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DEVELOPMENT OF THE LEGAL SERVICES CORPORATION

Warren E. George†

An increasing number of nations provide legal assistance programs for their poor citizens. Generally, these nations have recognized that an assistance program tied to the executive branch of government is reluctant to place its clients' interests above those of government or else is an inviting target for political interference. Thus, almost without exception, nations providing legal assistance for the poor have insulated their programs from political pressure.  

Until recently, the one significant exception was the legal services program of the United States. It was a creature of the executive branch and was subject to political attack whenever its efforts to secure the legal rights of poor citizens conflicted with entrenched interests. The program's history shows an almost continuous effort to restrict the activity of legal services attorneys and to control the free exercise of their professional judgment. Most of these efforts were spawned by a misunderstanding of the role that professionally independent lawyers play in representing clients, a role that includes working to change existing law on behalf of clients.

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1 See, e.g., M. Cappelletti, J. Gordley & E. Johnson, Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies ix-x (1975) [hereinafter cited as Toward Equal Justice].


3 Canon 7 of the ABA Code of Professional Responsibility requires a lawyer to represent a client zealously within the bounds of the law. Ethical Consideration 7-1 elaborates: The professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law; to seek any lawful objective through legally permissible means; and to present for adjudication any lawful claim, issue or defense. Indeed, private practitioners engaged in pro bono work on behalf of the poor take these same approaches to discharging their professional responsibilities. For example, during 1975 the San Francisco Lawyers' Committee for Urban Affairs litigated to establish the right of tenants to sue landlords for breach of implied warranty of habitability, to challenge state prison restrictions on visitation privileges, and to challenge a statute excluding debtors without families from obtaining exemptions to wage garnishments. San Francisco Lawyers Committee for Urban Affairs, 1975 Annual Report 6 (Nov. 1975). See also Sullivan, Law Reform and the Legal Services Crisis, 59 Calif. L. Rev. 1, 28 n.91 (1971).

4 Canon 8 of the ABA Code of Professional Responsibility and Ethical Consideration
The passage of the Legal Services Corporation Act, and the concomitant separation of the program from the executive branch, is therefore an important milestone in the history of this nation's legal services program. The Act recognizes the need to protect the program from political interference and to ensure the professional independence of legal services attorneys. The Act's significance can only be understood, however, by briefly reviewing both the history of the legal services program and the history of the Act itself. Furthermore, the basic features of the Act must be analyzed to determine whether it will provide effective, independent legal services for the poor.

I

DEVELOPMENT OF A CORPORATION FOR LEGAL SERVICES: THE NEED FOR INSULATION FROM POLITICAL INTERFERENCE

As this nation entered the 1960's, the government and the bar at virtually all levels were unresponsive to the needs of the poor for legal assistance. The existing private legal aid societies—financed almost exclusively by charitable contributions—were operating on modest budgets, and legal aid attorneys were underpaid, over-worked, and susceptible to pressure from their financial backers. The bar took refuge in its apathy by characterizing private legal aid as a buffer against socialization of the legal profession and by condemning suggestions that government provide legal assistance to the poor. Nevertheless, by 1965 the federal government had largely assumed this responsibility by establishing a legal services program within the Office of Economic Opportunity (OEO). It did so with the reluctant approval of the national bar.

Almost from the outset of the federally-funded program, how-

8.2 require that "[i]f a lawyer believes that the existence or absence of a rule of law, substantive or procedural, causes or contributes to an unjust result, he should endeavor by lawful means to obtain appropriate changes in the law."

7 See E. Johnson, Justice and Reform: The Formative Years of the OEO Legal Services Program 14-19 (1974) [hereinafter cited as Justice & Reform].
8 See, e.g., The Legal Aid Society, Annual Report 1967 ($3 million expenditures).
9 See J. Carlin, J. Howard & S. Messinger, Civil Justice and the Poor 50 (1967).
10 See Marden, Legal Aid, the Private Lawyer and the Community, 20 Tenn. L. Rev. 757, 759-61 (1949). See also 75 ABA REPORTS 93-95 (1950).
11 See note 47 infra.
12 The conversion of the ABA from opponent to supporter of government-funded legal services is described in Justice & Reform, supra note 7, at 43-64.
ever, the professional independence of its attorneys became a political embarrassment to groups outside the executive branch. Gradually this independence made the program a political liability to the Executive as well. A number of attempts were therefore made to limit the attorneys' independence, chiefly by giving greater control over local legal services offices to groups outside the program. For the most part such attempts were unsuccessful, but it became obvious that if the program was to retain professional integrity, then it would need to be shielded from political pressure and interference. Proposals to establish an independent corporate home for the program and the eventual development of the Legal Services Corporation were direct responses to the political vulnerability of the OEO Legal Services Program.

A. Threats from Outside

The history of groups outside the executive branch attempting to limit the independence of legal services attorneys parallels the development of California Rural Legal Assistance (CRLA)—an organization designated by OEO in 1968 as the “outstanding legal services program of the year,” and in 1970 as “one of the best Legal Services programs in the nation.” One reason for CRLA's success was its ability to cope with the intractable problems that beset legal services projects. It developed, in consultation with client advisory committees, a priority system to deal with the problem of limited resources and a potentially limitless case load. In addition to emphasizing “service cases” and “routine matters,” CRLA attorneys instituted litigation on problems affecting large numbers of clients. Moreover, CRLA conducted regular training and evalua-
tion of its staff and instituted a backup system to coordinate efforts of local offices on common legal problems and difficult cases.\textsuperscript{19}

Although it did not often resort to litigation,\textsuperscript{20} CRLA was extraordinarily successful when it did so.\textsuperscript{21} In one of its earliest cases, California was forced to restore $210 million in cutbacks incorrectly made in the state's "Medi-Cal" program.\textsuperscript{22} The case had political repercussions because it prevented former Governor Reagan from fulfilling a campaign promise to balance the state budget.\textsuperscript{23} In other cases, CRLA attorneys forced implementation of a minimum wage for farmworkers,\textsuperscript{24} blocked the importation of cheap foreign farm laborers,\textsuperscript{25} and obtained expansion of the federal food stamp and school lunch programs.\textsuperscript{26}

CRLA's success aroused considerable political hostility. In 1967, California's Senator George Murphy proposed legislation that would have prevented federally-funded legal services programs, and hence CRLA, from suing any federal, state, or local agency.\textsuperscript{27} Senator Murphy's amendment was defeated,\textsuperscript{28} but Governor

that roughly 80\% of project time was spent in dealing with service cases. \textsc{Comm'n Report} 34-35. Eighty-nine percent of the legal problems handled by CRLA between July 1, 1968, and June 30, 1969, involved individual clients. \textsc{115 Cong. Rec.} 38,816 (1969) (remarks of Representative Tunney).

\textsuperscript{19} See \textsc{CRLA Controversy} 605.

\textsuperscript{20} In fiscal year 1969-70, only 8\% of the 9,705 cases closed by CRLA attorneys involved a court proceeding. \textsc{Comm'n Report} 35. See Karabian, \textit{Legal Services for the Poor: Some Political Observations}, 6 \textsc{U.S.F.L. Rev.} 253, 257 (1972) [hereinafter cited as \textit{Political Observations}]. In fiscal year 1968-69, CRLA attorneys filed 63 class actions—less than one-half of one percent of the program's total caseload. See \textsc{115 Cong. Rec.} 38,816 (1969) (remarks of Representative Tunney).

\textsuperscript{21} CRLA attorneys were successful in 84\% of their court cases concluded in fiscal year 1969-70. Their success rate in administrative decisions during the same period was 88\%. \textsc{Comm'n Report} 34.

\textsuperscript{22} Morris v. Williams, 67 Cal. 2d 733, 433 P.2d 473, 63 Cal. Rptr. 689 (1967). For a discussion of this case as well as others as a measure of the legal services program's cost-effectiveness, see \textit{Justice & Reform}, supra note 7, at 250-33, 368-70 & nn. 229, 236.


\textsuperscript{24} In Riviera v. Division of Indus. Welfare, 265 Cal. App. 2d 576, 71 Cal. Rptr. 739 (1968), the court ordered a 25 cent per hour wage increase for 200,000 California farmworkers. Earl Johnson estimated the case was "worth" $100 million per year to farmworkers. \textit{Justice & Reform}, supra note 7, at 344 n.85, 369-70 n.256.

\textsuperscript{25} See \textsc{CRLA Controversy}, supra note 13, at 607.

\textsuperscript{26} See id. See also \textit{Political Observations}, supra note 20, at 258.

\textsuperscript{27} See \textsc{113 Cong. Rec.} 27,871-73 (1967). Senator Murphy's proposal was in the form of an amendment to the Economic Opportunity Act. In urging the Senate to support his amendment, Senator Murphy referred generally to CRLA and specifically to the suit against the Department of Labor to stop importation of Mexican "braceros." \textit{Id.} at 27,871.

\textsuperscript{28} \textit{Id.} at 27,873. The vote was 36 for, 52 against. Vigorous lobbying by the organized bar prevented introduction of the amendment in the House. See \textit{Justice & Reform}, supra note 7, at 339 n.41.
Reagan was so angered by CRLA's activities that he threatened to veto their funding for 1968, although a veto would have been subject to override by the OEO Director. In 1969, Senator Murphy introduced another amendment to the Economic Opportunity Act (EOA) that would have removed the OEO Director's override power and given a governor absolute veto power over federal funding of any legal services program in his state. The Senate passed this amendment, but the House rejected it after intensive lobbying by the organized bar. In conference, the Senate eventually dropped the Murphy amendment.

A challenge to CRLA's very existence came in 1970. On December 1, 1970, OEO announced that CRLA would receive a $1.8 million grant for 1971. On December 26, 1970, Governor Reagan vetoed the 1971 funding. Several weeks later a justification for the veto—the Uhler Report—was delivered to OEO. This report accused CRLA attorneys of a "blatant indifference to the needs of the poor...[and] a disposition to use their clients as ammunition in their efforts to wage ideological warfare." After giving CRLA an emergency thirty-day grant while it reviewed the report, OEO an-

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29 See CRLA Controversy, supra note 13, at 609. Governor Reagan finally did not veto the funding, offering to withhold the veto in exchange for grant restrictions on the activities of CRLA attorneys. Id.
30 Reagan's power as Governor to veto CRLA funding was pursuant to statutory authority in the Economic Opportunity Act, 42 U.S.C. § 2834 (1970), but was subject to override by the OEO Director.
31 See 115 Cong. Rec. 29,894 (1969). Senator Murphy again focused on the alleged abuses of CRLA as a justification for his proposal:

The program was not to set up a bank of lawyers to enjoin the California State Legislature, or the Secretary of Labor, or the Governor of the State...That is the tack that has been followed by the California Rural Legal Assistance.

Id. at 29,896.
32 Id. at 29,897-98.
33 See Robb, Controversial Cases and the Legal Services Program, 56 A.B.A.J. 329, 331 (1970); 115 Cong. Rec. 38,793 (remarks of Representative Reid: "President Nixon, Chief Justice Burger, OEO Director Rumsfeld, and virtually every national bar and legal association have spoken out against the Murphy amendment."); 115 Cong. Rec. 38,822 (1969) (remarks of Representative Wyatt: "The list of opponents to the Murphy amendment and supporters of legal services reads like a Who's Who.").
35 See CRLA Controversy, supra note 13, at 610. Although it had been anticipated, no advance notice of the veto was given to CRLA. See id. at 609-10.
nounced in late January 1971 that the Reagan veto would stand until the charges of misconduct could be considered by an OEO-appointed commission.\textsuperscript{38} CRLA was given six months interim funding pending the outcome of the investigation.\textsuperscript{39} A three-judge commission was appointed in March 1971, and assurances were given that if the commission found that CRLA's activities complied with the OEO statute and guidelines, then the program would be refunded "in full."\textsuperscript{40} After twenty days of public hearings, including testimony by 164 witnesses, the commission filed a 400 page report that concluded:

\begin{quote}
[T]he complaints contained in the Uhler Report and the evidence adduced thereon do not, either taken separately or as a whole, furnish any justification whatsoever for any finding of improper activities by CRLA. . . .

The Commission expressly finds that in many instances the [Uhler Report] has taken evidence out of context and misrepresented the facts to support the charges against CRLA. In so doing, the Uhler Report has unfairly and irresponsibly subjected many able, energetic, idealistic and dedicated CRLA attorneys to totally unjustified attacks upon their professional integrity and competence.

From the testimony of the witnesses, the exhibits received in evidence and the Commission's examination of the documents submitted in support of the charges in the [Uhler Report], the Commission finds that these charges were totally irresponsible and without foundation.\textsuperscript{41}
\end{quote}

The commission also found that CRLA had provided legal assistance "in a highly competent, efficient and exemplary manner" and thus urged that CRLA "be continued and refunded."\textsuperscript{42}

\textsuperscript{38} See Political Observations, supra note 20, at 259. Acting OEO Director Carlucci, although acknowledging the weakness of the Uhler Report, neither overrode nor sustained the veto. Reagan spent most of the week preceding the OEO announcement in Washington, apparently to ensure that no override would be made without an investigation. See Arnold, supra note 23, at 4. He apparently hinted that California's support of former President Nixon's renomination at the 1972 GOP convention hung in the balance. See Schardt, supra note 23, at 42.

\textsuperscript{39} See CRLA Controversy, supra note 13, at 618; Political Observations, supra note 20, at 259.

\textsuperscript{40} See Political Observations 259.

\textsuperscript{41} Comm'n Report, supra note 16, at 83-84. The three-judge commission's report also stated:

\begin{quote}
It should be noted that California State OEO and its Director, Mr. Uhler, were repeatedly invited and urged by the Commission to participate in the hearings . . . . The State OEO and its Director repeatedly refused to participate or to present any evidence to support the charges in the Uhler Report.
\end{quote}

\textit{Id.} Uhler's refusal to participate in hearings to investigate charges made by him was never explained. See Political Observations 260.

\textsuperscript{42} Comm'n Report 88. William L. Knecht, Assistant Counsel to the California Farm Bureau, branded the commission's report a "whitewash." See Arnold, And Finally, 342 Days
At first, OEO refused to release the commission report to CRLA until a decision on the Reagan veto could be made. CRLA then filed suit to force immediate release of the report. Meanwhile, OEO director Carlucci flew to California to consult with Reagan. A compromise was finally reached which ended the controversy: CRLA was given a seventeen month grant, which Reagan approved, and California was given a $2.5 million grant to establish an experimental legal services program for low-income citizens.

Although the ultimate result was a victory for CRLA, the lengthy battle undermined the morale of staff and drained energy and resources that could have been better used in serving the legal needs of the poor. The battle also demonstrated how vulnerable even the best of legal services projects was to the irresponsible use of political power. Nor was the veto against CRLA an isolated incident. Legal services refundings were vetoed in Arizona, Connecticut, Florida, Louisiana, Missouri, and North Dakota.

B. Threats from Inside

A series of developments within OEO also demonstrated the political vulnerability of a legal services program located in the executive branch. Although not specifically authorized by the Economic Opportunity Act (EOA), the Legal Services Program (LSP) was established in 1967 as a “national emphasis” program administered within OEO’s Community Action Program (CAP). By 1966 Congress was making direct appropriations to LSP, but the poorly-defined relationship between CAP and LSP, and CAP’s...
continued control over funding of local projects,\textsuperscript{50} hindered the development of LSP and left it vulnerable to local political pressure.\textsuperscript{51} Moreover, the requirement that local projects furnish twenty percent of their costs increased this pressure.\textsuperscript{52} In some areas, essential private funding was withdrawn after LSP sued local agencies that, directly or indirectly, were sources of such funding.\textsuperscript{53}

The most serious internal threat to LSP, however, was a series of attempts to "regionalize" OEO. Believing that the failure of its war on poverty stemmed from administrative inefficiency, OEO hired a consultant to study its management and make recommendations for change. The resulting McKinsey Report\textsuperscript{54} argued in favor of regionalization: a transfer of authority over OEO programs to regional directors.\textsuperscript{55} The McKinsey Report also recommended that LSP give up its power to approve grants and select personnel. Moreover, regional LSP staff were to serve CAP staff—nonlawyers—in an advisory capacity and relinquish operational control over local projects. "Thus, with one deft stroke the McKinsey report recommendations threatened to excise lawyer control from the Legal Services Program."\textsuperscript{56}

To block OEO implementation of the recommendations, Representative O'Hara suggested that language affirming the need for an autonomous LSP be inserted in a report of the House committee having jurisdiction over OEO.\textsuperscript{57} This tactic, and effective lobbying by the organized bar, temporarily blocked the threat to the professional independence of LSP lawyers.\textsuperscript{58} Subsequently, The National Advisory Committee\textsuperscript{59} formally stated the organized bar posi-

\textsuperscript{50} See Robb, supra note 49, at 221-23.
\textsuperscript{51} For example, Mayor Richard Daley was chairman of an OEO-funded CAP, the Chicago Committee on Urban Opportunity (CCUO). CCUO threatened to cut off funds for the LSP component of CAP, the Legal Aid Bureau (LAB), if LAB would not cease its suits against municipal agencies. See Pearson, supra note 46, at 646; Note, supra note 46, at 249-50 nn.59-61.
\textsuperscript{52} 42 U.S.C. § 2812(c) (1970), as amended, (Supp. IV, 1974).
\textsuperscript{53} For example, United Fund's support of LSP's was withdrawn in St. Louis, Missouri, Albuquerque, New Mexico, and Oklahoma City, Oklahoma as a result of suits against local government agencies that were heavy contributors to the United Fund. See Pearson, supra note 46, at 646; Note, supra note 46, at 259-60 n.95.
\textsuperscript{54} McKinsey & Co., Management Study of OEO.
\textsuperscript{55} See JUSTICE & REFORM, supra note 7, at 149-51.
\textsuperscript{56} Id. at 150-51. See also Robb, supra note 49, at 223.
\textsuperscript{58} See JUSTICE & REFORM 161-62.
\textsuperscript{59} The National Advisory Committee was established to enlist the support of the organized bar for federally funded legal services. Its members included, among others, officers of the ABA, the National Bar Association and the National Legal Aid and Defender Association (NLADA) and it acted as liaison between OEO and the bar. It functioned as "watchdog of
tion on regionalization in the Fuchsberg Report, which recommended raising LSP to independent status within the OEO, thus freeing it from the administrative authority of CAP. The Nixon administration took this step in 1969 and, additionally, made the LSP Director an Associate Director of OEO. In announcing these changes, former President Nixon stated:

The Office of Legal Services will . . . be strengthened and elevated so that it reports directly to the Director. It will take on central responsibility for programs which help provide advocates for the poor in their dealings with social institutions. The sluggishness of institutions—at all levels of society—in responding to the needs of individual citizens is one of the central problems of our time. Disadvantaged persons in particular must be assisted so that they fully understand the lawful means of making their needs known and having those needs met. This goal will be better served by a separate Legal Services Program, one which can test new approaches to this important challenge.

The respite from the threat of regionalization was short-lived, however. By early 1970, OEO had announced that a new form of regionalization would be instituted, giving administration of LSP to OEO's regional directors. The regional directors were all political appointees; only two were lawyers. The National Advisory Committee and the organized bar quickly mobilized opposition in Congress. By November 1970, OEO Director Rumsfeld had backed away from regionalization but almost immediately issued an order to decentralize the Legal Services Program. Decentralization entailed giving operating responsibilities to regional lawyers and required coordination of LSP activities with other anti-poverty programs.
Critics of decentralization argued that it was equivalent to regionalization since it gave control of the program to non-lawyers. The organized bar and congressional LSP supporters again voiced opposition, and the decentralization scheme was therefore scrapped. Meanwhile, however, the Director and Deputy Director of LSP, both of whom opposed regionalization, were fired by OEO Director Rumsfeld as the Administration sought to reassert political control over the program.

Regionalization and decentralization struck at the very heart of the LSP. Each plan would have subjected the professional independence of legal services attorneys to political compromise, with legal services becoming merely another tool for dealing with local politicians and bureaucrats. For instance, a CAP director would have been expected to curb legal actions against local governments in return for concessions favoring other poverty programs. But for the poor, whose legal problems often stem from entanglements with local bureaucracy, such a trade-off would have been devastating.

C. A Corporation for the LSP?

By early 1971, bruised by battles over regionalization and embarrassed by the reaction to its awkward handling of the CRLA funding veto, the Administration began to consider seriously an independent legal services corporation. An entity outside the executive branch would draw the fire provoked by legal services for the poor and insulate the Administration itself from political attack. The idea also appealed to legal services supporters, who saw it as a way to preserve professional independence and insulate LSP from political controversy.

The notion of a legal services corporation was not new, however. As early as 1968 the fundamental conflict between professional independence and political pressure led to discussions between Earl Johnson and the National Advisory Committee (NAC) concerning a corporate home for LSP. As the tempo of attacks on legal services increased, the consideration of how best to insulate the program from political interference accelerated. By mid-1970 the ABA, the National Legal Aid and Defender Association (NLADA), and the NAC had all recommended moving LSP into an independent governmental agency or else into a quasi-public corporation. Moreover,

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67 See Robb, supra note 49, at 228 n.101.  
68 See id.; Arnold, supra note 23, at 6-7.  
the executive branch itself was considering a reorganization of legal services. In June 1970, a study submitted to the Ash Council on Executive Reorganization recommended that LSP be transferred to the judiciary or to an independent agency. By early 1971, the Ash Council recommended that legal services be placed in a nonprofit corporation totally divorced from the executive branch. An important component of this recommendation was the desire to eliminate a political liability: "[T]his program should be placed in an organizational setting which will permit it to continue serving the legal needs of the poor while avoiding the inevitable political embarrassment that the program may occasionally generate."

The American Bar Association, after a detailed consideration of the alternatives, also recommended a private, nonprofit, federally-funded corporate home for legal services. The Departments of Health, Education and Welfare (HEW), Housing and Urban Development (HUD), and Justice were rejected as possible locations—HEW and HUD because legal services lawyers often brought suit against them, and the Department of Justice because it represented HEW and HUD in such suits. The Administrative Office of the Courts and the judiciary itself were rejected because they were not equipped to deal with the political ramifications of administering legal services. Similarly, an independent agency within the executive branch was rejected because presidential appointment of directors was seen as compromising the political independence essential to LSP. Perhaps most important, a successful prototype of a private federally-funded nonprofit corporation existed: the Corporation for Public Broadcasting (CPB).

The creation of CPB had been attended by a desire to provide "the most insulation from Government control or influence over the expenditure of funds." An independent corporation had been created as the best way to accomplish that end. Nevertheless, the ABA suggested some significant differences from the CPB model. The President was authorized to appoint all directors of CPB, with

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70 See id.
72 American Bar Ass'n, The Corporation for Legal Services: A Study (1971) [hereinafter cited as ABA Study].
73 ABA Study 22-33.
Senate confirmation. Because of the greater vulnerability of LSP to political pressure, the ABA report suggested that the President appoint only a portion of the new corporation's directors. Because of the need of CPB to seek yearly appropriations, and the inherent threat to independence that this funding mechanism presented, the ABA Report strongly urged that the legal services program receive a permanent funding authorization of at least $90 million per year. The National Advisory Committee, after a study of the alternatives, similarly recommended that LSP be transferred to a "District of Columbia non-profit corporation chartered by Congress." Meanwhile, these recommendations were being shaped into legislative proposals. In March 1971, a bipartisan bill sponsored by Senator Mondale and Representatives Meeds and Steiger was introduced in Congress. The bill would have moved LSP into an independent legal services corporation, permitted the President to appoint only a minority of the directors, and authorized funding for two years at levels significantly above those LSP had been receiving.

The Administration countered with its own bill in early May 1971. In submitting it to Congress, former President Nixon stated:

"If we are to preserve the strength of the [legal services] program, we must make it immune to political pressures and make it a permanent part of our system of justice.

The legal problems of the poor are of sufficient scope that we should not restrict the right of their attorneys to bring any type of civil suit. Only in this manner can we maintain the integrity of the adversary process and fully protect the attorney-client relationship so central to our judicial process."

To accomplish these ends, the administration bill proposed an eleven person board appointed by the President, removed the gov-

76 ABA STUDY 43.
77 Id. at 38-41, 51.
78 117 CONG. REC. 13,786-88 (1971) citing NATIONAL ADVISORY COMM. ON THE LEGAL SERVICES PROGRAM, RECOMMENDATIONS ON PROPOSED TRANSFER OF O.E.O. LEGAL SERVICES PROGRAM.
80 Id. The bill required Congress to hold for the LSP $140 million of OEO's fiscal 1972 appropriation and $170 million of its fiscal 1973 appropriation.
82 7 WEEKLY COMP. PRES. DOCS. 727, 729 (1971). The Legal Services Corporation Act, however, restricts the right of legal services attorneys to bring a number of types of civil suits. See text accompanying notes 174-76 infra.
governors' veto power, \(^{83}\) dropped the twenty percent local funding requirement, and authorized funding for the corporation on a three-year basis. \(^{84}\) In addition, the administration bill authorized funding of backup centers \(^{85}\) and suggested that solvent clients pay some portion of their legal services costs. \(^{86}\) There were some restrictions on attorney activities that were not present in the bipartisan bill. For example, lobbying, duplicative appeals, and grants to public interest law firms were forbidden. \(^{87}\)

After much wrangling, Congress passed a compromise bill that allowed the President to appoint only a portion of the directors of the corporation. \(^{88}\) President Nixon vetoed the legislation because he believed that this restriction was "an affront to the principle of accountability to the American People as a whole." He concluded that "[i]t would be better to have no legal services corporation than one so irresponsibly structured." \(^{89}\)

In July 1972, after Congress had again voted for a corporation, a revised provision was recommended by a House-Senate conference committee. \(^{90}\) It continued the limitation on the President's selection of the board, however, and because of the threat of another veto, the bill containing the provision was recommitted to conference. \(^{91}\) When it emerged, the provision relating to a legal services corporation had been dropped. \(^{92}\) The conference report stated:

The conferees continue to strongly support the existing legal services program and the concept of a legal services corporation

\(^{83}\) The bill did require that a state governor receive at least 30 days notice prior to the Corporation's approval of any grant application made in the state. H.R. 8163, 92d Cong., 1st Sess. § 905(f) (1971).

\(^{84}\) Id. § 908. No funding levels were specified, but President Nixon stated that "[t]he full financial support of the government [for the LSP] is clearly needed." 7 WEEKLY COMP. PRES. Docs. 729 (1971).


\(^{86}\) Id. § 905(a)(3).

\(^{87}\) H.R. 8163, 92d Cong., 1st Sess. (1971). No waiver of the lobbying provision for the representation of an eligible client was provided. Id. § 905(a)(6). Public interest law firms were defined as those expending 75% of their time and resources litigating issues either in the interests of the public or the poor. Id. § 905(b)(3).

\(^{88}\) S. 2007, 92d Cong., 1st Sess. § 904(a) (1971). See 117 CONG. REC. 31,248 (1971). Eleven of the 17 proposed directors were to be selected by the President from lists submitted by the Judicial Conference, a clients' advisory council, a project attorneys' advisory council and five national professional associations, including the ABA and the NLADA.

\(^{89}\) 7 WEEKLY COMP. PRES. Docs. 1635 (1971). See also 117 CONG. REC. 46,057 (1971). An attempt in the Senate to override the President's veto was defeated. Id. at 46,222.


\(^{91}\) See Schardt, supra note 23, at 43.

and intend to continue to seek appropriate means of expanding the program and insuring its independence, to provide the poor greater access to our system of justice under law.  

Unable to move LSP out of the executive branch on its own terms, the Nixon administration stepped up the intensity of its attacks on legal services. The legal services project in Camden, New Jersey—Camden Regional Legal Services (CRLS)—had filed suit against two urban renewal projects, alleging that the projects would destroy much low-income housing without providing sufficiently for relocation. Work on the projects halted as a result of the suit. The Camden City Council contacted Vice President Agnew to enlist his support against CRLS. In a January 1972 speech, Agnew argued that taxpayer-supported programs should not sue other taxpayer-supported programs. In February 1972, Agnew met with the parties to the Camden controversy. At the meeting he claimed that Camden's mayor "has a greater right to claim that he represents [CRLS] clients than [CRLS] because he earned that right at the polls." He urged CRLS to "be less militant in adhering to . . . the total extent of [its client's] legal right in every instance." In September 1972, Agnew delivered a sweeping indictment of LSP as "tax-funded social activism [that] transfers great power in community affairs from elected officials to self-appointed ones." He argued, ominously, that "the professional independence of the lawyer necessarily conflicts . . . with the requirements of a federally funded social program that must be . . . accountable to the public[,]" and suggested that the conflict ought to be resolved by imposing "control at the top."  

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93 H.R. REP. No. 1367, 92d Cong., 2d Sess. 26 (1972). The existing legal services program was assured of continued funding through June 30, 1974, but only at a level of $71.5 million for each fiscal year. 42 U.S.C. § 2702b(c)(2) (Supp. IV, 1974).  
94 See Note, supra note 46, at 254-55 n.77.  
95 See Haddad, supra note 59, at 201. The parallels to the first Murphy amendment were unmistakable. See text accompanying notes 27-28 supra.  
96 See Note, supra note 46, at 254-55 n.77, quoting transcript of meeting in Vice-President Agnew's office, Feb. 1, 1972.  
97 Id.  
98 Agnew, What's Wrong with the Legal Services Program, 58 A.B.A.J. 930, 931-32 (1972).  
99 Id. at 931. For an excellent reply to Agnew, see Klaus, Legal Services Program: Reply to Vice President Agnew, 58 A.B.A.J. 1178 (1972). Klaus argued, correctly, that Agnew's suggestion of "control at the top" totally disregarded the requirements of professional independence set forth in the Code of Professional Responsibility. Id.  
Interestingly, especially in light of the controversy that later erupted over law reform and backup centers, Agnew urged that for attorneys in local projects, law reform should be a by-product of their representation of eligible clients and that
When early in 1973 President Nixon announced his intention to dismantle OEO, the attack on legal services entered a new phase. The Administration's agent in this endeavor was Howard Phillips, newly appointed Acting Director of OEO. As part of his mission, Phillips took aim at LSP. In short order he placed limits on the refunding of local programs, prepared a rationale for phasing out backup centers, fired the LSP Director, struck down law reform as a goal of legal services, and abolished the National Advisory Committee. He made the purely political thrust of his activities very clear:

[The Legal Services Program] has been run by lawyers who disagree with the President's policies on welfare, on busing, on abortion, on every major social issue, people who have concluded that the only way to serve the poor is by opposing the policies of Richard Nixon. . . . I . . . reject . . . any suggestion that they have the prerogative to spend public funds in advancing their opposition.

Although Phillips's public activities were soon enjoined, and his appointment as Acting Director of OEO declared illegal, he continued to act behind the scenes to dismantle legal services. The alternative he proposed was a revenue sharing approach to legal services that would have abolished LSP in favor of turning funds for legal services over to the states, which could then reject the funds if they so decided. Strong pressure on the Administration by the

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[Law reform as a specific goal should be the province of the national office and the various backup centers. It should be pursued through responsible professional representation before legislatures and governmental agencies and through amicus curiae briefs or intervention in existing cases . . . .

Agnew, supra note 98, at 932.


2. Quoted in id. at 5. Phillips was also quoted as saying, "I think legal services is rotten and it will be destroyed." 119 Cong. Rec. 20,696 (1973).

3. See text accompanying note 237 infra.

4. See Arnold, supra note 71, at 25; Schardt, supra note 23, at 44. The revenue-sharing proposal was embodied in S. 1990, 93d Cong., 1st Sess. (1973). This bill, introduced by Senator Helms, a vocal opponent of legal services and the Legal Services Corporation, would have abolished OEO's legal services program (id. § 10(b)), created a Federal Legal Aid Corporation to disburse funds to the states for legal services (id. §§ 4(a)-(b)), mandated the creation of a Judicare system for delivering legal services (id. § 5(b)), and allowed the states to refuse to participate in revenue sharing (id. § 5(d)). Interestingly, in light of Helms's later position on backup centers, S. 1990 authorized the corporation to contract for legal research on problems encountered by eligible clients. Id. § 4(b). The Helms bill was referred to the Judiciary Committee, but was never considered by the Senate as such. 120 Cong. Rec. S 12,134 (daily ed., July 10, 1974). Thereafter, Helms introduced his revenue sharing scheme as an amendment during the debates on the Senate's version of the Legal Services Corporation
ABA blocked this proposal, however, and in May 1973 President Nixon submitted a new legal services corporation bill to Congress.\(^{105}\)

It was not until over a year later that President Nixon signed legislation establishing the Legal Services Corporation. Much of the maneuvering involved in producing an act acceptable to both Houses of Congress, and to the President, is described below in the context of the backup center controversy.\(^{106}\) The overall theme of this struggle, however, was that after two years of unsuccessful efforts to create a corporation, supporters of legal services, fearing another veto and operating at times in a crisis atmosphere, were willing to compromise where necessary to ensure the safety of the LSP.

The Administration's May 1973 proposal was similar to the legislation it had offered in 1971. The proposal did not prohibit grants to or contracts with backup centers. It proposed appointment of an eleven person board by the President. State advisory councils,\(^{107}\) corporation study of alternatives for delivering legal services,\(^{108}\) and prohibition of grants to public interest law firms\(^{109}\) were new features of the proposal.

When the House Education and Labor Committee reported the bill out, it had made one vital concession—the committee agreed that the President should appoint all of the Corporation's directors. Moreover, several important changes that became part of the final legislation had been made. Lobbying activities were permitted if necessary to represent an eligible client; the requirement that some eligible clients pay fees was dropped; a more flexible standard for eligibility was proposed; grants to some public interest law firms were allowed; and a provision giving standing to "interested citizens" in suits to enforce compliance with the legislation was deleted.\(^{110}\) The Administration's agreement to these changes had been obtained before the bill was reported out of committee.\(^{111}\)

Nevertheless, by the time the committee bill was presented on
the House floor for debate, administration support was waver-
ing. A barrage of restrictive floor amendments followed, twenty-
four of which were added to the bill. Significant amendments that
became part of the final legislation included limitations on funding
of backup centers, restrictions on off-duty nonpartisan political
activity of staff attorneys, and prohibition of handling cases deal-
ing with school desegregation, nontherapeutic abortion, and
the Selective Service.

The Senate proceeded more deliberately. Care was taken to
have the administration bill assigned to the sympathetic Committee
on Labor and Public Welfare. After obtaining administration
support for the changes it wished to make, the committee reported
out its bill on November 9, 1973, in a form similar to the House bill.
After several debates, introduction of amendments from the floor,
and a filibuster, the Senate version of the bill was passed on January
31, 1974. Although the Senate accepted amendments restricting
class actions, abortion suits, and Selective Service litigation, it
rejected limitations on desegregation suits, suits challenging state
legislation or a governor’s veto of such legislation, and suits
against federal programs.

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112 See id. at 47.
113 See text accompanying notes 270-88 infra.
§ 2996f(a)(6) (Supp. IV, 1974). It was introduced by Representative Quié. The constitutional-
ity of the restriction on nonpartisan off-duty political activity is questioned in Note, Depolitici-
zation Legal Aid: A Constitutional Analysis of the Legal Services Corporation Act, 61 Cornell L. Rev.
734, 767-75 (1976).
115 The amendment was introduced by Representative Mizell who focused, as had Rep-
resentative Green in introducing the backup center amendments, on the role of the Center for
Law and Education in the Detroit, Michigan, school desegregation case, Bradley v. Milliken,
sion is codified at 42 U.S.C. § 2996f(b)(7) (Supp. IV, 1974). The constitutionality of the restriction on
desegregation cases is questioned in Note, supra note 114 at 739-54.
116 The amendment was introduced by Representative Hogan and further amended by
Representative Froehlich. One purpose of Hogan’s amendment was to “respond” to the
“shocking” Supreme Court decisions on abortion. 119 Cong. Rec. 20,750-52 (1973). The provi-
sion is codified at 42 U.S.C. § 2996f(b)(8) (Supp. IV, 1974). Its constitutionality is
questioned in Note, supra note 114, at 739-54.
117 See 119 Cong. Rec. 20,752 (1973) (remarks of Representative Waggoner). The provi-
sion is codified at 42 U.S.C. § 2996f(b)(9) (Supp. IV, 1974). One other amendment, intro-
duced by Representative Hays and accepted by the House, provided that “[n]o assistance shall
be given to indigent, abandoned Watergate defendants.” 119 Cong. Rec. 20,754 (1973).
118 See Schardt, supra note 23, at 48.
120 See id. at S 824-25 (daily ed. Jan. 30, 1974).
121 See id. at S 965 (daily ed. Jan. 31, 1974).
122 See id. at S 928, S 964.
123 See id. at S 972-73.
124 See id. at S 974, S 978-79. As Senator Long, who introduced the amendment, ex-
When the bill finally emerged from conference in May 1974, it was clear that important concessions had been made by both Houses of Congress. In the most significant compromises, the Senate accepted House restrictions on off-duty nonpartisan political activity and desegregation cases, while the House retreated from its restrictions on backup center funding. The conference bill was accepted by both Houses, but to avoid a veto, the backup center restrictions were later restored. On July 25, 1974, the Legal Services Corporation Act was signed into law.

D. The Fight Continues

The Act was designed to move the embattled Legal Services Program from the executive branch to an independent corporation, thereby insulating it from political interference. Unfortunately, signing of the Act merely triggered a new wave of political fighting which lasted almost an entire year. Before LSP could be transferred to the Corporation, the Act required that a board of directors be appointed. The first group of nominees provoked a storm of reaction from the organized bar and legal services supporters. Most of the protest was directed at three nominees: two were characterized as critics of legal services, and one was known only as a conservative ex-presidential campaign director. Two of these nominees withdrew under fire. The last, William Knecht, whose nomination was sponsored by Ronald Reagan, did not receive approval from the Senate Committee on Labor and Public Welfare, which examined the nominees' credentials. Finally on July 9, 1975, with only four of the original eleven nominees surviving, the Senate confirmed a board of directors for the new Corporation.

plained: "It involves the proposition that no one but an idiot would hire a lawyer to sue himself." *Id.* at S 974.


126 See text accompanying notes 266-70 infra.


128 *Id.* § 3(b), codified at 42 U.S.C. § 2996b nt. (Supp. IV, 1974).


130 One nominee, Edith Green, was author of the so-called Green Amendment restricting backup center activities. The other, William Knecht, criticized the idea of a corporation for legal services and was a vocal opponent of California Rural Legal Assistance.


132 See Arnold, supra note 42, at 37.

133 See id.

On July 14, 1975, the directors were sworn in and promptly held their first meeting.

Ironically, the loser in this drawn-out political battle was the Legal Services Program, which the Act was supposed to protect. Congress, believing that creation of a corporate haven for the program was imminent, had funded legal services under continuing resolutions at $71.5 million per year during the four-year fight to establish the Corporation. Fixed funding for this extended period—one marked by high inflation and increasing unemployment—reduced the quantity of service available to the poor, threatened its quality, and produced an unacceptable level of lawyer turnover.135

The number of legal services lawyers in the field has dropped by about thirteen percent since 1972, and the number of neighborhood law offices by more than forty percent. During the same period economic recession has increased the eligible client population and generated a higher demand for services.136 One predictable result has been service cutbacks. Some programs have stopped taking clients for periods of two months or more, while others have turned away categories of cases, such as bankruptcies and divorces. Working conditions in some programs—lack of privacy for client interviews or insufficient funds for essential activity such as discovery—have failed to meet requirements of the Code of Professional Responsibility.137 Another predictable result—the widening gap between salaries of legal services lawyers and lawyers employed elsewhere—has led to attorney turnover approaching forty percent per year. Obviously, the program cannot withstand a talent loss of this magnitude without suffering grave harm.138

One of the first acts of the new board of directors was therefore to request a $96.5 million appropriation for fiscal year 1976. Congress appropriated $88 million, $16.5 million more than the program had received during each of the previous four years, but $8.5 million less than the board believes is essential.139 These funds can only begin to restore the program's operating capacity and staff morale.

136 See Cramton, supra note 135, at 1340.
137 See id.; Legal Services Appropriation Hearings 18-21.
138 See Legal Services Appropriation Hearings 19.
139 See Cramton, supra note 135, at 1341.
II

AN OVERVIEW OF THE LEGAL SERVICES CORPORATION ACT OF 1974

The focus of the Legal Services Corporation Act is three-fold: access, professionalism, and freedom from political interference. First, access to the system of justice for those otherwise unable to afford adequate legal counsel is recognized. Second, high quality legal assistance through the existing Legal Services Program is affirmed. Third, as befits the Act's tortured legislative history, the program's freedom "from the influence of or use by it of political pressure," is mandated.

A. Access

Eligibility for legal services is the most significant measure of access. The Act defines an eligible client broadly to be "any person financially unable to afford legal assistance." The Corporation is authorized to establish flexible guidelines that take into account such factors as family size, income and debt levels, urban and rural differences, and cost of living variations. The Corporation is to establish priorities giving preference to the "poorest of the poor" in the provision of service. Moreover, where significant numbers of

140 "[T]here is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances . . . ." 42 U.S.C. § 2996(1) (Supp. IV, 1974).
141 "[T]here is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program . . . ." Id. § 2996(2).
142 "[T]o preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures; and . . . attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession." Id. §§ 2996(5)-(6).
143 Id. § 2996a(3).
144 With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this subchapter, the Corporation shall— . . .
(A) establish, in consultation with the Director of the Office of Management and Budget and with the Governors of the several States, maximum income levels (taking into-account family size, urban and rural differences, and substantial cost-of-living variations) for individuals eligible for legal assistance under this subchapter;
(B) establish guidelines to insure that eligibility of clients will be determined by recipients on the basis of factors which include—
(i) the liquid assets and income level of the client,
(ii) the fixed debts, medical expenses, and other factors which affect the client's ability to pay,
(iii) the cost of living in the locality, and
(iv) such other factors as relate to financial inability to afford legal assistance, which shall include evidence of a prior determination, which shall be a disqualifying factor, that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation; and
eligible clients do not speak English, the Corporation is to provide assistance in their language.\textsuperscript{145} Other practices that enhance access to legal services include placing eligible clients on governing bodies of grant recipients\textsuperscript{146} and applying the Freedom of Information Act to the Corporation.\textsuperscript{147} Furthermore, the Corporation is charged with studying and improving systems for delivering legal services to the poor.\textsuperscript{148}

\section*{B. Professionalism}

The Act explicitly states that legal services attorneys are to provide the most effective representation for their clients, consistent with the Code of Professional Responsibility.\textsuperscript{149} For example, the

\textsuperscript{145} "In areas where significant numbers of eligible clients speak a language other than English as their principal language, the Corporation shall, to the extent feasible, provide that their principal language is used in the provision of legal assistance to such clients under this subchapter." 42 U.S.C. § 2996e(b)(6) (Supp. IV, 1974).

\textsuperscript{146} In making grants or entering into contracts for legal assistance, the Corporation shall insure that any recipient organized solely for the purpose of providing legal assistance to eligible clients is governed by a body at least 60 percent of which consists of attorneys who are members of the bar of a State in which the legal assistance is to be provided (except that the Corporation (1) shall, upon application, grant waivers to permit a legal services program, supported under section 2809(a)(3) of this title, which on July 25, 1974, has a majority of persons who are not attorneys on its policy-making board to continue such a non-attorney majority under the provisions of this subchapter, and (2) may grant, pursuant to regulations issued by the Corporation, such a waiver for recipients which, because of the nature of the population they serve, are unable to comply with such requirement) and which include at least one individual eligible to receive legal assistance under this subchapter. Any such attorney, while serving on such board, shall not receive compensation from a recipient.


\textsuperscript{148} The Corporation shall provide for comprehensive, independent study of the existing staff-attorney program under this chapter and, through the use of appropriate demonstration projects, of alternative and supplemental methods of delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance, and contracts with law firms; and, based upon the results of such study, shall make recommendations to the President and the Congress, not later than two years after the first meeting of the Board, concerning improvements, changes, or alternative methods for the economical and effective delivery of such services.

\textsuperscript{149} The Corporation shall not, under any provision of this subchapter, interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the
Act requires the Corporation to ensure that local projects maintain "the highest quality of service and professional standards, the preservation of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to [such] clients . . . ." The maintenance and improvement of professional standards are further assured by training programs designed to prepare attorneys and paralegals to provide quality assistance. Additionally, the Act requires evaluations of local programs, and study of delivery systems to determine ways in which the program can be improved.

The Act settles one question raised by the regionalization fight—the Corporation is to be managed and directed by professionals. A majority of the directors must be lawyers, sixty percent of the body governing a local project must be lawyers, and a majority of members of state advisory councils must be lawyers.

American Bar Association (referred to collectively in this subchapter as "professional responsibilities") or abrogate as to attorneys in programs assisted under this subchapter the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction. The Corporation shall ensure that activities under this subchapter are carried out in a manner consistent with attorneys' professional responsibilities.


Such training is limited by the Act as follows:

No funds made available by the Corporation under this subchapter, either by grant or contract, may be used to support . . . training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients . . . .

Id. § 2996f(b)(5). See also id. §§ 2996e(b)(4), 2996f(a)(4).

The Corporation shall monitor and evaluate and provide for independent evaluations of programs supported in whole or in part under this subchapter to insure that the provisions of this subchapter and the bylaws of the Corporation and applicable rules, regulations, and guidelines promulgated pursuant to this subchapter are carried out.

Id. § 2996f(d).

The Corporation shall have a Board of Directors consisting of eleven voting members appointed by the President, by and with the advice and consent of the Senate, no more than six of whom shall be of the same political party. A majority shall be members of the bar of the highest court of any State, and none shall be a full-time employee of the United States.

Id. § 2996c(a).

Within six months after the first meeting of the Board, the Board shall request the Governor of each State to appoint a nine-member advisory council for such State. A majority of the members of the advisory council shall be appointed, after recommendations have been received from the State bar association, from
Nevertheless, there are other provisions in the Act that restrict the
discretion of legal services lawyers in serving the best interests of
their clients. Such provisions, however, may be construed to do no
more than reiterate certain mandates of the Code of Professional
Responsibility and recognize the limited resources of the program.
For example, the Act requires staff attorneys to obtain the approval
of project directors before instituting class actions.\textsuperscript{157} Local projects
are to review appeals to ensure that project resources are not wasted
in useless appeals.\textsuperscript{158} Moreover, legal assistance attorneys must re-
frain from inciting litigation and other activity that violates the Code
of Professional Responsibility.\textsuperscript{159}

C. \textit{Freedom from Political Interference}

The Act attempts to separate politics from legal services in two
respects. To avoid the governmental interference that accompanied
among the attorneys admitted to practice in the State, and the membership of the
council shall be subject to annual reappointment. If ninety days have elapsed without
such an advisory council appointed by the Governor, the Board is authorized to
appoint such a council. The advisory council shall be charged with notifying the
Corporation of any apparent violation of the provisions of this subchapter and
applicable rules, regulations, and guidelines promulgated pursuant to this subchap-
ter. The advisory council shall, at the same time, furnish a copy of the notification to
any recipient affected thereby, and the Corporation shall allow such recipient a
reasonable time (but in no case less than thirty days) to reply to any allegation
contained in the notification.

\textit{Id.} § 2996c(f).

\textsuperscript{157} No class action suit, class action appeal, or amicus curiae class action may be
undertaken, directly or through others, by a staff attorney, except with the express
approval of a project director of a recipient in accordance with policies established by
the governing body of such recipient.

\textit{Id.} § 2996c(d)(5). This provision does not necessarily conflict with the requirement that clients
receive the best possible representation. It should mean that a senior attorney must screen
class actions for utility before instigation.

\textsuperscript{158} With respect to grants or contracts in connection with the provision of legal
assistance to eligible clients under this subchapter, the corporation shall—\ldots require
recipients to establish guidelines, consistent with regulations promulgated by the
Corporation, for a system for review of appeals to insure the efficient utilization of
resources and to avoid frivolous appeals (except that such guidelines or regulations
shall in no way interfere with attorneys' professional responsibilities) \ldots .

\textit{Id.} § 2996f(a)(7).

\textsuperscript{159} With respect to grants or contracts in connection with the provision of legal
assistance to eligible clients under this subchapter, the Corporation shall—\ldots insure
that all attorneys, while engaged in legal assistance activities supported in whole or in
part by the Corporation, refrain from the persistent incitement of litigation and any
other activity prohibited by the Canons of Ethics and Code of Professional Respon-
sibility of the American Bar Association; and insure that such attorneys refrain from
personal representation for a private fee in any cases in which they were involved
while engaged in such legal assistance activities.

\textit{Id.} § 2996f(a)(10). \textit{See also id.} § 2996e(f), which allows a successful defendant to recover costs
and fees in an action brought by a local project if a court finds either that the sole purpose for
which the action was brought was to harass the defendant or that the plaintiff "maliciously
abused legal process."
prior legal services programs,160 an independent entity is to operate
the new program. And fearing that the federally funded effort might
be used for political purposes other than providing legal services to
the needy, Congress has restricted the activities that legal services
attorneys may perform.

1. Insulation of the Corporation

The most significant organizational accomplishment of the new
Act is shifting the Legal Services Program to an independently char-
tered, private corporation.161 The board of directors is composed
of eleven members, no more than six of whom may be members of
the same party.162 The board must appoint a lawyer as president of
the Corporation, and it may not use political criteria in making its
own personnel decisions.163 Similarly, the Corporation may not use
these criteria in monitoring or selecting employees to deliver legal
services.164

As indicated above,165 the Administration's delay in naming the
first board cost the program an increased appropriation for fiscal
year 1975, but it did obtain a substantial increase for fiscal year 1976.
Unfortunately, the entire program continues to be vulnerable to
political influence in funding matters. Without a minimum guaran-
teed appropriation, the Corporation must apply for funding annu-
ally.166 Although this is an important method of providing accoun-

160 See generally text accompanying notes 13-68 supra.
161 There is established in the District of Columbia a private nonmembership
nonprofit corporation, which shall be known as the Legal Services Corporation, for
the purpose of providing financial support for legal assistance in noncriminal pro-
ceedings or matters to persons financially unable to afford legal assistance.
42 U.S.C. § 2996b(a) (Supp. IV, 1974).
162 Id. § 2996c(a), reproduced in note 154 supra.
163 The Board named Thomas Ehrlich, the widely respected Dean of the Stanford Law
School, as the Corporation's first president. Ehrlich selected E. Clinton Bamberger, Jr., as his
executive vice president. Bamberger, first Director of the OEO Legal Services Program, had
played a vital role in the successful development of that program. See JUSTICE & REFORM, supra
note 7, at 67-149. Conservatives were outraged by the appointments, which they branded as
"radically oriented." Kilpatrick, Activism Feared in Legal Services Group, Syracuse Herald Ameri-
can, Nov. 16, 1975 (copy on file at the Cornell Law Review). Although they had professed
similar outrage when Nixon signed the Legal Service Corporation Act (see text accompanying
note 270 infra), the conservatives now argued that the selection of such "activists" would rob
them of their legislative "victory." Ford's Big Backdown on Legal Services, HUMAN EVENTS, Nov. 8,
1975, at 3-4.
164 In a related provision, the Corporation is prohibited from suspending financial
assistance unless it gives the recipient reasonable notice and an opportunity to show cause why
there should be no suspension. Further, the Corporation cannot terminate assistance, or
continue a suspension for more than 30 days without giving the recipient "a timely, full, and
fair hearing." 42 U.S.C. § 2996j (Supp. IV, 1974). See also id. §§ 2996e(b)(1)-(2).
165 See text accompanying notes 135-39 supra.
166 There are authorized to be appropriated for the purpose of carrying out the
stability, the Corporation will be crippled if legislators opposed to federally-funded legal services succeed in denying the Corporation adequate appropriations. Part of the problem is inherent. The Corporation is admonished to deliver both economical and high quality legal services, but too great a stress on economy—which the Ford administration has emphasized thus far—will again subject the entire program to the ravages of inflation and make the Act's call for equal access and high quality ring hollow.

2. Limitations on Activities

There are two categories of restrictions on the activities of the Legal Services Corporation: those that limit what the Corporation itself may do, and those that limit what recipients and their attorneys may do.

The Corporation must ensure that none of its employees or employees of recipients providing legal assistance take part in or encourage public demonstrations, picketing, boycotts, or strikes. Such employees are further forbidden, at any time, to engage in or encourage rioting, civil disturbance, violation of an outstanding injunction, or intentional identification of the Corporation or recipient with certain political activity.
The Corporation may not lobby for or against any federal, state, or local legislation unless it has been formally requested to do so or unless its own activities are involved. Neither the Corporation nor its recipients may make political contributions or contributions relating to the passage of ballot measures, initiatives, or referendums. However, recipients may advise and represent clients regarding such matters.

With certain exceptions, recipients and their attorneys are forbidden to lobby at any level of government. While on duty, all legal

by section 2996f(a)(6) of this title. The Board within ninety days after its first meeting, shall issue rules and regulations to provide for the enforcement of this paragraph and section 2996f(a)(5) of this title, which rules shall include, among available remedies, provisions, in accordance with the types of procedures prescribed in the provisions of section 2996j of this title, for suspension of legal assistance supported under this subchapter, suspension of an employee of the Corporation or of any employee of any recipient by such recipient, and, after consideration of other remedial measures and after a hearing in accordance with section 2996j of this title, the termination of such assistance or employment, as deemed appropriate for the violation in question.

42 U.S.C. § 2996e(b)(5) (Supp. IV, 1974). See also id. § 2996e(e)(1). The prohibited political activity is set forth in § 2996f(a)(6). Section 2996e(b)(5) further required the board to adopt regulations for enforcement of the section within 90 days of its first meeting. See Fed. Reg. 33,293 (1975). The constitutionality of these regulations, which merely track the statute, has been challenged in Welfare Rights Org. v. Cramton, Civil No. 75-1938 (D.D.C., filed Nov. 20, 1975). The Corporation or recipient employees, however, may engage in picketing and related activity if it relates to their own employment situation. 42 U.S.C. § 2996e(b)(5) (Supp. IV, 1974).

The Corporation shall not itself— undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, except that personnel of the Corporation may testify or make other appropriate communication (A) when formally requested to do so by a legislative body, a committee, or a member thereof, or (B) in connection with legislation or appropriations directly affecting the activities of the Corporation.


Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment for use in advocating or opposing any ballot measures, initiatives, or referendums. However, an attorney may provide legal advice and representation as an attorney to any eligible client with respect to such client's legal rights.

Id. § 2996e(d)(4).

With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this subchapter, the Corporation shall— insure that no funds made available to recipients by the Corporation shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, except where— (A) representation by an attorney as an attorney for any eligible client is necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities (which shall not be construed to permit a recipient or an attorney to solicit a client for the purpose of making such representation possible, or to solicit a group with respect to matters of general concern to a broad class of persons as distinguished from acting on behalf of any particular client); or
assistance attorneys must refrain from political activity such as voter registration and transportation, although they may provide legal advice to eligible clients on such matters. In addition, staff attorneys—those who receive more than one-half of their professional income from recipients—must refrain from specified off-duty political activities, whether partisan or nonpartisan. Moreover, certain organizing activities are forbidden, except in the course of providing legal assistance to eligible clients.

The foregoing limitations on attorney activities raise serious constitutional issues. Still more troublesome are the issues raised by restrictions on the kinds of cases recipients and attorneys may handle. Congress decided to placate opponents of certain controversial legal developments, e.g., nontherapeutic abortion and school desegregation, by forbidding legal services to handle such cases. This wrong-headed approach to depoliticizing legal services demonstrates a grave misunderstanding of the legal process. According to the Act, legal services attorneys may not represent clients in actions involving collateral attack on criminal convictions.

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(B) a governmental agency, a legislative body, a committee, or a member thereof requests personnel of any recipient to make representations thereto . . . .

Id. § 2996f(a)(5).

174 Id. § 2996a(7).

175 With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this subchapter, the Corporation shall— . . . insure that all attorneys engaged in legal assistance activities supported in whole or in part by the Corporation refrain, while so engaged, from—

(A) any political activity, or

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

(C) any voter registration activity (other than legal advice and representation); and insure that staff attorneys refrain at any time during the period for which they receive compensation under this subchapter from the activities described in clauses (B) and (C) of this paragraph and from political activities of the type prohibited by section 1502(a) of Title 5, whether partisan or nonpartisan . . . .

Id. § 2996f(a)(6) (referring to 5 U.S.C. § 1502(a) (1970), as amended, (Supp. IV, 1974)).

176 No funds made available by the Corporation under this subchapter, either by grant or contract, may be used— . . . to provide legal assistance with respect to any fee-generating case (except in accordance with guidelines promulgated by the Corporation), to provide legal assistance with respect to any criminal proceeding, or to provide legal assistance in civil actions to persons who have been convicted of a

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177 See Note, supra note 114, at 760-75.

178 See id. at 739-54.

179 No funds made available by the Corporation under this subchapter, either by grant or contract, may be used— . . . to provide legal assistance with respect to any fee-generating case (except in accordance with guidelines promulgated by the Corporation), to provide legal assistance with respect to any criminal proceeding, or to provide legal assistance in civil actions to persons who have been convicted of a
juveniles in certain circumstances, desegregation of elementary or secondary schools, nontherapeutic abortion, Selective Service violations, or desertion. No rational classification is made by the desegregation and abortion limitations. Congressional hostility to legal services, rather than sound legislative principles, led to these restrictions, and their constitutionality should therefore be challenged as soon as possible.

D. Other Provisions

The issue of the funding veto by state governors has been resolved in the Act. Governors must be notified thirty days before a grant is made in their state, but they have no power to veto such grants. State advisory councils must be established, but their sole...
function is to notify the Corporation of apparent violations of the Act or regulations by recipients or attorneys. As discussed below, the Corporation itself must perform certain research, technical assistance, training, and clearinghouse activities, although it may not participate in litigation on behalf of clients.

III

Backup Centers

The development of specialized support centers to "backup" project attorneys was vital to the success of LSP. This success often provoked attack, however, and backup centers were widely attacked. A political deal was therefore instigated, which resulted in a restrictive backup center provision in the Legal Services Corporation Act. This limitation raises doubts about the status of backup centers and thus threatens the ability of the entire program to provide high quality legal assistance to as many poor clients as possible.

A. Pressures for the Development of Backup Centers

I. The Caseload Problem

The unmet need of the poor for legal assistance, and the early success of LSP in expanding legal services, combined to bury local projects under an avalanche of requests for help. Project attor-
neys discovered that the legal problems of the poor are numerous, complex, and time consuming.\textsuperscript{192} Legal services attorneys who had practiced privately estimated that it takes almost five times as much time and effort to provide adequate representation to poor clients as it takes to provide similar representation in private practice.\textsuperscript{193} Moreover, the limited resources of LSP\textsuperscript{194} made it impossible for project attorneys to assist every client who walked through the door.

Attempts to represent too many clients meant that all received short shrift: few depositions could be taken, few interrogatories could be filed, and few appeals could be made.\textsuperscript{195} In consumer contract cases, for example, project attorneys used telephone negotiations with creditors to reduce their clients’ payments, but they could not pursue such potential abuses as fraud and usury.\textsuperscript{196} Attorneys also accepted clients’ simplistic characterizations of legal problems, servicing only the problems described, rather than ferreting out the operative facts. Thus, legitimate defenses were not raised and cross-claims were not made.\textsuperscript{197}

This caseload pressure threatened to undermine the quality of service provided to the poor,\textsuperscript{198} and the lawyer’s ethical responsibility to provide, at a minimum, adequate professional service to his client.\textsuperscript{199} Thus, projects were forced to limit their caseloads in a variety of ways. One method was simply to close project doors when there was a case overload.\textsuperscript{200} A far less arbitrary device, however, developed from the realization that legal problems often involve issues common to an entire economic class. The poor share a common interest in governmental practices, policies, programs, and laws having an impact on their well-being.\textsuperscript{201} Selecting cases likely to have

\textsuperscript{192} See Silver, The Imminent Failure of Legal Services for the Poor: Why and How to Limit Caseload, 46 J. Urban L. 217, 218 (1968) [hereinafter cited as Silver]. Ms. Silver is a former Director of the Berkeley Neighborhood Legal Services Project.

\textsuperscript{193} See Silver 220. The multiplicity of cases for which each client needed help, communication difficulties, unfamiliarity with such concepts as contract or liability, distrust, and failure to understand the notion of lawyer-client confidentiality helped account for this disparity. Id. at 218-21. See also Sullivan, supra note 3, at 4-5.

\textsuperscript{194} A total of $291 million was appropriated in the first seven fiscal years of the program. Justice & Reform, supra note 7, at 369 n. 234.


\textsuperscript{196} See Silver 244-45.

\textsuperscript{197} See id. at 231.

\textsuperscript{198} See Sullivan, supra note 3, at 6, 21-22; Neighborhood Law Offices: The New Wave in Legal Services for the Poor, 80 Harv. L. Rev. 805, 822-28 (1967).

\textsuperscript{199} See Canons 1, 6 of the ABA Code of Professional Responsibility.

\textsuperscript{200} See Silver 223-34.

\textsuperscript{201} Legal problems of the poor were common on a nationwide basis as well. For example,
wide impact thus became a method of caseload limitation. It assured
the most efficient allocation of resources, and was a method that
poor clients themselves could support. When asked to select a
method of caseload limitation, project advisory councils composed
of poor people agreed that selecting cases affecting the largest
groups of poor people was the best method.\textsuperscript{202}

The national "group interest" of the poor, the need to limit
caseloads, and the overriding need to make efficient use of limited
funds were pressures leading to the development of a national
network of backup centers to expand the capacity of local projects.

2. \textit{Staffing Patterns}

Another significant pressure leading to a national support sys-
tem was the staffing pattern of legal services projects. The typical
staff attorney lacked experience in the area of poverty law.\textsuperscript{203}
Moreover, heavy case burdens, low salaries, and the frustrations of
poverty law practice contributed to attorney "burn-out" and high
turnover.\textsuperscript{204} Staff attorneys often did not spend enough time in
poverty law practice to develop expertise in handling the
complex tangle of federal and state statutes and regulations. Poverty
law and poverty law programs were new and rapidly changing;
merely keeping abreast of the burgeoning law was virtually a full-
time occupation.

Although local projects needed to train their attorneys and give
them an education in substantive poverty law, neither projects nor
attorneys had time to pursue these endeavors. Even when staff
attorneys could find the time, many projects lacked adequate li-
braries. Moreover, in many areas of the law adequate research tools
were simply unavailable.

Development of sufficient expertise within each legal services
project was not the answer, for it would have required intense
concentration on every case and would have forced dramatic cut-
backs in the caseload—something LSP could ill-afford. Moreover,
this would have wasted scarce resources, for local expertise would
have been unavailable to other projects. These factors eventually led
to the development of a rational, efficient mechanism for dealing

\textsuperscript{202} See Silver 241-42. \textit{See also} Falk & Pollak, \textit{supra} note 37, at 1289.
\textsuperscript{203} Memorandum from C. Eardley to L. Oberdorfer, Sept. 7, 1975 (copy on file at the
\textsuperscript{204} \textit{Legal Services Appropriation Hearings, supra} note 135, at 19.
with recurring legal problems on a state and national basis—backup centers. These backup centers supplied the expertise in poverty law practice that local projects simply could not afford to develop.205

B. Development of Backup Centers

A prototype of a national backup center existed at the time LSP was created. The Center for Social Welfare Policy and Law at Columbia University206 had been established in early 1965 to help reform welfare law through litigation and legislative proposals.207 The OEO took over funding of the center in 1966,208 and by 1967, using less than one tenth of one percent of OEO's budget, the center had been responsible for decisions striking down welfare residency and man-in-the-house restrictions in several states.209 The impact of this success, coupled with its low cost, led the legal services staff to create twelve other national backup centers during the next few years, concentrating on substantive law of significance to the poor.210 The resulting national system of specialized legal services supplied the continuity, professional experience, and expertise that local projects often lacked.211 Backup centers thus compensated for attorney turnover and caseload. They helped weld disparate local projects into a cohesive national program concerned with providing the best possible representation to the poor.

Most of the centers have taken a multifunctional approach to providing support services to local projects. For example, the Center for Social Welfare Policy and Law has prepared training materials and sessions, written briefs, drafted complaints, planned litigation, assisted in discovery and oral argument, and developed manuals of public assistance law.212

205 Representative Chisholm summed up these pressures:
Those who worked within OEO to set up the [legal services] program, realized early that the local legal services attorney was in vital need of backup assistance. Sometimes this was because of inexperience but all too often it was because of the shortage of resources and manpower necessary to keep current with legislative, administrative, and case law developments relevant to the poor . . . . Backup assistance—such as training of new attorneys, continuing legal education in new developing fields, and specialized research on complex legal problems or the complex Federal programs so vitally affecting the poor—was believed vital . . . .

206 See JUSTICE & REFORM, supra note 7, at 181.
207 See id.
208 See id.
209 See id.
210 See id.
211 See Weinstein, Waiting for the End in California, JURIS DOCTOR, Oct. 1974, at 26 (attorneys at the National Housing Law Project in Berkeley have an average of seven years' experience in their fields).
212 See Note, Beyond the Neighborhood Office—OEO's Special Grants in Legal Services, 56 GEO.
Other centers have a more narrow focus, but again give the program a national direction and assist staff attorneys in local projects to practice high quality law for their clients. For example, the National Clearinghouse for Legal Services publishes a monthly journal on poverty law, the Clearinghouse Review, maintains and distributes files of pleadings, opinions, and legislation, and prints manuals and handbooks on poverty law topics. The Legal Services Training Program at Catholic University's Columbus School of Law provides national and regional training sessions for legal services attorneys, emphasizing lawyering skills and substantive poverty law topics. The National Paralegal Institute performs a similar function in paralegal training, and the NLADA's Management Assistance Project provides consultation to local projects in program management, with particular emphasis on caseload control mechanisms.

C. The Effectiveness of the National Program

Responding to specific requests for assistance has been the primary role of the backup centers. The assistance provided has been vital to LSP's efforts to expand the rights of the poor respecting welfare, housing, and food stamps. Success in cases such as Goldberg v. Kelly, Shapiro v. Thompson, and King v. Smith, L.J. 742, 757-58 (1968). Other backup centers have taken similar multifunctional approaches. See Sullivan, supra note 3, at 9-13; NLADA, Outline of Support Center Functions and the Corporation Act (undated) (copy on file at the Cornell Law Review) [hereinafter cited as Backup Center Functions].

During fiscal year 1974, 72% of backup center requests came from local projects and 13% came from eligible clients or client groups. NLADA, Legal Service Backup Centers: Background Materials 13 nt. (Aug. 1975) (on file at the Cornell Law Review) [hereinafter cited as Background Materials].


has been worth well over $1 billion to the poor.\textsuperscript{224} Using an admittedly rudimentary but nonetheless conservative cost-effectiveness analysis, Earl Johnson has calculated that the benefits to the poverty community achieved in these and other cases outweigh the cost of the legal services program "by a ratio of approximately 7 to 1,"\textsuperscript{225} and has called the centers "the key to economically productive advocacy."\textsuperscript{226}

The success of the backup centers was not achieved without other costs, however, because the entire legal services program became embroiled in controversy. The congressional focus on backup centers during debate on the Legal Services Corporation Act demonstrated a failure to understand the attorney's role as advocate for his clients' interests, and the backup centers' role in enabling an overburdened, under-financed legal services program to provide high quality legal assistance in an efficient manner.\textsuperscript{227}

D. The Threat to Backup Centers

When Howard Phillips attempted to dismantle the Legal Services Program,\textsuperscript{228} the backup centers became an immediate object of his attention. Phillips believed that the centers were not helping local projects with individual client representation and that they were unaccountable to Congress.\textsuperscript{229} He therefore instructed his staff to explore methods of closing these centers, so as to curtail the law reform efforts of the program.\textsuperscript{230} Marshall Boarman, OEO's acting Director of Evaluation, commissioned special evaluations of the backup centers to prepare for their being closed.\textsuperscript{231} The evaluations, however, did not support abolition of the centers. Almost without exception, the centers were found to be producing an excellent work product in a responsible and professional manner.\textsuperscript{232} One evaluator, Judge Sullivan of the Indiana Court of Appeals,

\begin{itemize}
  \item \textsuperscript{224} See Justice & Reform, supra note 7, at 232.
  \item \textsuperscript{225} Id. at 230-34, 368-71 nn. 229 & 236. Using the period fiscal year 1966 to fiscal year 1972, Johnson estimated that the legal services program cost about $290 million but obtained benefits in excess of $2 billion for its clients. Johnson based his estimates of per case value on government or other calculations of the level of increased benefits required to implement the decisions involved.
  \item \textsuperscript{226} See Toward Equal Justice, supra note 1, at 158.
  \item \textsuperscript{227} See text accompanying note 259 infra; Sullivan, supra note 3, at 7-9.
  \item \textsuperscript{228} See notes 100-05 and accompanying text supra.
  \item \textsuperscript{229} See Arnold, supra note 101, at 6. See also Schardt, supra note 23, at 46.
  \item \textsuperscript{230} See Arnold, supra note 101, at 4-6.
  \item \textsuperscript{231} See 120 Cong. Rec. H 3963 (daily ed. May 16, 1974) (remarks of Representative Steiger).
  \item \textsuperscript{232} See id.
\end{itemize}
went beyond the scope of the evaluation . . . to support the concept of and need for such centers of specialization, citing their research resources and expertise as a necessary supplement to the neighborhood offices' operations under enormous time constraints and caseload pressures. Judge Sullivan referred to the [San Francisco Youth Law Center's] "extremely worthwhile contribution" to the law and described the center's overall performance as "the bargain of a lifetime."

Nevertheless, some backup centers were put on month-to-month funding. The acting Associate Director of LSP, J. Lawrence McCarty, supplied a justification for abolishing the existing backup centers in a memorandum to Phillips. He stated to his superior: "If we were to wipe out the Backup Centers without explaining how research was to be carried out we would look like we were killing Legal Services." McCarty then suggested the creation of a single new backup center, to be managed by the directors of the anticipated Legal Services Corporation. Although Phillips was enjoined from disbanding OEO prior to its legal date of expiration, which ended this threat to the centers, other attempts were made to blunt their effectiveness.

In June 1973, OEO promulgated a regulation that struck down law reform as a separate goal of the Legal Services Program. This change, the regulation noted, was "not intended to ban all resort by attorneys to class actions, suits against the government, [or] test case litigation." Such advocacy was permissible so long as it was brought in response to a client's request and was fully understood by the client. Nevertheless, the regulation demonstrated an obvious intent to restrict the support function of backup centers. Phillips, however, was forced out of OEO before it could be implemented.

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233 See id.
235 Id. at 1.
236 Id. at 4. This is the solution to the backup center "problem" that Representative Green pushed for as well. See text accompanying notes 246-49 infra.
238 45 C.F.R. § 1061.5-6 (1973) (suspended).
239 Id. § 1061.5-6(b).
240 Id. "Legal Services attorneys will not engage under any circumstances in non-client-initiated advocacy; i.e., all advocacy must be solely in response to a client-initiated request for legal help."
241 Interview with J. Lawrence McCarty, former Acting Associate Director of OLS, in Washington, D.C., Dec. 12, 1975.
This issue resurfaced when the House considered the Administration's Legal Services Corporation bill. The section of the bill relating to research, training, technical assistance, and clearinghouse functions—all performed by backup centers—permitted the Corporation to undertake such functions "either directly or by grant or contract." Thus, no change in the backup centers or their funding was contemplated. The House Education and Labor Committee reported the bill out with this provision intact, and a highly critical minority report made no mention of the provision.

During the legislative free-for-all that accompanied the House debates on the bill, however, the backup centers were attacked. Representative Edith Green offered an amendment allowing the Corporation "to undertake directly and not by grant or contract" the functions performed by backup centers. Her stated purpose was "to stop the research and advocacy in the backup centers located across the country," and "to get rid of the backup centers." She anticipated, however, that the kind of research she objected to would be carried on by the Corporation itself. Critical Representatives complained that the centers had "become the cutting edge for social change in this country," and an "intellectual brain trust which prepackages the lawsuits which go across the country." Moreover, allegations of improper activity were leveled at the centers, and claims were made that they either were unnecessary, or else gave poor clients an unfair advantage against opposing parties.

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243 Id. § 6(b) (emphasis added).
247 Id. at 20,721.
248 Id. at 20,721. "[The two amendments] ... would require Corporation Lawyers to be responsible for the kind of research they do and keep it in house." See also id. at 20,747.
249 Id. at 20,721, 20,748.
250 Id. at 20,717 (remarks of Representative Green).
251 Id. at 20,721 (remarks of Representative Conlan).
252 Howard Phillips helped engineer the congressional focus on backup centers and supplied much of the information regarding alleged improprieties by the centers. See id. at 20,719 (remarks of Representative Conyers); Arnold, supra note 71, at 27. Many of the charges proved to be inaccurate or untrue; those which were accurate dealt with activities that were proper or, if improper, had been discontinued. See NLADA, Charges Against Backup Centers (Aug. 1975) (copy on file at the Cornell Law Review); Schardt, supra note 23, at 49.
253 119 Cong. Rec. 20,719 (1973) (remarks of Representative G. Ford); id. at 20,721 (remarks of Representative Mazzoli: "[W]hen I was a practicing lawyer and struggling very hard to make a living, I had no backup center. My backup center was my brain and my feet.").
254 Id. at 20,720 (remarks of Representative G. Ford). This position is hard to justify.
The backup center debate demonstrated a failure to understand the caseload problem of local offices, and the centers' crucial role in enabling a national legal services program to provide efficient legal representation. Nevertheless, the Green Amendment was adopted by the House.\textsuperscript{255}

The backup center provision fared better in the Senate. Working with the Administration's original bill, rather than the amended House version, members of the Senate Committee on Labor and Public Welfare met with administration representatives, and in return for pledges of administration support, agreed to make some changes in the bill.\textsuperscript{256} No change, however, involved backup center functions or funding. The bill was reported out with unanimous committee backing.\textsuperscript{257} Nevertheless, despite administration support for quick passage,\textsuperscript{258} the committee bill first encountered a filibuster and then a series of delaying amendments.\textsuperscript{259} One such amendment, introduced by Senator Helms, was designed to eliminate the entire backup center concept.\textsuperscript{260} The Senate rejected this amendment and passed its version of the legal services bill on January 31, 1974.\textsuperscript{261}

The backup center provision was next considered in conference, where the House yielded on the issue, and the Senate and administration provision was adopted.\textsuperscript{262} When the House came to vote on the conference report, however, Representative Ashbrook moved to recommit the legal services bill to conference with instructions to restore the Green Amendment.\textsuperscript{263} But after this motion was narrowly defeated,\textsuperscript{264} the House went on to accept the report by a substantial margin.\textsuperscript{265} Thus, both Houses of Congress approved a legal services corporation bill that would have continued the backup centers without change.

The bill and the backup center provision, however, soon be-

\textsuperscript{255} Id. at 20,723. The vote was 245 in favor, 166 against.
\textsuperscript{258} See letter from Melvin Laird, supra note 256.
\textsuperscript{259} See Schardt, supra note 23, at 48-49.
\textsuperscript{260} 120 Cong. Rec. S 967-68, 972 (daily ed. Jan. 31, 1974) (remarks of Senator Helms: "The backup centers must be eliminated."). This proposal would not have allowed such functions to be performed in-house by the Corporation either.
\textsuperscript{261} Id. at H 3968-69. The vote was 183 in favor, 190 against.
\textsuperscript{264} Id. at H 3968-69. The vote was 183 in favor, 190 against.
\textsuperscript{265} Id. at H 3969. The vote was 227 in favor, 143 against.
came the subject of "impeachment politics." President Nixon threatened to veto the measure, apparently hoping to trade his acquiescence for anti-impeachment votes. The alternate price to avoid a veto was restoration of the Green Amendment. The Senate was so informed, and procedures were set in motion to reinstate the Green Amendment. With the parliamentary maneuvering accomplished, both Houses passed the bill, and former President Nixon signed it into law on July 25, 1974.

E. Impact of the Act on Backup Centers

Thus, a provision that had been rejected by both House and Senate found its way back into the Act. One early congressional response was to introduce legislation that in effect would repeal the Green Amendment and allow the Corporation to continue funding backup centers by grant or contract. This legislation has not been passed, and even if it were to pass, it would almost certainly be vetoed. For the time being, the Corporation must therefore accept the restrictions on backup centers.

It is still possible under the Act, however, to fund the specialized litigation activities of backup centers, despite former Representative Green's belief that her amendment would do away with backup centers altogether. As discussed earlier, the eleven backup centers operate on a multifunctional basis. They directly provide specialized litigation and other legal services to eligible clients.

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266 See Arnold, supra note 71, at 27; Schardt, supra note 23, at 50.
269 Id. at H 6557 (daily ed. July 16, 1974); id. at S 12,957 (daily ed. July 18, 1974).
270 See, e.g., H.R. 7005, 94th Cong., 1st Sess. (1975) (authorizing the Corporation to fund by grant or contract all backup center activities); H.R. 10799, 94th Cong., 1st Sess. (1975) (incorporating H.R. 7005, but limiting the Corporation's support of backup centers to 10% of its annual appropriation). In the past, the backup centers have received no more than 7% of the annual appropriations given the legal services program. For updated information on the status of the Green Amendment and current efforts to continue funding of the backup centers see Capowski, Introduction to the Welfare Law Issue, 61 Cornell L. Rev. 663, 667-69 (1976).
271 As a Congressman, Gerald Ford supported the Green Amendment. 119 Cong. Rec. 20,720 (1973). See note 255 supra. Moreover, the conservative wing of the Republican Party would insist on a veto, an insistence Ford might have to heed in an election year.
272 See text accompanying notes 212-16 supra.
center provision does not on its face apply to such activities; it merely forbids research, training, technical assistance, and clearinghouse functions.\textsuperscript{274} Moreover, other provisions of the Act authorize and arguably require the Corporation to make available specialized legal representation, whether by local projects or backup centers.\textsuperscript{275}

The congressional debates on backup centers support this conclusion. Representative Hawkins, one of the House managers of the bill, stated:

\begin{quote}
Our new legislation does not change the fact that the Corporation . . . cannot "participate in litigation on behalf of clients other than the Corporation." All such litigation and other legal assistance will be handled by local, State and National legal offices which provide either general legal services or specialized legal assistance. Thus, despite the unfortunate change in the conference bill, top notch legal services will continue to be provided to the poor.\textsuperscript{276}
\end{quote}

The Act and the pertinent legislative history thus require the Corporation to continue funding programs providing specialized representation to eligible clients, whether performed by backup centers or not.

This conclusion, however, does not end the problem of interpreting section 2996e(a)(3), as modified by the Green Amendment.\textsuperscript{277} The backup functions that section 2996e(a)(3) requires the Corporation to undertake directly—research, training, technical as-

\begin{footnotesize}
\textsuperscript{274} 42 U.S.C. § 2996e(a)(3) (Supp. IV, 1974). The text of the statute is reproduced in note 189 supra.

\textsuperscript{275} The Act requires the Corporation to "insure the maintenance of the highest quality of [legal] service" (42 U.S.C. § 2996f(a)(1) (Supp. IV, 1974); to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas" (id. § 2996f(a)(3)); and "to make such . . . grants and contracts as are necessary to carry out the purposes and provisions" of the Act (id. § 2996e(a)(1)(B)). Most important, the Act prohibits the Corporation from "participating in litigation on behalf of clients other than the Corporation." Id. § 2996e(c)(1).

\textsuperscript{276} 120 Cong. Rec. H 6555 (daily ed. July 16, 1974). Interestingly, Representative Edith Green was apparently present during this discussion of specialized legal assistance but made no comment. \textit{See also id. at H 6556 (remarks of Representative Steiger); id. at S 12,923 (daily ed. July 18, 1974) (remarks of Senator Nelson). In a letter dated Dec. 11, 1975, to Roger Cramton, Board Chairman of the Legal Services Corporation, Representative Hawkins stated his understanding of the compromise that restored the Green Amendment: All advocacy services—be they in judicial, administrative or legislative forums—were untouched by [the Green Amendment], particularly since those services may not be provided by the Corporation directly. Thus national legal centers specializing on particular subject matters could continue to provide advocacy functions in behalf of clients on the local, state and national level. (Copy on file at the \textit{Cornell Law Review}.)}

\textsuperscript{277} 42 U.S.C. § 2996e(a)(3) (Supp. IV, 1974).
\end{footnotesize}
sistance, and clearinghouse activities—are nowhere defined in the Act. Yet clearly the section does not mean that local projects, necessarily funded by grant or contract, cannot engage in research relating to the cases of their clients. That would be an absurd result, inconsistent with the requirement that legal assistance attorneys comply with the Code of Professional Responsibility. The only sensible interpretation is that the research restriction does not apply where a client is directly involved. The legislative history fully supports such an interpretation.

At a minimum, however, section 2996e(a)(3) requires the Corporation itself to assume the following functions: clearinghouse

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278 The statement in the original Conference Report, S. Rep. No. 845, 93d Cong., 2d Sess. 20 (1974), to the effect that "'the terms 'research' and 'research in connection with the provision of legal assistance to eligible clients' are understood by the conferees to . . . [include] the provision of co-counsel . . . " does not supply any assistance in defining the term research. In the context of the version of the bill to which that statement made reference, it amounted to an authorization to the Corporation to fund legal services programs to engage in co-counsel work. But that version of the bill was not enacted. The enacted version allows the Corporation to undertake research directly, but not by grant. 42 U.S.C. § 2996e(a)(3) (Supp. IV, 1974). If research were defined in this context to include co-counsel activities involving litigation, it would amount to an authorization to the Corporation to participate in litigation. This result would be inconsistent with id. § 2996e(c)(1).

279 See, e.g., 42 U.S.C. §§ 2996(b), 2996e(b)(3), 2996f(a)(1) (Supp. IV, 1974). Disciplinary Rule 6-101(A)(2) of the ABA CODE OF PROFESSIONAL RESPONSIBILITY requires that "[a lawyer not] handle a legal matter without preparation adequate in the circumstances." Moreover, § 2996e(a)(3) does not prevent legal services attorneys working in local programs or support centers from keeping up with legal developments in their areas of practice or specialty.

280 The "mischief" that critics of the backup centers denounced during the legislative debates was two-fold: first, specific types of activity or cases in which the centers were involved, and second, nonclient-oriented representation. For example, there were objections to participation in school desegregation and abortion cases (119 Cong. Rec. 20,717 (1973) (remarks of Representative Green)), and such political activity as lobbying (id. at 20,721 (remarks of Representative Conlan); 120 Cong. Rec. S 968 (daily ed. Jan. 31, 1974) (remarks of Senator Helms)). But participation in these types of cases and activities is dealt with in other parts of the Act, not in § 2996e(a)(3). See notes 171, 181-82 and accompanying text supra. Section 2996e(a)(3) was designed for one purpose—to prevent entities funded by grant or contract from engaging in nonclient-oriented activities. See 119 Cong. Rec. 20,717 (1973) (remarks of Representative Green); 120 Cong. Rec. S 968 (daily ed. Jan. 31, 1974) (remarks of Senator Helms). A congressional manager of the bill made this point explicit. Representative Quie stated:

The only grants or contracts which now can be made are those for the legal advice representation to specific clients—not general causes—having specific need of legal counsel, and not for any general legal research, training or information service. Id. at H 6553 (daily ed. July 16, 1974). See also id. at S 12,923 (daily ed. July 18, 1974) (remarks of Senator Nelson).

Interpreting § 2996e(a)(3) to apply to only nonclient-oriented activities is consistent with a general theme of the Act which makes the distinction between client and nonclient-oriented activities in a number of different contexts. See, e.g., 42 U.S.C. § 2996f(b)(5) (Supp. IV, 1974) (demonstrations, picketing, boycotting and strikes); id. § 2996f(b)(6) (organizing).
activities, and technical assistance unrelated to specific cases. These distinctions, at least, are relatively easy to make. The distinction between research performed for a specific client and other types of research is impossible to draw. It requires a comprehensive examination of the research performed by backup centers. The Corporation has undertaken such a study, and the results will allow the Corporation to make an informed decision about permissible backup center functions.

Nevertheless, a liberal interpretation of section 2996e(a)(3) is, at best, only a stopgap measure. Research on a case cannot be separated from the trial itself. Nor can courtroom experience be separated from the preparation of model briefs and litigation handbooks. The success of multifunctional backup centers was fostered by the integration of functions. The lawyer who researched, also litigated and developed model briefs out of his accumulated experience. Divorcing the functions may lower the quality of backup assistance. It may also create problems for legal services attorneys in need of support. Must they turn to the Corporation for research assistance and elsewhere for litigation assistance? The already overworked staff attorneys may not have time to coordinate effectively their separate sources of assistance.

Most disturbing, however, is the possibility that present backup center personnel will not remain in a legal services program that restrains their independence in the practice of law. Will they wish to be Corporation employees who cannot litigate, or project litigators who cannot research? This loss of backup center talent will in turn threaten the quality and focus of the entire program. Thus, the

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281 This does not mean that projects cannot share copies of actual pleadings and briefs prepared in the context of representing eligible clients. See 42 U.S.C. § 2996f(a)(3) (Supp. IV, 1974); 120 CONG. REC. S 12,924 (daily ed. July 18, 1974) (remarks of Senator Nelson).

282 This does not prohibit training done within a legal services program that teaches staff attorneys lawyering skills involved in client representation. See 42 U.S.C. § 2996f(b)(5) (Supp. IV, 1974); 120 CONG. REC. S 12,923 (daily ed. July 18, 1974) (remarks of Senator Nelson).

283 For example, although the preparation of a model pleading might not be directly related to providing legal services to an eligible client, the research and thought which preceded its preparation might have been accomplished in the context of providing legal service to eligible clients. See text accompanying note 285 infra.

284 Even this effort to preserve the program's ability to deliver high quality legal services came under attack. See Kilpatrick, supra note 163; testimony of former Representative Edith Green before the Board of Directors, Legal Services Corporation, Dec. 12, 1975.

285 See Background Materials, supra note 217, at 9-12.

286 See id.

287 See id.
opponents of legal services may yet have their victory. The solution, of course, is repeal of the Green Amendment, but whether or not this will be forthcoming is another question.

IV
ALTERNATIVE DELIVERY SYSTEMS AND THE FUTURE OF LEGAL SERVICES

A. The Politics of Alternative Delivery Systems

1. Judicare

From the outset, relying on both legal aid and neighborhood law office experience, the OEO Legal Services Program favored the full-time staff-attorney. The model was familiar and seemed the most efficient means of delivering high quality legal services to the poor.

An alternative surfaced almost immediately, however. The Wisconsin bar sponsored a "Judicare" program to compensate private practitioners for providing legal service to the poor. Eligible clients were to obtain Judicare cards which would entitle them to receive service from any participating attorney. The attorneys would then forward their bills to the program office for payment. The Wisconsin proposal had strong congressional support, but the Office of Legal Services (OLS) and the organized bar were less than enthusiastic. The overriding concern of OLS was that Judicare would cost more than staff-attorney delivery. The OLS also worried about a private attorney's ability to perceive the broad implications of his poor client's legal problem and about the potential conflicts of interest between paying and Judicare clients. The organized bar preferred staff-attorney delivery because it saw Judicare as attracting only less qualified attorneys. There was also some concern that if OLS supported Judicare, it would receive only Judicare proposals for local projects. Thus OLS, supported by the National Advisory

288 See text accompanying note 271 supra.
290 See JUSTICE & REFORM 118.
292 See JUSTICE & REFORM 119.
293 See id. at 118.
Committee and the organized bar, decided to "contain" Judicare, by reducing the Wisconsin proposal to a small program and by funding only a few small Judicare projects in other states.²⁹⁴ All such programs were to be experimental, and no further funding was to be made until after evaluation of the experiment.²⁹⁵

An additional reason for restricting Judicare was the extraordinary hostility of many local bar groups to a federally-funded program that offered quality legal assistance to poor clients.²⁹⁶ In the first two years of LSP, state bar associations in Tennessee and Florida passed resolutions opposing the program and urging local bar associations to oppose applications for funds.²⁹⁷ North Carolina threatened to disbar any attorney who worked for federally-funded legal services projects in that state.²⁹⁸ A local bar association in California²⁹⁹ and individual practitioners in Florida,³⁰⁰ Pennsylvania,³⁰¹ Texas,³⁰² and the District of Columbia³⁰³ sued to enjoin the formation or operation of legal services projects. One allegation in these suits was that staff-attorney projects deprive the poor of their right to choose a lawyer. The Florida suit challenged the constitutionality of the entire Legal Services Program.³⁰⁴

Other hostile local bar groups took control of local legal services projects. They quickly deferred to paying clients and opposed the aims of the legal services program. In Houston, bar members dominated the local project and refused to let it engage in outreach efforts, group representation, or impact litigation. As a result, the project handled domestic relations almost exclusively.³⁰⁵ When a legal services project began in Charlotte, North Carolina, the local bar controlled the project to such an extent that it exercised veto power over the handling of cases and absolutely refused to allow class actions. The project was characterized as a dumping ground

²⁹⁴ See id.
²⁹⁵ See id. at 118-21. Besides Wisconsin, Judicare projects were established in New Haven, Connecticut, rural Montana, and Alameda County, California. Later, other Judicare projects were started in Meriden, Connecticut, and West Virginia.
²⁹⁶ See id. at 89-95.
²⁹⁷ See id. at 95.
²⁹⁸ See id. at 89-90, 95.
³⁰¹ See Justice & Reform, supra note 7, at 91, 92, 315 n.45, 316 n.53.
³⁰³ See Justice & Reform 91, 315 n.47.
³⁰⁴ See note 300 supra.
³⁰⁵ See Note, supra note 46, at 247-48.
for cases the private bar did not want. In Daytona, Florida, the local project was also dominated by the bar association. As a result, it erected unrealistic eligibility requirements, restricted attorney activities, and segregated personnel by race.

2. The Choice of Delivery Systems as a Political Issue

Some opponents of the legal services program have attributed what they regard as drawbacks of the program to staff-attorney delivery, favoring instead a Judicare delivery system. This has two effects. First it makes the delivery system an ideological issue and thus prevents impartial assessment of the merits of each delivery system. Second, coming from opponents of legal services, it seems to acknowledge that Judicare will result in a less effective program, one reluctant to take on entrenched interests and one with little interest in protecting the poor.

The National Advisory Committee has suggested that Judicare may undermine the entire legal services program. Opponents of the program agree that a Judicare system at least gives private attorneys greater control over legal services for the poor. For instance, in Mississippi the state bar association attacked a local legal services project because it engaged in impact litigation on behalf of eligible clients. The bar association proposed to stop such litigation by replacing the local project with Judicare. In Albuquerque, New Mexico, the bar reacted to what it regarded as excesses of the local legal services project by establishing a competing Judicare plan. During congressional debate on the Legal Services Corporation Act, opponents of the program similarly urged that another delivery system be substituted for the staff-attorney system. Voucher systems, and revenue-sharing were all mentioned, and amendments requiring the adoption of Judicare were offered.

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306 See id. at 248 n.55. See also ABA Code of Professional Responsibility, Ethical Consideration 5-24, regarding the legal ethics of this kind of control over the cases handled by a local project.
307 See Note, supra note 46, at 248 n.56.
308 See Toward Equal Justice, supra note 1, at 172-79.
309 See Arnold, supra note 23, at 8.
310 See Note, supra note 46, at 255-56. The project in question, North Mississippi Rural Legal Services, had been rated as one of the best in the nation. See id. at 255-56 n.78.
311 See Note, Judicare as an Alternative to Legal Aid in Albuquerque, 1 N.M.L. Rev. 595, 603-06 (1971).
B. The Alternative Delivery System Study

Section 2996f(g) of the Act, calling for a study of both the existing staff-attorney program and "alternative and supplemental methods of delivery . . . including judicare, vouchers, pre-paid legal insurance, and contracts with law firms," served to mollify opponents of staff-attorney delivery by subjecting it to testing. The principal aim of the delivery system study is to determine which delivery method, or combination of methods, provides the most economical and effective service.

To a large extent, however, the answer is clear. Every reliable comparison of staff-attorney and Judicare delivery indicates that the former is more effective. In a two-year experiment in Connecticut in which welfare clients were allowed to choose either service, the legal services office was preferred by clients and was potentially less expensive. Another study compared the cost of handling

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S 1990, 93d Cong., 1st Sess. (1973). Representative Conlan introduced an amendment granting eligible clients the right to choose their own counsel. 119 Cong. Rec. 20,729 (1973). Representative Meeds opposed the amendment, citing the high cost of Judicare and the provision in the Act requiring a study of, among other alternatives, Judicare. Id. at 20,729. The amendment was rejected. Id. at 20,732.

42 U.S.C. § 2996f(g) (Supp. IV, 1974), reproduced in note 148 supra. The demonstration projects initiated under this section will furnish legal services directly to eligible clients, even though the projects are experimental in nature. Thus, such projects must be funded by grant or contract and cannot be run by the Corporation. See id. § 2996e(c)(1), quoted in note 190 supra.

There was general recognition however, that the existing staff-attorney system had proved itself capable of delivering high quality legal services to millions of clients at a relatively low cost. Thus Congress directed the Corporation to ensure that the staff-attorney system be maintained. See 120 Cong. Rec. 938 (1974) (remarks of Senator Nelson).

For example, there could be staff-attorney delivery supplemented by Judicare delivery for routine domestic relations matters. In Sweden and the Province of Quebec, Canada, legal assistance programs offer clients the choice between staff attorney or Judicare representation. See Toward Equal Justice, supra note 1, at 233-35.

Approximately 900 welfare clients in Meriden, Connecticut, were given the choice of taking their legal problems to the two-attorney neighborhood legal services office or to any of 40 private attorneys in the community. The staff attorneys were salaried; the Judicare attorneys were paid at the rate of $16 per hour, funded by HEW. See Cole & Greenberger, Staff Attorneys vs. Judicare: A Cost Analysis, 50 J. Urb. L. 705 (1973).

The program operated from Nov. 3, 1969 to March 31, 1972. During that time, 584 welfare recipients brought 1,149 legal matters to the program, 829 to legal services office and 320 to Judicare. Two-thirds of the cases handled by the staffed office were family, commercial, and administrative matters; two-thirds of the Judicare cases were family law matters. The clients made this selection, choosing staff attorneys where their expertise and sympathy were perceived as greater. Id. at 707.

The legal services office generally maintained records noting "actual" time spent by each attorney on a case. Judicare attorneys submitted bills with reference to "chargeable" time at $16 per hour. Few controls were placed on the number of hours charged to the program, no percentage of the minimum fee standard was imposed, and no attempt to define "charge-
divorce and bankruptcy cases in similar rural areas served by the Wisconsin Judicare program and Michigan's Upper Peninsula Legal Services, finding the latter far more economical. In the criminal defense area, results have been similar. And Judicare attorneys have been found to be far less willing to undertake impact litigation and appeals.

Although the staff-attorney method may be the only realistic way to deliver legal services effectively, the study should be useful. It will allow the Corporation to experiment with such methods of supplementing staff-attorney delivery as vouchers, contracts with law firms, and legal insurance plans. Although none of these

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323 Staff-attorney delivery by public defenders is thus much less costly than Judicare delivery by court-appointed counsel. See, e.g., Goldberg & Hartman, Help for the Indigent Accused: The Effect of Argersinger, 30 Legal Aid Briefcase 203, 205-06 (1972).


325 Judicare attorneys were involved in very little law reform work and no appellate work. The lack of appeals was attributed to the $300 per case limit imposed by Wisconsin Judicare and the inability of attorneys to obtain waivers for appeals. Comptroller General of the United States, Report to the Congress, The Legal Services Program—Accomplishments and Problems Faced by its Grantees 45-46 (1973). The total Judicare fees that could be paid in Wisconsin to one attorney were $3,000. Arguably, such a limitation operated to prevent Judicare attorneys from developing expertise in poverty law matters. See Masotti & Corsi, Legal Assistance for the Poor: An Analysis and Evaluation of Two Programs, 44 J. Urb. L. 483, 497 (1967).

326 See Toward Equal Justice, supra note 1, at 156-79.

327 The legislative history does not make it clear whether there is a distinction between alternative and supplemental delivery systems. To the extent that delivery of services by vouchers, contracts with law firms, or legal insurance plans is too limited in scope to be considered an alternative, it should be considered as supplemental to the staff-attorney system. Indeed, the relevant legislative history suggests that all alternatives are to be regarded as supplements to delivery by staff attorneys:

The Corporation shall provide for comprehensive, independent study of the exist-
supplemental techniques is an independent vehicle for providing legal services, they each may be valuable in combination with the regular program. Vouchers are merely a method of payment through which legal services may be purchased subject to various restrictions.\textsuperscript{328} Contractual arrangements with private law firms are another way to provide legal services.\textsuperscript{329} Prepaid legal insurance is developing as an additional method of arranging for legal services, most commonly through an open panel of lawyers similar to Judicare.\textsuperscript{330} The

\textsuperscript{328} There is no legislative history indicating what Congress meant by vouchers or how they are to be used by the Corporation in its study of alternative delivery systems. Vouchers could be used in staff-attorney, Judicare, or law firm delivery systems. Vouchers usually have a specified monetary value, but if left open-ended in terms of value and type of service, they are virtually identical to Judicare cards. If vouchers have fixed values, however, bearers may have to shop for bargain rates. Further problems are raised in designing the delivery mechanism for a voucher system. In addition, as in Judicare programs a voucher system requires an administrative mechanism for determining eligibility and issuing vouchers.

\textsuperscript{329} For example, if one law firm were hired to provide all legal services in a given project, the method of delivery would resemble a staff-attorney system. If a limited number of firms were hired, delivery would resemble a closed-panel Judicare system. Certain types of cases, such as divorce and bankruptcy, could be referred to private law firms. A steady referral business would allow private firms to develop expertise and economies of scale. Hiring criteria would have to be developed to weigh cost, quality of work (based on reputation in the legal community), and sympathy to the problems of the client community. The type of law firm that may be hired, however, is limited by the Act:

No funds made available by the Corporation under this subchapter, either by grant or contract, may be used—... to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public.


\textsuperscript{330} A number of group insurance plans are experimenting with alternative delivery systems, chiefly staff-attorneys, as a means to lower the cost of services. Such plans offer the Corporation a parallel study of ways to provide cheaper, more effective delivery. See S. MacKenzie, Group Legal Services (1975); Memorandum from Susan MacKenzie to Roger C. Cramton, Sept. 17, 1975 (copy on file at the Cornell Law Review). See also Bartosic & Bernstein, Group Legal Services as a Fringe Benefit: Lawyers for Forgotten Clients Through Collective Bargaining, 59 Va. L. Rev. 410 (1973). The seminal article on legal insurance is Stof, Insurance for Legal Services: A Preliminary Study of Feasibility, 35 U. Chi. L. Rev. 417 (1968). Many group legal services plans assist members who are at the lower end of the income spectrum and who encounter legal problems identical to those of the poor. For example, the legal problems of laborers in the plan of the Laborer's District Council of Washington, D.C. are virtually identical to those of eligible legal services clients. Interview with Jules Bernstein, General Counsel of the Laborer's District Council, in Washington, D.C., Dec. 11, 1975.
Corporation may also study systems approaches to poverty law practice and alternatives to the courts for dispute resolution.

C. The Future of Legal Services

Even if the study does produce recommendations for improving the delivery of legal services, no substantial improvement can be implemented without greater funding. The increased appropriation for fiscal year 1976 will merely allow the Corporation to begin restoring the program to its former level. If that restoration is made, the program will still only meet about fifteen percent of the legal needs of the poor. Less than 2,200 lawyers—roughly one-half of one percent of the American bar—are working to fill the needs of the poorest sixth of our population. Moreover, over forty percent of the poor live in areas totally unserved by legal services offices, and

The Act authorizes the Corporation to look beyond the statutory language to alternatives for improving the delivery of legal services. See note 148 supra. Within the context of the study of alternative delivery systems, every effort should be made to explore innovative ways to provide better legal services at lower cost, such as a "systems" approach to delivery. The San Francisco Neighborhood Legal Assistance Foundation has developed such an approach to the common legal problems of divorce, debt defense, and eviction defense. The systems break the process of handling cases into steps, set forth as options, and provide form letters, memoranda, and pleadings to implement the various options. See Toward Equal Justice, supra note 1, at 150 n.26. Use of such a systems approach in some of the experimental projects mounted for the alternative delivery study would give the Corporation important information on its utility.

Where consistent with Canon 3 of the ABA Code of Professional Responsibility, greater reliance on the services of paraprofessionals, especially for routine legal matters, is another alternative that should be studied as a means of improving the delivery of legal services. The legal services program has already made significant progress in this area. See Subcommittee on Representation of Citizen Interests of the Senate Committee on the Judiciary, Reducing the Costs of Legal Services 9-11 (Comm. Print 1974).

For example, staff attorneys in the legal services program in Cleveland developed a mechanism for arbitrating tenants' disputes with one particular landlord. Subsequently, they established a project designed to facilitate the arbitration of disputes between the poor and participating area landlords and merchants. See Massotti & Corsi, supra note 325, at 496. An OEO-funded private ombudsman was established in Buffalo, New York, as a means of supplementing the delivery of legal services to the poor. The ombudsman handled complaints by the poor against the city and county government by informal negotiation. See Hollands, Ombudsman in Buffalo, 26 Legal Aid Briefcase 224 (1968); Samore, Legal Services for the Poor, 32 Albany L. Rev. 509, 519 (1968). The success of this approach needs to be studied, and if appropriate, similar approaches could be included in demonstration projects.

See text accompanying notes 135-39 supra; Legal Services Appropriation Hearings, supra note 135, at 23.

See Cramton, supra note 135, at 1343.

See id. The historical reasons for this funding pattern are explained in Justice & Reform, supra note 7, at 188-91. See also L. Goodman & M. Walker, The Legal Services Program: Resource Distribution and the Low Income Population 7-10 (Bureau of Social Science Research, 1975).
such coverage as exists is often nominal rather than effective.336 A legal services program providing adequate coverage would cost close to $500 million per year.337 Meanwhile, in the United States the amount spent per capita on the program is one-fourth of what several other nations spend.338

In addition to requiring a greater financial commitment by Congress, the courts must assume an important role if this nation's poor are to enjoy their legal rights. The Legal Services Corporation and the existing network of legal services projects provide an institutional framework on which to build a constitutional right to counsel in civil cases. Regretably, after taking tentative steps toward a declaration of that right, the courts have pulled back.339

Unless Congress and the courts move forward together, on both the financial and constitutional fronts, equal justice will remain an empty phrase, an unmet promise.

CONCLUSION

The Legal Services Corporation Act is a promising development for the legal services program. So long as the program is shielded from political interference and pressure, its attorneys will be able to focus their energies on providing clients with the best service possible. But the Act provides no guarantee that the program will not once again become embroiled in political controversy. The Corporation must approach Congress every year for renewed funding. As in the past, the annual appropriations battle may foster attempts to limit the scope of the program, or perhaps what is worse, the program itself may become timid in asserting the rights of its poor clients, so as to preserve its funding. Battles over directorships may also recur, presenting the possibility that the program could again be immobilized. Moreover, the effectiveness of the program has been threatened by a political deal limiting the activities of

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336 See L. GOODMAN & M. WALKER, supra note 335, at 11-59.
337 An adequate program would cost at least $473,383,668:
That is, a 23 percent incidence of legal problems in a poor population of 28,987,685 means an estimated national incidence of 6,667,168 problems per year. This number divided by 500 [cases per attorney per year] works out to 13,334 attorneys. At the rate of $35,502 per attorney, on the average, the total cost is $473,383,668.

Id. at 63.
338 See TOWARD EQUAL JUSTICE, supra note 1, at 234 n. 203.
backup centers, and the Act does not rule out other such deals in the future.

If the Act is not cause for rejoicing, however, there is at least reason for cautious optimism. The legal services program is finally free from the executive branch, governors no longer have vetos over grants in their states, there has been some increase in funding for the program, and Congress is considering repeal of the Green Amendment. Perhaps most important, the program is once again in the hands of capable leaders who are committed to the development of the legal services program.