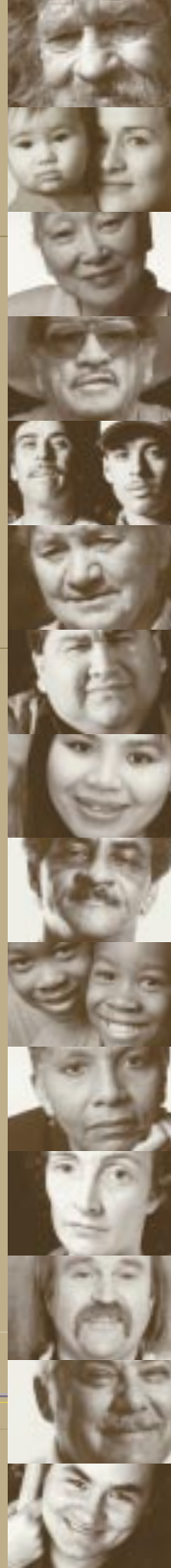
Restricting Legal Services:

How Congress Left the Poor with Only Half a Lawyer



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at NYU School of Law

The Access to Justice Series

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The Brennan Center for Justice at NYU School of Law unites thinkers and advocates in pursuit of a vision of inclusive and effective democracy. Our mission is to develop and implement an innovative, nonpartisan agenda of scholarship, public education, and legal action that promotes equality and human dignity while safeguarding fundamental freedoms.

Central to the Center's Poverty Program is its innovative Legal Services Project — a national, multi-faceted effort to help ensure effective, enduring, and unrestricted civil legal assistance for low-income individuals and communities. The Center actively fights efforts to restrict legal services programs and vocally rebuts the relentless attacks made by their opponents.

About The Access to Justice Series

This paper is the second in a series issued by the Center illuminating the accomplishments of legal services programs throughout the country, and documenting the impact of restrictions recently imposed by Congress on the federally funded Legal Services Corporation. It is the result of extensive investigative reporting by award-winning journalist Patrick J. Kiger in close collaboration with the Brennan Center's Laura K. Abel, Elisabeth S. Jacobs, Ilana Marmon, Kimani Paul-Emile, Kenneth N. Weine, and David S. Udell. The following individuals have been consulted as advisors for this series: Bonnie Allen, William Beardall, Martha Bergmark, Ann Erickson, Victor Geminiani, Peter Helwig, Steve Hitov, Carol Honsa, Alan W. Houseman, Esther Lardent, Linda Pearl, Don Saunders, Julie M. Strandlie, Mauricio Vivero, Jonathan A. Weiss and Ira Zarov.

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Restricting Legal Services:

How Congress Left the Poor with Only Half a Lawyer

The second installment of the Center's Access to Justice Series, *Restricting Legal Services*, paints a vivid picture of the legal and human consequences of restrictions imposed on the Legal Services Corporation by the U.S. Congress in 1996.

Championed mostly by foes of legal services – many of whom would gladly end the use of federal funds to provide the poor with free civil legal representation – these restrictions force LSC lawyers to fight without some of the most critical tools for effective advocacy.

Litigation over the constitutionality of the restrictions is ongoing. Whatever the outcome, *Restricting Legal Services* demonstrates that the restrictions are poor public policy. Lawyers for the poor are unable to bring class actions, collect attorney's fees, or engage in lobbying. Their clients are relegated to the bottom rung of a two-tier justice system and their needs often remain unmet. This article shows that when legal services attorneys are permitted to use these tools, however, they are often able to obtain justice for their clients in a highly efficient manner.

Legal services clients face great challenges, including financial struggles to stay afloat, and legal battles against opponents (e.g., landlords, employers, and government agencies) with far greater resources.

The restrictions, unfortunately, make this tough fight simply unfair.

David S. Udell
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BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW

Restricting Legal Services:

How Congress Left the Poor with Only Half a Lawyer

Table of Contents

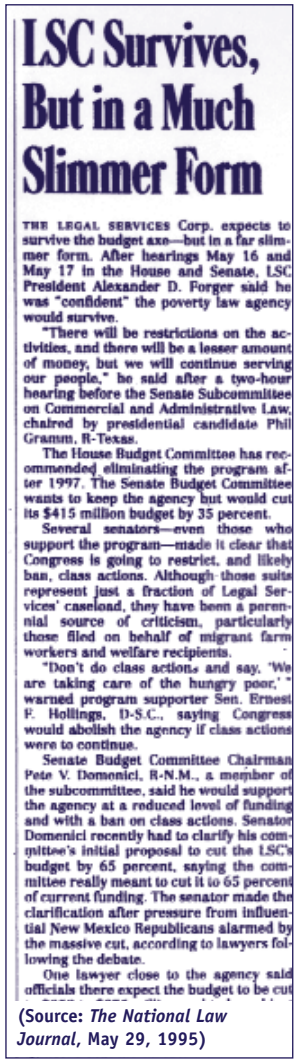
INTRODUCTION

When Congress imposed new restrictions upon lawyers funded by the federal Legal Services Corporation (LSC) in 1996, legislators insisted their goal was not to destroy legal aid for the poor, but to save it. U.S. Rep. Charles Stenholm, D-Texas, one of the authors of the new rules, argued that lawyers were squandering LSC's resources pursuing their own political agendas. Barring lawyers in the roughly 270 LSC-funded local programs from bringing class-action suits and other "questionable activities," Stenholm claimed, would actually "maximize legal assistance to thousands of poor people who have been locked out of the legal services system."

But for impoverished nursing home residents in the same position as legal services client Lorraine Townsend,* an elderly nursing home resident in Johnson City, Tennessee, the restrictions potentially deny them full legal assistance. It is hard to imagine a member of society who was more in need of the full protection of the law than Townsend. According to court documents, she suffered from osteoarthritis and hypothyroidism, and had been diagnosed as schizophrenic with borderline dementia. After attempting unsuccessfully to live with her daughters, Townsend was first placed in a residential home for the aged and then in Lakebridge Health Care Center. Yet, her medical and mental needs could not be met privately or in a residential home setting, and, Townsend's medical and mental conditions worsened.

In fact, Townsend was so mentally and physically frail that both her personal physician and the nursing home's supervising doctor feared she would suffer "irreparable harm" if she ever had to do without the constant nursing care she received at Lakebridge. Cost-minded bureaucrats at the Tennessee Department of Health who lacked medical training did not share the doctors' opinion. Reviewing Townsend's eligibility for Medicaid benefits, they concluded she was sufficiently healthy and therefore didn't need to be in a nursing home. They decided to deny her coverage.

An attorney with LSC-funded Legal Services of Upper East Tennessee appealed this decision, and an administrative law judge, independent of the state health bureaucracy, ruled that Townsend was entitled to remain in the nursing home. The state could have petitioned for a reversal of the judge's decision. Instead, they simply instructed the nursing



LSC Survives, But in a Much Slimmer Form

THE LEGAL SERVICES Corp. expects to survive the budget axe—but in a far slimmer form. After hearings May 16 and May 17 in the House and Senate, LSC President Alexander D. Forger said he was "confident" the poverty law agency would survive.

"There will be restrictions on the activities, and there will be a lesser amount of money, but we will continue serving our people," he said after a two-hour hearing before the Senate Subcommittee on Commercial and Administrative Law, chaired by presidential candidate Phil Gramm, R-Texas.

The House Budget Committee has recommended eliminating the program after 1997. The Senate Budget Committee wants to keep the agency but would cut its $415 million budget by 35 percent.

Several senators—even those who support the program—made it clear that Congress is going to restrict, and likely ban, class actions. Although those suits represent just a fraction of Legal Services' caseload, they have been a perennial source of criticism, particularly those filed on behalf of migrant farm workers and welfare recipients.

"Don't do class actions and say, 'We are taking care of the hungry poor,' " warned program supporter Sen. Ernest F. Hollings, D-S.C., saying Congress would abolish the agency if class actions were to continue.

Senate Budget Committee Chairman Pete V. Domenici, R-N.M., a member of the subcommittee, said he would support the agency at a reduced level of funding and with a ban on class actions. Senator Domenici recently had to clarify his committee's initial proposal to cut the LSC's budget by 65 percent, saying the committee really meant to cut it to 65 percent of current funding. The senator made the clarification after pressure from influential New Mexico Republicans alarmed by the massive cut, according to lawyers following the debate.

One lawyer close to the agency said officials there expect the budget to be cut

(Source: *The National Law Journal*, May 29, 1995)

* Clients quoted or discussed in this report are identified by pseudonyms (with the exception of John Henry Robinson, Virginia Villandry and Brian Zebley, whose names have been published elsewhere).

Under the LSC class-action restriction, Mrs. Townsend's legal services lawyer could go to court and seek relief for her under the existing injunction, but could do nothing to force state officials to change the illegal policy.

Counseling the Poor, But Now One by One

Legal Services Lawyers Cope With Ban

By JAN HOFFMAN

When Congressional Republicans barred Federally financed lawyers three months ago from suing the Government on behalf of large groups of poor clients, both the lawyers and their opponents predicted stark consequences.

Some Democrats warned that if the Legal Services Corporation, which since 1974 has represented the poor in civil matters, could not hold on to its class action lawsuits or bring new ones, thousands of people would lose hard-won rights and benefits. From the Republican standpoint, liberals would lose one of their best weapons for promoting left-wing social policies.

Both were wrong. For the moment, at least, the legal landscape remains undisturbed, despite a brief sandstorm from an insurgent New York office. All but 5 of Legal Services' 630 class action cases have been settled or handed off to other counsel.

Alan Houseman, a Legal Services lawyer for 20 years, said that losing the right to bring the large-scale lawsuits had to be placed in perspective: "There's an unfortunate notion in Legal Services that only experts like themselves can litigate these kinds of cases," said Mr. Houseman, who now runs the Center for Law and Social Policy in Washington. "But there's a broad range of public interest programs around the country that don't take Federal money that can do them. And we haven't even really begun to tap the private bar."

Lawyers for the poor have used class actions as a cost-effective means to spell out rights or enforce regulations for thousands of people. In New York City, for example, a Legal Services class action lawsuit brought wheelchair-accessible ra-

up the fragile agreement with Congress. Last month, the Washington leadership of Legal Services went to court to block efforts by New York's Legal Services for the Elderly to retain two class action cases.

The efforts of Jonathan Weiss, the director of Legal Services for the Elderly, to fight the restrictions, which he argued would violate his duty to his clients, angered many in the legal services world. Supervisors in New York and Washington were so furious that his office came within a day of being shut down. But Mr. Weiss, a poverty lawyer since the 1960's, maintains that the Legal Services Corporation made a Faustian bargain, selling the ability of its lawyers to do their jobs fully in exchange for temporary survival. Given that the Republican platform recommends ending the program, he asked, why not go down fighting?

"Either you believe that poor people have a right to a lawyer or you don't," Mr. Weiss said. "But if you do, then poor people certainly don't have a right to just half a lawyer."

A Federal judge in Manhattan ordered new lawyers to be substituted in one of the lawsuits from Mr. Weiss's office, which seeks the speedy replacement of Social Security payments for recipients whose checks have been lost or stolen.

But a State Supreme Court justice in Manhattan allowed Legal Services for the Elderly to remain, at least for now, with a second case, which is in a monitoring phase of a settlement. That lawsuit, brought on behalf of homebound patients who are unable to come to court for Medicaid hearings, created the right to a hearing over the telephone or even at home.

To lawyers like Valerie J. Bogart, who shepherded that case, the ban –

(Source: *The New York Times,* September 15, 1996)

home to discharge Townsend. At that point, Townsend's attorney argued to state officials that turning Townsend out of the home would violate a permanent injunction issued in 1987 by a federal judge in *Doe v. Word*, a class-action suit filed by LSC-funded attorneys to protect nursing home residents from precisely that sort of bureaucratic lawlessness.

The state bureaucrats' reaction? They didn't care. In fact, Townsend was not being singled out. According to court documents, the state's commissioner of health had quietly decided to stop complying with the 1987 injunction, and to ignore a law passed by Congress that same year that spelled out the right of nursing home residents to appeal state decisions about their Medicaid eligibility. Instead, the commissioner had authorized nursing homes to discharge the elderly class members before their appeals had been concluded.

Worse yet, the state knew it stood a good chance of getting away with this. *Doe v. Word* was a class-action lawsuit, and the restrictions enacted by Congress in 1996 specifically barred LSC-funded programs from any involvement in class actions. That remained true even though, in this case, the court order had been issued nine years before the restrictions had been enacted. Under the LSC class-action restriction, Townsend's legal services lawyer could go to court and seek relief for her under the existing injunction, but could do nothing to force state officials to abandon the illegal policy that they had secretly adopted, the policy that deprived thousands of other Townsends across the state of their rights. Those people were just

as impoverished and physically frail as Townsend. Nevertheless, legal services attorneys could protect them only by filing separate actions on behalf of each and every nursing home resident — a practical impossibility, given the limited number of legal services attorneys.

Townsend's attorney sought help from Gordon Bonnyman, formerly a LSC-funded attorney, who now works for a fledgling non-LSC public interest firm, the Tennessee Justice Center (TJC). Bonnyman was a key figure in the original effort by Legal Services of Upper East Tennessee to protect the rights of elderly nursing home residents. In *Doe v. Word*, he had represented "Doe," a 77-year-old diabetic double amputee and stroke victim to whom the state had tried to deny benefits without providing an appeal.

Bonnyman, fortunately, was available and willing to help out by doing what legal services could not. In December 1998, he filed a petition in federal court, asking that the state be held in contempt for changing its policy in defiance of the court order from the old class-action case. Because getting a ruling on that petition might take a long time, in the meantime he sought a preliminary injunction to protect Townsend. A scant three days before she was scheduled for discharge, a federal judge blocked the state from turning her out. In his subsequent memorandum on the Townsend case, the judge concurred with Bonnyman's broader accusations, commenting scathingly that the state "seems to be reading ambiguity into a clear decree at this late date in an attempt to justify evicting residents from nursing homes while their appeals are pending."

"If legal services had done the case, you'd have had a strange anomaly," Bonnyman points out. "The court would have found for the plaintiff on the preliminary injunction, and legal services wouldn't have been able to pursue it any further." But that modest legal victory on behalf of Townsend barely saved her from losing essential medical care and therefore should be of little comfort to anyone, cautions Bonnyman. He sees the case as the harbinger of a frightening future, in which those who want to disregard poor people's rights will be emboldened by the rules that prevent LSC-funded lawyers from advocating for clients to the best of their ability.

"The laws don't mean much in this country if you can't enforce them," Bonnyman admits, matter-of-factly. "George Bernard Shaw said, 'Never confuse morality with lack of opportunity.' I don't think this is an aberrant case at all. After all, we know from experience that it took years sometimes to train these government bureaucrats that, 'No, you can't do that.' After they'd lost in court a number of times, they finally learned to have some respect for demand letters, and to pay attention to people's rights. But that was only because they knew legal services was there, and that there would be legal consequences if they didn't. Now, with the restrictions on legal services, those who want to ignore the law are going to start figuring out they can get away with it."

A TWO-TIER JUSTICE SYSTEM

Andy Block, legal director of Just Children (an affiliate of Charlottesville-Albemarle Legal Aid Society), with a child on courthouse steps

In 1989, conservatives in Congress initially proposed the harsh slate of restrictions that would be imposed on legal services lawyers seven years later. Back then, supporters of legal services decried such rules as a danger to LSC's basic mission of ensuring that the poor had the same access to the legal system as everyone else in society. "These proposals would require poor people to jump through hoops that others who can pay for legal representation don't face," stated Carolyn Stewart of the National Legal Aid and Defender Association. "This is a disguised effort to destroy a delivery system of legal services that has worked well."

At the time, a majority in Congress agreed with Stewart. But by 1995, the situation had changed; the House GOP leadership was trying to abolish legal aid for the poor, and many LSC supporters reluctantly embraced restrictions as the only way to save it. The authors of the restrictions, Stenholm and Rep.Bill McCollum, R-Florida, both claimed to favor keeping LSC in existence; Stenholm

The restrictions prevent poor clients' lawyers from using the same tools that private lawyers use to represent their clients.

The 1996 restrictions place numerous substantive restrictions on the activities of recipients of federal funds appropriated to the Legal Services Corporation. A non-exhaustive list of the banned activities follows:

(1) Redistricting — defined as "mak[ing] available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or represent[ing] any party or participat[ing] in any other way in litigation, that is intended to or has the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census," Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law No. 104-134 (HR 3019) § 504(a)(1);

(2) Lobbying — defined as "attempt[ing] to influence the issuance, amendment, or revocation of any executive order, regulation, or other statement of general applicability and future effect by any Federal, State, or local agency; or . . . attempt[ing] to influence any part of any adjudicatory proceeding of any federal, state, or local agency if such part of the proceeding is designed for the formulation or modification of any agency policy of general applicability and future effect; or . . . attempt[ing] to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, or any similar procedure of the Congress or a State or local legislative body," *id.* § 504(a)(2), (3), (4);

(3) Influencing LSC oversight — defined as "attempt[ing] to influence the conduct of oversight proceedings of the [Legal Services] Corporation or any person or entity receiving financial assistance provided by the Corporation," *id.* § 504(a)(5);

(4) Participating in class actions — defined as "initiat[ing] or participat[ing] in a class-action suit," *id.* § 504(a)(7);

(5) Representing aliens — defined as "providing legal assistance for or on behalf of any alien" unless the alien is present within the United States and falls within a specifically enumerated category, *id.* § 504(a)(11);

(6) Political advocacy — defined as "support[ing] or conduct[ing] a training program for the purpose of advocating a particular public policy or encouraging a political activity, a labor or anti-labor activity, a boycott, picketing, a strike or a demonstration, including the dissemination of information about such a policy or activity," *id.* § 504(a)(12);

(7) Collecting attorney's fees — defined as "claim[ing] . . . or collect[ing] and retain[ing], attorney's fees pursuant to any Federal or State law permitting or requiring the awarding of such fees," *id.* § 504(a)(13);

(8) Abortion litigation — defined as "participat[ing] in any litigation with respect to abortion," *id.* § 504(a)(14);

(9) Representing incarcerated persons — defined as "participat[ing] in any litigation on behalf of a person incarcerated in a Federal, State, or local prison," *id.* § 504(a)(15);

(10) Welfare reform activities — defined as "initiat[ing] legal representation or participat[ing] in any other way, in litigation, lobbying, or rulemaking, involving an effort to reform a Federal or State welfare system, except that [an LSC] recipient [can] represent [ ] an individual eligible client who is seeking specific relief from a welfare agency if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation," *id.* § 504(a)(16); and

(11) Certain evictions from public housing — defined as "defend[ing] a person in a proceeding to evict the person from a public housing project if (A) the person has been charged with the illegal sale or distribution of a controlled substance; and (B) the eviction proceeding is brought by a public housing agency because the illegal drug activity of the person threatens the health or safety of another tenant residing in the public housing project or employee of the public housing agency," *id.* § 504(a)(17).

spoke of the restrictions package as "the leading alternative" to the plan to eliminate LSC.

The restrictions imposed in 1996 prohibit legal services lawyers from engaging in a wide range of activities on behalf of clients. Though the ostensible purpose of the restrictions is to de-politicize legal services, many of the rules have a seeming political bent; they serve to prevent poor people from using federally funded lawyers to resist items on the conservative political agenda. A poor person who wants to challenge the makeup of a legislative district under the Voting Rights Act, for example, can no longer turn to an LSC-funded attorney for help. Nor can a poor person engage an LSC-funded lawyer to challenge welfare laws. Housing project residents no longer can ask federally funded legal services to help them contest an eviction if they or a family member have been charged with or convicted of a drug offense and the housing authority alleges that the accused person threatens the health or safety of other tenants. Certain segments of the poor, such as some non-citizens, cannot be represented by federally funded legal services in any litigation. Incarcerated individuals are also denied federally funded legal services representation, even if they are awaiting trial and not yet convicted of a crime, and even if the suits are unrelated to their incarceration.

Additionally, LSC-funded lawyers are barred from using certain legal tools on behalf of clients. They cannot file class-action suits or participate in them in any way. They cannot lobby city councils or state legislatures for changes in the law that would benefit disadvantaged clients. They cannot collect attorney's fees from private defendants in lawsuits. LSC-funded lawyers also are barred from soliciting new clients.

Beyond that, Congress barred lawyers in all LSC-funded programs from engaging in any of the banned activities, even if the program wants to use non-federal

Charlottesville-Albemarle Legal Aid Society Executive Director Alex Gulotta with University of Virginia law students

money — state appropriations, levies from attorney filing fees, or contributions from private donors — to underwrite them. Programs can, however, respond to requests for information from legislators if they use non-LSC funds to do so.

The cost has been to the clients — both those that LSC-funded lawyers cannot represent to the best of their ability, and those that they can no longer represent at all. Since the restrictions prevent poor clients' lawyers from using the same tools that private lawyers use to represent their clients, certain legal strategies and tactics are available only to those who can afford to pay.

"I consider the restrictions to be an attack on our system of justice," Sheldon Roodman, executive director of the Legal Assistance Foundation of Chicago, said back in 1995, when it became apparent that the new rules were a *fait accompli*. Their effect is "to deny legal services lawyers the right to represent their clients as any other lawyer would."

Alex Gulotta heads Charlottesville-Albemarle Legal Aid Society (CALAS), a long-time LSC program in central Virginia that chose to abandon its federal funding rather than operate under the restrictions. "People criticized [LSC-funded lawyers] for tinkering with the 'system,' but the truth is, that's what lawyers are supposed to do. I remember a speech that one of the justices of the Virginia Supreme Court gave at a conference I attended. 'We're the mechanics of the law,' she told us. 'Our client brings in the car to us, and our job is to figure out how to get it to run for them.' All lawyers are social engineers; we're trying to change the way society is impacting our individual clients. You're trying to do everything you can to help the person you represent. Of course, in our case, if what you're doing helps other poor people in the process, it's all for the better."

BANNING CLASS ACTIONS

To understand just how the restrictions are hurting poor clients, it is useful to look at a tool that LSC-funded lawyers *used* to be able to use on their behalf: the class-action suit. Class actions are perhaps the activity most vehemently denounced and demonized by LSC's opponents. For example, in 1989, when the present slate of restrictions were first proposed, American Conservative Union official Dan Casey claimed LSC had "basically been an open purse for social engineering activists to provide expanded benefits through class-action litigation."

That critique wouldn't have won much support from the hundreds of African-American agricultural workers who waited in line for hours outside a church meeting-hall in Indiantown, Florida, one morning in June 1995. The workers were there to receive their shares in a successful class-action suit that LSC-funded Florida Rural Legal Services (FRLS) and other law firms had pursued against Caulkins Indiantown Citrus Co. The company had a long history of giving Black workers only the dirtiest and most dangerous jobs, and of denying them promotions. Beyond the alleged taunts, slurs, and humiliation by bosses, they had been subjected to brutal abuses that harkened back to the days of slavery. On one occasion, a supervisor thought a worker was not paying close enough attention as he berated him, so he set a pit bull on the worker and left him in the groves to bleed.

The plaintiffs were hard working people, accustomed to spending long days shoveling tons of citrus peels in 110-degree temperatures. But getting justice was nearly as laborious. Finally, after a 12-year court battle, a federal jury sided with the workers on some of the accusations, and the company (by then, under different owners) agreed to pay $13.5 million to settle the case. More than 730 workers received damage awards, including more than 100 who got payments of $50,000

Legal Aid dividing into two agencies

By CALVIN R. TRICE
Daily Progress staff writer

The Charlottesville-Albemarle Legal Aid Society will reorganize today in response to federal legislation that forced the agency to stop representing public housing tenants in a 1996 land dispute with the city.

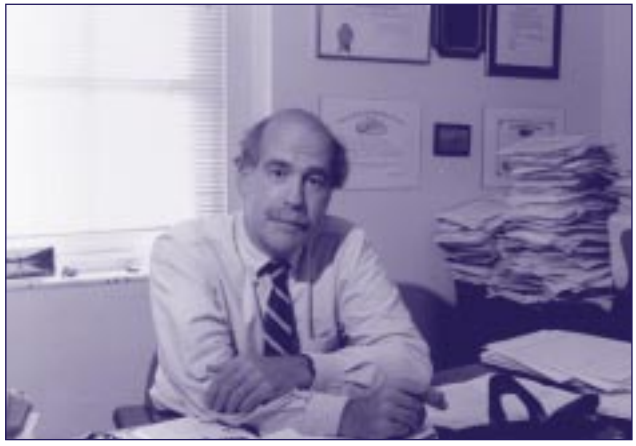
In the spring of that year, Legal Aid assisted residents of the low-income Westhaven public housing complex who were trying to stop construction of a fence between the apartments and nearby private property. Legal Aid represents poor people who cannot afford attorneys for civil matters.

But in April 1996, Congress placed restrictions on federally-funded legal assistance organizations that prohibited the local Legal Aid from representing Westhaven residents.

(Source: *The Daily Progress,* January 1, 1998)

or more. Rather than the "expanded benefits" that the conservatives derided, that money came as compensation for two to three decades of being cheated out of fair wages and being brutalized on account of their skin color. "When a person is stripped of their dignity and pride," explained lead plaintiff John Henry Robinson, "it feels like someone has reached inside and tore your heart out."

Conservatives were correct in noting that LSC-funded lawyers often used class-action suits as a legal weapon against government health care and welfare bureaucracies. But those suits didn't create new entitlements for their clients. Instead, the lawyers went after agencies that weren't following the laws passed by Congress; the suits forced bureaucrats to provide poor citizens with the benefits guaranteed to them by law.



Philadelphia Community Legal Services attorney Richard Weishaupt, co-counsel in *Sullivan v. Zebley*

One example is *Sullivan v. Zebley*, a case that reached the U.S. Supreme Court. In 1972, Congress passed a law authorizing payment of monthly Supplemental Security Income (SSI) benefits to people whose physical or mental disabilities prevented them from working, and to children, if their disabilities were of "comparable severity." A decade later, two lawyers at former LSC affiliate Community Legal Services in Philadelphia, Richard Weishaupt and Jonathan Stein, stumbled upon the case of a boy named Brian Zebley. Zebley had suffered brain damage at birth that left him mentally retarded and able to walk only with difficulty. Nevertheless, the U.S. Social Security Administration did not consider him sufficiently disabled to receive benefits.

It was not because an official had made a mistake. The government had decided to exclude tens of thousands of children with problems as severe as Zebley's. Social Security rules listed a series of childhood diseases and impairments that could make a person under age 18 eligible for benefits, but they did not count the effect of multiple disabilities that were disabling when combined. That omission was significant, because disabled people often have multiple conditions, blindness and autism, for example, or mental retardation and partial paralysis. By doing so, the administration was ignoring the standard set by Congress — that a child was disabled if his or her impairments were comparable to those that would prevent an adult from working.

Community Legal Services filed a class-action suit in 1983, but both the Reagan and Bush Administrations resisted vigorously. Finally, in 1990, the U.S. Supreme Court decided by a 7-2 vote that the LSC-funded lawyers were right. As a remedy, the Court ordered the agency to undertake individual functional assessments of children like Brian Zebley to determine whether they qualified for benefits. The effect? One hundred and fifty thousand children across the nation who'd been rejected for benefits were reevaluated and found to qualify.

The class-action suit was such a potent weapon for

Disabled children were not, by any means, the only poor Americans to be helped by class-action suits that LSC-funded lawyers filed from the 1970s through the mid-1990s. Across the nation, low-income people were able to obtain substantial improvements in their lives as a result of class-action suits brought by LSC lawyers on their behalf.

- **In Massachusetts, LSC-funded lawyers prevented the state from cutting off welfare benefits to mothers who were unable to locate their children's deadbeat fathers.**
- **In the late 1980s, a class-action suit filed by San Fernando Valley Legal Services led the Los Angeles Police Department to reform its polices so that officers could protect victims of domestic violence more aggressively.**
- **In Oregon, "We filed a number of large class actions against several growers who were basically not paying workers," explains Oregon Legal Services Executive Director Ira Zarov. "In fact, the U.S. Attorney worked with us on several peonage cases in which workers were being treated like slaves. In cases like that, filing an individual lawsuit on behalf of one worker wasn't effective, because the grower could say, 'I'll pay this one person off, and get rid of him.' It's because of class action cases that the very worst abuses have been controlled here and most of the unscrupulous growers have been replaced by more reputable farmers."**

(Sources: *Boston Globe*; *Los Angeles Times*; Ira Zarov, interview Oct. 19, 1998.)

legal services lawyers that sometimes they did not even have to file a suit to get relief for their poor clients. Take the example of former LSC-affiliate CALAS in Virginia. When the present slate of restrictions were imposed in 1996, Executive Director Alex Gulotta reviewed the program's records of past cases in an attempt to figure out what effects the class-action ban might have on the clients of CALAS. "We'd never actually filed a class action in the two years that I'd been in charge," Gulotta explained. "But when I checked, I found that in the year prior to the restrictions, our lawyers had sent seven demand letters in which they proposed class-action suits as a solution if the person they were writing to didn't take action to make things right." In one case, attorneys had used the threat of a suit to stop a used car dealer from scamming poor people by taking their credit insurance payments but not actually providing them with policies. In another case, attorneys forced the local public housing authority to back down after it abruptly informed tenants that they faced immediate eviction unless they showed up at a meeting that Saturday to renew their leases.

"Basically, they were doing things that were illegal, and we were simply telling them to stop," says Gulotta, adding that his lawyers usually sought no money from the class-action targets. "When they know you can take them over to federal court and file a class action, they can't just get away with saying, 'Okay Mary, we won't do it to you,' and then go on ripping off everyone else. Actually, in a way, we may have done some of these defendants a favor, because we saved them from being sued for damages by individuals later on."

Now that federally funded legal services lawyers are no longer able to file class actions, they — and more importantly, their clients — are often caught in

"Basically, they were doing things that are illegal, and we were simply telling them to stop. When they know you can take them over to federal court and file a class action, they can't just get away with saying, 'Okay Mary, we won't do it to you,' and then just go on ripping off everyone else."

Charlottesville-Albemarle Legal Aid Society Executive Director Alex Gulotta

agonizing dilemmas. One is the lack of legal resources.

A class-action suit that permanently solved a pervasive problem was a way to benefit sometimes thousands or tens of thousands of poor people. By using that legal tool, legal services programs got the best cost-benefit from their limited funding, and actually conserved resources that could be put to use helping still more people in need.

Ashley Wiltshire, executive director of the Legal Aid Society of Middle Tennessee, explained to the *Nashville Tennessean* in 1996 that class actions and lobbying amounted to only 20 of the 4,000 cases his program might pursue in a typical year, but the results were disproportionately large. "At one point, we figured out we were handling 4,000 cases a year, but with our class-action cases and administrative work we were able to help 600,000 people."

Today, in contrast, attorneys say that their inability to file class actions means that fewer low-income people benefit from their work. "We have 250,000 low-income people in this area, and we represent 10,000 of them a year," Florida Rural Legal Services' Peter Helwig explains. "We're always saying to ourselves, is there some way through this case that we can get relief for the rest of the people, the ones who never find their way to our office?" Since attorneys do not have the leverage that comes from the ability to threaten a big lawsuit, it is more difficult to get results for individual clients.

Charles Delbaum, director of litigation with New Orleans Legal Assistance Corp., explains the frustrations: "We had a client, a woman who had to move out of her apartment in the projects, because her place had been shot up by gunmen from a drug gang, and she was terrified. She has a small child, and she wanted the housing authority to transfer her to a different project. Her request sat around for more than a year. Last month, finally, after we sent a demand letter informing them of our intent to file suit, [the authority] put through her transfer.

"We've seen this before. The local housing authority doesn't provide grievance hearings within a reasonable period of time, as required by federal regulations. Instead, they delay [for] several months or more. Generally, if an individual client is savvy enough to contact us, we can eventually resolve the matter for her, but what you really need is a class action, so you can

New Orleans Legal Assistance Corporation Director of Litigation Charles Delbaum, client, and child

resolve it for all public housing residents. Otherwise, we just keep having to do the same thing over and over to make them follow rules that are already in place."

Legal services lawyers say it is far easier for defendants to thwart individual suits than class actions. Florida Rural Legal Services' Peter Helwig notes, "We had a case in which a big nation-wide manufacturing company was discriminating against Hispanic workers. They employed Hispanics in the lowest-level jobs, and Anglo workers in supervisory, managerial and sales jobs." A worker had come forward who wanted to take the employer to court. Other workers described similar grievances and seemed willing to pursue litigation as well. Moreover, there were indications of a widespread pattern of discrimination that was hurting other people who hadn't come forward. Clearly, a class action would have been the smartest way to go. But the lawyers no longer had that option.

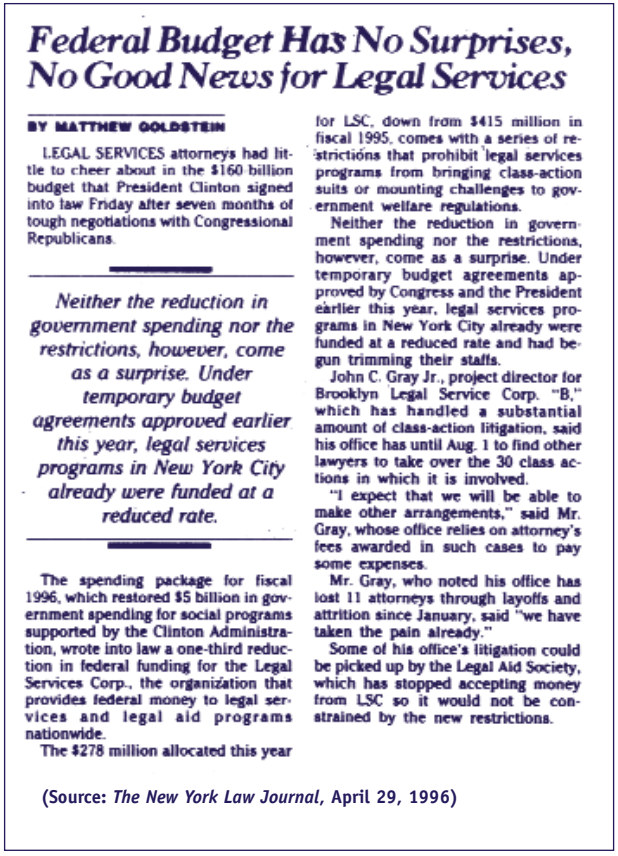
"We then thought about bringing it as an individual action, but lo and behold, the company promoted our lead client. Suddenly, he was over the income level to be eligible for legal services, so he's not our client any more." If FRLS had been allowed to pursue the case as a class action, that would not have been a problem, because Helwig might have simply found a private lawyer to represent the lead client, and continued on with the larger suit. The other workers who had been discriminated against were too fearful of retaliation to take his place out front; however, even if they had been willing to do so, the company could have repeated its tactic and given those workers enough of a raise to force them to drop individual suits. Effectively, FRLS was stymied. There was nothing to stop the company from discriminating against other Hispanic workers in the future.

Highlights of Pre-1996 Successes

- **In the mid 1960s, Legal Services compelled California counties to participate in a federal school lunch program for needy children. A class-action suit on behalf of nursing mothers working in agricultural fields ultimately led to the banning of the dangerous pesticide DDT.**
- **In the late 1970s, a class-action suit by Memphis Area Legal Services against a local utility company led to a U.S. Supreme Court decision establishing the constitutional right of utility customers to a due process hearing before their service could be terminated.**
- **In the early 1980s, a class-action suit brought by Legal Services of Northern California, blocked the city of Sacramento from abolishing general assistance to the needy and replacing it with a 19th-century-style poorhouse.**
- **In the early 1990s, Texas Rural Legal Aid filed suit against the Texas A&M University system over its practice of treating farm laborers at some of the university's Agricultural Experiment Station locations as independent contractors rather than employees. The illegal practice meant that the workers earned less than the minimum wage because they had to pay Social Security taxes that the University should have paid. As a result of the lawsuit, Texas A&M compensated the workers for the taxes they had paid and printed and distributed a pamphlet informing farm workers that it is illegal for employers to hire them as contract laborers.**

(Sources: *The New York Times*, March 19, 1997; *Memphis Commercial Appeal*, Oct. 28, 1990; *San Francisco Express-News*, Jan. 23, 1996; Roberta Ranstrom, interview)

FORBIDDING ATTORNEY'S FEES



Federal Budget Has No Surprises, No Good News for Legal Services

BY MATTHEW GOLDSTEIN

LEGAL SERVICES attorneys had little to cheer about in the $160 billion budget that President Clinton signed into law Friday after seven months of tough negotiations with Congressional Republicans.

Neither the reduction in government spending nor the restrictions, however, come as a surprise. Under temporary budget agreements approved earlier this year, legal services programs in New York City already were funded at a reduced rate.

The spending package for fiscal 1996, which restored $5 billion in government spending for social programs supported by the Clinton Administration, wrote into law a one-third reduction in federal funding for the Legal Services Corp., the organization that provides federal money to legal services and legal aid programs nationwide.

The $278 million allocated this year for LSC, down from $415 million in fiscal 1995, comes with a series of restrictions that prohibit legal services programs from bringing class-action suits or mounting challenges to government welfare regulations.

Neither the reduction in government spending nor the restrictions, however, come as a surprise. Under temporary budget agreements approved by Congress and the President earlier this year, legal services programs in New York City already were funded at a reduced rate and had begun trimming their staffs.

John C. Gray Jr., project director for Brooklyn Legal Service Corp. "B," which has handled a substantial amount of class-action litigation, said his office has until Aug. 1 to find other lawyers to take over the 30 class actions in which it is involved.

"I expect that we will be able to make other arrangements," said Mr. Gray, whose office relies on attorney's fees awarded in such cases to pay some expenses.

Mr. Gray, who noted his office has lost 11 attorneys through layoffs and attrition since January, said "we have taken the pain already."

Some of his office's litigation could be picked up by the Legal Aid Society, which has stopped accepting money from LSC so it would not be constrained by the new restrictions.

(Source: *The New York Law Journal*, April 29, 1996)

Another 1996 restriction — the ban on seeking legal fees and costs from defendants — is another weighty albatross for LSC-funded lawyers. The ban deprives LSC-funded programs of an estimated $15 million annually in badly needed funds, that could help them stretch their resources further and serve more clients. More importantly, attorney's fees prevented meritless lawsuits and acted as deterrents against needlessly extending lawsuits.

"One of the most effective ways to benefit people isn't by obtaining individual damages, but rather by getting an injunction," Helwig notes. "If you get ten workers paid a day's salary that they'd been cheated out of, that doesn't really do a lot. But if you can get an injunction against an employer, compelling him not to violate the Fair Labor Standards Act, then you've accomplished something.

"The problem is that if your remedy is injunctive relief, and complying with the injunction is expensive overall, the defendants may decide to just stall you and drag out the case as long as they can. After all, the longer that they can delay the case, the less it's going to cost them in total, because in the end all they're going to be told is that they have to change the unfair rule. In the past, we would remind people that they were liable for legal fees. If they said, 'We're willing to wait until a judge tells us we have to change our rules,' we could remind them, 'When you lose, you'll not only have to change your rules, but you'll have to pay us $50,000 or $60,000 in legal fees.' Now, that's leverage. But we don't have it any more."

Generally, the danger of losing and having to pay a defendant's legal expenses serves as a deterrent to anyone who is tempted to harass another with a meritless lawsuit. But poor people who rely on LSC-funded attorneys no longer have this protection.

The ban against LSC-funded lawyers collecting legal fees particularly hurts clients who are victims of consumer fraud and mistreatment by repossession agencies.

The danger of losing and having to pay a defendant's legal expenses serves as a deterrent to anyone who is tempted to harass another with a meritless lawsuit, but poor people who rely on LSC-funded attorneys no longer have this protection that other citizens have.

Florida Rural Legal Services had a client, Rose Smith, who lived in a public housing project with her two children and an abusive husband. Smith became so afraid of her husband that she went to court on her own and obtained a restraining order, forcing him to move out and barring him from having any contact with the family. Eventually, she relented and allowed him to visit.

At that point, the housing authority swooped in. Bizarrely, the authority accused Smith of "criminal conduct," because Smith had permitted her husband to visit despite the court order, and it sought to evict her. Smith came to FRLS attorneys for help, and they got the case dismissed on procedural grounds. Under Florida law, Smith was entitled to have the housing authority pay her attorney's fees, but because of the no-fees restriction, FRLS could not seek them. Without that financial deterrent, there was nothing to keep the housing authority from continuing to harass Smith; they simply filed another eviction action against her. FRLS represented her a second time and again won, this time based on facts rather than procedure. Once again, Smith was entitled to legal fees but could not collect them.

Still emboldened, the housing authority filed yet another eviction action against Smith. This time, FRLS, with its stretched-thin resources, had no attorney available to represent her, and the housing authority won. Smith and her children were evicted.

PROHIBITING LOBBYING

Prior to 1996, LSC-funded lawyers could engage in legislative lobbying in city hall chambers and state capitals across the nation, as long as they didn't use federal funds for that purpose. To some opponents of legal services, lobbying had a particularly nefarious connotation. It angered conservatives to have lawyers from LSC-funded programs lobbying state legislatures who were rewriting welfare laws — despite the fact that, other than welfare officials themselves, legal services lawyers were among the few people who understood the intricacies and impacts of public-benefits rules. But unlike their corporate counterparts, attorneys from LSC programs also lobbied for legislation whose benefit to clients was measured not in dollars and cents, but rather in a reduction of human misery. And in many cases, those benefits extended beyond the poor, to a broader segment of society.

In Oregon in the mid-1970s, for example, lobbying allowed lawyers to help victims of domestic violence. Oregon Legal Services attorney Ira Zarov was representing a woman in a divorce case. According to Zarov, "I was supposed to go into court for the final divorce decree, and my client's mother called up and said, 'She can't be there.' I asked, 'Why?' She told me that the woman's soon-to-be ex-husband had beaten her up, and she was in critical condition. Her jaw was broken and wired, and she looked horrible. So I called my friend, an assistant district attorney. To my shock, he said, 'If she dies, call me back, because we don't prosecute otherwise.' They figured that women would just be intimidated into dropping the charges later, or that juries wouldn't believe them. I thought to myself, how can I make them do something?"

Zarov and other attorneys at Oregon Legal Services started discussing the possibility of filing a class-action suit, to challenge law enforcement policy on domestic violence. LSC-funded lawyers had successfully employed this strategy in Texas, among other places.

But one of Zarov's colleagues came up with an even better solution. Why not change the law itself, and give women more protection? The attorneys wrote a bill that enabled a woman to proceed *pro se* — to go to court on her own to obtain a restraining order against an abusive spouse. The law also required the police to arrest the man if he violated the order. "The *pro se* part was important, because if everyone needed to find a lawyer to get protection, it wouldn't work," Zarov explains. Oregon Legal Services marshaled support from women's organizations and other groups, and their combined efforts convinced the Oregon legislature to enact the Family Abuse Protection Act, one of the nation's first such domestic violence laws. In addition, when a police officer in a small Oregon town declined to enforce the new law against an abuser, Oregon Legal Services filed a lawsuit, *Nearing v. Weaver*, in which the Oregon Supreme Court established that the police could be liable for damages in such situations. "Passing the law wasn't enough," Zarov recalls. "We had to enforce it, too."

In 1996, LSC grantees handled 250,000 cases involving domestic violence. Fifty thousand of these focused on obtaining protection from spousal abuse, and another 200,000 concerned divorces and other family and juvenile cases of domestic violence. More than one out of every six LSC cases involves efforts to obtain protection from domestic violence.

(Source: National Legal Aid and Defender Association)

"Legislatures work pretty well if you have good lobbyists on both sides. Where the system breaks down is where you have a crew of highly effective and capable lobbyists on one side and only five-and-a-half million silent Tennesseans on the other side. Then the result is not always justice."

Tennessee state Senator Roy Herron

Today, unfortunately, battered women in Oregon and other states would be out of luck, at least in terms of getting help from LSC-funded lawyers in passing legislation. Across the nation, LSC-funded attorneys are unable to help pass laws or convince legislators to modify existing ones in ways that would benefit their clients. Conservative critics tend to stereotype the lobbying efforts of legal services attorneys, accusing them of wanting mostly to interfere with welfare reform. In Maryland, the federal ban on lobbying forced the Legal Aid Bureau to abandon an effort to reform the state's bankruptcy laws, which would have given people in tough financial straits a better chance of keeping their houses. "I'm only allowed to give information [to legislators] if they ask for it," notes Bureau attorney Bob Wilbert. At the request of legislators, federally funded legal services attorneys can testify and assist in the drafting of legislation, so long as no LSC funds are used to underwrite the work.

In Tennessee, Gordon Bonnyman recalls, for years LSC-funded attorneys successfully lobbied the state legislature to prevent legalization of "payday loans" by storefront check-cashing companies. A company that gives a "payday loan" accepts a post-dated check from a customer, at a big discount on face value, and then charges hefty fees to renew the loan if the customer can't cover the face. Attorneys found this exploited the working poor. In 1997, the check-cashing outlet industry once again pushed for a change in the rules. Industry lobbyists and trade associations not only pounded the hallways of the statehouse, but they also reinforced their point with hundreds of thousands of dollars in campaign contributions to Tennessee politicians. One company even retained the governor's former chief aide.

"This time, the LSC attorneys couldn't lobby because of the restrictions, and we couldn't do it at the Tennessee Justice Center because we didn't have the resources," Bonnyman says. "Basically, there was a vacuum in the halls of the legislature, nobody there to try and keep it from happening."

"Legislatures work pretty well if you have good lobbyists on both sides," Tennessee state Senator Roy Herron subsequently explained to the *Associated Press*. "Where the system breaks down is where you have a crew of highly effective and capable lobbyists on one side, and only five-and-a-half million silent Tennesseans on the other side. Then the result is not always justice."

As a result, Tennessee exempted check-cashing businesses from its usury laws, allowing them to make short term loans at an annual rate of 390 percent. "It'll never be repealed, because the industry has grown so big that they now have enough money to spend on whatever it takes to keep the law in place," Bonnyman says. "Two of those businesses just blossomed on the same street as our offices."

THE NEEDS THAT AREN'T BEING MET

LSC's 1998 budget of $300 million was actually $21 million less, in non-inflation adjusted dollars, than the government spent supporting LSC in 1980. In the mid-1990s, an LSC official estimated that to match its 1981 funding level, the agency would need nearly $850 million.

(Sources: *The Washington Post*, January 4, 1994; *New Jersey Lawyer,* October 26, 1998)

Some insist that poor people aren't really being denied their rights, because publicly minded non-LSC lawyers can still pursue cases that LSC lawyers are no longer permitted to handle. One problem with that logic is that in many parts of the country, particularly in rural areas, LSC-funded programs are pretty much the whole ballgame as far as poverty law is concerned. "On the east and west coasts, you have non-LSC public interest law firms," says Community Legal Services attorney Jonathan Stein. "But there are significant parts of the country, in the rural deep South, for example, where you're not going to find a lot of people doing this kind of work." And even in places where there are non-profit poverty law organizations trying to pick up where LSC lawyers are forced to leave off, the non-LSC alternatives do not have enough resources.

When the class-action ban and other restrictions became effective in 1996, numerous active lawsuits died because LSC-funded attorneys could not find anyone to take over their clients. In Rhode Island, legal services attorneys had to abandon a lawsuit on behalf of thousands of women and children who were owed child support money that the state allegedly had collected from absent fathers and then kept for itself, in violation of federal law. One of the plaintiffs in the Rhode Island case, Virginia Villandry, told *The New York Times* that she had lost her house and had been forced to go on welfare after her husband left her 25 years before with two toddlers, one of whom was mentally retarded. The state collected $25 a week in child support from her former husband, who worked in a military plant, but failed to pass on to her and her daughters the first $50 each month, as federal law required. The money that the state had illegally kept, Villandry explained, would have allowed her "to buy food and get my kids clothes."

The restrictions forced Florida Rural Legal Services to withdraw from about 30 lawsuits. Half of the suits were on behalf of migrant farm workers who were fighting unsafe or unhealthy working conditions or

- **In 1993, Southern Arizona Legal Aid (SALA) sued the state of Arizona on behalf of single mothers, because the state had failed to meet federal standards in tracking down and collecting child support from absent fathers. SALA won at the trial and appeals level but had to withdraw from the case as it headed for the U.S. Supreme Court in 1997. Fortunately, the National Women's Law Center agreed to replace SALA. They won a partial victory: the Supreme Court eventually ruled that individual mothers had the right to sue the state over their individual cases, although not to force broad changes in the system.**
- **In the 1990s, Atlanta Legal Aid Society (ALAS) sued Cobb County, Georgia, alleging inhumane conditions in its juvenile detention system. However, because of the 1996 ban on class actions suits, ALAS was forced to withdraw from the case before it was settled. A private law firm negotiated a settlement in 1997, which compelled Cobb County to make sweeping changes in its system to eliminate crowding, improve sanitation and food-handling, and curb mistreatment of young prisoners. The ALAS suit also triggered an investigation of youth detention facilities in Georgia by the U.S. Department of Justice and led to a separate settlement under which the state agreed to further improve conditions.**

(Sources: *The New York Times*, Oct. 27, 1996; *The Arizona Republic*, April 22, 1997; *Fulton County Daily Report*, Feb. 6, 1998; *Atlanta Journal-Constitution*, Nov. 28, 1996; Significant Atlanta Legal Aid Society Cases, http://www.law.emory.edu/PI/ALAS)

who had been held in bondage to work off a debt. Others were employment discrimination, housing, and Voting Rights Act cases. In addition, FRLS had to drop about 4,000 non-citizen clients.

With the help of the Florida Bar Foundation, some FRLS lawyers left the program and set up their own non-LSC outfit to handle ten of the farm-worker cases, supported by state Interest on Lawyers' Trust Accounts (IOLTA) funds. To minimize the disruption, FRLS moved out of its Belle Glade office, where the lawyers had been based, and turned the lease over to the new outfit. In addition, the lead counsel of FRLS in the voting rights cases left and joined the ACLU's national voting rights project in Atlanta, where she continued to handle seven Florida voting rights cases that FRLS had to drop.

"I think we were able to hand things off so that it was as smooth and seamless as possible for our clients at the time," says Peter Helwig of FRLS. "It was rough for us, but I feel pretty good about the cases that were pending." However, there's still one problem — no one is available these days to handle voting rights cases arising in Florida. Indeed, the real damage that the restrictions did to justice, Helwig explains, took longer to emerge. Clients still show up at the doorstep of FRLS with problems that cry out for the remedy of a class-action suit. Helwig tries to place those clients with a non-LSC lawyer or organization; but he is often unsuccessful. A case in point is the earlier example, cited by Helwig, of the Hispanic workers who were being discriminated against by their company. FRLS offered the case to other non-LSC organizations, hoping that one would pick it up and file a class action on their behalf. None did.

The non-LSC organizations, because of their limited budgets, have to set strict priorities. They are under pressure to handle only the most significant, major-impact cases.

This has led to an ironic result. Proponents of the restrictions wanted to put an end to what they saw as ideologically motivated class-action suits, and to restrict

LSC's resources so the lawyers could only help people with everyday problems. Yet, today a client whose grievance has spectacular potential to rock the system may potentially find an activist attorney to take on the case. The ones who lose out are great numbers of poor people, who suffer from more mundane, everyday injustices — exploitation by loan companies or wrongful treatment by minimum-wage employers.

Philadelphia Legal Assistance Executive Director Anita Santos

In Tennessee, Gordon Bonnyman explains the limitations he faces in a non-LSC program. In 1996, he left the LSC-funded Legal Aid of Middle Tennessee and, with another attorney, set up the Tennessee Justice Center (TJC). Thanks to generous support from the state's Bar Association Foundation, the Center has become an aggressive advocate for nursing home patients and poor people contending with problems in the state's TennCare public health system. But from the start, Bonnyman had to disabuse supporters of the notion that the new organization could come anywhere close to picking up all the cases that LSC-funded attorneys in Tennessee had to drop. Bonnyman explains:

"I talked to a city bar association president who said to me, 'What do you mean you're not going to handle the cases of people who are evicted from housing because of spurious drug accusations?' I tried to explain that I can't do that for 95 counties. We've got a $400,000 budget. We can't possibly address the legal needs of one million poor people spread throughout the state."

What's happening in America is "a conspiracy of silence. There's no effort to critically look at the unaddressed problems, the unmet needs of the poor." As a society, "we don't want to know what the problems are, who's being hurt."

Philadelphia Community Legal Services attorney Jonathan Stein

Looking for a way to do as much good for as many people as possible, TJC focuses largely on public health care. Bonnyman uses a medical analogy to explain the Center's strategy. "TJC isn't a big modern hospital. We're a MASH unit on a battlefield, trying to save the few souls that we can. So we triage, focus on issues. I'm sure there are many preventable injustices and deaths that occur, because we just don't have the resources."

In Philadelphia, Pennsylvania, Community Legal Services (CLS) helped set up a separate organization, Philadelphia Legal Assistance, that conforms to LSC restrictions. The new organization applied for and obtained LSC funding, while CLS continued as a non-LSC-funded program. CLS now has a $5 million budget from the state government and bar associations, enabling it to pursue class-action suits and other activities that its counterpart is barred from undertaking.

LSC, which recently celebrated its 25th anniversary, helps support 258 local programs that offer legal assistance in every county and congressional district in the nation. Under the 1999 House Appropriations Committee recommendation to cut funding by more than half, there would have been just one legal services lawyer for every 23,000 poor Americans in 2000.

(Source: National Legal Aid and Defender Association)

Because of its budget, CLS can now pursue class-action suits on a much larger scale than other non-LSC public interest law firms. For example, CLS attorney Jonathan Stein, who won the *Zebley* decision in 1990, is presently researching the possibility of a further class-action challenge to SSI rules that are hurting his

Philadelphia Community Legal Services attorney Rue Landau and client

clients. Even so, Stein notes, besides CLS, only one other general poverty law firm in the state — the Harrisburg-based Community Justice Project — is pursuing class-action litigation. In addition, a few small, specialized non-LSC organizations, such as the Pennsylvania Institutional Law Project, which represents prisoners, still can undertake class actions on behalf of clients, but these groups' resources are limited. This is in a state that has a 30-year tradition of guaranteeing legal assistance to state residents.

Even if they had sufficient resources, Stein contends, non-LSC law firms simply wouldn't be as well equipped to spot the issues where large groups of poor people need intervention. "The public interest law outfits don't see a lot of individual clients, so they can't respond to the patterns that are affecting people the way that legal services attorneys could. Legal services — they're the ones who can see the problems in the community, and they're the ones who really should be involved in the community's issues."

Stein calls the restrictions on federally funded legal services lawyers "a conspiracy of silence." "There's no effort to critically look at the unaddressed problems, the unmet needs of the poor. We don't want to know what the problems are, who's being hurt," he says.

Even as LSC-funded lawyers around the country keep working to find ways to help clients, they are haunted by the knowledge that because of the restrictions, there are many people who are beyond their help.

LSC-funded attorneys in Tennessee, for example, watch helplessly as their clients struggle to pay the exorbitant fees they owe on their "payday loans." The attorneys remember the many times they warned the state legislature about the devastating effects such loans have on poor communities, and they remember the many times the legislature relied on that information to bar those loans. Then the attorneys try to explain to their clients that their offices can no longer tell the legislature about the harmful effects of the loans — the lawyers with this important information have been silenced.

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