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# Save the Legal Services Corporation

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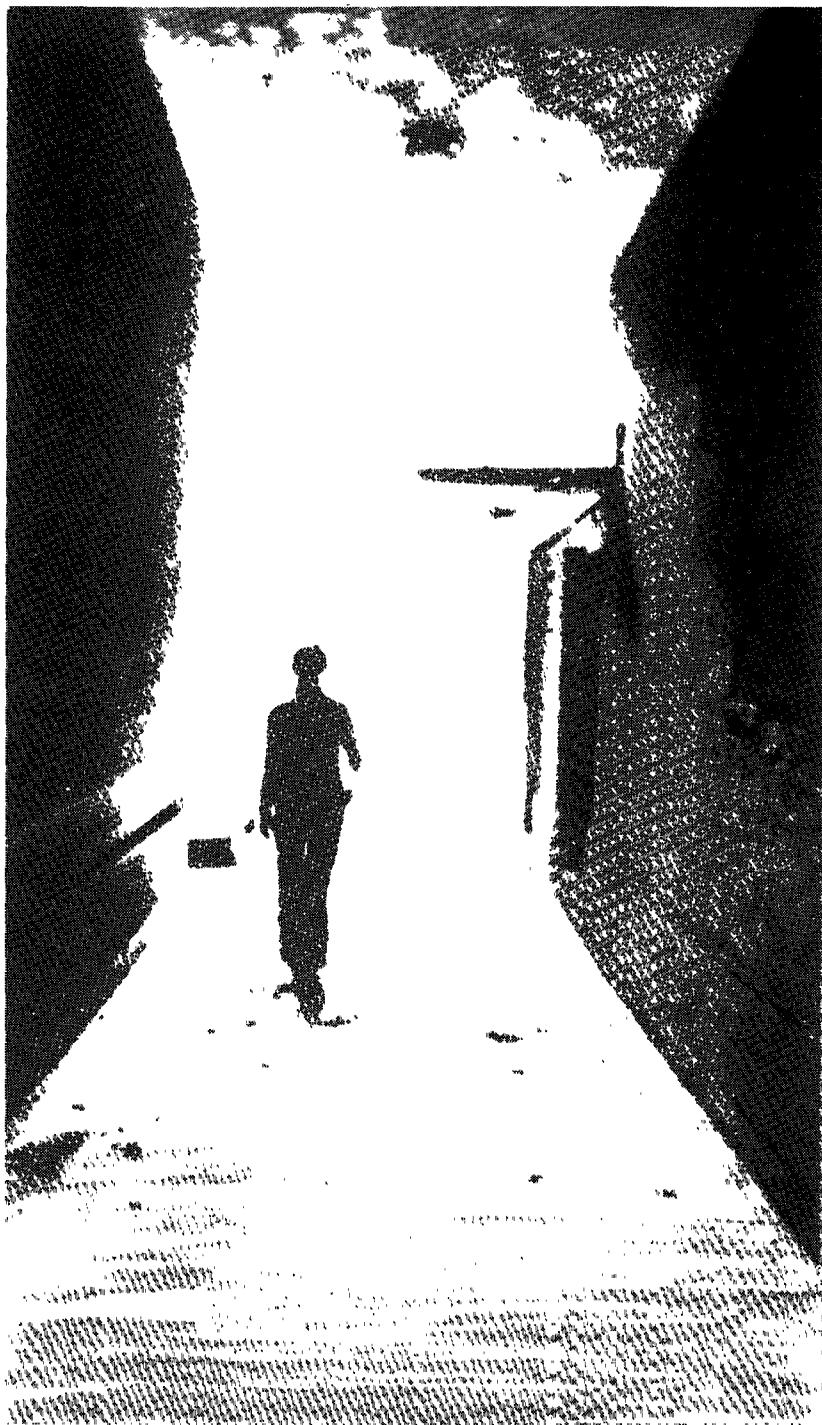
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**If political liberty means anything, it is that there must be an opportunity for poor people to use the legal system.**



## **Save the Legal Services Corporation**

**By Thomas Ehrlich**

OVER the past decades bar organizations in general and the American Bar Association in particular have been powerful proponents of federally funded civil legal services for poor people. Without their enthusiastic endorsement, the program never would have begun in 1965 under the Office of Economic Opportunity. Without their strong support when the program came under attack during the late 1960s, the move to establish the Legal Services Corporation — separate from both the executive branch and partisan positions — never would have succeeded.

Once again federally funded legal services for poor people are under sharp attack—no less than a declaration of war. Once again the support of private lawyers throughout the country, and particularly those in the American Bar Association, is essential if the program is to survive. The new administration in Washington has announced that it is seeking to eliminate totally the Legal Services Corporation. It is not asking Congress to reduce the corporation's current \$321 million budget, as other federal programs are being reduced to achieve a balanced budget. Rather, the Reagan administration has recommended to Congress that legal services for poor people no longer receive any direct federal funds.

All lawyers who care about ensuring that poor people have a right to use the legal system that they, along with the rest of us, must live under and abide by should respond by helping to save the Legal Services Corporation.

A brief bit of background may be helpful for those who have not kept in close touch with the corporation since 1975, when it first began operations. At that time federal funding for legal services had been frozen for the previous five years. Local programs, whose financing was assumed by the corporation, were concentrated mainly in urban centers on the East and West coasts, where the support of local bar and other groups had been the strongest. Most poor people in the Middlewest, and particularly in the South and Southwest, were totally without access to a program.

The corporation's bipartisan board of directors, appointed by President Ford,

quickly adopted a plan to expand legal services so that poor people in every area of the country could have at least minimum access to legal services. The initial funding target was to provide the equivalent throughout the country of two lawyers per 10,000 poor people—not an adequate level of legal care but a strong beginning. Over the next five years, with the active support of Congress, the executive branch, and particularly the organized bar, the goal was essentially achieved.

State and local bar groups were extraordinarily helpful in these efforts. They worked quietly and effectively to help establish and maintain strong local programs that could meet the real needs of poor people in their communities. I and my able successor as L.S.C. president, Dan J. Bradley, have traveled in virtually every state and have visited with scores of bar organizations. We are both enormously impressed by the dedication of private lawyers everywhere to the basic concept of equal access to justice and by their support for achieving that concept through a national network of local legal services programs for poor people.

Today about 6,200 staff lawyers and 2,800 paralegals are working in 323 local programs throughout the country. No area is now without minimum access, although many programs need to be strengthened. Plans to improve both the quality and the quantity of legal services are well under way.

What types of services do these programs provide for poor people? Each local program is an independent entity, governed by a local board of directors. Sixty per cent of every board is composed of local lawyers in the community served, and eligible clients constitute another third of each board's membership.

Each local program is charged by the corporation with setting priorities for allocating resources to ensure that the most pressing needs of poor people in the community are well served. As a result, housing issues are the highest priority in some areas, consumer concerns in some, family matters in some, and administrative benefits in others. Viewing the country as a whole, those four subject areas account for 80 per cent of legal services work. Other fields such as employment and juvenile law are also important, although not as significant as the four primary areas.

One of the most important efforts of the corporation over the past years has

been to promote the active involvement of private lawyers in the direct delivery of legal services to poor people.

A preliminary step was mandated by Congress in the Legal Services Corporation Act—a study of the range of possible delivery mechanisms using private lawyers and a comparison of those mechanisms with staff-attorney programs. Thirty-eight demonstration projects were set up around the country to compare the costs, quality, client satisfaction, and impact on the client community of judicare programs, contracts with private law firms, prepaid legal insurance, *pro bono publico* projects, legal clinics, and voucher plans. Sixty staff attorney programs were analyzed for comparative purposes.

The full report on the results of the study, issued in June, 1980, is available from the Legal Services Corporation, 733 15th Street, Washington, D.C. 20005, and I urge those who have not read it to review a copy. It underscores, through carefully documented and empirical analysis, two important points.

First, no single method of delivering legal services is clearly preferable for every community in terms of the criteria considered. One mechanism—the voucher system—was found to have insuperable difficulties in practical operation, but the others are all feasible, and their particular utility depends on a variety of local circumstances.

Second, and most important, there is an important role for private lawyers in every local program. In some localities private lawyers may be the principal deliverers of services. In others they provide important supplements to staff attorneys. My own view, and it is confirmed by the study, is that the use of staff and private lawyers in the same program offers the most opportunities for effective services to poor people—and that, of course, is the aim of all our efforts. The old debate between judicare versus staff attorney programs has never made sense to me. The dichotomy is a false one because an entire range of program types is needed, and all of them should involve private lawyers in ways that work best for the particular communities to be served.

The American Bar Association endorsed this view last year when the House of Delegates recommended that the Legal Services Corporation Act specifically mandate "the opportunity for substantial involvement of private lawyers in providing legal services to the poor." In my judgment, that involvement is essential, whether or not it is

mandated by Congress, and I know that the board of the L.S.C., of which American Bar Association Secretary F. Wm. McCalpin now is chairman, shares this view fully.

Private lawyers are already providing vital service through local programs in scores of communities. A technical assistance project has been initiated by the corporation to help expand the involvement of private lawyers even further.

High quality assistance for the full range of legal needs facing poor people is, of course, the central goal of these efforts. The board of the corporation is clear that this aim can be best achieved—indeed, can only be achieved—if private lawyers are fully and actively involved on a steadily expanding basis.

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### Why not shift legal services to state governments?

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Some have questioned whether the legal services effort could not be better (or at least as well) handled by state governments. Why is a national organization needed? Three reasons seem to me most important.

First, a shift of responsibility from the L.S.C. to state governments would undercut the independence of legal services and subject the program to intense, partisan political pressures. Independence from those pressures is perhaps the most significant characteristic of the corporation. Congress does, of course, set annual budget allocations and fundamental policy directions, but the program is not subject to day-to-day supervision or influence by government officials. During the entire period I headed the corporation, no one from the White House under either President Ford or President Carter called to seek a partisan political favor.

As civil law enforcers, one of the responsibilities of legal services attorneys is to challenge state and local officials when poor people believe they have been hurt because those officials are not carrying out their responsibilities as required by law. This type of client representation is, of course, a normal part of a private attorney's practice. When supported with government funds, however, it is not surprising that some officials would prefer elimination of that representation. Similarly, some landlords, retailers, and employers would prefer that their tenants, customers, and employees have no means

of legal redress through an attorney when a dispute arises. A national organization, controlled by an independent board of directors and allocating funds to local programs that are similarly controlled by their own independent boards, ensures that quality legal services to poor people, not partisan politics, is the basis for decision making.

Second, the corporation has become a remarkably efficient and effective organization. It spends only 1.8 per cent of its entire budget on management and administration, far less than most comparable public and private agencies, at whatever level they are administered. Perhaps most important, legal services is already a locally run program. The corporation is able to ensure that local programs are controlled and supervised by local community leaders. A shift of administration to state governments would mean an increase in bureaucracy, red tape, and overhead expenses—the opposite of the objectives usually sought by moving responsibility to the states.

At the same time, the corporation also makes certain that the special legal needs and difficulties of access to legal services of particular groups are taken appropriately into account. Some areas of the country, for example, include substantial numbers of Native Americans who face unique types of legal concerns. Other areas have large groups of elderly persons who need special help in the areas of the law pertaining to their age and disabilities. In these and scores of other fields, a national entity is able to allocate scarce resources in ways that promote efficient and high-quality service.

Third, and closely related, the corporation provides training, co-ordination, technical assistance, and information exchange on a national basis. These services are essential for an effective civil legal assistance program. The remarkable efficiency of the current system would be undermined if the corporation were eliminated.

Materials from the L.S.C.'s national training programs are used widely in many law schools and continuing edu-

cation programs—a tribute to their high quality. The corporation supports a national clearinghouse that publishes the only journal on poverty law and the only current poverty law reporting services. It has developed scores of manuals and other materials to assist private and staff lawyers in managing their work efficiently and in delivering legal assistance to their clients effectively.

In addition, the corporation has taken a lead in the design of effective delivery systems, the application of technology to legal practice, and the development of standards for quality legal work. It also has designed a professional monitoring system that ensures steady program improvement. The legal profession as a whole, and the public it serves, benefits enormously from these efforts.

All these and many more vital services provided on a national basis would be lost without a national Legal Services Corporation. That was the conclusion of the many groups that studied the issue before the corporation was established by Congress. It was the judgment of President Nixon when he proposed the legislation in 1971 to create the corporation: "Legal assistance for the poor . . . is one of the most constructive ways to help them to help themselves. . . . We have also learned that justice is served far better and differences are settled more rationally within the system than on the streets. Now is the time to make legal services an integral part of our judicial system."

### **Statement of Wm. Reece Smith, Jr., President of the American Bar Association**

PRESIDENT Reagan's recommendation to eliminate funding for the Legal Services Corporation is a matter of serious concern to the American Bar Association and to the organized bar generally. Experience suggests that the recommendation would cost society far more in the long run than the immediate dollars it would save.

The distinguishing characteristics of a democracy are equality and justice for all its people. Thus, every citizen should be afforded reasonable access to our legal system. It is society's collective responsibility to assure this access.

The organized bar has long sought to meet the legal needs of the poor. But we cannot bear the responsibility alone; the needs are simply too great. Assuring justice is a public concern that must be addressed by the nation as a whole and not left to one profession or group.

L.S.C.-funded programs now afford representation for the poor in more than 1.5 million matters each year. Most of these involve routine problems related to housing, family law, and consumer concerns of individuals. These are matters of critical importance to those individuals. The administrative overhead is less than 3 per cent of the corporation's budget, making this program one of the most cost-effective federal programs. Moreover, the corporation's work has been successfully blended with voluntary efforts of the private bar—a remarkable example of government and the private sector working together to solve societal problems.

To eliminate or weaken a program that has provided legal assistance to millions of poor people and strengthened their belief in our society would be unfortunate. The Legal Services Corporation deserves the continued support of every citizen, and I hope you will join me in working for its preservation.

—WM. REECE SMITH, JR.

### **Why the opposition to the national program?**

Why the opposition to the continuation of the Legal Services Corporation in view of the enormous positive impact that it has had on the lives of millions of poor people throughout the country? There are at least three primary reasons.

First, the nature of effective legal advocacy makes it inevitable that legal services programs represent clients opposing public officials and private interests in every part of the country. Few people like to be involved in litigation or legal proceedings, and it is, therefore, understandable—although unfortunate—that some individuals resent legal services programs that are doing nothing more or less than properly representing their clients.

Second, as a former law school dean, I am the first to attest that good judgment, along with many other qualities of good lawyering, is not taught in law school. It is hardly surprising that among the thousands of legal services lawyers and staff members working around the country, some occasionally use poor judgment. Mistakes in particular matters have and will continue.

The surprising fact to me is that among the more than one million matters handled annually by local legal services programs, so few errors are made. Those programs rarely make headlines, even when they are involved in litigation, because they generally do such a good job. Of course, particular cases may be brought or not brought to trial when my personal judgment—or someone else's—might have been otherwise. But in light of the extraordinary array of problems and pressures, I think it is remarkable how well legal services programs work and how effective they are in serving their clients with a minimum of wear and tear on other individuals and institutions. Over the course of my years with the Legal Services Corporation, I worked with hundreds of women and men from programs in every state. In my view, there is no more dedicated, hard-working, and thoroughly professional group of lawyers serving anywhere.

A third reason is, I think, the most important. It is at the root of why legal services faces difficulties now: lack of public understanding of why those services for poor people are so important. The help of private lawyers everywhere is absolutely essential on this issue.

Most nonlawyers have little sense of what lawyers do or how important they can be to those facing a legal problem. In an educational system that virtually ignores law after fifth-grade civics for all but those who become lawyers, this is hardly surprising. But it does place a special premium on the role of private lawyers in underscoring the importance of legal services for poor people, in explaining why those services are not "just another public program" that may be useful but dispensable. Every lawyer, no doubt, has a special perspective on this issue. Two key points, from my own perspective, are particularly significant.

The first point for special emphasis is the advantages that accrue to all of us when a dispute involving a poor person is avoided or, if it cannot be avoided, is settled through legal proceedings.

For most people, law is only one among many avenues of redress when a problem arises and usually the one of last resort. Wealthy and middle-class persons generally have access to a number of mechanisms when trouble occurs. If a car is defective, they use a better business bureau or one of the government consumer complaint offices available in many localities. If they fail to receive a social security benefit, they know how to weave their way through the bureaucratic maze and, if need be, to tap necessary political help. In short, in these and other problems, most people have various levers to pull or push before turning to a lawyer.

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### Legal services: only avenue of redress

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Poor people, however, rarely know where those levers are or how to use them, and, if they do know, they often lack sufficient muscle to make the levers work. For poor people generally, legal services, if available, are the first as well as the last resort; they are the only avenue of redress. One need not raise the specter of blood in the streets to appreciate the importance to all of us that the legal system be used as widely as possible when self-help is the only other option.

The point is underscored by the reality in our society that many of the traditional institutions for settling disputes (or at least containing them)—family and church being primary among them—are far less able to cope than in earlier days. We can, and I do, bemoan the loss of strength in these institutions, but the loss is no less real.

Second, as I have already suggested, a central job of those in legal services programs is to ensure that civil laws—local, state, and federal—are enforced on behalf of poor people, just as they are on behalf of those who are able to afford an attorney. A network of laws affects poor people in every aspect of their lives, much more than is true for any other group in our society. The point is fundamental but often overlooked by nonlawyers.

It is not by happenstance that "to establish Justice" is the first purpose expressed in our federal Constitution by the framers who sought "a more perfect Union." That aim is stated in the preamble: to "insure domestic Tranquility, provide for the common de-

fense, promote the general welfare. . . ." Without justice there can be no domestic peace or general welfare; in short, there can be nothing worth defending.

Justice is not possible in many civil situations, however, as only a lawyer can fully appreciate, if the individual involved has no legal counsel available. This is not true in all matters when a lawyer might be helpful, but it is true in a wide range of situations—when one is sued is an obvious example. The resources of all federally funded legal services programs are so scarce that they can be used only in those situations, in the problem areas of the highest priority to poor people in each community.

If political liberty in this nation means anything, it must mean the opportunity to use the legal system in those problem areas. One of the responsibilities of citizenship is living within the legal system; one of the rights of citizenship must be to make use of that system when the need arises.

These and other basic reasons why legal services are so important to poor people must be communicated clearly and persuasively to the public generally. A legal proceeding is a terrifying prospect to a poor person forced with the loss of a home, or a job, or essential health benefits. A legal services lawyer often represents that person's only chance for equal justice under law. We must make that basic truth clear to the public.

To my knowledge, no major Western democracy is now without some form of legal services program. If the Reagan administration's proposal is adopted, the United States would stand alone in failing to provide public support for civil legal assistance to poor people.

In the strongest terms I urge American lawyers to consider carefully your own views as lawyers and as members of the most important organization in the American legal profession, the American Bar Association. If you concur that federally funded legal services must be maintained, please take the time now to make your voice heard.

*Journal*

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(Thomas Ehrlich was the first president of the Legal Services Corporation, serving from 1975 to 1979. He recently resigned as director of the International Development Co-operation Agency and now is a guest scholar at the Brookings Institution. A former dean at Stanford Law School, he is on leave from there as a professor of law.)