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WHY THE LEGAL SERVICES CORPORATION MUST BE ABOLISHED

INTRODUCTION

The Legal Services Corporation (LSC) was established by the Legal Services Corporation Act of 1974 to provide free legal assistance to the indigent in civil, non-criminal matters. Its origins lie in President Lyndon Johnson's War on Poverty, specifically with the Office of Economic Opportunity (OEO), which in 1965 began making direct grants to local legal aid organizations.¹

Despite its name, however, the Corporation does not use its budget (currently \$400 million) to provide direct legal services to the poor. Rather, it distributes federal tax dollars to 323 private groups around the country. These grantees also receive another \$255 million from lawyer groups, local and state governments, interest on lawyers' trust accounts (IOLTA), and private sources.²

Unfortunately, taxpayer-funded legal groups, under LSC, engage in political, lobbyist, and cause-advocacy activities, often at the expense of providing real legal services needed by poor people.

Legal Services suffers from an institutionalized ideological bias. Attorneys have promoted racial preferences and illegal immigration, and grantees are sufficiently politicized to become involved in congressional redistricting, litigation, and campaigning on ballot referendum questions. For the past 30 years, the LSC has been the legal pillar of the wel-

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- 1 John A. Dooley and Alan W. Houseman, *Legal Services History*, National Legal Aid and Defender Association, 1984, pp. 4, 13.
 - 2 Testimony of LSC Chairman Douglas Weakly and LSC President Alex Forger, Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, Committee on Appropriations, U.S. Senate, May 26, 1995.

fare state. Through litigation, advocacy, and lobbying, it has caused an increase in local, state, and federal welfare spending by hundreds of billions of dollars and has effected the addition of millions of people to the welfare rolls.³ It has sued to stop welfare reform in New Jersey and in other states. It even has engaged in actions—litigating to prevent the eviction of drug dealers from public housing, for example—that harm the poor.

During the 1980s, even though its budget was cut by Congress, the program survived an attempt by the Reagan Administration to eliminate it. Now, however, just as welfare itself is being debated in Congress, so is the LSC's future. Like the War on Poverty itself, the Legal Services Corporation has failed. It should be abolished.

LEGAL SERVICES AS POLITICAL MOVEMENT

Legal Services sees itself as a “movement.”⁴

According to its founders, its primary mission is not to meet the needs of individual poor people, but to achieve broader social change through “law reform.”⁵

The Legal Services agenda is grounded in the belief that the “system” creates poverty; therefore, it is the system—America's economic, political, and cultural institutions—that must be altered. To this end, the LSC:

- ☞ **Attempts to effect a redistribution of income** by litigating increases in transfer payments through class action suits against local, state, and federal governments;
- ☞ **Is at the forefront of the so-called rights revolution**, litigating to promote “children's rights,”⁶ to protect aggressive panhandling,⁷ and to establish the right to camp in city parks and streets;⁸ and
- ☞ **Engages in lobbying and political advocacy.** Sixteen LSC grantees known as “support centers,” national in scope and organized around specific issues such as housing, welfare, immigration, youth, and food,⁹ function as the legal arm of a host of social and political causes.

The LSC says grantees handled 1.6 million matters last year. Supporters say allegations of ideological bias are without merit and that, due to sheer volume, it is inevitable that the program will become involved in some controversial cases. But a review of thousands of cases and news articles¹⁰ clearly indicates that the LSC has never filed a major

3 For an excellent analysis, see Howard Phillips and Peter H. Ferrara, “The Real Cost of the LSC: A Two Trillion Dollar Bypass of Electoral Accountability,” Conservative Caucus Research, Analysis and Education Foundation, June 14, 1995.

4 Dooley and Houseman, *Legal Services History*, p. 15; see also Earl Johnson, Jr., preface, *Justice and Reform: The Formative Years of the OEO Legal Services Movement*, Russell Sage Foundation, 1973.

5 Johnson, *Justice and Reform: The Formative Years of the OEO Legal Services Movement*, pp. 132-134.

6 *K v. K*, No. 92-02446 (Fla. Dist. Ct. App. filed Dec. 21, 1992).

7 United Press International, “Panhandlers Challenge Seattle's Anti-Begging Law,” January 26, 1994.

8 *Tove v. City of Santa Ana*, No. G01 4257 (Cal. Ct. App. filed July 8, 1993).

9 *Legal Services Corporation Budget Request*, 1995, p. 39.

10 Additionally, Kenneth F. Boehm served in senior LSC staff positions, including Counsel to the Board of Directors, for five years.

case opposed to the goals of the homosexual, feminist, or environmental movements or designed to help poor clients preserve the right to home schooling, defend the right to own firearms, stop the establishment of substance abuse facilities in their neighborhoods, or challenge any type of gender or ethnic quota.

AVOIDING ACCOUNTABILITY

The Legal Services Corporation cannot be reformed because it was designed to avoid external controls. In affect, it takes public funds and transforms them into private funds, immune from the safeguards that govern other federal spending.

The LSC's unique structure, established by the Legal Services Corporation Act of 1974 (drafted in part by Alan Houseman, a legal services movement theoretician) guarantees a lack of accountability. The LSC is an independent, private, nonprofit corporation which makes grants to separately incorporated, private, nonprofit grantees, some of which make subgrants to other groups and to each other. An eleven-member board is appointed by the President, subject to Senate confirmation,¹¹ but has little actual influence over grantees and how they spend their grant money. Presidents Ronald Reagan and (to a lesser extent) George Bush appointed LSC critics to the board, but they were unable to effect any real reform. Moreover, by law, the LSC's budget is submitted directly to Congress. All the Office of Management and Budget can do is review it.¹²

The LSC's status as a private corporation also exempts it from many provisions of the federal criminal code, such as the Anti-Deficiency Act, that apply to government officials. While it is a felony for a federal official to misappropriate federal funds, the LSC Act declares that "officers and employees of the Corporation shall not be considered officers and employees" of the federal government.

From time to time, Congress and the LSC board have sought to exercise oversight. They have been all but ignored. Since most grantees receive at least some funding from IOLTA funds and from state and local governments, they can claim that any restricted activities are not supported by LSC funds. The result: Restrictions on LSC involvement in abortion, congressional redistricting, politics, lobbying, and advocacy are ignored or circumvented.

There is no way to confirm resource allocation claims because LSC attorneys do not keep time sheets. Attorney time is the most valuable asset in any law office, and timekeeping is absolutely *de riguer* at any private firm. Lack of timekeeping prevents oversight by eliminating the only real way to track the activities of Legal Services lawyers.

LSC lawyers do not report their cases to anyone outside their offices, and all client and case records are closed. This secrecy, based on invocation of attorney-client privilege, makes it impossible to evaluate the effectiveness of Legal Services attorneys. Moreover, there are no provisions for the waiving of this privilege for purposes of oversight, even though tax funds pay for the services rendered.

11 Legal Services Corporation Act of 1974, as Amended, Public Law 95-222, 42 USCS 2 996(c).

12 *Ibid.*, 42 USCS 2 996(d).

Because of these built-in problems, there is little information on expenditures, either per case or per type of case. While most government programs are required to have detailed accounting systems to explain how taxpayer money is used, Legal Services continues to ask for government funding without offering any detailed evidence of how it has used money already received.

At present, the only way the LSC can track how grants are used is through a monitoring program involving on-site visits to programs by Washington-based staff. During the Bush Administration, about 125 visits took place annually, so the average program could expect a visit only once every three years. Under the Clinton-appointed board, this largely ineffective program has been weakened to the point where only six monitoring visits took place last year.

It makes little difference who sits in the White House, in Congress, or on the LSC board. As long as they flow through the LSC to its 323 grantees, public funds will be spent to further a private political agenda. As Alan Houseman wrote in a 1984 history of the LSC, "Since the central directions of the program were not created by statutes or regulations, they are invariably difficult to undo by regulations and LSC policies."¹³

POLITICS AND SURVIVAL

After the election of Ronald Reagan, even though the LSC supposedly is restricted in its ability to lobby Congress,¹⁴ officials directed a "survival campaign"¹⁵ that cost millions of dollars and mobilized thousands of Legal Services lawyers. This effort included such activities as training activists to lobby;¹⁶ transferring hundreds of thousands of LSC dollars to sympathetic outside organizations;¹⁷ orchestrating positive media coverage; and generating thousands of phone calls, letters, and visits to Congress.¹⁸ Some LSC offices were advised to have receptionists respond to potential clients by saying: "I'm sorry but at this time we are unable to handle this kind of case. Due to the recent proposed federal cutbacks, we have had to reduce our caseload drastically. It would be unethical for us to take any cases...."¹⁹

An LSC grantee, the National Legal Aid and Defender Association (NLADA) became the "corporation in exile." Having received no more than \$72,900 annually in LSC support before 1981, NLADA received \$2.2 million in late 1981. Staff members responsible for awarding the grants went on the NLADA payroll after leaving the LSC.²⁰ This effort

13 Dooley and Houseman, *Legal Services History*, pp. 53-54.

14 Appropriations Act for the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1995, Public Law 103-317.

15 Hearing, *Oversight of the Legal Services Corporation, 1984*, Committee on Labor and Human Resources, U.S. Senate, 98th Cong., 2nd Sess., April 11, 1984, p. 63.

16 *Ibid.*, pp. 4-19.

17 *Ibid.*, pp. 154-246.

18 *Ibid.*, p. 63.

19 *The Legal Services Corporation, Robber Barons of the Poor* (Washington, D.C.: Washington Legal Foundation, 1985), p. 55.

20 Hearing, *Oversight of the Legal Services Corporation, 1984*, pp. 154-246.

was known as “saving the rubies,” a reference to the action of Czar Nicholas in sending the Russian Crown Jewels to Switzerland for safekeeping during the Bolshevik Revolution of 1917.

In 1983, the Senate Labor and Human Resources Committee conducted oversight hearings on the survival campaign. Committee Chairman Orrin Hatch (R-UT) concluded that “The political abuses by LSC and many of its grant recipients were not simply isolated anomalies. They were the business of Legal Services. They were committed on a national scale and were planned by key members of the LSC’s national leadership.”

Also in 1983, the U.S. General Accounting Office concluded that the LSC survival campaign had violated the law.²¹ This prompted a criminal investigation by the Justice Department. In July 1984, Assistant Attorney General Stephen S. Trott asserted that “the unauthorized activities of the Corporation, and many people associated with it, are uniquely reprehensible and beyond the scope of LSC’s original mission” but that “notwithstanding these inappropriate, misguided, and abusive activities, 18 U.S.C. Sec. 1913 as well as the federal theft and fraud laws—for technical reasons—were not violated by the lobbying activities involved here.”²² Among these “technical reasons,” of course, was the fact that LSC employees are not subject to laws that apply to federal employees.

LSC grantees have sought to affect the composition of Congress through redistricting litigation. In 1989, the LSC board banned grantees from participating in redistricting cases, only to be sued by Texas Rural Legal Aid, California Rural Legal Assistance, and North Mississippi Rural Legal Services. A U.S. Appeals Court upheld the prohibition, “particularly in light of the Act’s mandate to LSC to ensure that the legal services program remain free from partisan political involvement....” According to Judge (now former White House Counsel) Abner Mikva, “we cannot conclude that LSC has no right to prohibit its grantees from engaging in partisan activities.”²³

In addition to grants, the legal services infrastructure benefits from money litigated away from taxpayers. The National Center for Youth Law forced Arkansas in 1993 to expand its child welfare system and won \$314,107 in legal fees.²⁴ Kansas Legal Services has charged clients up to \$100 per hour for filing Social Security disability insurance cases, collecting almost \$2 million in fees from money awarded in these actions.²⁵

21 U.S. General Accounting Office, “GAO Opinion and Relevant Portions of the Report on the Study of the National Clients’ Council,” B-210338/B202116, September 19, 1983, p. 19.

22 Letter from Stephen S. Trott to Senator Jeremiah Denton, July 5, 1984.

23 *Texas Rural Legal Aid v. LSC*, No. 90-7109 (U.S. Ct. of Appeals D.C.). Texas Rural Legal Aid is so politicized that it filed suit to challenge a 1983 special election for the seat of then-U.S. Representative Phil Gramm, who had resigned from the House in order to run for re-election as a Republican. United Press International, *The New York Times*, January 31, 1983, p. 18.

24 *R v. Clinton*, No. LR-C-91-415 (E.D. Ark., March 30, 1993).

25 Rael Jean Isaac, “Who Funds the Left? The GOP,” *The Wall Street Journal*, June 23, 1995.

PROMOTING WELFARE DEPENDENCY

LSC grantees have won hundreds of billions in expanded welfare, AFDC,²⁶ Medicaid, and food stamp benefits. Legal Services also has expanded welfare by seeking to nullify any “moral” conditions connected to its provision, such as a requirement for identifying the fathers of illegitimate children;²⁷ by attacking citizenship²⁸ and residency requirements;²⁹ and by signing up thousands of alcoholics and substance abusers for Social Security disability insurance benefits.³⁰ Western Massachusetts Legal Services (WMLS) has published a brochure advising lottery winners that they can stay on welfare by such devices as prepaying rent, buying a special gift, or taking a vacation.³¹ In 1994, WMLS filed suit to get Arthur Cooney back on welfare after he admittedly had spent the \$75,000 he won in a 1992 lottery on drugs and gambling.³²

While the exact amount cannot be calculated, government spending for LSC litigation, advocacy, and lobbying has contributed significantly to the national debt. In 1973, former OEO Legal Services Director Earl Johnson, Jr., wrote that “A bare handful of lawyers, scarcely a footnote in the federal budget, has produced massive transfers of goods and services to the poor—some from the private sector and some from the public treasury.”³³ Johnson pointed to the initial period between 1965 and 1972, when federal legal services cost the taxpayer a total of \$290 million:

[T]he welfare residency decision already has produced between \$300 and \$600 million added income for the poor, the 1968 man-in-house decision \$400-\$800 million, the 1969 and 1970 food stamp cases have thus far produced over \$450 million in additional food stamp allotments, the prior hearing case over \$200-\$300 million. The California Medicaid suit saved \$200 million in health services, the New York Medicaid case thus far has saved \$367 million, and other actions undoubtedly have generated several million in additional income. Thus a total dividend in excess of \$2 billion actually has been received by the poor since the beginning of the federal investment in legal services to the poor.³⁴

Asserting that the program’s “benefits” outweighed its “cost” by a ratio of 7 to 1, Johnson further calculated that since benefits were won in the form of entitlements, and therefore would continue many years into the future, the actual ratio was closer to 34 to 1.³⁵

26 Aid to Families with Dependent Children.

27 *S v N.D. Department of Human Services*, No. 920273 (N.D. Sup. Ct., filed Jan. 25, 1993).

28 *Smart v. Shalala*, 9 F. 3d 921 (11th Cir. 1993).

29 *Mitchell v. Stetfen*, No. C8-91-11691 (Minn. Dist. Ct. Ramsey County, Jan. 8, 1992).

30 See, for example, *Clearinghouse Review*, December 1993, p. 923.

31 “Buy a Special Gift,” *Reader’s Digest*, July 1994.

32 *USA Today*, January 10, 1994.

33 Johnson, *Justice and Reform*, p. 234.

34 *Ibid.*, p. 232.

35 *Ibid.*, p. 233.

Legal Services now seeks to protect earlier gains. To this end, LSC lawyers have responded to the 1988 Family Support Act, which allowed states to seek waivers from the federal government to experiment with welfare, by suing to obstruct or stop virtually every reform that has been attempted.

In 1993, for example, Legal Services of New Jersey sued both the state and federal governments to prevent implementation of a cap on AFDC benefits designed to discourage illegitimacy.³⁶

In 1995, the Legal Services Organization of Indiana (LSOI) filed a class action suit challenging Governor Evan Bayh's welfare reform plan, which includes a work requirement and benefit reduction for families that fail to get their children immunized or to send them to school.³⁷ An LSOI-employed lobbyist organized opposition to the plan when it was before the Indiana legislature.³⁸

Legal Services also has sued to block welfare reform in California, New York, Michigan, Minnesota, and Wisconsin. Should Congress enact a serious overhaul of the welfare system, it is safe to assume that LSC lawyers will fight its implementation in the courts as well.

HELPING TO DESTROY PUBLIC HOUSING

One of the major problems in public housing today is drug-related crime. In Georgia, according to John Hiscox, Executive Director of the Macon Housing Authority (MHA), "One of the most difficult and persistent obstacles to removing drug-related, criminal activity from public housing has been Georgia Legal Services." While it has never won a case, GLS routinely demands costly jury trials. The result: The MHA's average legal cost for an eviction went from a few hundred dollars in 1987 to \$8,000 in 1990. During the same period, its annual legal bill increased from \$10,000 to \$90,000.

In 1989, Georgia Legal Services tried to prevent the eviction of Tina Burke, whose apartment was surrounded by gangs of young men and lookouts. During surveillance, police witnessed her presence during drug transactions in her apartment. But GLS maintained that she lacked knowledge of such transactions. In 1994, tenant Shon Scott was arrested after leaving a crack house two blocks from his residence. Along with a firearm and a beeper, he possessed 33 pieces of crack cocaine. He pled guilty to possession with intent to distribute. GLS fought Scott's eviction on the basis that his crimes did not take place on public housing property.³⁹

In New York City, the Legal Aid Society of New York went to court in 1994 to challenge the New York Housing Authority's plan to make it easier to evict drug dealers by cutting the process (which now can take as long as three years) to only three to four

³⁶ *K v. Shalala*, No. 49,519 (D. N.J. filed Dec. 1, 1993).

³⁷ Larry MacIntyre, "Some Welfare Reforms Take Effect Today," *The Indianapolis Star*, June 1, 1995, p. B1.

³⁸ Larry MacIntyre, "Senator Pledges Full Discussion of Welfare Bill Before Vote," *The Indianapolis Star*, February 3, 1995, p. C4.

³⁹ Testimony of John Hiscox, Executive Director, Macon Housing Authority, before Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, U.S. House of Representatives, June 15, 1995.

