Securing Equal Justice for All

A Brief History of Civil Legal Assistance in the United States

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The 104th Congress

With the 1994 congressional elections, the Corporation suffered a dramatic reversal of political fortune. Conservatives included the elimination of LSC in the infamous "Contract for America." In much the same way as the Reagan Administration in the early 1980s, the leadership of the new Congress, under House Speaker Newt Gingrich (R-GA), committed itself to the elimination of LSC and ending federal funding for legal services. The House leadership sought to replace LSC with a system of limited block grants to the states that would severely restrict the kind of services for which the funds could be used. The House of Representatives adopted a budget plan that assumed that LSC's funding would be cut by one-third for FY 1996, another third in FY 1997, and completely eliminated thereafter. Opponents of legal services dubbed this funding plan "the glide path to elimination." It seemed possible that the federal commitment to equal justice might be abandoned altogether.

Despite the efforts of the House leadership, a bipartisan majority in the Congress, led by Senator Pete Domenici (R-NM), remained committed to maintaining a federally funded legal services program. Nevertheless, key congressional decision makers, led by Congressmen Bill McCollum (R-FL) and Charles Stenholm (D-TX), determined that major "reforms" in the delivery system would be required if the program was to survive.

Grants were to be awarded through a system of competition, rather than through presumptive refunding of current recipients. Funding was to be distributed on a strict, census-based formula, eliminating any LSC discretion over funding amounts. A timekeeping system was imposed on all attorneys and paralegals working in programs. Programs were subject to a host of new organizational and administrative requirements. LSC funds could no longer be used to pay dues to nonprofit organizations, including the ABA and NLADA, or to sue LSC. The LSC Office of Inspector General was given new powers over local program audits, and LSC was given expanded access to recipient and client records.

More fundamentally, the Congressional majority was determined to redefine the role of federally funded legal services by refocusing legal services advocacy away from law reform, lobbying, policy advocacy, and impact litigation and toward basic representation of individual clients. Congress set out to accomplish this goal by restricting the broad range of activities that programs had engaged in since the early days of OEO, many of which had been mandated in the past. These restrictions applied to all activities that a recipient undertook, regardless of the source of the funding that was used to support the activity. Thus, with certain limited exceptions, LSC-funded programs were prohibited from using the public funds that they received from federal, state or local governments, or the private funds they received from bar associations, charitable foundations, private donations, and any other non-LSC sources for the LSC-restricted activities.

Congress prohibited representation of certain categories of clients, including prisoners and public housing residents who were being evicted based on drug-related charges. Only certain specified categories of aliens were permitted to be served, although later amendments lifted the restriction on providing a range of legal services to aliens who were victims of domestic violence and human trafficking. Perhaps even more damaging and insidious, Congress limited the kinds of legal work that LSC-funded programs could undertake on behalf of eligible clients, prohibiting programs from participating in class actions, welfare reform advocacy, and most affirmative lobbying and rulemaking activities. In addition, programs were prohibited from claiming or collecting attorneys' fees[5], cutting off a significant source of funding and limiting programs in their ability to use an effective strategic tool. These prohibitions were written to be "entity" restrictions and applied not just to LSC funded activity, but to all of a grantee's non-LSC funds as well. Finally, Congress eliminated LSC funding for national and state support centers, the *Clearinghouse Review,* and other entities that had provided support, technical assistance, and training to LSC-funded legal services programs.

In essence, when Congress passed the LSC appropriation riders in April 1996, it determined that federal funds should go only to those legal services programs that focused on individual representation and concentrated on clients' day-to-day legal problems, while broader efforts to address the more general systemic problems of the client community and to ameliorate poverty should be left to those entities that did not receive LSC funds. As former LSC President John McKay recently wrote: "Taken as a whole, the restrictions on the types of cases LSC programs are allowed to handle convey a strong Congressional message: federally funded legal services should focus on individual case representation by providing access to the justice system on a case-by-case basis."

Along with the new restrictions came a major reduction in funding. The LSC appropriation was cut by 30 percent, from $400 million for FY 1995 to $278 million for FY 1996. Final 1996 statistics revealed the staggering cost of the funding cuts: the number of cases that were closed fell from 1.7 million in 1995 to 1.4 million in 1996; during the same period, the number of attorneys working in LSC-funded programs nationwide fell by 900, and 300 local program offices closed.

Selected Grant Years	Annual LSC Appropriation in Actual Dollars	What the LSC Appropriation would have been if it had kept up with inflation	Percentage Change From 1980 (Using 1980 Dollars)
1975*	71,500,000	109,486,451	+1.53%
1976	116,960,000	169,368,493	+1.45%
1980	300,000.000	300,000,000	0.0%
1981	321,300,000	331,004,146	-2.9%
1982	241,000,000	351,219,424	-31.4%
1990	316,525,000	475,649,712	-33.5%
1995	400,000,000	554,737,587	-27.9%
1996	278,000,000	570,998,079	-51.3%
2005	330,804,000	704,055,010	-53%
2009	390,000,000	752,938,299	-48.2%
2010	420,000,000	767,497,879	-45.3%
2013	341,500,000	835,585,677	-59.1%
2017	385.000,000	936,391,172	-58.9%

*Grant was given to the Community Services Administration, which took over the OEO legal services program until LSC was created.

Reaction to the Restrictions

LSC worked quickly to develop new regulations to implement the restrictions imposed as part of the 1996 appropriations act. In response to a report by the General Accounting Office, LSC also tightened its case reporting requirements and resumed and significantly expanded its monitoring efforts to ensure compliance with these reporting rules as well as numerous other regulatory requirements and restrictions that had been imposed by Congress. The LSC Office of Inspector General (OIG) began a series of special program audits around a variety of specific issues.

Although the leadership of the legal services community recognized that Congressional support for continued legal services funding was, to a large degree, premised on the notion that the legal services program had been "reformed," opposition to the restrictions remained intense within the legal services community.

In January 1997, legal services programs filed two separate lawsuits against LSC challenging the constitutionality of the new statutory prohibitions, the substantive restrictions, and the limitations that had been imposed on the use non-LSC funding. In the first of the two suits, *LASH v. LSC*, the federal District Court held that the statutory restrictions were constitutional, but the regulatory scheme restricting non-LSC funds violated the First Amendment. In response to the lower court decision in *LASH*, LSC revised its regulations and imposed a new set of "program integrity" requirements that required strict legal, financial, and physical separation between LSC-funded programs and entities that engaged in restricted activity. The Court of Appeals approved the new LSC scheme and held that the restrictions were constitutional.

In the second suit, *Velazquez v. LSC*, the Court of Appeals did strike down part of one of the restrictions. The Court found that the provision in the welfare reform restriction that prohibited legal services advocates from challenging welfare law as part of the representation of an individual client who was seeking relief from a welfare agency violated the First Amendment because it constituted impermissible viewpoint discrimination. In February 2002, the U.S. Supreme Court upheld that decision. After the Supreme Court issued its decision, LSC announced that it would no longer enforce the specific provision addressed by the Court, and in May 2002, LSC formally eliminated it from the welfare reform regulation.

In the years since the imposition of the restrictions, there have been numerous conversations within the legal services community and among its supporters about the impact of the restrictions on the ability of legal services providers to provide a full range of services to low-income clients. Efforts have been made in Congress by a coalition including NLADA, CLASP, the Brennan Center, the ABA and the United Auto Workers, to eliminate some or all of the restrictions. Special efforts were made to limit the reach of the restrictions to only LSC funds rather than the non-LSC funds of recipients. To date, the only change in the restrictions occurred in late 2009, when Congress eliminated the restriction on seeking attorneys' fees. Otherwise, LSC programs have, for the most part, learned to live within the restrictions, albeit unhappily.

LEGAL SERVICES AFTER THE RESTRICTIONS

Since 1996, the legal services landscape has undergone a dramatic transformation. Legal services has seen a reduction in the total number of LSC grantees from more than 325 programs in 1995 to 133 in 2018, and the geographic areas served by many of the remaining programs have increased dramatically. These changes were the result of the Congressional elimination of funding for state and national support entities and the mergers and reconfigurations promoted or sometimes imposed by LSC.

The network of state and federal support entities formerly funded by LSC has been substantially curtailed, and some of its components have been completely dismantled. This network, which had consisted of state and national support centers; the National Clearinghouse for Legal Services, which published the poverty law journal *The Clearinghouse Review*; and various training programs, had developed quality standards, engaged in delivery research, provided training to support legal services advocacy, and served as the infrastructure that linked all of the LSC-funded providers into a single national legal services program. Since the loss of their LSC funding, several of the national support centers that had focused solely on issues affecting the low-income community have broadened their focus to attract new sources of funds. Several closed their doors when they were unable to raise sufficient funds to operate effectively.

At the state level, the network of LSC-funded support centers has been replaced by a group of independent non-LSC funded entities engaged in state advocacy that operate in over 30 states. Only 12 of the current state entities are former LSC-funded state support centers. Several states have been unable to recreate a significant state support capacity at all. Recently, the Shriver National Center on Poverty law (successor to the National Clearinghouse) has, with foundation support, created the Legal Impact Network that brings together many state advocacy programs and strong legal and policy advocates from throughout the country who are using innovative, coordinated strategies to address poverty and advance racial justice.

At the same time, new legal services delivery systems have begun emerging in many states that include both LSC-funded programs, operating within the constraints of Congressionally imposed restrictions, as well as separate non-LSC-funded legal services providers that operate unencumbered by the LSC restrictions. Many of these non-LSC-funded providers were created specifically in response to the imposition of the restrictions, when LSC-funded programs either gave up their LSC grants or spun off new entities that were supported with non-LSC funds that formerly went to the LSC recipients. The non-LSC-funded providers are generally free to seek attorneys' fees, as are LSC grantees since the end of 2009; engage in class actions, welfare reform advocacy, or representation before legislature and administrative bodies; and provide assistance to aliens and prisoners, as long as their public and private funders permit their resources to be used for those activities. In 14 states and more than 20 large- or medium-size cities, two or more parallel LSC- and non-LSC-funded legal service providers operate in the same or overlapping geographic service areas.

Moreover, in a number of jurisdictions, the private bar became increasingly more involved in delivering basic legal services, as well as in undertaking those cases and activities that LSC recipients are prohibited from handling.

This new statewide system is emerging in large part because, beginning in 1995, in anticipation of funding cuts and the imposition of new restrictions, LSC initiated a strategic program that required all of its grantees to engage with non-LSC-funded providers, bar associations and state access to justice commissions, law schools, and other important stakeholders in each state in a state planning process. The goal was to develop a comprehensive, integrated system of legal service delivery for each state. Hallmarks of the new statewide delivery systems were to include a capacity for state-level advocacy; a single point of entry for all clients into the legal services system through a centralized telephone intake system; integration of LSC and non-LSC legal services providers; equitable allocation of resources among providers and geographic areas in the state; representation of low-income clients in all forums; and access to a full range of legal services, regardless of where the clients live, the language they speak, or the ethnic or cultural group with which they identify. States with large numbers of small LSC-funded legal services providers were urged to consider mergers and consolidation of local programs into larger and arguably more efficient regional or statewide programs, leading to the reconfiguration and reorganization of the legal services delivery systems in many states.

In addition to the state planning initiative that came from LSC, the Project for the Future of Equal Justice, a joint program of NLADA and CLASP, undertook a series of projects to promote the development of comprehensive, integrated statewide delivery systems. The ABA joined the effort by encouraging bar leaders to participate in state planning and to promote statewide, integrated systems. In February 1996, NLADA and the ABA created the State Planning Assistance Network (SPAN). SPAN provided leadership and assistance to state planning groups in order to support and stimulate legal services planning efforts around the country. In 2006, in recognition of the importance of state-level Access to Justice initiatives, the ABA created a new Resource Center for Access to Justice Initiatives to support the bench, bar, and legal services leaders engaged in efforts to expand civil justice and increase legal aid funding.

Beginning in 1998, under the leadership of LSC President John McKay and Vice President Randi Youells, LSC intensified its effort to promote state planning by requiring its grantees to submit detailed state plans and to engage in numerous follow-up activities. LSC's efforts to promote mergers and reconfigurations increased in scope and intensity. Beginning in 1998 and continuing through 2005, LSC made funding decisions based in large measure on the results of the state planning process that has gone on in each state, although in some instances, LSC rejected the proposals that emerged from the state planning process, substituting its own configuration decisions. As a result of reconfigurations, the number of LSC grantees has been reduced substantially, and fewer programs with proportionately larger LSC grants are each responsible for serving more poor people in a larger geographic area. In 2018, LSC funded 133 grantees across the country, down from more than 325 in 1995.