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# CIVIL LEGAL ASSISTANCE FOR LOW-INCOME PERSONS: LOOKING BACK AND LOOKING FORWARD

Alan W. Houseman\*

## INTRODUCTION

Civil legal assistance for indigents in the United States began in New York City in 1876 with the founding of the Legal Aid Society of New York.<sup>1</sup> In 1965, the federal government appropriated funds for legal services through the Office of Economic Opportunity and started the Legal Services Program.<sup>2</sup> In 1974, Congress passed the Legal Services Corporation Act<sup>3</sup> and, in 1975, the Legal Services Corporation assumed control of the programs started by the Office of Economic Opportunity.<sup>4</sup> Until recently, the primary funder of civil legal assistance in the United States has been the legal services program funded by the Legal Services Corporation (LSC).<sup>5</sup>

The Legal Services Program is currently undergoing major transformation. Since 1995, the landscape of legal aid providers has substantially changed. Six years ago, the civil legal assistance system funded by the LSC consisted primarily of full-service provid-

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1. HARRISON TWEED, *THE LEGAL AID SOCIETY: NEW YORK CITY 1876-1951*, at 5-8 (1954) (discussing early efforts to establish legal assistance for the poor in New York City, Boston, Chicago, Philadelphia, Los Angeles, and San Francisco).

2. Economic Opportunity Amendments of 1966, Pub. L. No. 89-794, § 211-1(b), 80 Stat. 1458, 1458-60. In 1967, Congress added the Legal Services Program to the Economic Opportunity Act. Economic Opportunity Act, Pub. L. No. 90-222, § 222(a)(3), 81 Stat. 672, 698 (1967).

3. Legal Services Corporation Act, Pub. L. No. 93-355, 88 Stat. 378 (1974) amended by Pub. L. No. 95-222, 91 Stat. 1619 (1977) (codified as 42 U.S.C. 2996 (1998)).

4. Joseph A. Dailing, *Their Finest Hour: Lawyers, Legal Aid and Public Service in Illinois*, 16 N. ILL. U. L. REV. 7, 12 n.16-19. (1995) (describing how the Legal Services Corporation carried over the structure established by the Office of Economic Opportunity).

5. See generally EARL JOHNSON, JR., *JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICES PROGRAM* (1973) (describing the early history of legal services); John A. Dooley & Alan W. Houseman, *Legal Services History* ch.1 (Nov. 1985) (unpublished manuscript, on file with the Fordham Urban Law Journal) (same).

ers, each serving one geographic area. Each provider had the responsibility and capacity to provide high-quality legal assistance and ensure access by all clients to the legal system.<sup>6</sup> Today the full-service provider has been replaced in sixteen states by two direct service providers that operate statewide in the same geographic areas. In over twenty large or medium size cities, instead of one full-service provider, there are now two.<sup>7</sup> In addition, the number of LSC providers has declined from over 325 grantees in 1995 to 176 grantees at the beginning of 2002. Local program grantees have been reduced from 292 to 172.<sup>8</sup>

Moreover, because of new restrictions on advocacy and categories of persons represented,<sup>9</sup> LSC-funded legal services programs can no longer engage in activities previously open to them. Although there have been some restrictions on LSC-funded legal services programs,<sup>10</sup> in April 1996, Congress imposed a new set of restrictions on funding through appropriation provisions. LSC grantees can no longer use funds available from non-LSC sources to undertake activities that are restricted with the use of LSC funds. The new legislation restricts all of a grantee's funds regard-

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6. Even within the pre-1996 legal aid world, LSC-funded providers were never the only providers who delivered civil legal assistance to the poor. In cities like Washington D.C., New York City, Chicago, and others, and in states like California, there were a number of providers, including full-service providers, that were not funded by LSC.

7. Alan W. Houseman, *Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All*, 17 YALE L. & POL'Y REV. 369 (1998) [hereinafter Houseman, *Civil Legal Assistance*].

8. Interview with Michael Genz, Director, Office of Program Performance, Legal Services Corporation, in Washington, D.C. (June 6, 2001). See also John B. Arango & Gerry Singen, *Suddenly Larger Programs: Some Initial Observations*, MGMT. INFO. EXCH. J., Fall 2001, at 15 (discussing consolidations in legal services generally).

9. Omnibus Consolidated Rescissions and Appropriations Act (OCRAA) of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (prohibiting "participation in redistricting matters, lobbying, class actions, representation of illegal aliens, abortion-related litigation, litigation on behalf of prisoners, and eviction proceedings of individuals charged with selling drugs"). Congress also barred legal services lawyers from pursuing constitutional challenges to welfare laws, OCRAA § 504(a)(16); imposed substantial record-keeping and time-keeping requirements, OCRAA § 504(a)(8)-(10); and forbade legal services offices from claiming, collecting, or accepting attorneys fees, OCRAA § 504(a)(13). See also Paula Galowitz, *Restrictions on Lobbying by Legal Services Attorneys: Redefining Professional Norms and Obligations*, 4 B.U. PUB. INT. L.J. 39 (1994); Benjamin L. Liebman, *Recent Legislation—Congress Imposes New Restrictions on Use of Funds by Legal Services Corporation*, 110 HARV. L. REV. 1346, 1347 n.8 (1997); David Barringer, *Downsized Justice*, A.B.A. J., July 1996, at 60-61.

10. Alan W. Houseman, *Restrictions by Funders and the Ethical Practice of Law*, 67 FORDHAM L. REV. 2187, 2191-96 (1999).

less of the source.<sup>11</sup> These “entity” restrictions are unique and unprecedented.

With a few narrow exceptions, recipients are precluded from advocating and providing representation before legislative bodies and in administrative rulemaking proceedings.<sup>12</sup> In addition, recipients cannot initiate, participate, or engage in any new class actions, and were required to discontinue work on pending class actions by August 1, 1996.<sup>13</sup> Recipients cannot claim, collect, or retain attorneys’ fees from adverse parties from cases initiated after April 25, 1996, even when the fees are otherwise permitted by statute.<sup>14</sup> Until a recent Supreme Court decision,<sup>15</sup> recipients could no longer challenge state or federal welfare reform laws or regulations, and some welfare reform activities are still prohibited.<sup>16</sup>

Recipients are prohibited from providing representation in redistricting cases, participating in any abortion-related litigation,<sup>17</sup> representing certain aliens,<sup>18</sup> participating in litigation on behalf of a person incarcerated in a federal, state, or local prisons (including pre-trial detainees),<sup>19</sup> and representing persons convicted of, or charged with drug crimes in public housing evictions when the evictions are based on alleged threats to the health or safety of public housing residents or employees.<sup>20</sup>

In addition, recipients must identify potential client plaintiffs by name and obtain a written statement of facts from any client plaintiff before engaging in pre-complaint settlement negotiations or filing suit on the client’s behalf.<sup>21</sup> Recipients cannot conduct training programs advocating particular public policies or political activities and cannot conduct training on prohibited cases or advocacy activities, such as lobbying, rulemaking, or collecting attorneys’ fees.<sup>22</sup>

The restrictions on and reduction in LSC-funded programs led to the emergence of a new delivery system. It includes both LSC-funded programs as well as programs substantially funded with non-LSC funds. The non-LSC providers are free to participate in

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11. OCRAA § 504; 45 C.F.R. § 1610 (1999).

12. OCRAA § 504(a)(2), (3), (4), (5); (6); 45 C.F.R. § 1613 (1999).

13. OCRAA § 504(a)(7); 45 C.F.R. § 1617 (1999).

14. OCRAA § 504(a)(13); 45 C.F.R. § 1642 (1999).

15. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533 (2001).

16. OCRAA § 504(a)(16); 45 C.F.R. § 1639 (1999).

17. OCRAA § 504(a)(14).

18. OCRAA § 504(a)(11); 45 C.F.R. § 1626 (1999).

19. OCRAA § 504(a)(15); 45 C.F.R. § 1637 (1999).

20. OCRAA § 504(a)(17); 45 C.F.R. § 1633 (1999).

21. OCRAA § 504(a)(8); 45 C.F.R. § 1636 (1999).

22. OCRAA § 504 (a)(12); 45 C.F.R. § 1612.8 (1999).

class actions, welfare reform advocacy, representation before legislative and administrative bodies, and assistance to aliens and prisoners as long as their public and private funding sources permit their resources to be so used. Moreover, in a number of jurisdictions, the private bar is becoming significantly more involved in delivering basic legal services as well as undertaking those activities that LSC recipients are restricted from handling.<sup>23</sup>

As a result of the basic changes to the LSC delivery system, the network of federally funded entities linking LSC providers into a single national legal services program has been substantially reduced.<sup>24</sup> At the state level, the federal network has been replaced by non-LSC funded entities in over thirty-five states.<sup>25</sup>

A number of states are beginning to assemble integrated statewide delivery systems. These systems establish a single entry point for all clients by integrating institutional and individual providers. Additionally, the systems allocate resources among providers to ensure equal representation in all forums for low-income persons. Such representation provides access to all eligible clients regardless of residence, native language, or cultural or ethnic identity.<sup>26</sup> In some states, a justice commission facilitates the delivery systems with help from a range of stakeholders.<sup>27</sup>

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23. *E.g.*, WILLIAM J. DEAN, ABA CONSORTIUM ON LEGAL SERVS. AND THE PUB., 1990 DIRECTORY OF PRIVATE BAR INVOLVEMENT PROGRAMS 146-47 (1990); William J. Dean, *The Role of the Private Bar*, 25 FORDHAM URB. L.J. 865 (1998) (describing the involvement of private bar in pro bono work).

24. This network consisted of state and national support centers, a national clearinghouse and poverty law journal, and training programs combined with a single federal source of funds.

25. ALAN W. HOUSEMAN, THE MISSING LINK OF STATE JUSTICE COMMUNITIES: THE CAPACITY IN EACH STATE FOR STATE LEVEL ADVOCACY, COORDINATION AND SUPPORT, PROJECT FOR THE FUTURE OF EQUAL JUSTICE AND THE CENTER FOR LAW AND SOCIAL POLICY 5-7 (2001). Twelve of the state entities are formerly LSC funded state support centers.

26. Washington, Hawaii, Maine, New Hampshire, Vermont, Massachusetts, Maryland, New Jersey, Michigan, Nebraska, Florida, Minnesota, Colorado, New Mexico, Oregon, Ohio, Indiana, West Virginia, Virginia, Texas, Wisconsin, Illinois, Kentucky and Tennessee (among others) are moving toward statewide-integrated systems and California, Pennsylvania and New York are moving toward regional integration.

27. LSC requires all of its grantees to engage in state planning to achieve such a system. The Project for the Future of Equal Justice (a joint program of the National Legal Aid and Defender Association and the Center for Law and Social Policy (NLADA)) promotes such a system and the American Bar Association has joined the effort to encourage bar leaders to participate in state planning. The initial state planning initiative was undertaken in 1995 to respond to the legal services crisis. NLADA and the American Bar Association created the State Planning Assistance Network (SPAN) in February of 1996. SPAN provides leadership and assistance to state planning groups across the country. In 1998, LSC issued a new statewide planning letter

In light of these recent developments, state-level funding has become a new focal point for the future of civil legal assistance. The civil legal assistance system of the future will be partially state-based, with funding coming from state governmental sources, the private bar, Interests of Lawyers Trust Accounts (IOLTA), private foundations, and the LSC. States will provide the basic legal framework for such representation. Moreover, future devolution is likely to increase the role of states in determining policies affecting the poor.<sup>28</sup> As more programs operate without LSC funding, and other funders provide greater resources, the LSC will have less influence on the overall civil legal assistance system.<sup>29</sup> Thus, the structure and functions of the civil legal assistance system for low-income persons will significantly depend on state actions.

### I. LOOKING BACK: WHERE WE HAVE BEEN

By 1965, virtually every major city had some program to provide civil legal assistance to low-income people. One hundred and fifty-seven organizations employed over 400 full-time lawyers with a

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requiring all LSC-funded recipients to report by October 1, 1998, on how they and the other programs in their state were going to address seven issues: intake and the provision of advice and brief services; effective use of technology; increased access to self-help and prevention information; capacities for training and access to information and expert assistance; engagement of pro bono attorneys; development of additional resources; and configuration issues such as mergers and consolidations within states. LSC PROGRAM LETTER No. 98-1, Feb. 12, 1998. A subsequent Program Letter set out more details on what LSC was seeking, explained how the October report should be presented, and clarified how the state planning process would affect LSC grant decisions for 1991 and beyond. LSC PROGRAM LETTER 98-6, July 6, 1998. Beginning in 1998 and continuing through 2001, LSC has made funding decisions based on state planning. For a discussion of LSC state planning, see LEGAL SERVS. CORP., BUILDING STATE JUSTICE COMMUNITIES: A STATE PLANNING REPORT (2001). LSC programs are now undergoing an assessment of their state planning achievements. In addition to the efforts by LSC, the Project for the Future of Equal Justice issued on July 8, 1998, A Discussion Draft: Characteristics of a Comprehensive Integrated State System for the Provisions of Civil Legal Assistance to Achieve Equal Justice for All. This statement set out the object of a state civil legal assistance system and then describes the key characteristics of such a system.

28. See Houseman, *Civil Legal Assistance*, *supra* note 7, at 384.

29. In most states LSC will no longer have the primary role in funding legal services. Instead, non-LSC funding sources within most states will continue to grow and, in many states, will ultimately predominate. The amount of non-LSC funding varies greatly among states: seven states in the South, Southwest, and Rocky Mountain areas receive less than 30% of their total funding from non-LSC sources; in 31 states, non-LSC funding continues over 50% of total funding. *Id.* at 375. A few states have non-LSC funding well over 80%. *Id.*

budget of nearly \$4.5 million.<sup>30</sup> However, there was no national program.<sup>31</sup>

Because of a large number of clients and a lack of resources, Legal Aid gave perfunctory service to many clients. Court appearances were rare<sup>32</sup> and appeals were nonexistent.<sup>33</sup> Administrative representation, lobbying, and community legal education were not contemplated.<sup>34</sup> Legal Aid had little effect on those it served and no effect on the client population as a whole.<sup>35</sup> Much of what we know today as “welfare law,” “housing law,” “consumer law,” “health law,” and the like, did not exist.<sup>36</sup>

The federal legal services program began in the Office of Economic Opportunity (OEO) in 1965.<sup>37</sup> OEO created a unique structure, building on the Legal Aid model and the Ford-Foundation’s demonstration projects of the early 1960s.<sup>38</sup> Unlike other legal aid systems, the U.S. system utilized staff attorneys working for non-profit entities, not private attorneys participating in *judicare* programs. Later, pursuant to the findings of the *Delivery System Study* completed in 1980,<sup>39</sup> LSC encouraged the development of pro bono programs and subsequently required programs to use 12.5% of their LSC funding for private attorney involvement, most of which went to increase pro bono efforts.<sup>40</sup> Today, over 150,000 private attorneys are registered to participate in pro bono efforts with LSC-funded programs.<sup>41</sup>

OEO also funded full-service providers, each serving one geographic area, which had the obligation to ensure access of all cli-

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30. NAT’L LEGAL AID AND DEFENDER ASS’N, SUMMARY OF PROCEEDINGS, 43RD ANNUAL CONFERENCE 84-5 (1965).

31. See generally EMERY A. BROWNELL, LEGAL AID IN THE UNITED STATES (1961) (describing the legal aid system in the United States as heterogeneous and lacking a cohesive national program).

32. JOHNSON, JR., *supra* note 5, at 10-14; JACK KATZ, POOR PEOPLE’S LAWYERS IN TRANSITION 34-50 (1982).

33. JOHNSON, JR., *supra* note 5.

34. *Id.*

35. *Id.*

36. Alan W. Houseman, *Political Lessons: Legal Services for the Poor—A Commentary*, 83 GEO. L.J. 1669, 1670-72 (1995) [hereinafter Houseman, *Political Lessons*].

37. Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508 (codified as 42 U.S.C. §§ 2701-2995d, 2781 (1994)).

38. JOHNSON, JR., *supra* note 5, at 22.

39. LEGAL SERVS. CORP., THE DELIVERY SYSTEMS STUDY: A POLICY REPORT TO THE CONGRESS AND THE PRESIDENT OF THE UNITED STATES (1980).

40. *Id.* at 126-27.

41. Legal Servs. Corp., Background Information and Talking Points, Promoting Pro Bono (Summer 1999) (unpublished manuscript, available at the Fordham Urban Law Journal).

ents and client groups to the legal system.<sup>42</sup> The only national earmarking of funds was for Native Americans and migrant farmworkers, for which OEO created separate funding and a somewhat separate delivery system.<sup>43</sup> It was expected that funding would continue for each provider unless they substantially failed to provide service or abide by the requirements of the Act. OEO also developed a unique infrastructure—found nowhere else in the world—which, through national and state support, training programs, and a national clearinghouse, provided leadership and support on substantive poverty law issues. In addition, it undertook litigation and representation before state and federal legislative and administrative bodies.<sup>44</sup>

The delivery and support structure that OEO established was carried over fundamentally unchanged by the Legal Services Corporation when it began to function in 1975. On July 25, 1974, President Nixon signed the Legal Services Corporation Act into law.<sup>45</sup> It took almost a year to appoint and confirm the board of directors, who were sworn in on July 14, 1975. Ninety days later, on October 12, 1975, the Legal Services Corporation officially took control of the federal legal services program.

The Act articulated five fundamental objectives:<sup>46</sup> continuing the “present vital legal services program”;<sup>47</sup> ensuring “equal access” to our system of justice “for individuals who seek a redress of grievances”;<sup>48</sup> providing “high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel”;<sup>49</sup> keeping the legal services program “free from the influence of or use by it of political pressures,”<sup>50</sup> and assuring that “attorneys providing legal assistance . . . have full freedom to protect the best

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42. Houseman, *Civil Legal Assistance*, *supra* note 7, at 375.

43. *Id.*

44. See Houseman, *Political Lessons*, *supra* note 36, at 1682.

45. Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378 (codified at 42 U.S.C. § 2996 (1994)). The Act did not provide a sunset provision terminating the Corporation at a specific date. However, the 1974 Act only authorized appropriations through the fiscal year of 1977. The Act was reauthorized once in 1977, providing for appropriations through the fiscal year of 1980. Since 1980, the Act has not been reauthorized; LSC has continued because Congress has appropriated funds to LSC.

46. 42 U.S.C. § 2996 (1994).

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*



interests of their clients in keeping with the [ethics codes] . . . and the high standards of the legal profession.”<sup>51</sup>

Twenty-five years later, in retrospect, it is remarkable that the LSC even survived, let alone achieved what it did for our nation’s indigents. The LSC retained the basic structure of the federal legal services program, while expanding it from primarily an urban program into a program covering every county in the U.S. and its territories. For the first time, millions of our nation’s poor had access to an attorney and the civil justice system. Moreover, this legal representation was high quality, effective, and professional. As a result, LSC-funded programs expanded the rights and opportunities of the poor, ensuring equitable treatment and sensitivity from the courts, government agencies, and private institutions. Finally, in the face of repeated political attacks and all out efforts to eliminate the LSC, it has persevered and kept alive the fundamental federal responsibility for ensuring equal justice for all.<sup>52</sup>

It is truly incredible that the basic structure of the program remained in place without significant change until 1996. To insure that an effective program continued, it was very important to maintain the OEO structure when the LSC took over the program. Continuation of the fundamental framework for the program was due in part to both the effectiveness of the structure in delivering legal assistance and to congressional support for the basic elements of the program. Equally important, the legal services programs were accepted as mainstream institutions in their communities. A system based on such entrenched institutions was capable of preserving itself against both internal and external attack.

Despite these considerable achievements, it is important to recognize that the LSC was not able to achieve equal access to justice for all low-income families in need of civil legal assistance. The federal government did not continue to provide sufficient resources for the LSC and twice reduced its funding substantially.<sup>53</sup>

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51. *Id.*

52. The first significant effort to dismantle LSC came in 1981-1984 with the election of President Reagan and his appointment of Attorney General William French Smith who was explicitly hostile to the program. President Reagan proposed no funding for LSC in his first budget request and continued that posture for a number of years. The second effort began in 1995 when the leadership of the Republican-controlled Congress sought to eliminate LSC and replace it with a state block grant program. See The Legal Aid Act of 1995, H.R. 2777, 104th Cong. (1995). The congressional leadership also sought to eliminate funding for LSC in three years. John McKay, *Federally Funded Legal Services: A New Vision of Equal Justice Under Law*, 68 TENN. L. REV. 101, 109-12 (2000).

53. Dooley & Houseman, *supra* note 5, ch. 4, at 7-8.

As a result, access to the civil legal assistance system declined. Congress also imposed restrictions on the clients that could be served and the services that could be provided, as well as new requirements for access to records that impinged upon the ethical responsibilities of attorneys working for programs funded by the LSC.<sup>54</sup> Moreover, the LSC never became free from the influence of political pressures from either the executive or the legislative branch. However, by the mid-1990s, the legal needs of clients had changed, and new and innovative approaches to delivery and support were necessary.

## II. ACHIEVING EQUAL ACCESS TO CIVIL JUSTICE

The major accomplishment of the LSC was the expansion of the federal legal services program from a predominantly urban program to one providing legal assistance in virtually every county in the United States and most U.S. territories. In 1975, the LSC inherited a program that was funded at \$71.5 million annually.<sup>55</sup> By 1981, the LSC budget had grown to \$321.3 million.<sup>56</sup> Most of this money went into creating new programs and expanding old ones. In 1975, 11.7 million out of 29 million poor people had no access to any program and 8.1 million had access to only inadequately funded programs.<sup>57</sup> By 1981, the LSC funded 323 programs, operated in 1450 neighborhood and rural offices throughout the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Micronesia, and Guam.<sup>58</sup> Poor people in every county of the United States had access to legal services programs.<sup>59</sup>

Since 1981, the LSC has been unable to obtain funding sufficient to maintain the level of access achieved at that point and has lost considerable ground because of the two budget reductions in 1982 and 1996 and an inability to keep with up inflation even with increased funding. The following chart presents a few of the funding comparisons:<sup>60</sup>

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54. See *supra* notes 9-22 and accompanying text.

55. See JOHNSON, JR., *supra* note 5, at 99-100, 188-94 (discussing the growth of the legal services program budget).

56. See LEGAL SERVS. CORP., 1981 ANNUAL REPORT 8 (1982).

57. See LEGAL SERVS. CORP., 1976 ANNUAL REPORT 14 (1977).

58. JOHNSON, JR., *supra* note 5, at 369 n.234; LEGAL SERVS. CORP., 1981 ANNUAL REPORT 8 (1982).

59. See LEGAL SERVS. CORP., 1981 ANNUAL REPORT 8 (1982).

60. Aaron Bergmark prepared this chart for NLADA and CLASP.

**TABLE 1:  
ANNUAL LSC APPROPRIATIONS**

Grant Year	Annual LSC Appropriation in Actual Dollars	Annual LSC Appropriation in 2001 Dollars	Percentage Change From 1980 (Using 2001 Dollars)
1980	300,000,000	646,238,000	0.0%
1981	321,300,000	627,401,000	-2.9%
1982	241,000,000	443,290,000	-31.4%
1990	316,525,000	429,864,000	-33.5%
1995	400,000,000	465,879,000	-27.9%
1996	278,000,000	314,500,000	-51.3%
2001	329,274,000	329,274,000	-49.0%

While non-LSC funding has grown considerably and now exceeds LSC funding, this funding has not been evenly distributed. Uneven distribution of resources has led to a shortage of funds in large sections of the South, Southwest, and Rocky Mountain states, making these regions dependent upon LSC funds for survival.<sup>61</sup>

Equal access cannot be achieved without several changes. Achieving equal access will require additional funding, new approaches to support and training, and new methods of delivery including the development of a comprehensive, integrated statewide system of delivery. Without the later changes it is unlikely that new funding will develop.

### III. HIGH QUALITY LEGAL ASSISTANCE

One of the great accomplishments 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 created new legal rights through representation before judges and legislative and administrative bodies.<sup>62</sup> Equally significant were judicial decisions stimulated by the creative advocacy of legal services attorneys that expanded

61. Houseman, *Civil Legal Assistance*, *supra* note 7, at 391.

62. *Fuentes v. Shevin*, 407 U.S. 67 (1972) (requiring due process in seizures); *Bodie v. Connecticut*, 401 U.S. 371 (1971) (finding that indigents can seek divorce without payment of costs); *Goldberg v. Kelly*, 397 U.S. 254 (1970) (finding due process for public benefit terminations); *Shapiro v. Thompson*, 394 U.S. 618 (1969) (finding welfare residency requirements invalid); *Thorpe v. Hous. Auth.*, 386 U.S. 670 (1967) (requiring due process in eviction from public housing); *King v. Smith* 392 U.S. 309 (1968) (describing federal court remedies for state court welfare decisions); *see also* Houseman, *Political Lessons*, *supra* note 36, at 1685 (indicating that hundreds of constitutional, statutory and common law cases were brought by legal services lawyers to enforce the rights of the poor); *id.* at 1515-17 (reviewing the groundbreaking cases).

common law theories on such issues as retaliatory evictions and the implied warranty of habitability.<sup>63</sup> These decisions insured that the poor could not be evicted from housing when landlords failed to meet statutory and common law obligations. Legal services attorneys effectively enforced rights that were theoretically in existence but often not honored.<sup>64</sup> Legal services representation ensured that federal laws benefiting the poor were enforced on behalf of the poor.<sup>65</sup>

Public agencies, private agencies, and entities dealing with the poor were fundamentally changed because of the LSC. Legal services representation helped to simplify court procedures and rules so that they were more accessible and easier to understand. They forced the welfare and public housing bureaucracies, as well as schools and hospitals to abide by rules and laws and to treat the poor both equitably and in a manner sensitive to their needs. Legal services helped the courts, police, and society address the needs of female victims of domestic violence.

Legal services must continue to reshape and reevaluate its specialties and strategies in order to continue to provide high quality legal services to low-income persons. Advocates and programs need to reexamine the pressing legal problems of the clients and consider which legal problems now need to be addressed and what strategies might work best in the present environment. This fundamental rethinking of work and advocacy is more critical today than ever because of the many changes in the federal social welfare and housing law. These changes are part of devolution from the federal government to the state and local levels. Restrictions imposed on LSC recipients on who they can serve and how they can serve them further necessitate new legal approaches.

#### A. Professional Ethics and Standards

Until 1996, attorneys providing legal assistance in the LSC-funded programs had the full freedom to protect the best interests of their clients in keeping with state ethics codes and other profes-

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63. *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970) (establishing a concept of the implied warranty of habitability); *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir. 1968) (prohibiting retaliatory evictions for reports of housing code violations).

64. Houseman, *Civil Legal Assistance*, *supra* note 7, at 376; Gary Bellow & Jeanne Charn, *Paths Not Yet Taken: Some Comments on Feldman's Critique of Legal Services Practice*, 83 GEO. L.J. 1633, 1643 (1995).

65. See Alan W. Houseman, *A Short Review of Past Poverty Law Advocacy*, 23 CLEARINGHOUSE REV. 1514 (1990); Houseman, *Political Lessons* note 36, at 1685-87.

sional standards.<sup>66</sup> Under the LSC Act,<sup>67</sup> the LSC was required to respect the ethical rules and attorney-client privilege in carrying out its enforcement and monitoring activities.<sup>68</sup> The LSC honored those provisions of the LSC Act preventing the LSC from interfering with an attorney's professional responsibilities.

However, the 1996 appropriation provisions gave the LSC the authority to examine eligibility records, client trust funds, time-keeping records, retainer agreements, and client names. The LSC was denied access only to reports or records that were subject to the attorney-client evidentiary privilege.<sup>69</sup> Although such access by the LSC is generally permitted under most state ethical rules, which permit access to confidential information when "required by law," the intrusion of the LSC auditors and monitors into confidential client information is a troubling development that could lead to much more intrusive review of client case files and other confidential information.<sup>70</sup>

In addition, the restrictions imposed by the LSC Act<sup>71</sup> and the LSC funding<sup>72</sup> appropriation provisions during the 1980s and 1990s did not significantly limit the LSC-funded programs' services to their clients. The 1996 LSC restrictions on services for eligible clients force legal service programs to limit the scope of the representation they provide. While programs and their attorneys can act ethically and comply with these restrictions, there is a substantial danger that future restrictions will limit attorneys to an extent where they will not be able to competently represent clients.<sup>73</sup>

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66. Dooley & Houseman, *supra* note 5, at ch. 2.

67. Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378 (codified at 42 U.S.C. § 2996 (1994)).

68. *Id.*

69. See Omnibus Consolidated Rescissions and Appropriations Act (OCRAA) of 1996, Pub. L. No. 104-134, § 509(h), 110 Stat. 1321.

70. One example is the case brought by the LSC inspector general to enforce a subpoena requiring a legal services program to turn over client names along with client code information. The courts upheld the subpoena over claims that requiring client names and client case code information could violate the attorney-client privilege and the ethical rules regarding confidentiality. See *United States v. Legal Servs.*, 100 F. Supp. 2d 42 (D.D.C. 2000), *aff'd*, 249 F.3d 1077 (D.C. Cir. 2001).

71. Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378 (codified at 42 U.S.C. § 2996 (1994)).

72. See OCRAA § 504; 45 C.F.R. § 1610 (1999).

73. For a detailed analysis of confidentiality and scope of representation issues, see Alan W. Houseman, *Restrictions by Funders and the Ethical Practice of Law*, 67 *FORDHAM L. REV.* 2187 (1999).

### B. Political Independence

In 1971, studies by the American Bar Association and the President's Advisory Council on Executive Organization "recommended [the] creation of a separate corporation to receive funds from Congress and to distribute [the] funds to local legal services programs."<sup>74</sup> President Nixon, when introducing legislation for this legal services corporation, called the Corporation a new direction in making legal services "immune to political pressures and . . . a permanent part of our system of justice."<sup>75</sup> However, from the outset the LSC was influenced by political pressures on its actions and activities. In retrospect, it is remarkable that Richard Nixon proposed the Corporation and maintained support for it. It is even more remarkable that despite the efforts by President Reagan and the 104th Congress to eliminate the LSC, it has lasted over twenty-five years.<sup>76</sup>

There are two fundamental lessons from the political history of the federal legal services program. First, a federal legal services program is a part of the political process and thus subject to congressional and executive politics and ideology. No structure will make legal services immune to, or free from, political pressures. In order to survive, the legal services program must have strong bipartisan support and cannot act to undermine or significantly reduce the support of either political party.<sup>77</sup>

Second, the LSC is Congress-created and therefore depends on Congress for funding, its continued existence, and the scope of its activities. Congress can protect the LSC when the administration wants to reduce funding, add restrictions, or staff the LSC with lawyers holding particular ideologies. On the other hand, the LSC is vulnerable even with a supportive administration because Congress can reduce funding, impose restrictions, eliminate program components, or even eliminate the Corporation itself.

These two lessons do not suggest that another governmental structure would have been better for the federal legal services program. The LSC may not have survived as a federal agency or as an executive department. Nor do these lessons suggest that there is

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74. Dooley & Houseman, *supra* note 5, ch.1, at 13 (discussing financial organization of LSC); see also Warren E. George, *Development of the Legal Services Corporation*, 61 CORNELL L. REV. 681 (1976).

75. Dooley & Houseman, *supra* note 5, ch.1, at 13

76. *Id.*

77. See McKay, *supra* note 52, at 108-12 (discussing the financial and logistical obstacles that prevents LSC from providing adequate legal aid to all needy individuals).

no need for a federal program. A federal program is critical both because civil legal assistance is a federal responsibility and because only a federal program will ensure that the poor have access to civil justice. These lessons suggest a far more fundamental proposition: without a broad base of widespread public support, civil legal services in the United States will not survive and cannot achieve the fundamental purposes of the LSC Act. Such support must include that of private lawyers and the organized bar. Legal services must develop and nurture support from liberal and conservative leaders, labor organizations and business groups, and government and human services providers.

#### IV. WHERE ARE WE NOW? WHERE ARE WE GOING?

The three critical challenges that this new system will face are (1) how to expand funding and resources, both personal and financial; (2) how to eliminate restrictions on civil legal assistance and keep new restrictions from being imposed; and (3) how to develop and perfect a state system of civil legal assistance that includes an interconnected system of local and statewide providers.

##### A. Funding

Without additional funding, the civil legal assistance community can not achieve increased access for low-income persons or implement the civil legal assistance system for the future. This is imperative since the U.S. civil legal assistance system is far less funded than those of most other Western developed nations.<sup>78</sup> For example, in the United States, the per capita government expenditures for civil legal assistance is \$2.25, while the equivalent figures in England is \$32, New Zealand \$12, and Ontario \$11.40. As the chart indicates, we are far below comparable Western industrialized countries in the provision of civil legal assistance.<sup>79</sup>

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78. See Earl Johnson, Jr., *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 FORDHAM INT'L L. J. 83 (2001) (discussing the inadequate level of funds provided for legal services in the United States in comparison with other countries).

79. This chart was prepared for CLASP by Nora S. Houseman with information provided by the Organization for Economic Cooperation and Development.

**TABLE 2**  
**EXPENDITURES FOR LEGAL ASSISTANCE IN WESTERN**  
**INDUSTRIALIZED COUNTRIES**

Nation	Government's Civil Legal Aid Investment per \$10,000 of GNP (in U.S. Dollars)	Government's Public Social Expenditures per \$1,000,000 of GDP (in U.S. Dollars)
United States	\$ 0.70	\$16.03
Germany	\$ 1.90	\$26.56
France	\$ 1.90	\$29.64
Australia	\$ 2.75	\$18.09
Canada	\$ 3.50	\$16.95
	Quebec:	
	Ontario	
	B.C.	
Netherlands	\$ 4.20	\$25.10
New Zealand	\$20.70	\$ 5.10
United Kingdom	\$12.00	\$21.59

Furthermore, as the chart also shows, the United States's public social expenditures are also much lower than those in other developed countries.

Even so, over the last decade, the United States' civil legal assistance budget has grown from approximately \$400 million to over \$800 million.<sup>80</sup> While these resources are not distributed equally, over thirty states now have more non-LSC funds than LSC funds.<sup>81</sup>

Future funding for civil legal assistance will come from five sources: state and local governmental funds; IOLTA funds; private bar contributions; private sources such as foundations and United Way campaigns; and the federal government. Since 1982, funding from state and local governments has increased from a few million dollars to over \$215 million.<sup>82</sup> Until recently, this increase has been primarily through IOLTA funding. While IOLTA funding is possibly in jeopardy because of recent Supreme Court and Fifth Circuit decisions,<sup>83</sup> funding will unquestionably continue for the

80. Interview with Meredith McBurney, Consultant, Project to Expand Resources for Legal Services, Standing Committee on Legal Aid and Indigent Defendants, American Bar Association, in Denver, Co. (Sept. 18, 2001).

81. Houseman, *Civil Legal Assistance*, *supra* note 7, at 381-82 nn.44-45.

82. The exact amount of state funding for civil legal assistance has not been fully documented because much of this funding has gone to non-LSC funded programs, which, unlike LSC-funded programs, do not have to report to any central funding source.

83. See *Phillips v. Wash. Legal Found.*, 524 U.S. 156 (1998) (holding the interest income generated by IOLTA is the private property of the client for purposes of the



next several years and will likely continue even if the ultimate judicial resolution is adverse to IOLTA. In many states, there are new initiatives that expand revenue from IOLTA programs.<sup>84</sup> Within the last three years, substantial new state funding has come from general state or local governmental appropriations, filing fee surcharges, state abandoned property funds, punitive damage awards, and other government initiatives. In addition, there has been increased funding from private sources including foundation and corporate gifts, United Way funding, special events, religious institutions, fee-for-service projects, lawyer fund drives, attorney registration fee increase or dues assessments, dues check-off or add-ons, bar association appropriations, funds from cy pres awards, and awards from attorneys' fees pursuant to fee-shifting statutes.<sup>85</sup>

Despite the fact that eighteen states have non-LSC funding that exceeds LSC funding<sup>86</sup> and the continuing availability of new funding from non-LSC sources, increased funding from the federal government is still essential for two reasons. First, civil legal services is a federal responsibility and the LSC continues to be the primary funding agency and standard bearer.<sup>87</sup> Second, there are many parts of the country—the South, Southwest, and Rocky Mountain states—that have not yet developed sufficient non-LSC funds to operate civil legal assistance, including pro bono programs, without federal support.<sup>88</sup> Abandoning a federal commitment to civil legal assistance would mean that in many states, and thus in the nation as a whole, the principle of equal justice would be a fiction.

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Taking Clause of the Fifth Amendment); Wash. Legal Found. v. Tex. Equal Access to Justice Found., 270 F.3d 180 (5th Cir. 2001) (holding that state permanently appropriated appellant's interest income resulting in a per se taking). *But see* Wash. Legal Found. v. Legal Found. of Wash., 271 F.3d 835 (9th Cir. 2001) (holding that there was no taking of interest income and upholding the constitutionality of the Washington State IOLTA program).

84. *See, e.g.,* Lonnie Powers, *Legal Needs Studies and Public Funding for Legal Services: One State's Partial Success*, 101 *DICK. L. REV.* 587, 591-92 (1997) (discussing the Massachusetts initiative which resulted in a four-time increase in state funding for civil legal services); *see also* Gregory A. Hearing, Comment: *Funding Legal Services for the Poor: Florida's IOLTA Program—Now Is The Time to Make It Mandatory*, 16 *FLA. ST. U.L. REV.* 337 (1988) (advocating that the Florida Supreme Court mandate participation in the IOLTA plan by all Florida attorneys).

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

86. Houseman, *Civil Legal Assistance*, *supra* note 7, at 381-82 nn.44-45.

87. *Id.*

88. *Id.*

Supporters of increased federal funding will have to overcome significant political barriers to a substantial, rather than incremental, increase in federal funding for civil legal assistance. Although the former president of the LSC, John McKay, made substantial gains in developing a stronger bi-partisan support for LSC funding,<sup>89</sup> the U.S. political leadership remains divided about the necessity and structure of a federal program.

Substantial growth in federal funding, as well as state and local governmental funding, is not likely to occur until there is much greater support for civil legal aid among the general public.<sup>90</sup> In recognition of this political reality, the Project for Future of Equal Justice has begun a new initiative to build stronger public support through an aggressive media campaign to be carried out on the local and state level. Based on the findings of focus groups and a national poll on civil legal assistance, the Project and its consultants are developing a series of media efforts intended for use by state and local groups that will begin shortly. In time, these and other efforts will increase support for civil legal aid.<sup>91</sup>

### **B. Addressing Restrictions on Civil Legal Assistance**

Congress has imposed a formidable set of restrictions on civil legal assistance. One group of such restrictions prohibits the representation of certain clients including public housing residents<sup>92</sup> and numerous categories of aliens.<sup>93</sup> Perhaps the most insidious category of restrictions are the prohibitions of certain types of activities of LSC-funded programs for eligible clients. These restrictions include prohibitions on class actions, welfare reform advocacy, attorney fee collection, and some lobbying activities.<sup>94</sup> Other restrictions apply only to LSC funds, and impose no restrictions on the usage of non-LSC funds for activities. These include restric-

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89. See McKay, *supra* note 52, at 110-111.

90. See Belden, Russonello & Stewart, Developing a National Message for Civil legal services: Analysis of National Survey and Focus Group Research (2000) (unpublished survey prepared for Open Society Institute and Project for Future of Equal Justice, on file with the Fordham Urban Law Journal) (discussing public attitudes toward legal aid programs).

91. *Id.*

92. OCRAA § 504(a)(17); 45 C.F.R. 1633.3 (1999).

93. Omnibus Consolidated Rescissions and Appropriations Act (OCRAA) of 1996, Pub. L. No. 104-134, § 504(a)(11), 110 Stat. 1321; 45 C.F.R. 1626.3 (1999).

94. OCRAA § 504(a)(12); 45 C.F.R. 1612.8 (1999). See also Paula Galowitz, *Restrictions on Lobbying by Legal Services Attorneys: Redefining Professional Norms and Obligations*, 4 B.U. PUB. INT. L.J. 39 (1994) (reviewing the pre-1996 congressional restrictions against lobbying by legal services lawyers).

tions on participating in legislative and administrative rulemaking activities. Finally, there have been successful efforts to prohibit state funding of certain type of programs, such as those that provide legal assistance to migrant farmworkers.

These restrictions cannot be justified as reasonable limitations, nor is there any compelling rationale for most of them. Critics claim, for example, that class actions are used by legal services to foment system change and not to represent the interests of individual clients with legal problems.<sup>95</sup> This is erroneous. A class action is nothing but a procedural device made available by court rules that allows many people with the same legal claim to join together in one lawsuit rather than filing hundreds of separate, identical claims. Class actions are an appropriate remedial device used under narrow circumstances to achieve consistent resolutions of legal issues. Many legal problems of the poor, like those of the affluent, are better resolved as class actions. Not only do class actions provide an effective remedy where no others may exist, they are an economical means of obtaining relief. Class actions assure effective enforcement of judicial decisions and deter unlawful conduct towards others similarly situated.

Restrictions on attorneys' fees are another example of unfounded limitations. Critics contend that it is inappropriate for attorneys to collect fees when the government already provides funding for free legal aid.<sup>96</sup> They also assert that private individuals sued by a recipient should not have to pay three times (for their own attorneys' fees, taxes that support government funding for the LSC, and the attorneys' fees of the winning recipient). Finally, critics argue that permitting recipients to recover attorneys' fees results in bias because recipients inevitably will give higher priority to cases where fees are available than to other cases.<sup>97</sup>

However, the arguments for restricting attorneys' fees do not stand up to careful scrutiny. The prohibition completely negates the Civil Rights Attorneys' Fees Awards Act,<sup>98</sup> a key part of the civil rights enforcement structure in this country, and similar fee-shifting statutes. The prohibition severely undercuts the ability of legal services programs to effectively represent poor people who

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95. *See, e.g.*, 141 Cong. Rec. S. 14, 588 (daily ed. Sept. 29, 1996) (statement by Sen. Hollings).

96. *See, e.g.*, 138 Cong. Rec. H. 2974-78 (May 6, 1992) (debate on the Legal Services Reauthorization Act of 1991).

97. *Id.*

98. 42 U.S.C. 1988 (1994).

are often members of minority groups intended to be protected by civil rights laws. Under the American system, an award of attorneys' fees is intended, among other things, to deter and punish illegal conduct by defendants.<sup>99</sup> With the threat of a possible large attorneys' fee award removed, private parties may feel they can violate poor people's rights with impunity. In addition, the prohibition undermines the incentive for those sued by a recipient to settle cases in which their claims are weak, thus burdening the justice system with litigation that could be settled. Finally, fee awards enable legal services programs to represent more clients than government and other funding would allow.<sup>100</sup>

Taken alone, policy arguments are often not persuasive. Practical real life examples must also be given. To build a case against the restrictions, the civil legal assistance community must show that the restrictions harm real people with real problems. It is not enough to show that class actions are a more efficient way of handling cases. Instead, the civil legal assistance community must demonstrate that with restrictions in place, clients will not be effectively represented and without the use of class actions their problems will not be effectively addressed.

Similarly, it will not be enough to show that without attorneys' fees restrictions legal services could have gained millions of dollars to use representing more clients. Rather, the civil legal assistance community must prove that either there were clients whose rights were not enforced because of the prohibition, or whose cases would have been settled if attorneys' fees had been part of the negotiation, or that there were clients who would have recovered more damages or obtained a more effective remedy if the lawyer could have used the leverage of collecting attorneys' fees.

A persuasive showing of real harm may not persuade legislators to remove the restrictions, nor will such a showing prevent legislators from imposing additional restrictions. These restrictions are imposed because a majority of Congress, and probably a majority of the public, believe that government funding for civil legal aid should only go toward providing legal advice and representing people in courts that adjudicate individual legal problems.<sup>101</sup> McKay

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99. See generally John F. Vargo, *The American Rule on Attorney Fee Allocation: The Injured Person's Access to Justice*, 42 AM. U. L. REV. 1567 (1993).

100. *Id.* at 1575.

101. See Belden, Russonello & Stewart, *Developing A National Message for Civil Legal Services: Analysis of National Survey and Focus Group Research* 39-40 (unpublished manuscript prepared for the Open Society Institute and the Project for the

noted that “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.”<sup>102</sup>

To remove existing restrictions and prevent new restrictions from being added, the civil legal assistance community will have to build a broad base of support among federal and state legislative bodies and the public for the need for advocacy beyond advice or legal representation in individual cases. In order to build broad public support, it is critical to reach beyond bar leaders to state and local leaders, the press, businesses, labor, and human services and civic organizations.

The recent Supreme Court decision on legal services restrictions, *Legal Services Corp. v. Velazquez*,<sup>103</sup> does not fundamentally change the need for public support. In that case, the Court invalidated a restriction that permitted LSC-recipients to represent clients in individual welfare cases only when the cases did not challenge existing law.<sup>104</sup> The Court found that Congress had impermissibly restricted lawyers from presenting arguments to the courts, thereby distorting the legal system and altering the traditional role of lawyers as advocates.<sup>105</sup> If Congress chose to subsidize individual representation in welfare cases, the Court held that it could not restrict the arguments that legal services attorneys could make on behalf of their clients in those cases.<sup>106</sup> Such a restriction amounted to unconstitutional viewpoint discrimination and violated the free speech guarantee of the First Amendment.<sup>107</sup>

The Supreme Court’s decision did not strike down the general restriction on legal services representation or other participation in litigation, lobbying, or rulemaking efforts related to welfare reform.<sup>108</sup> Nor did it require Congress to continue to fund representation on individual welfare cases.<sup>109</sup> In fact, the Court left standing the Second Circuit’s ruling that the invalidated provision

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Future of Equal Justice 2000) (indicating that focus groups support some of the key restrictions such as those on class actions and welfare reform advocacy).

102. See McKay, *supra* note 52, at 111.

103. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533 (2001).

104. *Id.*

105. *Id.*

106. *Id.* at 542.

107. *Id.*

108. See Galowitz, *supra* note 94 (discussing restrictions on advocacy by legal services attorneys).

109. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 548 (2001).

could be severed from the other welfare reform restrictions, leaving them in place.<sup>110</sup>

The Court's decision gives recipients some flexibility to challenge state statutory and regulatory provisions that are inconsistent with the Constitution or other law in the context of individuals seeking redress from state or local welfare agencies. Although the *Velazquez* case is clearly a victory for legal services clients and their attorneys, it does not constitute a wholesale rejection of the LSC Appropriations Act restrictions, nor does it guarantee that LSC recipients will be permitted to represent their clients unfettered by congressional control and oversight.

### C. A Comprehensive Integrated System

Removing restrictions and increasing funding will not be sufficient to ensure equal justice under the law for low-income persons. Fundamental change in civil legal assistance delivery is needed. What is needed are integrated statewide systems of delivery designed to reach three objectives: increased awareness of rights, options, and services through community legal education; access to legal assistance through a coordinated system of intake, advice, and service delivery; and the provision of a full range of legal and related services to enable low-income persons to improve their quality of life.

#### 1. Access to Civil Legal Assistance

Every legal needs study conducted over the last ten years tells us that the current system is meeting at most twenty percent of the legal needs of the population it is meant to serve.<sup>111</sup> More financial resources are needed to achieve full access to civil legal assistance. At the same time, the bar and other civil legal assistance providers recognize that achieving access will require new methods of deliv-

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110. On December 14, 2001, plaintiffs in *Velazquez* and a new case, *Dobbins v. Legal Services Corp.* filed a complaint challenging the prohibitions on class actions, attorneys' fees, solicitation, lobbying and rulemaking, aliens, and the use of non-LSC funds (the so-called entity restriction).

111. See ABA STANDING COMM. ON LAWYERS' PUB. SERV. RESPONSIBILITY, REPORT TO THE HOUSE OF DELEGATES 6-7 (1993) (reporting that "Only about 14-20% of the legal needs of the poor are being addressed" according to one national study); Sandra Day O'Connor, *Meeting the Demand for Pro Bono Services*, 2 B.U. PUB. INT. L.J. 1, 1 (1992); see also John Kennedy, *Justice Denied: Despite Legal Firms' Vow to Aid the Poor, Pro Bono Work Lags Far Behind the Need*, BOSTON GLOBE, Aug. 13, 1989, at A25 (reporting that a 1989 survey indicated that only fifteen percent of the legal needs of the poor were being met).

ery.<sup>112</sup> Innovative electronic and video technologies will be needed. States are beginning to implement plans that include four elements.

*a. Coordinated Service Delivery Connecting All Providers*

Under pressure from LSC, IOLTA commissions, the bar and national organizations such as the Project for the Future of Equal Justice,<sup>113</sup> states are beginning to coordinate new and existing providers into a single statewide system. These systems ensure access to justice anywhere in a state, including remote rural areas and low-income urban neighborhoods.<sup>114</sup> They make specialized expertise available in major substantive areas of the law affecting low-income persons. In addition, these systems seek to provide an appropriate service for every major legal problem confronting low-income persons. Consequently, the coordinated systems are designed to provide legal information and assistance in all languages spoken by a significant number of low-income persons. Finally, the state systems are designed to serve all segments of low-income households, including those with distinct, or disproportionate legal needs.

*b. Coordinated Advice and Brief Services*

States are developing advice and brief services systems that enable low-income persons to speak to a skilled attorney or paralegal in person or on the telephone. Telephone hotlines are now used in

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112. A 1996 policy report from the American Bar Association's Comprehensive Legal Needs Study calls for (1) increasing the flexibility of the civil justice system and expanding the options available for people seeking legal help, including hot lines and assistance to those proceeding pro se; (2) developing better ways for people to obtain information about their options when facing a legal situation and more effective referral systems including more legal education through pamphlets, kiosks and other new technologies; (3) increasing pro bono legal services by the private bar; (4) increasing the availability of affordable legal services to moderate-income individuals and households through sliding fees and the expansion of legal services programs; (5) integrating the use of community-based dispute resolution services into the options available for low-income clients; and (6) encouraging legal services programs to retain as much flexibility as possible in deciding what cases to accept. AM. BAR ASS'N CONSORTIUM ON LEGAL SERVS. AND THE PUB., *AGENDA FOR ACCESS: THE AMERICAN PEOPLE AND CIVIL JUSTICE* 8-9, 10-32 (1996).

113. The Project for the Future of Equal Justice is a joint project of the National Legal Aid and Defender Association and the Center for Law and Social Policy. The project serves as an information source and connection mechanism for lawyers and other advocates involved in providing civil legal assistance to low-income people. Project for the Future of Equal Justice, Ctr. for Law and Soc. Pol'y, Equal Justice Network, <http://www.equaljustice.org>.

114. Houseman, *Civil Legal Assistance*, *supra* note 7, at 380-82.

140 programs in forty-five states to connect expert attorneys and advocates with clients who need immediate advice, assistance, or referral.<sup>115</sup> Some hotlines focus on particular client groups such as the elderly.<sup>116</sup> In 1999, for example, there were twenty hotlines for the elderly in eighteen states, Puerto Rico, and the District of Columbia.<sup>117</sup> Other hotlines have been developed for special political efforts, such as changes in welfare reform.<sup>118</sup> In states where one centralized system does not make sense, regional systems are being developed.<sup>119</sup>

The Project for the Future of Equal Justice has evaluated the effectiveness of centralized telephone legal advice, brief service, and referral systems. The study compared “before” and “after” caseload statistics in states with hotlines to determine the effect of the hotline system on the number of clients served and the levels of brief and extended services. The study concluded that hotlines can be effective because they increase the capacity to provide brief service without reducing the capacity to provide extended services. Still, success is not guaranteed. Phase II of the study will evaluate the effectiveness of hotline systems in obtaining favorable outcomes for clients.<sup>120</sup>

Additionally, Legal Counsel for the Elderly of American Association of Retired People (AARP) is implementing a new, untested approach, the Brief Services Unit (BSU). The BSU is providing brief services to clients that require more than phone contact but less than extensive representation. The BSU will follow-up on hotline cases that require services and do active intake, including periodic clinics in low-income neighborhoods. Non-attorney volunteers, paralegals, and attorneys will staff the BSU.<sup>121</sup>

### *c. Accessible Intake Systems*

To facilitate access, state systems are implementing intake systems that include telephone screening, case evaluation, and referral

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115. Project for the Future of Equal Justice, *State-by-State Legal Hotline Directory*, at <http://www.equaljustice.org/hotline> (last visited Jan. 11, 2002).

116. Houseman, *Civil Legal Assistance*, *supra* note 7, at 403-04 n.91.

117. *Id.* at 403-05 n.91-92.

118. *Id.*

119. Project for the Future of Equal Justice, *State-by-State Legal Hotline Directory*, at <http://www.equaljustice.org/hotline> (last visited Jan. 11, 2002).

120. Jessica Pearson & Lanae Davis, *The Hotline Outcome Assessment Study, Final Report-Phase II: Pre-Test of Follow-Up Telephone Questionnaire (2000)*, at <http://www.equaljustice.org/hotline1/hotlinepretest.html>.

121. See Wayne Moore, *A More Productive, More Versatile Legal Hotline Methodology*, MGMT. INFO. EXCH. J., Spring 2001, at 5.



systems. These systems can diagnose legal problems and determine the level of service that each applicant needs. The systems can also make referrals to legal providers including pro bono, evening legal workshops, law school clinics, high-volume automated document assembly systems, and pro se assistance programs.<sup>122</sup> The intake systems also make referrals to alternative dispute resolution providers, community-based organizations, and other non-legal organizations.<sup>123</sup>

*d. Gateway to State Civil Legal Assistance Systems*

A number of states are combining statewide advice and brief services with statewide intake systems to serve as a client-friendly gateway to the civil legal assistance system for low-income persons.<sup>124</sup> Several new programs have devoted significant resources to statewide hotlines and have all but abandoned using staff to provide in person representation, leaving such representation to non-LSC funded providers.<sup>125</sup> LSC has strongly encouraged these efforts both through its funding decisions and by disseminating information about what such programs have been doing.<sup>126</sup> Such combined systems not only provide critical services that are used by a majority of low-income persons accessing the current system, but also offer clients who need a fuller range of legal service easy access to such legal assistance. In addition, such combined systems also serve as a clearinghouse of information for staff, low-income persons, courts, pro bono programs, law school clinics, and others.

*2. Provide a Full Range of Services*

Over thirty states are designing their civil legal assistance systems to provide a full range of services to all clients regardless of

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122. The Equal Justice Network, Discussion Draft, Comprehensive, Integrated Statewide System for the Provision of Civil Legal Assistance to Low Income Persons to Secure Equal Justice for All, Pt. II, July 2, 1998, at <http://www.equaljustice.org/Compdft.pdf>.

123. *Id.*

124. Houseman, *Civil Legal Assistance*, *supra* note 7, at 404-405.

125. Examples include Legal Services Law Line of Vermont, Inc. and Statewide legal services of Connecticut, Inc.

126. See LEGAL SERVS. CORP., BASIC ELEMENTS OF EFFECTIVE CENTRALIZED TELEPHONE INTAKE AND DELIVERY SYSTEMS (1997) (describing how statewide hotline systems work and providing some basic regulatory guidance); LEGAL SERVS. CORP., INTAKE SYSTEMS REPORT: INNOVATIVE USES OF CENTRALIZED TELEPHONE INTAKE AND DELIVERY IN FIVE PROGRAMS (1998) (describing the statewide systems for Connecticut, New Hampshire, Vermont and Washington and the system in the Boston area).

their location or legal forum.<sup>127</sup> Such systems enable low-income persons to address some legal problems without legal representation, receive advice and brief services in appropriate situations, and receive representation from an attorney or paralegal when necessary.

Low-income persons experience a continuum of legal needs. A battered woman may need some help in filling out a form to secure a protection order. A recipient of welfare-to-work services may need some help presenting evidence in an administrative tribunal. An individual or group may need extended representation on a complex civil matter. Some clients may need representation before an administrative agency in a rule making proceeding. Others may need representation on matters legislative in nature. No matter what the substance, no matter what the forum, the timely availability of legal counsel is key to the resolution of important civil legal claims.

States must ensure that justice system consumers have access to legal assistance commensurate to their legal needs. Some clients do not need a lawyer to appear in court, but still need legal advice and information. Technology based systems must be developed to ensure that legal advice and information is readily available to those who need it. These systems include hotlines, kiosks, interactive web sites, electronic filing, and the like. In addition, discrete task representation must be allowed so that limited matters can be addressed without forcing parties to suffer from the power imbalance that attaches when one side is represented and the other not. There must also be systems to ensure that those in need of extended in-person representation in more complex, contested cases get the legal assistance that they need.

In short, the services that must be available include brief legal services; representation in negotiation; representation in the judicial system and in administrative adjudicatory processes; transactional assistance; representation before state and local legislative, administrative and other governmental or private bodies; assistance to clients using mediation and dispute resolution programs; assistance to individuals representing themselves pro se; and advocacy to help make the legal system more receptive to low-income persons.

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127. Such states include Vermont, New Hampshire, Maine, Connecticut, New Jersey, Washington and Hawaii.

### 3. *Using a Full Range of Providers*

In all state systems, civil legal assistance will continue to be delivered by staff attorneys and paralegals. However, there is an increasing use of other advocates as well. These include private attorneys who work for a small fee or pro bono; law students working in clinics and other programs; staff from other community organizations; lawyers, paralegals or staff working for other entities (including attorney general offices, corporations, labor unions, civil rights and civil liberties organizations, human services providers and other non-profit institutions); non-lawyers and lay advocates; and others involved with the civil justice system, such as law librarians, clerks, and other court personnel.

In a few states, these legal services providers are beginning to work as a community.<sup>128</sup> In particular, state civil legal assistance systems are making use of private attorneys for a variety of functions.<sup>129</sup>

### 4. *Collaboration with Human Services Providers*

In a number of states, legal providers are collaborating with human service providers, community organizations, and other entities to deliver holistic interdisciplinary services and help non-legal service providers provide their clients with information about legal rights and options.

Developing partnerships with a variety of providers, including local and state governmental agencies, has proven to be very effective. Often, more clients can be reached through such collaborations, rather than by working in isolation.<sup>130</sup> There are other advantages as well. Non-legal partners can often influence policy more effectively than the legal services program.<sup>131</sup> Moreover, partnering with other human services providers has resulted in increased funding for the legal services program, either directly or as a line item in the human services agencies budget. Finally, such partnerships have created a greater awareness of the challenges

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128. Houseman, *Civil Legal Assistance*, supra note 7, at 418-420.

129. See generally, Alan W. Houseman, *Policy Advocacy and Law Firm Pro Bono Programs*, LAW FIRM PRO BONO CHALLENGE, Summer 1999 (discussing the use of private attorneys).

130. See Steve Xanthopoulos, *View from the Trenches: Local Partnerships Enhance Results for Program Clients*, NLADA CORNERSTONE, Fall 1997, at 6-7 (discussing the advantages of partnership).

131. Sharon M. Dietrick et al., *Welfare Advocacy: Tactics for a New Era*, CLEARINGHOUSE REV., Feb. 1998, at 419 (discussing the effectiveness of coalitions in welfare advocacy through exceptions for time limits).

facing low-income persons and the role of civil legal assistance. They have facilitated the creation of new grass roots organizations to benefit low-income persons.

Collaborations and partnerships have also provided opportunities for holistic service delivery involving legal services working in conjunction with other human services programs to deliver integrated services.<sup>132</sup> Such partnerships enable the legal services program “to become a part of a bigger solution for our client’s problems.”<sup>133</sup>

### 5. *Ensuring Statewide Coordination of and Support for Providers of Civil Legal Assistance*

The loss of over \$10 million in state funding as a result of the congressional funding decision made in 1995<sup>134</sup> has taken a large toll on the state support structure. As a result, many of the state support units and the regional training centers that were part of larger programs have been eliminated.<sup>135</sup> A number of new entities have been developed to carry on state level advocacy, particularly policy advocacy;<sup>136</sup> however, they are generally underfunded and understaffed. With a few exceptions that have not been able to

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132. For example, West Tennessee Legal Services has set up one-stop shopping for victims of domestic violence by sharing space with a domestic violence organizations in two of its rural offices. Similarly, Bay Area Legal Services in Tampa, Florida, created partnerships with local domestic violence shelters, including placing a full-time attorney at one of the shelters. Another example is the Partnership Project funded by the Ford Foundation and involving Legal Services of North Carolina, Legal Aid Society of Hartford, Connecticut, and Oregon Legal Services. A final example, Monroe County Legal Assistance Corporation, has contracts with hospitals to provide legal services in conjunction with hospital programs, such as drug and alcohol rehabilitation programs.

133. LeAnna Hart Gipson, *Effective Delivery: Rethinking Fundamental Issues*, MGMT. INFO. EXCH. J., Nov. 1997, at 46.

134. For a discussion of legal services budget cuts by Congress, see *supra* notes 60-61 and accompanying text.

135. Address: *Interpretation of LSC Restrictions*, 25 FORDHAM URB. L.J. 285, 288 (1998).

136. Examples include the William E. Morris Institute for Justice (Arizona); Colorado Center for Law and Policy and the Colorado Fiscal Policy Institute; National Center on Poverty Law in Illinois; Project Safety Net in Kentucky; Maine Equal Justice Partners and Maine Center for Economic Policy; Legal Services Advocacy Project (Minnesota); Center for Civil Justice in Saginaw, Michigan; Nebraska Appleseed Center; New Mexico Center on Law and Poverty; North Carolina Justice and Community Development Center; Oregon Center for Public Policy; South Carolina Appleseed Legal Justice Center; South Dakota Peace and Justice Center; and the Tennessee Justice Center.

make up the loss of LSC funds, most of the remaining freestanding state support programs have survived.<sup>137</sup>

The Project for the Future of Equal Justice recently completed a study of state advocacy and support.<sup>138</sup> According to the study, since the cessation of LSC funding, a few states have preserved or even strengthened the capacity for state level advocacy.<sup>139</sup> In a number of states, there has been no state level policy advocacy, no significant training of staff, no information sharing about new developments, no litigation support, and no effective coordination among providers.<sup>140</sup> In a number of states, some state support activities have been undertaken by new entities or carried on by former LSC-funded entities. The activities provided vary widely and there is no generalization that can be made from the information we collected. In some states, an existing entity continued but with less funding. In other states, a new entity was created to replace or work alongside an existing entity. In still other states, new ways of providing state level advocacy have emerged.<sup>141</sup>

Over the last several years, there has been significant progress in developing effective state support systems in a number of states. These new state support systems have disseminated information, coordinate statewide education and training activities, and served as statewide civil legal assistance liaisons.

A critical role of state support efforts involves information dissemination. Several state systems have created efficient, technologically advanced statewide information dissemination networks that include at least five elements. The first element is statewide e-mail access for institutional providers such as legal services programs, pro bono programs, law school clinics, and community organizations. Second is the creation of web sites to provide up-to-date information about state legislative, regulatory, and policy developments affecting low-income persons, as well as other information relevant to civil legal assistance. With the help of the LSC Technology Initiative Grants, most state systems should have a strong In-

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137. These include Western Center for Law and Poverty; Massachusetts Law Reform; Legal Services of New Jersey; Greater Upstate Law Project; Texas Legal Services Center; Ohio State Legal Services; Florida Legal Services; and Michigan Legal Services.

138. Alan W. Houseman, *The Missing Link of State Justice Communities: The Capacity in Each State for State Level Advocacy, Coordination and Support*, Project for the Future of Equal Justice and Center for Law and Social Policy (2001) (on file with the Fordham Urban Law Journal).

139. *Id.* at 4.

140. *Id.*

141. *Id.* at 6.

ternet presence by 2003. Third, state systems have established an electronic library of briefs, forms, best practices, proprietary texts, and client information materials accessible by institutions and private attorneys. Fourth, some state systems have developed a coordinated statewide research strategy integrating Internet usage, proprietary sources, and other resources. Finally, several state systems have developed a coordinated data management system to facilitate information sharing and case file transfers.<sup>142</sup>

Many state systems also convene regular statewide meetings of civil legal assistance providers to discuss common problems, client constituencies, and strategies to use resources efficiently.

A number of states have made their providers available for in-state education and training activities. These programs provide expertise in legal services practice; update advocates on emerging trends in law and policy affecting low income persons; ensure the use of new strategies; and maximize opportunities for professional development for all levels of staff.<sup>143</sup>

State support entities in a few states are also providing assistance to local providers to appropriate local education activities and materials. Some states are coordinating with continuing legal education programs offered by state or local bar associations or other entities.<sup>144</sup> Finally, there is a growing recognition among legal providers that they must permit staff participation in national and regional collaboration relevant to civil legal assistance activities.<sup>145</sup>

Several states<sup>146</sup> are coordinating statewide civil legal assistance liaisons with the major institutions affecting or serving low-income people in legal matters. These institutions include state, local and federal courts, administrative agencies, legislative bodies, alternative dispute resolution bodies, and other public or private entities providing legal information, advice, or representation.<sup>147</sup>

#### 6. *National Coordination and Support for Civil Legal Assistance Providers*

National support has fared better than state support after the loss of LSC funding. Most of the old LSC-funded centers are still in existence and many are doing well.<sup>148</sup> Nevertheless, even though

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142. *Id.* at 10-12.

143. *Id.* at 12-13.

144. *Id.* at 15.

145. *Id.* at 15-16.

146. *Id.*

147. *Id.*

148. *Id.* at 4-5.

many of these former LSC-funded entities remain and other entities provide some support, the reality is that advocates in the civil legal assistance system have less support after the termination of LSC funding. While national policy advocacy suffered the least, there still remains decreased ability to ensure that the rights and interests of low-income families are represented before Congress and federal agencies. Additionally, there remain gaps in national advocacy on issues of importance to the poor. The diminished resources have also resulted in a lack of training, manuals, and information about emerging issues, such as transportation, assisting low-income welfare recipients in obtaining and maintaining a job, and job advancement in the low-income workforce.

The national legal services community is not attempting to recreate the old national support system because private foundations, the government, and legal services programs cannot provide sufficient funds. To meet the needs of advocates efficiently, while retaining the capacity to meet the continual gaps in support and advocacy, the national legal services community is building a new system, using modern technology to provide training, information, manuals and even advice and strategy assistance.

This new system will be modeled after a web-based national legal advocate information desktop that uses the Internet to provide content to every advocate in the civil legal assistance community. When implemented, the system will give every advocate access to current legal developments, training materials, and legal research tools. This system will integrate state materials developed by state advocates with national materials prepared by national organizations.<sup>149</sup>

### CONCLUSION

Over the last thirty-five years, civil legal assistance in the United States has developed from a haphazard program with limited private funding into a significant \$800 million institution. The legal aid program has a long history of effective representation of low-income persons and has achieved a number of significant results in the courts, administrative agencies, and legislative bodies. The federal program has expanded access throughout the country and provided significant relief to millions of needy persons. Without the

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149. See Richard Zorza, *Meeting the Legal Information Needs of Low and Middle Income People and the Organizations that Serve Them* (2000) (an unpublished report, on file with the author).

civil legal assistance program, there would be virtually no access to justice for low-income persons residing in the country.

These accomplishments do not suggest that the civil legal assistance system should remain static. On the contrary, considerable change is needed. The civil legal assistance community has begun transforming its structure into a more effective system. Even if Congress had not imposed restrictions and reduced funding in 1996, the legal services community would have needed to create a statewide system of civil legal assistance in each state. This restructuring was necessary to obtain new funding, increase access for low-income people, and improve the effectiveness of legal assistance providers. The reorganization has helped build a broader base of public support for civil legal assistance. The civil legal assistance community needed a new system to ensure that low-income persons were represented in all relevant forums where decisions affecting their lives are made. Advocacy activities had to be effectively coordinated within and among states, and all advocates participating in the system needed to have access to information, training, and assistance to provide effective legal advice.

The directions for the future are clear. The civil legal assistance community must develop a stronger base of public support within the general public and among key local leaders. Moreover, it must move forward to create integrated, comprehensive statewide systems. States that have not begun serious efforts to create new systems must do so.

The overarching goal has been and will continue to be equal justice for all. While the United States has far to go to reach that goal, it is moving down the path that will someday achieve a civil justice system that guarantees equal justice for all.



