be required if the program was to survive.

Grants were to be awarded through a system of competition, rather than through presumptive refunding of current recipients. Funding was to be distributed on a strict, census-based formula, eliminating any LSC discretion over funding amounts. A timekeeping system was imposed on all attorneys and paralegals working in programs. Programs were subject to a host of new organizational and administrative requirements. LSC funds could no longer be used to pay dues to nonprofit organizations, including the ABA and NLADA, or to sue LSC. The LSC Office of Inspector General was given new powers over local program audits, and LSC was given expanded access to recipient and client records.

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

Congress prohibited representation of certain categories of clients, including prisoners and public housing residents who were being evicted based on drug-related charges. Only certain specified categories of aliens were permitted to be served, although later amendments lifted the restriction on providing a range of legal services to aliens who were victims of domestic violence and human trafficking. Perhaps even more damaging and insidious, Congress limited the kinds of legal work that LSC-funded programs could undertake on behalf of eligible clients, prohibiting programs from participating in class actions, welfare reform advocacy, and most affirmative lobbying and rulemaking activities. In addition, programs were prohibited from claiming or collecting attorneys' fees[5], cutting off a significant source of funding and limiting programs in their ability to use an effective strategic tool. These prohibitions were written to be "entity" restrictions and applied not just to LSC funded activity, but to all of a grantee's non-LSC funds as well. Finally, Congress eliminated LSC funding for national and state support centers, the *Clearinghouse Review,* and other entities that had provided support, technical assistance, and training to LSC-funded legal services programs.

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

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

| Selected Grant Years | Annual LSC Appropriation in Actual Dollars | What the LSC Appropriation would have been if it had kept up with inflation | Percentage Change From 1980 (Using 1980 Dollars) |
|---|---|---|---|
| **1975*** | 71,500,000 | 109,486,451 | +1.53% |
| **1976** | 116,960,000 | 169,368,493 | +1.45% |
| **1980** | 300,000.000 | 300,000,000 | 0.0% |
| **1981** | 321,300,000 | 331,004,146 | -2.9% |
| **1982** | 241,000,000 | 351,219,424 | -31.4% |
| **1990** | 316,525,000 | 475,649,712 | -33.5% |
| **1995** | 400,000,000 | 554,737,587 | -27.9% |
| **1996** | 278,000,000 | 570,998,079 | -51.3% |
| **2005** | 330,804,000 | 704,055,010 | -53% |
| **2009** | 390,000,000 | 752,938,299 | -48.2% |
| **2010** | 420,000,000 | 767,497,879 | -45.3% |
| **2013** | 341,500,000 | 835,585,677 | -59.1% |
| **2017** | 385.000,000 | 936,391,172 | -58.9% |

*Grant was given to the Community Services Administration, which took over the OEO legal services program until LSC was created.

## *Reaction to the Restrictions*

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

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

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

In the second suit, *Velazquez v. LSC*, the Court of Appeals did strike down part of one of the restrictions. The Court found that the provision in the welfare reform restriction that prohibited legal services advocates from challenging welfare law as part of the representation of an individual client who was seeking relief from a welfare agency violated the First Amendment because it constituted impermissible viewpoint discrimination. In February 2002, the U.S. Supreme Court upheld that decision. After the Supreme Court issued its decision, LSC announced that it would no longer enforce the specific provision addressed by the Court, and in May 2002, LSC formally eliminated it from the welfare reform regulation.

In the years since the imposition of the restrictions, there have been numerous conversations within the legal services community and among its supporters about the impact of the restrictions on the ability of legal services providers to provide a full range of services to low-income clients. Efforts have been made in Congress by a coalition including NLADA, CLASP, the Brennan Center, the ABA and the United Auto Workers, to eliminate some or all of the restrictions. Special efforts were made to limit the reach of the restrictions to only LSC funds rather than the non-LSC funds of recipients. To date, the only change in the restrictions occurred in late 2009, when Congress eliminated the restriction on seeking attorneys' fees. Otherwise, LSC programs have, for the most part, learned to live within the restrictions, albeit unhappily.

# LEGAL SERVICES AFTER THE RESTRICTIONS

Since 1996, the legal services landscape has undergone a dramatic transformation. Legal services has seen a reduction in the total number of LSC grantees from more than 325 programs in 1995 to 133 in 2018, and the geographic areas served by many of the remaining programs have increased dramatically. These changes were the result of the Congressional elimination of funding for state and national support entities and the mergers and reconfigurations promoted or sometimes imposed by LSC.

The network of state and federal support entities formerly funded by LSC has been substantially curtailed, and some of its components have been completely dismantled. This network, which had consisted of state and national support centers; the National Clearinghouse for Legal Services, which published the poverty law journal *The Clearinghouse Review*; and various training programs, had developed quality standards, engaged in delivery research, provided training to support legal services advocacy, and served as the infrastructure that linked all of the LSC-funded providers into a single national legal services program. Since the loss of their LSC funding, several of the national support centers that had focused solely on issues affecting the low-income community have broadened their focus to attract new sources of funds. Several closed their doors when they were unable to raise sufficient funds to operate effectively.

At the state level, the network of LSC-funded support centers has been replaced by a group of independent non-LSC funded entities engaged in state advocacy that operate in over 30 states. Only 12 of the current state entities are former LSC-funded state support centers. Several states have been unable to recreate a significant state support capacity at all. Recently, the Shriver National Center on Poverty law (successor to the National Clearinghouse) has, with foundation support, created the Legal Impact Network that brings together many state advocacy programs and strong legal and policy advocates from throughout the country who are using innovative, coordinated strategies to address poverty and advance racial justice.

At the same time, new legal services delivery systems have begun emerging in many states that include both LSC-funded programs, operating within the constraints of Congressionally imposed restrictions, as well as separate non-LSC-funded legal services providers that operate unencumbered by the LSC restrictions. Many of these non-LSC-funded providers were created specifically in response to the imposition of the restrictions, when LSC-funded programs either gave up their LSC grants or spun off new entities that were supported with non-LSC funds that formerly went to the LSC recipients. The non-LSC-funded providers are generally free to seek attorneys' fees, as are LSC grantees since the end of 2009; engage in class actions, welfare reform advocacy, or representation before legislature and administrative bodies; and provide assistance to aliens and prisoners, as long as their public and private funders permit their resources to be used for those activities. In 14 states and more than 20 large- or medium-size cities, two or more parallel LSC- and non-LSC-funded legal service providers operate in the same or overlapping geographic service areas.

Moreover, in a number of jurisdictions, the private bar became increasingly more involved in delivering basic legal services, as well as in undertaking those cases and activities that LSC recipients are prohibited from handling.

This new statewide system is emerging in large part because, beginning in 1995, in anticipation of funding cuts and the imposition of new restrictions, LSC initiated a strategic program that required all of its grantees to engage with non-LSC-funded providers, bar associations and state access to justice commissions, law schools, and other important stakeholders in each state in a state planning process. The goal was to develop a comprehensive, integrated system of legal service delivery for each state. Hallmarks of the new statewide delivery systems were to include a capacity for state-level advocacy; a single point of entry for all clients into the legal services system through a centralized telephone intake system; integration of LSC and non-LSC legal services providers; equitable allocation of resources among providers and geographic areas in the state; representation of low-income clients in all forums; and access to a full range of legal services, regardless of where the clients live, the language they speak, or the ethnic or cultural group with which they identify. States with large numbers of small LSC-funded legal services providers were urged to consider mergers and consolidation of local programs into larger and arguably more efficient regional or statewide programs, leading to the reconfiguration and reorganization of the legal services delivery systems in many states.

In addition to the state planning initiative that came from LSC, the Project for the Future of Equal Justice, a joint program of NLADA and CLASP, undertook a series of projects to promote the development of comprehensive, integrated statewide delivery systems. The ABA joined the effort by encouraging bar leaders to participate in state planning and to promote statewide, integrated systems. In February 1996, NLADA and the ABA created the State Planning Assistance Network (SPAN). SPAN provided leadership and assistance to state planning groups in order to support and stimulate legal services planning efforts around the country. In 2006, in recognition of the importance of state-level Access to Justice initiatives, the ABA created a new Resource Center for Access to Justice Initiatives to support the bench, bar, and legal services leaders engaged in efforts to expand civil justice and increase legal aid funding.

Beginning in 1998, under the leadership of LSC President John McKay and Vice President Randi Youells, LSC intensified its effort to promote state planning by requiring its grantees to submit detailed state plans and to engage in numerous follow-up activities. LSC's efforts to promote mergers and reconfigurations increased in scope and intensity. Beginning in 1998 and continuing through 2005, LSC made funding decisions based in large measure on the results of the state planning process that has gone on in each state, although in some instances, LSC rejected the proposals that emerged from the state planning process, substituting its own configuration decisions. As a result of reconfigurations, the number of LSC grantees has been reduced substantially, and fewer programs with proportionately larger LSC grants are each responsible for serving more poor people in a larger geographic area. In 2018, LSC funded 133 grantees across the country, down from more than 325 in 1995.

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

## State Access to Justice Commissions

Moreover, in an increasing number of states, leadership for these state planning efforts and state justice communities is no longer concentrated in the hands of the staff and boards of individual LSC grantees but is provided by new entities that are known generically as "access to justice commissions." Although the exact structure of these commissions varies, in most states representatives of the courts, the organized bar, and the legal services provider community, including both LSC- and non-LSC-funded programs, work together through some formal structure to expand and improve civil legal assistance. State Access to Justice Commissions are appointed directly by these entities or by the State Supreme Court based on nominations by the other entities. They are conceived as having a continuing existence, rather than being a blue-ribbon body created to issue a report and then sunset. They have a broad charge to engage in ongoing assessment of the civil legal needs of low-income people in the state and to develop, coordinate, and oversee initiatives to respond to those needs. There are 39 active Commissions as of 2018.

These Commissions have undertaken a variety of activities, such as:

- Funding for civil legal aid: Increasing state legislative funding (appropriations and legislatively enacted filing fees add-ons), funding from changes in court rules/statutes (e.g., *pro hac vice* fees and *cy pres* distributions) and private funding from foundations, the bar and the general public. Many states run public relations and public outreach campaigns as part of fundraising initiatives.
- Developmental Activities: undertaking state legal needs and economic impact studies, convening public forums across a state, developing strategic plans for access to justice, and holding access to justice seminars and conferences on general and specific topics (e.g. law schools, technology).
- Self-represented litigation: simplification of court processes and forms; developing court-based self-help centers; producing educational programs, handbooks and materials; changes in the Code of Judicial Conduct; increasing language access; and cultivating partnerships with public libraries as points of access to legal assistance.

- Best practices for administrative agencies, strategic plans and recommendations have also been developed to guide future endeavors.
- Pro bono initiatives: implementation of Supreme Court recognition programs, mentorship and training programs, retiring and retired lawyer programs, specialized pro bono programs, regional committees, and rule and policy changes to support pro bono work.
- Limited scope representation: formulating or amending rules of professional conduct or rules of procedure and developing and providing educational resources.
- Legal aid delivery initiatives: expanded uses of information technology, remote video conferencing, triage approaches, portal projects, legal incubator programs, disability access initiatives, addressing racial disparities, mediation/ADR initiatives, legal answers websites, court-based vacillators/navigators, and limited licenses for non-lawyers/legal technicians.
- Law school and legal profession efforts: new law school initiatives, pro bono admission requirements for graduation, implicit bias training, poverty simulations, and proposals to add questions about access and poverty law to bar exams.

Thus, the manner in which the civil legal services system develops in the future will no longer be determined solely by LSC and its grantees. Instead, the future of civil legal assistance increasingly will be in the hands of a much broader partnership of stakeholders who operate within the justice system in each state.

## Funding

Funding for this new state justice system has not remained static. From 1996 through 2016, total funding from all sources for legal services in the United States grew from an estimated $700 million to over $1.6 billion. Despite the 1996 reductions, appropriations for LSC recovered slowly from $278 million in FY 1996 to $420 million in FY 2010, and funding from other sources grew significantly during much of that same period. Until recently, most of this increase was attributed to expansion of IOLTA[6] programs and new mechanisms to increase the amount of IOLTA funding that was available to support civil legal assistance. However, with the economic downturn that began at the end of 2008, IOLTA funds for legal services have spiraled down in many states, as a result of historically low interest rates as well as major slowdowns in the real estate market and general business activity that had provided the impetus for IOLTA funding.

After the 1996 reductions in LSC funding, many programs were successful in securing substantial additional new funding to support civil legal services. Legal services programs received significant non-LSC federal funding from the Department of Justice under the Violence Against Women Act (VAWA), the Department of Housing and Urban Development, the Internal Revenue Service, and other federal agencies. Funds also have come from general state or local government appropriations and from contracts with state or local agencies to assist them in establishing eligibility of individuals for federal benefits, including Supplemental Security Income/Social Security Disability Insurance programs and Medicaid.

In addition, programs received funding from court filing fee surcharges; attorney registration fees or state bar dues assessment; state abandoned property funds; punitive damage awards; and various other state and local government initiatives. Since 1982, funding for civil legal aid derived from state and local governments has increased from a few million dollars to over $300 million per year. However, the exact amount of state funding for civil legal assistance was not fully documented, because much of this funding went to non-LSC-funded programs that do not have to report to any central funding source, unlike LSC-funded programs.

LSC-funded legal services programs were also successful in securing substantial increases in funding from private sources, including foundations and corporate gifts, donations from individual philanthropists, United Way campaigns, special events, grants from religious institutions, fee-for-service projects, private bar fundraising campaigns, grants from bar associations, voluntary bar dues check-offs or add-ons, *cy pres* awards, and awards from attorneys' fees pursuant to fee-shifting statutes once they were permitted under the LSC restrictions.

While these resources are not distributed equally, in 39 states non-LSC funds exceed LSC funds, and the ratio of non-LSC funds to LSC funds continues to increase. Although LSC funds remain the single largest source of support for civil legal services, programs in most areas of the country have become less dependent on LSC dollars in recent years. However, financial support for this newly emerging system of delivery must be put into context. Private philanthropy is highly dependent on the state of the economy. State funding is no more secure than federal funding, and during the Great Recession state appropriations for civil legal services were significantly reduced or, in some states, eliminated entirely. In many states, efforts have been made by the legislatures or IOLTA commissions to impose significant restrictions on the use of their funds.

## Changes in Delivery: Technology and Self-Help Initiatives

In addition to changes in the funding landscape, there have been numerous modifications in the legal services delivery system over the last two decades. Faced with severely limited resources, legal services programs have adopted new technologies and strategies that have allowed them to provide limited legal assistance to a larger number of people. As a result, low-income persons have access to information about legal rights and responsibilities and about the options and services available to solve their legal problems, protect their legal rights, and promote their legal interests.

LSC began a new grant program, Technology Initiative Grants (TIG) in 2000 and funded more than 708 projects totaling more than $63 million. Technological innovation in virtually all states has led to the creation of websites that offer community legal education information, *pro se* legal assistance, and other information about the courts and social services. Most legal aid programs now have websites, numbering more than 300 nationwide.

All states have a statewide website, most of which also contain information useful both to advocates and clients. Most of these statewide web sites were made possible by the Technology Initiative Grants program of LSC. All of these state sites can be accessed through www.lawhelp.org. Half of the sites are hosted on one platform operated by Pro Bono Net (www.probono.net). Dozens of national sites provide substantive legal information to advocates; other national sites support delivery, management, and technology functions. Many program, statewide, and national websites are using cutting-edge software and offering extensive functionality. Projects in many states use kiosks with touch-screen computers that allow clients to produce court-ready pleadings and access to other services, such as help with filing for the Earned Income Tax Credit. Video conferencing is being used in Montana and other states to connect clients in remote locations with local courthouses and legal services attorneys.

Finally, increasing numbers of legal aid programs across the country, in partnership with the courts and legal community, are using document assembly applications, most notably HotDocs and Access to Justice Author (A2J Author) to expand and make more efficient the provision of legal services to clients. These projects generally focus on the use of document assembly for *pro se* resources used by the public and automated documents used by legal aid staff to more efficiently represent their clients. Many of these projects nationally are coordinated through Law Help Interactive, which is a project of Pro Bono Net.

A2J Author uses HotDocs Online software to assist self-represented litigants in a web mediated process to assess eligibility, gather pertinent information to prepare a set of simple court forms, and then deliver those forms ready to be signed and filed. A2J Author is equipped with "just in time" help tools, including the ability to speak each word of the interview to the user in English or Spanish. The user can be directed to other websites to obtain explanations of technical terms.

In addition, there has been a rapid expansion of efforts by courts, legal aid providers, and bar associations to help people who are attempting to represent themselves in courts. Civil legal aid programs are devoting substantial time and resources to address the issue of assistance to *pro se* litigants. Many legal aid programs throughout the country operate self-help programs independently or in conjunction with courts. Some programs provide only access to information about the law, legal rights, and the legal process in written form, on the internet, on videotape, through seminars, or through in-person assistance. Other programs actually provide individualized legal advice and also often provide legal assistance in drafting documents and advice about how to pursue cases. Often, programs provide both printed and internet-accessible forms for use by persons without legal training, and also may provide assistance in completing the forms.

A critical part of expanding access has focused on a range of limited legal assistance initiatives to provide less than extended representation to clients who either do not need such extended representation in order to solve their legal problems or live in areas without direct access to lawyers or entities available to provide extended representation.

Many legal aid programs now operate legal hotlines, which enable low-income persons who believe they have a legal problem to speak by telephone to a skilled attorney or paralegal and receive advice and brief service. Legal hotlines may provide answers to clients' legal questions, analysis of clients' legal problems, and advice on solving those problems so that the client can resolve the problem with the information from phone consultation. Hotlines may also perform brief services when those are likely to solve the problem and make referrals if further legal assistance is necessary. Hotlines now operate in over 92 programs in 45 states, Puerto Rico, and the District of Columbia. Some hotlines focus on particular client groups, such as the elderly. Others serve the low-income population in general. Finally, more and more states have a central phone number (or several regional phone numbers) that clients can call to be referred to the appropriate program or to obtain brief advice about their legal problems.

## Developments During the Bush Administration

In 2003, the Bush Administration appointed a new LSC Board of Directors. For the most part, the members of the LSC board were highly supportive of the legal services program, seeking increased appropriations from Congress and adopting policies that continued the commitment of their predecessors. In early 2004, the Board selected as the new LSC President Helaine Barnett, who previously worked for many years as an attorney and manager for the Legal Aid Society of New York, a former LSC grantee. Ms. Barnett hired a highly competent and committed senior staff, which worked diligently to expand resources available to LSC grantees and to improve the quality of LSC programs. In 2005, LSC began a new quality initiative and issued a well-received report on the national "justice gap," documenting the gap between the resources available to support legal services and the legal needs of the low-income community. The "justice gap" study was updated in 2009. In 2006, LSC issued a set of revised Performance Criteria, setting new standards for its grantees and recommitting LSC to high-quality and effective legal services.

The year 2006 was a landmark for the ABA's efforts relating to legal services. At its annual meeting in August, the ABA adopted a new set of substantially revised Standards for the Provision of Civil Legal Aid. Although based on its 1986 Standards, the new standards also addressed the major changes in the legal services delivery system and the client community that had been made in the previous two decades, including new standards on participation in statewide and regional systems, cultural competence, the effective use of technology, limited representation, representation on transactional matters, and representation of groups and organizations. In addition, the ABA adopted two new major policy statements. One was a call for the expansion of the right to counsel in civil cases involving basic human needs, and the other was a set of 10 principals for an effective state-based legal services delivery system.

Finally, LSC came under increased scrutiny from US General Accountability Office (GAO) which began a series of audits in 2006 of LSC and its grantees. These audits resulted in two extensive and critical GAO reports issued in 2007 that included a number of recommendations intended to modernize and strengthen LSC's governance and accountability practices and to improve its internal controls, grants management, and oversight operations.

The GAO reports and the implementation of their recommendations engulfed the LSC Board and management in a time-consuming set of activities and provided substantial fodder to LSC's critics. LSC implemented most of the GAO recommendations, and GAO indicated that LSC is responding effectively to the concerns that it had raised. In addition, the LSC Board appointed by President Obama created a *Special Task Force on Fiscal Oversight* to study how fiscal oversight of grantees is currently performed by the Corporation. The Board accepted and adopted the findings and recommendations of the Task Force in January 2012. The recommendations included creating a risk-based, integrated approach to financial oversight and consolidating management's three, separate oversight offices into one office called the Office of Grantee Assessment (OGA). LSC's Vice President for Grants Management oversaw the implementation of the Task Force recommendations.

# THE LEGAL SERVICES LANDSCAPE 2009-2017

With the election in 2008 of Barack Obama, the legal services community looked forward to a period of relative calm and expanded federal support. For FY 2009, LSC funding had reached $390 million, an increase of more than 11 percent over the 2008 funding level of $350.5 million. The President appointed a new Board of Directors in 2009, although the full board was not confirmed until 2010. While the new board included several very conservative members, all wee supporters of the legal services program. The President's budget proposal for FY2010 included a substantial increase in funding for LSC and proposed elimination of many of the restrictions. Things really began to look up when Congress passed the 2010 LSC appropriation that included $420 million in funding for LSC, although the only restriction that was eliminated was the prohibition on seeking attorneys' fees. A new LSC President, James Sandman, was hired and began work early in 2011. Sandman had served for many years as the managing partner for the Washington, D.C. law firm of Arnold & Porter, and had recently been the general counsel of the D.C. public schools. He had served as the president of the D.C. Bar and was a pro bono leader among private attorneys in the nation's capital.

Nevertheless, with the continuing fiscal crisis and mounting calls in Congress for reduction of the federal deficit, LSC faced a potential funding crisis of significant proportions. The 2010 election cycle resulted in a highly partisan Republican majority in the House of Representatives and a slim Democratic majority in the Senate. A proposal by a freshman Republican House member to eliminate funding for LSC entirely was soundly defeated on a bi-partisan vote, but despite the President's request for a $30 million increase to $450 million, Congress cut FY 2011 funding for LSC field programs by $16 million to $404 million. President Obama also sought $450 million for LSC for FY 2012, but Congress, under the guise of its continuing efforts to hold the budget in check, cut overall LSC funding by $56 million to $348 million, a reduction of 13.9 percent, slashing funding for basic field grantees by 14.9 percent. Efforts to eliminate additional restrictions have been stymied. Funding has slowly moved up to $385 million for 2017.

In addition to the Fiscal Oversight Task Force and the Pro Bono Task Force discussed elsewhere, in 2012, the LSC Board adopted a five-year (2012-2016) strategic plan.[7] The plan established three major goals and identified specific implementation initiatives: (1) maximize the availability, quality, and effectiveness of the civil legal services that LSC grantees provide to eligible low-income individuals; (2) become a leading voice for access to justice and quality legal assistance in the United States; and (3) achieve the highest standards of fiscal responsibility, both for LSC and its grantees.

LSC has also embarked on a major new project to improve LSC's data collection and reporting mechanisms and to educate LSC grantees about collection, analysis, and use of data. The data collection and analysis project has three major objectives: (1) develop and implement an improved system for collecting and analyzing data from LSC grantees, so that LSC can obtain a fuller picture of grantees' operations, accomplishments, and limitations; (2) develop tools and resources that enhance LSC grantees' ability to collect and use data to design, assess,

and improve their delivery strategies and program operations, and to demonstrate the need for and effect of the services they provide clients throughout the country; and (3) provide training and technical assistance that fosters LSC grantees' effective use of the tools and resources developed.

In June 2012 and January 2013 LSC convened a two-part Summit on the Use of Technology to Expand Access to Justice. The Summit brought together selected technology experts, academics, private practitioners, and representatives of legal services programs, courts, and governmental and business entities to explore the potential of technology to move the United States toward providing some form of effective assistance to 100 percent of persons with essential civil legal needs and unable to afford an attorney. Summit participants agreed on the following focus areas for the next five years: (1) Document Assembly: improving automated form creation for self-represented individuals; (2) Expert Systems: developing intelligent tools that guide clients and advocates through the steps needed for complex legal procedures; (3) Remote Services Delivery: using technology to overcome physical barriers (e.g. distance in rural states or disability) to seeking representation; (4) Mobile Technology: delivery of assistance and services using smart phones and tablets; and (5) Triage: further automating the complex processes of matching clients to resources.

Finally, the LSC Board's created an Institutional Advancement Committee and hired a Director of Development to seek private funds for a 40th Anniversary Celebration and a 40th anniversary campaign to fund: (1) a prestigious, national fellowship program aimed at recent law school graduates to foster a lifelong commitment to legal services and, if feasible, senior or emeritus lawyers; (2) research; (3) a Pro Bono Innovation Fund to encourage and replicate innovations in pro bono services; (4) an outreach project to better educate and increase public awareness of the significance and value of civil legal services, and effectively promote the work of LSC and its grantees; and (5) other projects (e.g., expanding TIG, assisting grantees with capacity building), as well as introducing members of the honorary support auxiliary group and/or the alumni group, who will play a role in supporting LSC's development efforts.

## White House Forums

Five White House forums were held between 2012 and 2017 to highlight the work and importance of civil legal aid. At the first forum, President Barack Obama promised legal aid supporters that his administration would be a "fierce defender and advocate on your behalf." The President stressed the role of legal aid attorneys in ensuring that everyone in America is playing by the same rules in tough, economic times. He congratulated those throughout the legal aid community who "helped to answer the call" by ensuring that more people are able to stay in their homes, avoid domestic violence, and have access in general to the nation's system of justice. In addition, Eric Holder, Attorney General of the United States and Harold Koh, U.S. Department of State Legal Advisor spoke. The forum also included a panel of six project directors from LSC-funded programs and a panel of judges and officials on the importance of civil legal aid.

The second forum featured remarks from: Vice President Joseph Biden; Attorney General Eric Holder; Senior Advisor to the President Valerie Jarrett; Deputy Counselor to the President Steve Croley; and LSC Board Chair John Levi. The forum featured two panels: one on pro bono's role and the other on technology's role in promoting access to justice. Similar formats continued for the next three forums.

## Leaders Council

In May of 2016, LSC formed a new Leaders Council to raise public awareness of the current crisis in legal aid. The Leaders Council consists of high-profile and influential leaders from various industries. They include public figures such as former Major League Baseball player Henry "Hank" Aaron, author John Grisham, University of Michigan head football coach Jim Harbaugh, former Attorney General Eric Holder, Viacom Vice Chair Shari Redstone, and Microsoft Corporation President and Chief Legal Officer Brad Smith. Others include Earl Johnson and Jo-Ann Wallace (CEO of NLADA). Kenneth C. Frazier, CEO of pharmaceutical company Merck & Co., and Harriet Miers, a partner at Locke Lord and former White House Counsel to President George W. Bush, serve as co-chairs of the Leaders Council.

## Voices for Civil Justice

Voices for Civil Justice is a national nonprofit communications hub launched in 2013 that raises awareness of civil legal aid. Voices seeks to strengthen and broaden the brand identity of civil legal aid and to establish, via a drumbeat of media coverage, a comprehensive narrative of what civil legal aid is and why it matters. For more information, see **http://voicesforciviljustice.org**. In July 2017, Voices released findings of Voices' latest round of messaging research conducted by Celinda Lake: ***Building a Civil Justice System that Delivers Justice for All.*** According to the research 84 percent of voters believe it is important for our democracy to ensure everyone has access to the civil justice system—an enormous level of support, indicating this is a core value of a large majority of Americans. And, 82 percent of voters agree that *"equal justice under the law is a right, not a privilege." Voters want civil justice reform, and they strongly support a wide range of services to enable everyone to get access to the information and effective assistance they need, when they need it, and in a form they can use.*

## The Trump Administration (2017)

The budget submissions for Fiscal Year 2018 and Fiscal Year 2019 of the Trump Administration called for the elimination of LSC and no further funding. A range of groups were in opposition including the American Bar Association and numerous state and local bar associations, Corporation General Counsels of over 185 corporations, most leading newspaper editorial boards, major national law firms, over 150 law school deans, and the Presidents of the Conference of Chief Justices and the Conference of State Court Administrators. An example of bi-partisan support is the new Congressional Access to Civil Legal Services Caucus launched by Rep. Joseph Kennedy (D-MA) in December 2015 with Rep. Susan Brooks (R-IN).

The budget submission of the Administration was just the beginning of a long process. LSC submitted its own budget directly to Congress and asked for $527.8 million for FY 2018 and $564.8 million for FY 2019. Beginning in September 2017, Congress passed a series of Continuing Resolutions through March 23, 2018 to keep the government open. The final appropriation for LSC for 2018 was $410 million, a $25 million increase over 2017.

While the Trump Administration has proposed to eliminate it, LSC continued to operate and the LSC board appointed by President Obama and the LSC President remain. In 2017, LSC funded 133 legal services programs and made 25 TIG grants to 22 legal services programs and 15 Pro Bono Innovation grants. In July 2017, LSC released a **new toolkit** on legal aid websites created by Ernst & Young LLP. *On April 25, 2017, LSC*, Microsoft Corporation, and Pro Bono Net named Alaska and Hawaii as state partners in a pilot program to develop online, statewide legal portals to direct individuals with civil legal needs to the most appropriate forms of assistance.

In June 2017, LSC released *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans*. Prepared by NORC at the University of Chicago for Legal Services Corporation, Washington, D.C., the report found that in 2017, low-income Americans will approach LSC-funded legal aid organizations for help with an estimated 1.7 million civil legal problems. They will receive legal help of some kind for 59 percent of these problems, but are expected to receive enough help to fully address their legal needs for only 28 percent to 38 percent of them. More than half (53 percent to 70 percent) of the problems that low-income Americans bring to LSC grantees will receive limited legal help or no legal help at all because of a lack of resources to serve them. The study found seven of every 10 low-income households have experienced at least one civil legal problem in the past year. A full 70 percent of low-income Americans with civil legal problems reported that at least one of their problems affected them very much or severely. They seek legal help, however, for only 20 percent of their civil legal problems. Many who do not seek legal help report concerns about the cost of such help, not being sure if their issues are legal in nature, and not knowing where to look for help.

While LSC could not hold a White House forum, it did hold two forums on access to justice. In an April forum held at Georgetown University Law Center, Rep. Thomas E. Emmer (MN-6), Rep. Joseph P. Kennedy III (MA-4), LSC Board Chair John G. Levi, Georgetown Law Dean William M. Treanor, and ABA President Linda Klein delivered remarks. LSC sponsored an October forum at Harvard Law School with remarks by John G. Levi, chairman of the Legal Services Corporation Board of Directors and Dean John F. Manning of Harvard Law School, along with several panels of distinguished speakers on current efforts of the judiciary, American businesses, and law schools to improve access to justice and further efforts that could be made.

## Private Attorney Involvement: Recent Developments

In addition to the continuing requirement that LSC programs devote the equivalent of 12.5 percent of their LSC grant to private attorney involvement, there are other developments that focus on increasing the involvement of private attorneys in the delivery of civil legal aid.

The Pro Bono Institute's Law Firm Pro Bono Project challenged large firms around the country to contribute 3 to 5 percent of their total billable hours to the provision of pro bono legal services.

As of 2013, 140 law firms are signatories to that challenge.[8] The Pro Bono Institute also has a challenge for corporate in-house counsel to increase the number of significant pro bono activities among lawyers who work on legal matters directly for corporations. The Corporate Pro Bono Challenge is a simple, voluntary statement of commitment to pro bono service by corporate legal departments, their lawyers, and staff. The goal is for one-half of the legal staff to support and participate in pro bono services.[9] As of 2013, there are 114 signatories to the corporate challenge.

The American Bar Association's Standing Committee on Pro Bono and Public Services recently issued a report—*Supporting Justice III: A Report on the Pro Bono Work of America's Lawyers (March 2013)*—which reports on a 2012 survey completed by 2,876 lawyers throughout the country in private practice, corporate counsel offices, government, and academic settings.[10] This report is based on a new survey similar to those done by the ABA in 2004 and 2008. The study focused directly on what lawyers did for persons of limited means and for organizations that address the needs of persons of limited means. The study found that 63 percent of respondents worked on matters that address the everyday legal problems of people in poverty and 36 percent of the lawyers met the ABA's aspirational goal of providing at least 50 hours of free pro bono services to persons of limited means.

The LSC Board appointed a Pro Bono Task Force that released its report in October 2012.[11] The Task Force concluded that LSC should (1) serve as an information clearinghouse and source of coordination and technical assistance for pro bono services; (2) review certain aspects of LSC's Private Attorney Involvement (PAI) Regulation; (3) partner with other stakeholders to launch a public relations campaign on the importance of legal services and pro bono; and (4) work with law schools and law firms to create a new civil legal services fellowship program for recent graduates designed to bridge the gap between firms and legal services organizations.

In addition, LSC established and received funding from Congress for a Pro Bono Innovation Fund. At the first LSC 40th Anniversary celebration in 2014, LSC President Jim Sandman presented the first Pro Bono Innovation Fund grants to 11 LSC grantee executive directors. In 2015, LSC awarded grants to 15 legal aid organizations; in 2016, LSC awarded grants to 11 legal aid organizations; and, in 2017, LSC awarded grants to 15 legal aid organizations. The goal of all these projects is to engage pro bono lawyers and other volunteers to leverage LSC's federal funding and increase the legal resources available to low-income Americans.

NLADA and the American Bar Association also embarked on major efforts around pro bono. The ABA's Standing Committee on Pro Bono and Public Service convened in 2009 a yearly National Pro Bono Summit to facilitate a national pro bono dialogue and to develop an action plan with realistic goals and concrete next steps to encourage real change in the nation's pro bono legal services delivery system. NLADA appointed a Blue Ribbon Commission to look at pro bono efforts in both the civil and defender contexts.

## Right To Counsel in Civil Cases At State Expense

In the United States, there is no general right to state-funded counsel in civil proceedings. The United States Constitution does not provide an explicit right to state-funded counsel in civil proceedings, although the Fourteenth Amendment does prohibit a State from depriving "any person of life, liberty, or property, without due process of law" or denying "to any person within its jurisdiction the equal protection of the laws." Unlike *Gideon v. Wainwright*, 372 U.S. 335 (1963), in which the United States Supreme Court held that there must be counsel in criminal cases in which the defendant faces imprisonment or loss of physical liberty, the Court refused to find a constitutional right to counsel in civil cases when first faced with the issue in 1981. In *Lassiter v. Department of Social Services,* 452 U.S. 18 (1981), the Supreme Court held in a 5-4 ruling that the due process clause of the federal constitution did not provide for the guaranteed appointment of counsel for indigent parents facing the termination of parental rights. Rather, "the decision whether due process calls for the appointment of counsel for indigent parents in termination proceedings is to be answered in the first instance by the trial court, subject, of course, to appellate review."

This basic framework was continued in 2011 when the Supreme Court decided *Turner v, Rogers*, 131 S.Ct.2507 (2011), which held that a parent jailed for civil contempt due to failure to pay child support is not categorically entitled to counsel when (1) the state provides other procedural safeguards; (2) the contemnor's opponent is neither the state nor represented by counsel; and (3) the matter is not "unusually complex." The court also determined that there is not a presumption in favor of counsel when physical liberty is at stake. However, the Court did hold that the state must provide four safeguards to ensure due process. These were: (1) notice to the defendant that his "ability to pay" is a critical issue in the contempt proceeding; (2) the use of a form to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status; and (4) an express finding by the court that the defendant has the ability to pay.

No state constitution explicitly sets out a state-funded right to counsel in civil cases. Virtually all state constitutions have due process and equal protection clauses whose wording may differ from the federal constitution but whose scopes have often been interpreted to be similar to or even broader than the federal constitution's provisions. These provisions have been the primary legal framework for asserting the right to counsel in civil cases at state expense. Many state constitutions have "access to court" provisions, and some have provisions incorporating English common law rights. In limited categories of cases, some state legislatures have enacted statutes requiring state-funded counsel to be appointed for one or more parties, and the highest courts in some states have judicially

decided that state-funded counsel should be provided as of right to some parties. These state-funded counsel provisions or court rulings are generally in the family law area and civil commitment. There are a few federal statutory requirements for appointment of counsel in civil cases, but these are very limited. Thus, in the vast majority of civil cases, there is no constitutional or statutory right to state-funded counsel.

The National Coalition for the Civil Right to Counsel, a coalition of over 240 participants from 35 states and housed at the Public Justice Center in Maryland, has focused on changing this legal framework through supporting litigation primarily in state courts, pursuing state statutory reform, and promoting pilot projects. These efforts are paying off. Many new state laws and court decisions are establishing the right to counsel in a range of cases, though primarily in the family law area. Significant efforts have been made to develop more expansive state statutes that provide for the right to counsel in civil cases at state expense in situations that go far beyond the few areas that now provide for such counsel. The California Access to Justice Commission developed a Model Statute in 2007, and the American Bar Association developed a Model Statute in 2010. In 2010, the Maryland Access to Justice Commission began a process that led in 2013 to Maryland legislation that created a statewide task force to explore civil right to counsel issues.

In 2017, New York City and Washington D.C. enacted right to counsel legislation that would provide a right to counsel for low-income families in eviction proceedings who are at or below 200 percent of the poverty level. Providing counsel will happen in New York City by increasing the City's eviction legal aid spending by $93 million (on top of the $60 million the Mayor invested in 2014), which will occur over five years. In doing so, NYC will become the first jurisdiction in the country to provide a right to counsel in housing cases, making this an enormous step forward for the civil right to counsel movement in the United States. In May 2017, the Washington, D.C. Council approved a budget that sets aside $4.5 million for a program to offer free legal aid to tenants facing eviction. Other cities, including Philadelphia, are also setting up right to counsel projects in eviction proceedings.

In several states, advocates have turned to setting pilot projects that provide counsel in a category or categories of cases. Massachusetts began pilot projects in 2009 to explore the impact of full representation in eviction cases. According to a March 2012 report,[12] both pilot projects prevented evictions, protected the rights of tenants, and maintained shelter in a high rate of cases. In one pilot, two-thirds of the tenants who received full representation were able to stay in their homes, compared with one-third of those who lacked representation. Even those represented tenants who moved were better able to manage their exit on their own timetable and their own terms. Full representation therefore allowed more than two-thirds of the tenants in this pilot to avoid the destabilizing consequences of eviction, including potential homelessness. Represented tenants also received almost five times the financial benefit (e.g., damages, cancellation of past due rent) as those without full representation. A collaboration of legal services programs in Massachusetts recently launched a new pilot project to provide legal help to people facing evictions in two additional counties.

In 2009, California adopted the Sargent Shriver Civil Counsel Ac. Under that Act, the California Judicial Council oversaw ten pilot projects in seven counties for appointment of counsel in civil cases including housing, child custody, and probate guardianship. The projects started in fiscal year 2011-2012. The legislation also required data collection and evaluation of both the civil representation and court-innovation components in order to provide a basis to revise and extend the legislation. In June 2016, the Governor signed legislation making the Shriver pilots permanent. In July of 2017**,** The Judicial Council of California released the Evaluation of the Sargent Shriver Civil Counsel Act prepared by NPC Research of Portland Oregon and the recommendations of the Shriver Civil Council Act Implementation Committee.[13] The evaluation clearly supported the important role of attorneys in representing their clients, reaching settlements, improving the durability of court orders and helping ensure more efficient use of judicial resources. Attorney resources are used most effectively with well-designed triage systems. Such systems are critical to the smooth functioning of the continuum of service. The evaluation also showed that court-based opportunities for settlement discussion, including mediation and settlement masters, are an effective way to resolve cases before trial, benefiting all parties; the improved use of technology, including expansion of e-filing, helps facilitate the efficient handling of cases; and expanded court-based self-help centers are a critical element of the continuum of service.

Another example of a pilot was a multi-year, collaborative study entitled The Longer-Term Influence of Civil Legal Services on Battered Women, funded by the National Institute for Justice and operated by the University of Iowa and Iowa Legal Aid. It focused on the impact of providing counsel for victims of intimate partner violence in protection order, custody, child support, and marriage dissolution cases. The study found that after being provided counsel women reported substantially less physical violence (a decrease of around 75 percent); significantly decreased symptomatic responses to traumatic stressors, including intrusive thoughts, avoidant behaviors, hyperarousal, and depressive symptoms; and improved economic situations. Women reported a statistically significant increase in the adequacy of their family resources. Women also reported a decrease in difficulty living on their current income, an increase in monthly income, and a decrease in the number of assistance resources used.

# ACCESS TO JUSTICE MOVEMENT

Within the last 20 years, a broad access to justice movement has emerged at the state level, including through state supreme courts, access to justice commissions, state IOLTA and other funders, law schools, civil legal aid programs, bar associations, self-help centers, technology initiatives, and researchers on delivery of legal services.

This movement seeks 100 percent access to effective assistance to address civil legal needs. The Conference of Chief Justices and the Conference of State Court Administrators at their joint meeting in July 2015 adopted a resolution specifically supporting "the aspirational goal of 100 percent access to effective assistance for essential civil legal needs," urged "their members to provide leadership in achieving that goal and to work with their Access to Justice Commission or other such entities to develop a strategic plan with realistic and measurable outcomes," and urged "the National Center for State Courts and other national organizations to develop tools and provide assistance to states in achieving the goal of 100 percent access through a continuum of meaningful and appropriate services." In November 2016, the National Conference of State Courts and the Public Welfare Foundation awarded grants to seven states under the Justice for All project, which is supported by the Public Welfare Foundation and housed at the National Center for State Courts. The grants support each state grantee in forming partnerships with all relevant stakeholders in the civil justice community and beyond to develop state assessments and strategic action plans in order to implement the Resolution referenced above.

A comprehensive "access-to-justice system" includes a coordinated and integrated civil legal aid system: right to counsel in essential civil cases and pro bono initiatives. In addition, technology advances in the practice of law and the delivery of justice are ongoing and expanding. Among the strategies are websites that provide legal information, including how to access civil legal aid and pro bono programs; document assembly systems for use by lawyers and litigants that permit a lay person to generate and file accurate court documents; hotlines and other means of providing advice and brief service; systems, including mobile apps providing universal access to civil legal aid programs, self-help centers and other providers; online dispute resolution forums that permit parties to resolve legal problems themselves with oversight and review by courts; and the use of social media for information, training, and other justice related activities.

State access to justice initiatives (hereafter states) are developing triage systems for matching a client's problem with the appropriate level of legal advice and representation. For example, in 2017, *LSC,* Microsoft Corporation, and Pro Bono Net named Alaska and Hawaii as state partners in a pilot program to develop online, statewide legal portals to direct individuals with civil legal needs to the most appropriate forms of assistance.

States are developing effective referral systems including enhanced collaboration with human services and other relevant entities to ensure that clients with legal problems are referred to the appropriate civil legal assistance providers.

States are educating lawyers about, and specifically encouraging lawyers to undertake, unbundled discrete task representation.

States are pursuing comprehensive and coordinated self-help assistance to unrepresented litigants through court-based self-help centers. The Self-Represented Litigation (SRL) Network brings together courts, bars, legal aid programs, and access to justice organizations in support of innovations in services for the self-represented and has undertaken a number of activities to ensure the justice system works for all including those forced to go to court on their own. See **www.srln.org**

States are reforming how courts operate to ensure efficient and effective access by implementing: e-filing for all including those who cannot afford fees; changes in judicial codes and practices so that judges make reasonable accommodations for unrepresented litigants to have their matters heard fairly; court-based programs to assist those with special needs including disabilities, limited English proficiency, the elderly, and others; simplification of court procedures and rules to enable unrepresented litigants and lay advocates to better present and advocate before the judge; and new forums to efficiently and effectively resolve routine matters.

In addition to clinical programs that serve indigent clients, states and law schools are expanding the use and education of law students through pro bono requirements, internships with providers, inclusion of access to justice developments in the curricula, and other means.

States are experimenting with and using lay advocates (non-lawyers) in certain administrative proceedings, simple court cases, and as facilitators in courts and community settings.

States are developing comprehensive and enforceable language access services suitable to the communities served to enable all clients to effectively communicate to the court or other adjudicatory personnel and to understand their rights, responsibilities, and adjudicatory processes.

States are developing legal incubators that provide support to young lawyers interested in launching their own practice to serve low-income communities that lack access to legal representations. Incubators foster the lawyers working with them to understand and cultivate the services they wish to provide. They perform market research to determine how to best reach the underserved population. They assist the community in identifying legal needs and create legal packages that are affordable, understandable, and accessible. The end goal is to assist attorneys in establishing successful and sustainable practices.

States are ensuring education and outreach to law libraries and all public libraries to enable their staff to suggest legal resources, information, and referrals to individuals seeking assistance.

There is emerging an ongoing and institutionalized capacity to conduct research on how to improve the delivery of civil legal aid and conduct and evaluate demonstration projects testing new ideas and innovations for possible replication across the system.

The United States had such a component, the Research Institute, during the first era of the Legal Services Corporation from 1976 to 1981. During the funding and political crisis of 1981, the Research Institute was closed. Several recent developments are promising. In 2016, Harvard Law School opened an Access to Justice Lab dedicated to transforming adjudicatory administration and engagement with the courts into evidence-based fields. LSC raised private funding for and has recently established an Office of Data Governance and Analysis that now has six analysts. Rebecca Sandefur, a professor at the University of Illinois and a researcher at the American Bar Foundation, has actively pursued a legal aid delivery research agenda. Other academics are following her lead.

In addition to these court and delivery focused strategies, state access to justice efforts are pursuing other strategies to expand access to justice including working with legislative bodies and administrative agencies to write statutes and regulations in clear language that can be easily understood by non-lawyers and the public, as well as working with state and federal administrative agencies to incorporate best practices to ensure administrative justice.

## Department of Justice Access to Justice Initiative

In addition to initiatives at LSC, the Department of Justice created the Access to Justice Initiative (ATJ) in 2010 to promote civil legal aid and indigent criminal defense. Since its launch, ATJ has worked to help the justice system efficiently deliver outcomes that are fair and accessible to all, irresective of wealth and status. ATJ's staff works within the Department of Justice, across federal agencies, and with state, local, and tribal justice system stakeholders to increase access to counsel and legal assistance, and to improve the justice delivery systems that serve people who are unable to afford lawyers.

**LAIR**: One of the most effective ongoing initiatives involves the Legal Aid Interagency Roundtable or "LAIR" that was conceived of and staffed by ATJ. The LAIR, which includes 22 participating federal agencies, works to raise awareness about the profound impact legal aid programs can have in advancing federal efforts to promote access to health and housing, education and employment, family stability and community well-being. The goal is to maximize federal program effectiveness by integrating legal aid providers as partners, grantees, or sub-grantees in federal safety-net programs when doing so can improve outcomes. Since 2012, LAIR has worked to inspire collaborations that increase access to justice and improve outcomes for vulnerable and underserved people. NLADA's **Civil Legal Aid Initiative**, with support from the Public Welfare Foundation and the Kresge Foundation, has worked closely with ATJ to complement the work of LAIR.

On September 24, 2015, President Obama issued a **Presidential Memorandum** formally establishing the White House Legal Aid Interagency Roundtable and explicitly expanding its mission to "advance relevant evidence-based research, data collection, and analysis of civil legal aid and indigent defense, and promulgate best practices." Ambassador to the United Nations Samantha Power announced the Presidential Memorandum on the eve of the adoption of the United Nations' historic 2030 Agenda for Sustainable Development. The Memorandum expands the number of participating agencies, urges these agencies to accelerate and deepen their commitment to legal aid, and directs them to assist the United States in the implementation of Goal 16 of the 2030 Agenda.

In November 2016, The Department of Justice issued to President Obama the first annual report of the White House Legal Aid Interagency Roundtable (WH-LAIR), ***Expanding Access to Justice, Strengthening Federal Programs***.

On May 20 – 21, 2015, the ATJ and National Institute of Justice, in collaboration with the National Science Foundation, hosted a Civil Legal Aid Research Workshop.[14] The workshop—a first of its kind—was designed to help create a civil legal aid research agenda and identify federal priorities on civil legal aid for the conveners and the WH-LAIR.

In addition to LAIR and the development of a civil research agenda, ATJ led an effort to expand and raise the visibility of Access to Justice Commissions around the country. ATJ collaborated with the Office of Child Support at the Department of Health and Human Services (HHS) to disseminate and support best practices with respect to access to legal services and self-help assistance for low-income individuals in child support proceedings. ATJ promoted research on the Delivery of Civil Legal Aid by collaborating with the Stanford Center on the Legal Profession, the Harvard Program on the Legal Profession, and the American Bar Foundation—in an effort to develop a broad research agenda and plan for a sustainable infrastructure to support the research. ATJ organized a White House "Champions of Change" event in 2011 to honor and recognize the work of 16 leaders who dedicated their professional lives to closing the justice gap in America. In addition, working with the White House and the Office of the Vice President, ATJ helped launch the Access to Justice for Victims of Domestic Violence Project, an effort to create a pool of lawyers with expertise in providing comprehensive legal representation to domestic violence victims.

During the first year of the Trump Administration, the initiative on Access to Justice (ATJ) at the Department of Justice continued, but its role was limited within the Department.

## Justice Index

In 2014, the National Center for Access to Justice at Cardozo Law School (NCAJ), www.ncforaj.org, launched the Justice Index, www.justiceindex.org. (In 2016, NCAJ moved to Fordham Law School where it co-chairs a school Access to Justice Initiative with Dean Matthew Diller and former NYS Chief Judge Jonathan Lippman). The Justice Index is a website that uses data, indicators, and indexing to rank the 50 states, Puerto Rico, and Washington, D.C., on their adoption of selected best policies and practices for access to justice. Its driving idea is that a responsible comparison of the access to justice policies established in the states will, in turn, promote a dialogue about those policies both within and between the states, which in turn will prompt reform that expands access to justice. By making selected policy models highly visible, the Justice Index makes it easy to understand what is important in state justice systems, see which states are doing the best at it, and replicate the best policies. **www.justiceindex.org**.

# SOME THOUGHTS ABOUT THE FUTURE

LSC and the legal assistance program have become an accepted part of the civil justice system. Yet, it remains a challenge to restore and increase federal funding, restore and increase IOLTA, and increase state and local funding. Federal funding for legal services has declined in purchasing power over the last 35 years and is now a far smaller share of the overall funding for civil legal assistance than it was two decades ago. While it is important to continue to seek additional resources from state and local governments and private sources, it is also essential to continue to strive and struggle to increase federal funding. Although LSC has made substantial gains in developing a much stronger bipartisan consensus in Congress in support of continued funding for LSC, the political leadership of the United States remains deeply divided about whether there should be a federally funded legal services program, and, if so, how it should be structured. Legal services supporters will have to overcome significant political barriers and competition from other programs for the limited funds. In addition, in order to secure political support for substantial growth in federal funding, legal services must develop much greater awareness of and support for civil legal services among the general public. Voices for Civil Justice is helping to accomplish greater awareness and support.

The fundamental restructuring in the legal services delivery system that began over the last two decades is likely to continue and may accelerate in part because of reduced resources, and the delivery system will be forced to act in more efficient and effective ways to deliver services. There are likely to be increasing number of state access to justice commissions and increasing efforts to develop comprehensive, integrated state systems of legal services delivery. Statewide systems will continue to develop to provide low-income and other residents with legal information about their legal problems and document assembly systems to increase access to courts. Virtually all states will develop and implement technologically advanced systems for client intake including portals and triage systems and to provide advice and brief services. Courts and legal aid programs will establish more self-represented service centers.

The fundamental challenge will be whether the civil legal aid system can continue to focus on establishing equal justice for all through the provision of a full range of legal services including the right to counsel in cases requiring the assistance of a lawyer or will limit the focus to expanding access to courts through self-help, hotlines, brief service, and technology.

In our view, legal aid programs are the essential component of any system in the United States that seeks to provide legal representation, systemic advocacy, policy advocacy, brief service, and legal advice to low-income persons and organizations. Unless there is a system of robust civil legal aid programs, supplemented by effective pro bono programs and initiatives, low-income individuals will not have equal access to courts, administrative agencies, and other dispute resolution venues—and they will not achieve equal justice.

Legal aid programs have other essential roles within the broader access to justice movement. Legal aid leaders must be actively involved within each state in access to justice initiatives in their state. This includes working with and participating on Access to Justice Commissions and related entities; working with courts and court committees; working with state and local bar associations; and working with administrative agencies to improve their adjudicatory procedures and to increase their focus on bringing justice to the people the agencies serve.

Legal aid should be innovators within the system, trying and experimenting with new approaches to access and to justice. They should work with researchers to improve their programs and to use their resources efficiently. Funders must encourage and give space for innovation, experimentation, and evaluation to learn what innovations work and what do not. Some innovations will involve new uses of technology, while others may involve new ways of reaching and addressing client problems.

# CONCLUSION

Civil legal assistance in the United States has evolved since its early years from a relatively insignificant and disorganized program that provided limited services in only a few areas of the country, with little financial support and political recognition, into a system that provides a broad panoply of legal services to the low-income community nationwide. Overall, funding has grown from less than $5 million in 1965 to over $1.6 billion today. Spurred on by LSC and by its own leadership, the civil legal assistance community has begun to fundamentally change its structure, with the goal of developing in each state a comprehensive, integrated system of civil legal assistance. This fundamental restructuring is viewed by many as essential to building a much broader base of public support for civil legal assistance, obtaining critical new funding for the program, achieving broadened access to justice for low-income people, and improving the quality and effectiveness of civil legal assistance.

Within the last 20 years, a broad access to justice movement has emerged at the state level, including through state supreme courts, access to justice commissions, state IOLTA and other funders, law schools, civil legal aid programs, bar associations, self-help centers, technology initiatives, and researchers on delivery of legal services. This movement seeks 100 percent access to effective assistance to address civil legal needs. It involves a range of initiatives beyond the core civil legal assistance system supplemented by pro bono. This was supported by the Department of Justice Access to Justice Initiative in the Obama Administration.

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

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# ENDNOTES

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

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

[3] Susan E. Lawrence, The Poor in Court: The Legal Service Program and Supreme Court Decision, 98 Making (Princeton: Princeton University Press, 1990).

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

[5] In 2009 Congress eliminated the restriction on seeking attorneys' fees.

[6]Until March 2003, there remained a serious question about whether the IOLTA program could survive under its current structure. Opponents of legal services brought several lawsuits challenging the legality of the IOLTA program, charging that it constituted an unconstitutional "taking" of private property. However, in *Brown v. Legal Foundation of Washington*, 123 S. Ct. 1406 (March 26, 2003), in a 5-4 decision, the U.S. Supreme Court held that the IOLTA program is constitutional under the "takings clause" of the Constitution.

[7] See: **http://www.lsc.gov/sites/default/files/LSC/lscgov4/LSC_Strategic_Plan_2012-2016--Adopted_Oct_2012.pdf**.

[8] Information is available from the Pro Bono Institute. See **www.probonoinst.org**.

[9] **http://www.probonoinst.org**

[10] **http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_p b_Supporting_Justice_III_final.authcheckdam.pdf** .

[11] See **http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf**.

[12] **The Importance of Representation in Eviction Cases and Homeless Prevention** issued by the Boston Bar Association Task Force on the Civil Rights to Counsel.

[13] **https://jcc.legistar.com/View.ashx?M=F&ID=5319197&GUID=A7E82A2C-C90F-41BF-AA2B-1EC3E5825C4C**.

[14] **https://www.justice.gov/lair/file/828316/download**.