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# Recalling the Legal Services Corporation's Critical First Steps

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# Recalling the Legal Services Corporation's Critical First Steps

Roger C. Cramton

An accidental encounter on a beautiful spring day in April, 1975, led to my formal involvement with the nascent Legal Services Corporation (LSC). I had come to Washington, D.C., to attend a meeting of the Commission on Revision of the Federal Court System (often referred to as the Hruska Commission after its chair, Senator Roman Hruska of Nebraska). A luncheon break led to a stroll through Lafayette Park, where I ran into an acquaintance from my three years of appointive office during the Nixon Administration. My friend, who had stayed on under President Ford as an official in the White House Personnel Office, asked my advice about a current personnel problem that had turned into a political embarrassment: appointment of the eleven members of the Board of Directors of the newly created Legal Services Corporation.

The LSC Act of 1974 was the result of nine years of political warfare over the Office of Economic Opportunity's Legal Services Program—the Johnson Administration's foray into publicly-funded civil legal assistance for the poor through the creation of an executive-branch agency. The legislation, a compromise between President Nixon and the program's congressional supporters and opponents, was the last major bill signed by President Nixon in June, 1974, before he resigned. The Act required that a board of directors be appointed before the legal services program could be transferred to the Corporation. (In the 1970s, public funding of legal services was a front-page story every-



where. The political centrality of the program continued through the Reagan years, but now discussions of legal services issues can be found, if at all, only in small stories. Maybe it's just as well that legal services issues fly under the radar of public attention.)

President Ford appointed a full slate of nominees in early 1975, but three of them provoked a storm of reaction from the organized bar and legal services supporters. Former Congresswoman Edith Green had sponsored an amendment that restricted backup center activities, and William Knecht had severely criticized California Rural Legal Assistance. Both were said to be opposed to publicly funded legal assistance. The third, Denison Kitchel, was known only as the manager of Barry Goldwater's 1964 presidential campaign. Eventually, it became clear that these nominees would not be confirmed by a Senate controlled by Democrats.

President Ford, my friend told me, needed to resolve the political issue by appointing knowledgeable and sensible lawyers who would be quickly confirmed. He also needed to appoint a chair. Although subsequent chairs were to be chosen by the board itself, President Nixon had insisted—and the Act provided—that the initial chair was to be designated by the President.

I proposed my law school classmate, Bob Kutak, to chair and direct the Corporation. He had served as a legislative assistant to Senator Hruska after law school, and was active in the American Bar Association, including activities that involved delivery of legal

*Roger C. Cramton (left of fireplace) at the cabinet table with President Ford*

services. In May, 1975, my White House friend called to inform me that Mr. Kutak could not serve as chair because of prior obligations. Instead, Mr. Kutak had offered his own suggestion as to who should serve as LSC's first chair: Roger Cramton. President Ford, I was told, seconded my nomination.

So, in the summer of 1975, after checking with my university president to make sure the assignment would not interfere with my responsibilities as dean of the Cornell Law School, I agreed to serve.

President Ford submitted the names of seven new nominees for LSC's eleven-member board, and on July 9, 1975, we were confirmed by the United States Senate. Five days later, we were sworn in, and held our first meeting.

Our initial problems were large, complex, and vital. During the four-year controversy over the establishment of LSC, legal services funding had remained at \$71.5 million per year. This static funding occurred during a period of high inflation, resulting in high turnover of staff lawyers, program reductions, and poor morale. Moreover, at that time the program was not a national program, but was largely concentrated in major cities, with a bias toward the northeast and California. Ambiguous statutory language concerning "backup centers"—which provided substantive support to LSC grantees—threatened their continuance, and needed prompt attention. Even more crucially, LSC was starting out with no executive leadership, no staff, no offices, and no equipment.

Funding and operational needs received the attention of the Board at our initial meeting. For fiscal year 1976 we agreed upon an appropriation request to Congress of \$96 million, an increase which—if granted—would begin to compensate for four years of relatively high inflation. We also began an intensive search for an LSC president and vice president who could provide the inspired leadership the program deserved.

But first, more immediate needs had to be addressed. After our initial board meeting, I worked



in the evenings with a small group of legal services volunteers from around the country to draft, type, and copy our initial appropriations request. Through the courtesy of Leo Levin, the executive director of the Hruska Commission, we were allowed to use the Commission's office after business hours. I remember finally finishing the typing, assembly, and photocopying of the required sixty copies at 3:00 a.m., just seven hours before I was to testify in front of the House Appropriations Committee.

Fortunately, that late night work paid off. Congress approved a LSC budget increase to \$88 million for fiscal year 1976 (later increased to \$92.3 million with the passage of an additional supplemental appropriation).

That same year, the board acquired imaginative and resourceful temporary help when Louis Oberdorfer, an able and public-spirited Washington lawyer on sabbatical from his law firm, agreed to provide executive leadership on an interim basis. He brought in David Tatel to work alongside him, and they provided indispensable leadership during LSC's formative period. (Today, Judge Oberdorfer is a senior district judge, and Judge Tatel is a circuit court judge.) Mr. Oberdorfer and Mr. Tatel were aided by Robert Shea of the American Red Cross, whose experience in meeting the emergency needs wrought by natural disasters was a great help to LSC in employing staff, organizing offices, and carrying out a myriad of everyday tasks. Finally, Donald Coppock, former head of the Immigration and Naturalization Service's Border Patrol, was ingenious in meeting LSC's infrastructure and equipment needs.

*Roger C. Cramton (center) chairing a committee meeting in Washington, D.C., in the 1970's with, among others, William H. Rehnquist (second from right), now Chief Justice of the U. S. Supreme Court*

The Office of Equal Opportunity (OEO) Legal Services Program featured an experienced group of lawyers and staff, but the board made an early decision not to employ them as a group. Although highly knowledgeable on the subject of legal services, there was an internal history of resisting executive control, as well as a labor union agreement that would infringe on the powers of the LSC board. As a result, OEO employees were considered on an individual basis. Many were hired as LSC employees.

Mr. Oberdorfer and Mr. Tatel, under the direction of the board, soon tackled the major issues facing the corporation. They worked to recruit an outstanding president and vice president. They drafted the initial regulations necessary to operate the legal services program. They assumed the management of the existing OEO grantees. And they succeeded in resolving the uncertainty concerning the activities and operations of legal services' backup centers. The latter issue was undoubtedly the most controversial. The two interim officers commissioned a study to determine the precise activities of backup centers and their role in the effective delivery of legal services to the poor. It was eventually decided that these units would be permitted to provide expertise to local programs that were helping clients in need of specialized assistance. However, they would be barred from creating test cases out of whole cloth by soliciting clients for the purpose of filing test cases to change the law. (LSC budget cuts in 1996 brought an end to federal funding of backup centers.)

LSC's first management team was comprised of three outstanding lawyers: President Tom Ehrlich, Vice President Clinton Bamberger, and General Counsel Alice Daniel. The trio provided the board with executive leadership that was creative, practical, and effective.

## **It was eventually decided that the legal services centers would be permitted to provide expertise to local programs that were helping clients in need of specialized assistance.**

By 1980, national goals were established, and LSC-funded programs employed more than 6,000 attorneys that constituted the backbone of a nationwide program that served the civil legal needs of the poor in every U.S. county.

When I left the LSC board in mid-1979, LSC's annual funding had reached \$300 million, which is equivalent in today's dollars to more than \$683 million. Regrettably, LSC today receives less than half that amount from Congress in real dollars, and the corporation's budget supports fewer than 4,000 staff lawyers to serve substantially more poor Americans. State, local, and private contributions provide an essential supplement to the federal investment.

On a personal level, I retain warm memories of the comradeship and collegiality within the board and among the executive leadership, and I treasure the many contacts I made with dedicated legal services lawyers during LSC's infancy. I can still remember social gatherings held in connection with our board meetings... the music of a mariachi band playing at a dinner at Rudy Montejano's home in the Los Angeles area... the sounds of country music at a festive gathering in Austin, Texas... Native American culture on display at a meeting in Window Rock, Arizona. Looking back on those critical early years, I am proud to have presided over a board that helped LSC grow into the vibrant national program it is today, one capable of providing high-quality civil legal assistance to millions of deserving Americans in need.



*Roger C. Cramton, the Stevens Professor of Law Emeritus at Cornell Law School, was the first chair of the LSC, presiding over the board from 1975 to 1978. For his detailed argument on the case for publicly funded legal services for the poor, see "Crisis in Legal Services for the Poor," 26 Villanova L. Rev. 521 (1981).*