

STRUGGLING TO MEET THE NEED:

COMMUNITIES CONFRONT GAPS IN FEDERAL LEGAL AID



 BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW

THE ACCESS TO JUSTICE SERIES

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About The Access to Justice Series

This paper is the eighth 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, Jobina Jones, Leena Khandwala, Ilana Marmon, Kimani Paul-Emile, Amanda E. Cooper, 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 Perl, Don Saunders, Julie M. Strandlie, Mauricio Vivero, Jonathan A. Weiss and Ira Zarov.

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B R E N N A N C E N T E R F O R J U S T I C E

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THE ACCESS TO JUSTICE SERIES

The eighth installment of the Brennan Center's Access to Justice Series, *Struggling to Meet the Need: Communities Confront Gaps in Federal Legal Aid*, presents a picture of the valiant efforts of state and local governments, as well as private entities, to find ways to support civil legal representation for vulnerable individuals and families despite massive setbacks imposed by Congress in 1996. This report is a snapshot taken in the year 2000.

It was a hardhearted Congress, aiming to enforce a "Contract with America," that in 1996 reduced the budget of the Legal Services Corporation (LSC) by 40 percent, and banned lawyers in programs receiving any LSC funding from helping certain clients altogether—including prisoners and many categories of immigrants—and from helping all clients with certain important matters, such as challenging welfare reform laws, lobbying, class actions, or claims for attorneys' fee awards. Since 1996, Congress has restored only a sliver of the money, and has renewed the restrictions automatically each year without ever examining the harms they cause.

Some legislators argued initially that civil legal aid clients who seek aid with consumer matters, housing disputes, government benefits, and a range of other claims, would have ample access to legal services. They insisted that other lawyers and other sources of funding would fill the gap. Indeed, many communities sought to meet this challenge. For example, South Carolina, Tennessee, and other states enacted court filing fees to fund legal aid; each of the 50 states established a structure called "Interest on Lawyers Trust Accounts" that produces additional funding; various charities and wealthy individuals found ways to contribute; and the private and non-profit bars pitched in as well.

But virtually all would agree that the gap is nowhere close to being filled. The new funding creates geographic disparities resembling those that defined private legal aid before the birth of the national LSC in 1974. And there are other types of disparities, too: New non-LSC funds are sometimes earmarked for certain uses, made subject to state restrictions, diverted to functions having nothing to do with legal aid, or tainted by the 1996 federal restrictions which Congress imposed on all funds possessed by LSC grantees, even those they receive from private individuals.

No matter how hard communities around the nation try to protect their most vulnerable residents, unless Congress restores LSC's funding and removes the harmful restrictions, the nation's vision of "equal justice for all" will remain just that—a vision.



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LEGAL AID: A KEY RESOURCE FOR LOW-INCOME PEOPLE WHEN BASIC LEGAL RIGHTS ARE THREATENED

Mary Collins had an extraordinarily difficult time getting herself and her three children away from her violent husband. Fortunately, she found somewhere to turn: Colorado Legal Services, one of over 200 programs across the nation that represent low-income Americans with the help of federal funding from the Legal Services Corporation (LSC). It was several years ago that Collins first told Colorado Legal Services attorney Rene Rosechild her horrifying tale of being beaten and held captive in a trailer by her husband. Rosechild helped Collins obtain a permanent restraining order against the husband and begin divorce proceedings, but Collins decided to give him a second chance.

“The next time I saw her was nine months later,” Rosechild recalls. “She came into my office. Two black eyes.” Rosechild helped Collins obtain a second restraining order. “This time it was easy — we just showed the court a photo of her,” Rosechild remembers. With Rosechild’s support boosting her



Rene Rosechild, staff attorney, Colorado Legal Services



Rep. Sheila Jackson Lee, D-Texas, former board member of the LSC-funded Gulf Coast Legal Foundation in Houston, Texas: “Mr. Speaker, I was on the board of the Gulf Coast Legal Foundation in my own community. What those Legal Services Corporation lawyers do around the Nation is they affirm and confirm that all of us are created equal, working families who are low income, who need child support or need help in their family law matters, who need rental assistance or landlord-tenant issue assistance.”

(Source: Statement on the Floor of the House of Representatives, June, 2000)

confidence, Collins also pressed criminal charges against her husband, who was convicted on charges stemming from the attack and sentenced to a three-year jail term. This time, Collins decided to go through with a divorce, but it was not easy. Her husband did not want to relinquish his power by allowing her to end the marriage, so even though he was behind bars, he found ways to continue to harass her.

“He turned into Mr. Jailhouse Lawyer, and started filing motions to oppose the divorce,” Rosechild recalls. “He asked the court to appoint a legal representative for one of her three children — the one who wasn’t his. Then he filed another petition, asking for blood tests on the two kids he’d fathered. He didn’t actually deny paternity, but he wanted to question it. Then he asked the court to order that he be allowed to correspond with the child who wasn’t his, through the mail. None of it really made any sense — these actions were obstruction tactics. As I told the court, he was trying to continue his battery of her through the legal system.”

With Rosechild’s help, Collins was able to thwart her husband’s stalling maneuvers and obtain a divorce. Now she lives in subsidized housing with her children

and is in a job training program that she hopes will eventually enable her to make a better life for her family. When her husband gets out of jail, though, he will be able to petition the court for visitation rights with the children, despite his history of violence against their mother and past hints that he might try to steal the children from her. “It’s a very tricky situation,” Rosechild explains. “The courts in Colorado tend to be reluctant to cut off all contact with a parent, even if he has done bad things. I’ve seen guys even worse than him who got parenting time. If they’re good boys for a while, they can get the requirement for supervision lifted.”

While Collins may be dreading her next legal battle, she can take some comfort in one thing — Rosechild will be at her side, doing whatever she can to protect Collins and her children from danger. That kind of access to a lawyer is not always a given for women like Collins. Today, low-income people in many states are unable to obtain effective legal representation in civil matters. Meredith McBurney, of the American Bar Association’s Project to Expand Resources for Legal Services, describes “an L-shaped swath across the middle of a map of the United States, formed by



western and southern states that provide little or no funding.” While legal aid programs in urban areas may be comparatively well funded, a low-income person may still have difficulty retaining an attorney; that same person living in a rural area might have to wait months to get an attorney — if he or she gets one at all.

And in many places where funding is more ample, the funding comes with strings that prevent legal aid lawyers from helping certain categories of clients, handling certain kinds of cases, or using certain types of effective legal tools. So while a citizen with a housing case might be able to get a lawyer, an undocumented farm worker employed under abusive conditions or a prisoner trying to maintain a relationship with her children might not be able to get a lawyer at all.

These kinds of disparities in access to the legal system were what originally inspired the movement to create LSC — a program that distributes federal funding to legal aid lawyers who provide legal assistance in civil cases to low-income people across the nation. The resurgence of such disparities is largely the product of funding cuts and restrictions that have undermined LSC. Although supporters of the cuts and restrictions said that state, local and private funding would pick up the slack, and although bar leaders and legal aid supporters find broad support for legal services in many parts of the country, the bottom line is that these expectations have been largely unfulfilled. Four years after the cuts and restrictions, the importance of restoring LSC to its former self, at a realistic funding level, is clearer than ever.

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THE STRUGGLE TO BUILD A FEDERAL LEGAL AID PROGRAM

For decades, the legal aid programs that existed in about 20 major urban centers around the nation depended entirely upon state and local sources of funding. The paucity of the funding limited both the number of clients the programs could serve and the degree of help they could provide. Additionally, the availability of legal aid varied tremendously between cities and states throughout the nation. Big cities such as New York and Baltimore had well-developed legal aid programs, while in many other cities and towns, and in most rural areas, the impoverished had nowhere to turn for legal representation.

In the 1960s, President Johnson sought to remedy that inequitable situation by creating the forerunner of today's federal legal aid program under the auspices of the Office of Economic Opportunity (OEO), the agency that waged his War on Poverty. The OEO allocated \$20 million of its budget to poverty law. Then, in 1974, Congress enacted and President Nixon signed the LSC Act, creating LSC as an independent agency that distributes funding to local legal aid programs throughout the nation. The goal of the LSC Act was visionary: "to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances." To that end, Congress slowly

Liberty and Justice for All?

Nation	Statutory right to counsel in civil cases?	Current per capita government expenditure on civil legal aid	Total U.S. civil legal aid expenditures if funded at same level per capita as this nation
England	Since 1495	\$32.00	\$9 billion plus
France	Since 1851	\$5.00	\$1.4 billion
Germany	Since 1877	\$5.00	\$1.4 billion
Netherlands	Since 1950s	\$10.50	\$3.1 billion
New Zealand	Since 1960s	\$12.00	\$3.4 billion
Ontario Province, Canada	Since 1960s	\$11.40	\$3.2 billion
Quebec Province, Canada	Since 1973	\$9.00	\$2.6 billion
United States	No	\$2.25	\$600 million (including LSC, IOLTA, and other federal and state expenditures)

(Source: Compiled by California Court of Appeals Justice Earl Johnson, Jr. for the National Equal Justice Library. While the data for most countries is based on 1998, 1999 or 2000 reports, the data for France and Germany is based on reports from 1993 and 1996 respectively.)



increased LSC's funding, reaching a high of \$400 million in 1994. The influx of federal resources had a dramatic effect. Throughout the country, people fighting eviction from their homes, veterans seeking help obtaining government benefits, and many others were able for the first time to get legal assistance in their neighborhoods. These clients' cases often had important effects far beyond their individual lives. In Oregon, for example, litigation by LSC-funded attorneys established that police departments must take seriously women's pleas for protection from domestic violence. In Indiana, LSC-funded attorneys won court cases confirming the rights of juveniles and the mentally ill to have hearings before they could be confined in institutions. And in rural Texas, LSC grantees forced big agribusiness corporations to remedy illegally substandard working conditions and to pay migrant workers the lawful minimum wage.

Some 45 million low-income Americans meet the financial qualifications for LSC-funded representation, and LSC-funded programs strain to provide services to about 1.4 million of them a year

Then, in 1996, Congressional LSC opponents cut LSC's 1996 budget by 40 percent, to \$278 million. Within a year after the cut, more than 100 of the nation's 1,200 legal-aid offices closed their doors due to lack of funding; LSC-funded programs served one million fewer clients. At North Mississippi Rural Legal Services, for example, seven of the thirteen offices were closed, and the program reduced its staff from 81 to 50.

Adding to the assault, in 1996 Congress imposed a comprehensive set of unprecedented restrictions on LSC-funded lawyers, prohibiting them from using certain efficient legal tools (such as bringing class actions and collecting court-ordered attorneys fee awards), handling certain types of actions (such as challenges to welfare

The goal of the LSC Act was visionary: "to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances."

laws), and representing certain types of people (including prisoners and undocumented workers).

Since then, determined supporters from around the nation, including federal legislators, bar leaders, and many others have insisted that LSC be protected from further cuts. Opponents of LSC have continued to seek its elimination, though, and the set of restrictions imposed on advocacy by LSC-funded lawyers has remained in place. In 2000, the House Appropriations Committee recommended cutting LSC's 2001 appropriation to \$141 million — a familiar proposal that has become the committee's annual tradition. During the floor vote on the budget, an amendment sponsored by Representatives Jose E. Serrano, D-New York; Jim

Ramstad, R-Minnesota; and William Delahunt, D-Massachusetts, succeeded in increasing LSC funding to a still-slim \$275 million. In conference negotiations with the Senate, where Budget Committee Chairman Pete V. Domenici, R-New

Mexico, is a strong LSC supporter, the program's funding was increased again to \$330 million. In the final budget bill signed by President Clinton, LSC ended up getting \$329,274,000, reflecting an across-the-board budget cut.

But even that hard-won funding is stretched precariously thin. Some 45 million low-income Americans meet the financial qualifications for LSC-funded representation, and LSC-funded programs strain to provide services to about 1.4 million of them a year — including some, like Mary Collins, whose complex cases require many hours of work. Also, because of the 1996 restrictions there are many important cases that LSC-funded offices would be prohibited from handling even if the resources became available.



Rep. Jose Serrano, D-New York (co-sponsor of 2000 Serrano-Ramstad-Delahunt LSC funding amendment): "It baffles me that some of our colleagues object to a Nixon-era entity, the role of which is to assure that low-income Americans have access to the civil justice system, surely a basic human and constitutional right, and which raises substantial non-Federal resources and promotes pro bono service by private lawyers to increase legal assistance to the poor."

(Source: Statement on the Floor of the House of Representatives, June, 2000)

WORKING TO SOFTEN THE EFFECTS OF THE 1996 FEDERAL FUNDING CUTS AND RESTRICTIONS

Whenever LSC's opponents have attempted to justify the budget cuts and restrictions of the past several years, they have claimed that legal aid clients would not suffer as a result. For example, in 1995 then-Congressman Robert Dornan, R-California, argued that “the absence of LSC — or its functional equivalent at the federal level — will not leave women and children without access to the legal system. LSC-funded programs already receive substantial resources from state and local governments, private entities, the United Way, the NAACP and the ACLU, just to name a few.” Around the nation, the many people who care about access to justice for all Americans have tried to make this enticing vision a reality by finding alternative funds to support civil legal aid for the poor. Although many poor people *have* ended up feeling the pinch of the budget cuts and restrictions, the impact is far less than it would have been without these strenuous efforts.

In the struggle to meet the legal needs of the poor, one important source of financing for legal aid work has been Interest on Lawyers' Trust Accounts (IOLTA) funds, which generate money for legal aid in a creative way: Lawyers routinely hold funds for their clients that — either because the amounts are small, or because they are held for brief periods of time — do not yield any interest after the lawyer's administrative costs are deducted. By pooling the interest on those funds, the IOLTA mechanism is able to produce significant net interest, much of which is used to pay for civil legal aid for the poor. Today, IOLTA funds exist in every state, and in 1999 they generated over \$139 million for legal aid nationwide.

Another source of funding for civil legal aid for the poor has been the states. Since the 1996 cuts, 14 states have recognized the importance of legal representation for the poor in civil cases by choosing, for the first time, to appropriate money in their budgets or add surcharges to filing fees in their courts for legal aid programs. Ten more states have increased their previous allotments. This has generated just under \$40 million yearly for civil legal aid for the poor.

In Colorado, to focus on one example, Mary Collins and other women in need of legal help to escape abusive spouses can breathe just a little easier thanks to state House Bill 1115, signed into law in July 1999. The new law appropriates \$250,000 in 2000 for



Colorado State Rep. William Kaufman and Colorado State Sen. Ed Perlmutter, two of the three sponsors of House Bill 1115, which provided the first Colorado state funding for legal aid for domestic violence victims

programs in Colorado providing civil legal aid to the indigent, with the money earmarked specifically for representation of victims of domestic violence. In 2001, the funding will increase to \$400,000. Colorado Legal Services Executive Director Jonathan Asher notes the significance of Colorado's support with appreciation. "It's the first time that the legislature has supported us," he says. Unfortunately, the new money makes up for only a portion of the roughly \$1 million shortfall in LSC grants that Colorado has endured since the federal funding cuts of the mid-1990s. Even so, Asher is optimistic. "At least it's a start," he says.

Many other states recognized the need to support civil legal aid even before the 1996 LSC cuts. The upshot is that today legislatures in about 39 states provide roughly \$100 million nationwide annually in direct appropriations and filing fee surcharges to support the work of diverse programs.

In some parts of the nation, community organizations and charitable foundations have also chipped in to support civil legal aid programs. In St. Joseph's County, Indiana, for example, the local United Way contributes \$45,000 to underwrite a legal aid program whose goal is to prevent child abuse. In Missouri, the local United Way provided \$443,972 in funding to LSC-funded Legal Aid of Western Missouri in 2000. Lawyers' groups have also raised significant amounts of money from their members. Lawyers in Massachusetts, for example, donated \$1.6 million to

Greater Boston Legal Services in 1999 alone. And in Wisconsin lawyers have pledged \$1.2 million dollars out of their own pockets to the Wisconsin Equal Justice Campaign, which will distribute that money to legal aid offices around the state.

Finally, lawyers around the country have stepped up to the plate by spending millions of hours each year providing pro bono assistance to low-income clients. They have signed pledges to increase the number of pro bono hours that they perform, implemented pro bono policies at their law firms, and hired pro bono coordinators to assist their lawyers in performing as much pro bono as possible. The results are impressive. America's largest law firms donate approximately *two million* pro bono hours each year. In New York alone, for example, the top 27 law firms donated 420,000 pro bono hours in 1999. And these figures do not capture a lot of lawyers' pro bono time, because most lawyers do not work for large firms. Lawyers in solo practice or in small or mid-size firms handled most of the 85,000 pro bono cases performed for federally funded legal aid offices in 1999, and those lawyers do a lot of other pro bono work too. The pro bono movement continues to encourage the private bar to do even more. One important goal is to raise the average lawyer's commitment of pro bono time from the 36 hours a year currently performed by lawyers at the nation's largest law firms to at least the 50 hours per year recommended by the American Bar Association.

The San Francisco Bar Association's Volunteer Legal Services Program

Across the nation, bar associations have worked hard to fill some of the unmet need left by the cuts and restrictions that Congress imposed on LSC. One such effort is the San Francisco Bar Association's Volunteer Legal Services Program (VLSP), which recruits 6,000 attorneys, law students and paralegals to provide their services to about 30,000 low-income clients free of charge. *Bar Leader* magazine has valued the services donated in 1997 alone at \$17 million.

But the program does much more innovative work as well. As VLSP Director Tanya Neiman explains, San Francisco's legal volunteers have reached out to other activist groups, government agencies and even other professions to form partnerships that attack the systemic causes of social problems. "We have a homeless advocacy project, for example, in which we work hand in hand with volunteers from the social services world," Neiman says. "We get social workers and psychiatrists, people who do private drug abuse counseling. That way, we can look not just at a person's legal needs, but at all their needs." Another VLSP initiative, the Legal Employment Action Program, provides training to women welfare recipients and helps them find entry-level clerical jobs in San Francisco law firms.

(Sources: *Bar Leader*, 1999; telephone conversation with Tanya Neiman)



A Court Filing Fee Surcharge Helps a Disabled Child in South Carolina

The diverse funding sources for legal aid have helped clients across the country to gain needed legal assistance. In South Carolina, for example, a court filing fee surcharge has enabled LSC-funded Palmetto Legal Services (PLS) to help clients like Diane Smith and her young daughter.

“I remember when I first came to your office on June 3, 1998, I was so scared,” Smith wrote in a thank-you note to PLS staff. “I knew my ten-year-old daughter was still disabled and needed help. The Social Security Administration had awarded my daughter Supplemental Security Income benefits in 1994, and now they wanted to take the benefits away. I knew that my child’s condition was still very severe, and that she needed the benefits to help with her expenses.”

Smith was grateful for the help she received from Charles Stover, a PLS paralegal. “Mr. Stover took time to answer all of my questions. He got the medical records, represented my daughter before the law judge, and we received a favorable decision. Because of Palmetto Legal Services and Mr. Charles Stover, my child still has the desperately needed Medicaid card and the monthly SSI check. Thank you again for your help.”

PLS does a lot of good for clients such as Smith and her daughter. But PLS’s successes have not insulated that program and South Carolina’s other two LSC-funded organizations — Charleston’s Neighborhood Legal Assistance Program and Rock Hill’s Piedmont Legal Services — from funding woes. The 1996 cuts in LSC funding reduced the grants for South Carolina’s programs from \$5.1 million to \$3.74 million, with harsh results. PLS, for example, was forced to lay off nine attorneys and support staffers.

“Even before the funding cuts, everyone could see there already was a huge unmet need,” explains Sue Berkowitz, a former LSC-funded attorney who now heads a non-LSC poverty law program, the Appleseed Legal Justice Center in Columbia, South Carolina. “We estimated that one out of every two people who requested services was being turned away.”



Shannon Clark, Administrative Assistant; Susan Berkowitz, Director; and Sara Krome, Staff Attorney, all of the South Carolina Appleseed Justice Center

The number of poor people able to receive PLS’s help has also been dramatically reduced. “Even before the funding cuts, everyone could see there already was a huge unmet need,” explains Sue Berkowitz, a former LSC-funded attorney who now heads a non-LSC poverty law program, the Appleseed Legal Justice Center in Columbia. “We estimated that one out of every two people who requested services was being turned away. When we saw the cuts coming in 1995, we feared things were going to get a lot worse.”

LSC-funded programs in South Carolina were hit particularly hard because the state government provided no funds of its own. South Carolina is a politically conservative southern state where elected officials might be expected to resist funding legal aid programs for the poor. Yet, as Berkowitz and other advocates discovered, many of the state’s legislators supported legal aid. “One advantage we had was that they already knew us,” Berkowitz explains. “I’d been up to the legislature, for example, to testify about welfare legislation. And state legislators are a little closer to what’s going on in their communities than legislators



are in Congress. They know the local programs, and actually know people in their districts who are legal aid clients.”

South Carolina has a GOP-controlled house and a Democrat-controlled Senate, so “the only way to succeed with a bill is to build a bipartisan base for it,” notes Berkowitz. One of legal aid’s staunch advocates turned out to be state Sen. Glenn McConnell, a Charleston Republican. Berkowitz explains McConnell’s support: “As it turns out, he was a former legal services attorney. He’s about as traditional and conservative as you can get, but more importantly, he cares about the little guy. [Legal aid] doesn’t conflict with his conservative beliefs, because for him the issue is fairness, access to the legal system.” Strong bi-partisan support by McConnell and his fellow legislators translated into concrete support for legal aid: the state legislature voted that a small surcharge be added to court filing fees, and that the money be used to fund civil legal aid for the poor. “Today, the filing-fee surcharge supplies a much-needed \$1.6 million annually to help programs provide legal representation for low-income clients in the state,” says Berkowitz. In South Carolina, the state’s support for legal aid has made a real difference.

Surcharges on Court Filing Fees and Traffic Tickets Help an Elderly Widow Fight Con Artists in Tennessee

Without state support for legal aid in Tennessee, Margaret Jones might well have forfeited her savings to a gang of con artists. A few years ago, Jones, a widow in her seventies from a rural county outside the city of Jackson, answered a knock on her door to find a home repair salesman on her doorstep. The man told Jones that his crew of workers would replace the aging roof on her woodframe house for \$5,000. The price seemed fair to her, and the man seemed trustworthy, so Jones wrote out a check. The workmen began the job, tearing off the roof’s old shingles and the plywood beneath, exposing the upstairs rooms to the sky. Then, to Jones’ bewilderment, the workers climbed down from the roof of her home. If she did not pay them another



Tennessee State Representatives Matt Kisber and Steve McDaniel, sponsors of the measure providing for surcharges on speeding and parking tickets to be allocated to legal aid programs in Tennessee

\$3,000, they told her, they would pack up their tools and leave her house torn apart and exposed to the elements.

“It was a scam they’d pulled all the time,” explains Roger Wright, a victim assistance coordinator at LSC-funded West Tennessee Legal Services Inc. (WTLS) who worked on Jones’ case. “They drove up and down the roads out in the country, looking for seniors and talking them into letting the crew fix up their houses. Once they got them hooked and had them sign a contract, they’d tear off the roof, and then put the squeeze on them.” Jones paid the con artists the \$3,000 they had demanded, hoping they would fix her home as promised. Then the crooks pulled another of their tricks, installing a “new” roof made of shoddy materials, including defective shingles they had retrieved from a building-supply company’s trash.

The crew figured they could get away with the swindle because they had convinced Jones to sign a contract. “It’s surprising, but a lot of law enforcement agencies in these counties don’t want to touch cases . . . if there’s a contract involved,” Wright explains. “To them, it looks like a civil matter, a contract dispute, and not a criminal situation, so they’re reluctant to investigate or swear out a warrant.”

The crooks did not count on Mrs. Jones going to WTLS for help. Wright and the WTLS attorney on



the case found a reputable home-repair specialist who inspected Jones' home and verified that the work was shoddy. Knowing that con men can make collecting damages in a civil lawsuit very difficult, WTLS took a different approach. They developed an airtight case alleging that Jones had been a victim of a fraud, and they took the documentation to the local sheriff to try to convince him to file criminal charges. "If you can get them arrested and convicted, the court can make restitution a condition of their sentence. The sheriff can confiscate their truck, their tools, whatever else they have and sell it to compensate the victim, and if they don't come up with the rest, it's a violation of their parole or probation, and they go back to jail," explains Wright.

WTLS treats fraud cases on behalf of elderly clients like Margaret Jones as a high priority, even though such cases are often time-intensive and eat up precious resources. Fortunately, unlike hard-pressed LSC grantees in some parts of the nation, WTLS is able to devote the necessary time and resources to the case. One reason is that Tennessee legislators have supplemented the federal funding for legal aid with additional money. In 1995, the state legislature passed legislation imposing a \$1 surcharge on the filing fees in civil cases. In 1999, it added similar surcharges to speeding and parking tickets. As a result, legal aid programs in Tennessee will receive an estimated \$2.6 million in much-needed state funds in 2000. The only downside is that recipients cannot use this money to bring class action lawsuits on behalf of their clients, which prevents them from using this money in the most efficient manner possible. For example, a

recipient could not use the money to bring suits on behalf of Ms. Jones and her neighbors in order to try to put the con artists out of business. Instead, if the recipient wanted to use that funding to represent them it would have to bring a separate lawsuit on behalf of each victim.

Nonetheless, WTLS Executive Director Steve Xanthopoulos is grateful for the money, saying, "It's really an enormous help to us." In addition to using those expanded resources to combat exploitation of the elderly, he explains, the funding will allow WTLS to provide women fleeing domestic violence with advice on how to deal with tax returns in the wake of a separation or divorce. The money will also help the organization finance renovations to its offices in order to accommodate volunteer lawyers from the private bar.

What's particularly remarkable about Tennessee's generous support of legal aid programs is that Tennessee is not in one of the regions of the country awash in wealth from the late-1990s technology-driven economic boom. Instead, as Xanthopoulos is quick to point out, the southern industrial and agricultural state is struggling to cope with a government budget shortfall of several hundred million dollars. Even so, Tennessee's austerity-minded legislators have enthusiastically embraced civil legal assistance for low-income people. The 1999 funding increase enjoyed near-universal, bipartisan support in the legislature, passing the state House by 90-0 and the Senate by 20-1. "We had all sorts of people lining up, wanting to be sponsors," Xanthopoulos says. With such a tidal wave of support, Tennessee Governor Don Sundquist signed it into law.

What's particularly remarkable about Tennessee's generous support of legal aid programs is that Tennessee is not in one of the regions of the country awash in wealth from the late-1990's technology-driven economic boom.



CAN NON-FEDERAL FUNDING FILL THE GAP? OBSTACLES ENCOUNTERED IN DEVELOPING SOME STATE ACCESS TO JUSTICE SYSTEMS

Not Enough Non-Federal Funding to Meet the Need

State governments, IOLTA funds, pro bono assistance and charitable contributions provide a chance for at least some individuals, like Mary Collins, to gain legal representation in an era of reduced federal support. But despite the predictions of people promoting LSC funding cuts and restrictions, these new funds have not been able to adequately substitute for the missing funds. One problem is that some types of new funding are not available in many places. So while Mary Collins could obtain an LSC-funded lawyer's help with her domestic violence problems in Colorado, needy people in other parts of the country have a much tougher time.

Legislatures in at least ten states — including Alabama, Arkansas, Connecticut, Delaware, Idaho, Mississippi, New Mexico, South Dakota, Utah, and Wyoming — and the District of Columbia provide no financial support for civil legal assistance for the poor.

Even the states that have recognized the importance of civil legal aid have had difficulty making up for the drastic reductions in federal funding for LSC programs. In 1981, LSC's budget was \$321 million, or about \$630 million in today's dollars. Even with approximately \$139 million in IOLTA funding and nearly \$100 million in state appropriations and court filing fees, and with other grants from bar associations and other charities, states would have to come up with millions more just to make up the shortfall.

State Direct Appropriations and Filing Fees for Legal Services, 1999

\$1 million or More

New Jersey: \$12,000,000 (state appropriation, 80 percent funded by court filing fee surcharge).

California: \$10,000,000 state appropriation.

Massachusetts: \$9,076,799 (\$4,800,000 for general legal aid, \$550,906 for Medicare advocacy, \$2,521,289 for services to battered women, \$1,204,604 for a disability advocacy project).

Michigan: \$6,928,000 court filing fee surcharge.

New York: \$6,648,000 (\$6,098,000 in state appropriations for general legal aid, plus \$550,000 targeted to domestic violence victims).

Minnesota: \$6,125,000 state appropriation.

Ohio: \$6,000,000 court filing fee surcharge.

Florida: \$5,300,000 from optional court filing fee surcharge levied in half of the counties.

Virginia: \$3,425,000 (\$1,800,000 court filing fee surcharge, \$1,625,000 state appropriation).

Washington: \$3,400,000 state appropriation (funded partly from court filing fee surcharge).

Texas: \$3,000,000 court filing fee surcharge.

Oregon: \$2,900,000 court filing fee surcharge.

Maryland: \$2,800,000 (\$2,300,000 court filing fee surcharge, \$500,000 state appropriation).

Kentucky: \$2,700,000 (\$1,200,000 court filing fee surcharge, \$1,500,000 state appropriation).

Tennessee: \$2,600,000 court filing fee surcharge.

Georgia: \$2,125,000 state appropriation targeted toward domestic violence victims.

Pennsylvania: \$2,499,000 state appropriation.

North Carolina: \$1,640,000 state appropriation.

Hawaii: \$1,610,000 (\$600,000 court filing fee surcharge, \$1,010,000 state appropriation).

South Carolina: \$1,300,000 court filing fee surcharge.

Missouri: \$1,250,000 state appropriation.

Arizona: \$1,100,000 (\$1,000,000 in TANF funds to serve domestic violence victims, \$100,000 in state appropriations targeted to fund elder law hotline).

Indiana: \$1,000,000 state appropriation.

Kansas: \$1,000,000 court filing fee surcharge.

Less Than \$1 million

Maine: \$948,000 (\$800,000 court filing fee surcharge, \$148,000 state appropriation).

Nebraska: \$800,000 court filing fee surcharge.

Nevada: \$800,000 court filing fee surcharge.

Iowa: \$700,000 state appropriation.

Oklahoma: \$600,000 state appropriation targeted to family law cases.

Colorado: \$250,000 state appropriate targeted to representation for domestic violence victims.

Montana: \$250,000 court filing fee surcharge (targeted to domestic violence victims).

Illinois: \$240,000 court filing fee surcharge levied in DuPage county.

New Hampshire: \$200,000 state appropriation.

North Dakota: \$200,000 court filing fee surcharge.

Alaska: \$125,000 state appropriation.

Wisconsin: \$100,000 state appropriation in matching funds targeted to families with minor children.

Rhode Island: \$75,000 court filing fee surcharge.

Louisiana: \$55,000 optional court filing fee surcharge, levied in three jurisdictions.

No funding

Alabama

Arkansas

Connecticut

Delaware

District of Columbia

Idaho

Mississippi

New Mexico

South Dakota

Utah

Wyoming

(Sources include: American Bar Association, Project to Expand Resources for Legal Services; American Bar Association, *Legal Services Now* (October 2000); Louisiana State Bar Association, September, 2000; *Wisconsin Lawyer*, November, 2000)



Limited Funding Creates Difficult Choices Between Vulnerable Clients in Louisiana

The lack of sufficient funding has left some people in very dangerous situations. Last year, in rural north-central Louisiana — one of the handful of states that has failed to generate significant new funds for legal aid — Barbara Dampier had a brush with death. Her husband had ripped the phone lines out of the jack in their home, so she could not call for help. He pulled out his handgun, fired it into the wall, and then pointed it at her head. Although he never pulled the trigger, Dampier's terror lasted until the next morning, when her sister surprised the couple by knocking on the front door. Dampier took the opportunity to flee for her life. But where could she go for help? She lives in a hardscrabble farming and fishing region on the edge of the Mississippi Delta, one of the most impoverished places in a poor state. North Louisiana has few resources for abused

women — the nearest women's shelter is more than 50 miles away from Dampier's home.

Desperate for protection, Dampier turned to the LSC-funded Kisatchie Legal Services Corporation (KLS). Before the office could help her, though, attorneys needed to determine whether Dampier was in more serious danger than the dozens of other women who needed assistance. KLS's phone hotline is flooded by desperate women, and some even show up at the doorstep of the organization's main office in Natchitoches. "We literally had a woman who was waiting on us when we opened at 8 a.m. recently," explains KLS Executive Director Sarah Campbell. "She had run away from an abuse situation, and she and her kids were in nightclothes." Although the need is great, KLS's resources are incredibly limited. The last round of LSC funding cuts three years ago forced the program to lay off two paralegals and two of its nine attorneys.

Strapped for funds and faced with the impossibility of representing all the clients who contact them, Campbell and the rest of the KLS staff have been forced to make heartwrenching choices. "We've had to pick the women who seemed to be in the most immediate danger," she explains. "If they'd had a gun to their heads, or they'd been severely beaten, we'd squeeze them in no matter what. Or if they had kids, we'd take the case. As awful as it sounds, you'd rationalize that a case where several people were in danger deserved priority over one person who's being beaten up."

In Dampier's case, the choice was clear. Because her husband had assaulted her with a weapon, she went right to the front of the line. KLS immediately asked a local judge for a protective order, which barred him from their home, and forbade him — under penalty of arrest — from pursuing her when she went out. That protective order put enough space between Dampier and her husband that she felt safe filing for a divorce. Her legal aid lawyer's efforts won her possession of not only the house but also the car, so that she was able to drive in search of the job she needed to support herself.

Despite her ordeal, Dampier was very fortunate. The unlucky women whose cases KLS could not afford to take had to go to court on their own. Many do not do well when they proceed that way.

Recently, the United States Department of Justice has begun funding the efforts of some lawyers and paralegals working with domestic violence victims. But that funding is subject to political vicissitudes, and Campbell expects that in the near future she will be

Findings from the Legal Services Corporation's Strategic Plan for the Next Five Years

"[S]o many in our society continue to suffer injustice and are unable to gain access to a lawyer for critical legal assistance."

"Approximately 40 million Americans living below the poverty line are eligible for some level of civil legal assistance. Of those needing legal assistance, it is estimated that less than one out of four have access to a lawyer."

"Many states and local governments do not invest adequate funds in support of civil legal services."

"While recent federal appropriations for LSC have garnered wide bipartisan support, too many in Congress appear to fundamentally question the federal role in assuring access to justice for people in poverty."

"Private, charitable, and other contributions vary widely among States and programs, and are not sufficient to meet the burden imposed by inadequate governmental investment."

(Source: Legal Services Corporation, Strategic Directions: 2000-2005)



forced to make the same scary choices she was recently making. “It’s like you’re playing Solomon,” she says, referring to the Bible story in which King Solomon had to decide which of two women got custody of a child. “We’ve had two clients who were killed in our service area in the past few years, even with our efforts to protect them. I live in fear that someday we’re going to have a woman who gets killed because we turned her down, because we made the wrong decision that her case wasn’t serious enough. That’s my nightmare.”

Attorneys at Louisiana’s other LSC-funded programs face similar dilemmas. In New Orleans, tenants at an apartment complex grew frustrated with the wretched conditions that they lived with daily, such as yellowish-brown tap water, air conditioning that stopped working in the middle of Louisiana’s oppressive summer heat, and standing water so full of rotting tree branches that it became a breeding ground for mosquitoes. “I don’t think I can live like this,” tenant Sharon Clayborne complained at the time. “The homeless do better. We pay for our discomfort.” Fortunately, the tenants had somewhere they could turn for help — LSC-funded New Orleans Legal Assistance Corporation (NOLAC) — which worked with the Greater New Orleans Fair Housing Action Center to document the awful conditions and press the owners to make improvements.

Such help for needy tenants may not be so readily available in the future. Although the Louisiana legislature granted permission in 1997 for local court jurisdictions to assess filing fees in civil cases to support legal aid, as of September 2000 only six parishes have implemented filing fees for legal services programs. A seventh has agreed to adopt a fee for a local pro bono project. Combined, these programs raise approximately \$13,000 a month, which is distributed to legal services and pro bono programs throughout the state. When Congress cut LSC’s funding in 1996, NOLAC’s staff dropped from 26 lawyers and 8 paralegals to 20 lawyers and 6 paralegals. As a result, many potential clients are turned away. If interest rates go down at some point in the future and reduce the \$1.5 million in IOLTA

“I live in fear that someday we’re going to have a woman who gets killed because we turned her down, because we made the wrong decision that her case wasn’t serious enough. That’s my nightmare.” **Kisatchie Legal Services Corporation Executive Director Sarah Campbell, discussing the dilemma her office faces when, because of insufficient funding, it has to turn away domestic violence victims.**



Rep. William D. Delahunt, D-Massachusetts (co-sponsor of 2000 Serrano-Ramstad-Delahunt LSC funding amendment): “This appropriation is truly a lifeline for hundreds of thousands of people with no other means of access to the legal system. [LSC’s] current funding . . . meet[s] only the needs of 20 percent of those who are eligible. Let me suggest that that is unconscionable. When we speak of justice for all, remember that we are denying it to oh so many in this country.”

(Source: Statement on the Floor of the House of Representatives, June, 2000)

funding that Louisiana legal aid programs currently receive, NOLAC will have to make additional painful choices about which clients it can still afford to represent.

In a state in which one in four people are poor, and in which legal aid providers serve as many as 30,000 clients each year, this is a severe problem. “We’re already really backed up in most areas,” says NOLAC Executive Director Mark Moreau. “In consumer law, for example, if a person comes in who has had a car unfairly repossessed or suffered a fraud, it might take us months to get to their case. When people see how long the list is, we often never hear from them again. They’re out there in some poor neighborhood, struggling to come up with money to pay their rent or maybe just get through the day without getting shot, and they just decide they might as well just forget it and get on with their lives. In domestic violence and family law cases, we take on enough cases to keep eight lawyers working full time, and we easily could take on twice as many.”

If funding is reduced any further, Moreau says, NOLAC “may just have to stop doing consumer cases and just concentrate on domestic violence, unless a person is in danger of losing his or her home and being evicted.” That policy would translate into many more people going without representation, he admits, including many whose grievances have legal merit. He predicts: “It’s a difficult road ahead.”



Less Money for Legal Aid Than There Might Appear to Be

In 1996, Representative Charles Taylor, R-NC, argued for a reduction in LSC's funding, arguing that "[t]he poor will not be denied free legal services," in part because of the "millions of dollars of increases in interest on lawyers' trust accounts." A careful examination reveals that although IOLTA funds do raise millions of dollars, although a lot of that money goes to support projects generally related to the justice system, and although most of that money supports legal aid for the poor in civil cases, some of the money is not used for that purpose. Instead, some of the money is used for such projects as teaching youths about the legal system and helping courthouses comply with the federal requirement that they be accessible to people with disabilities. Although IOLTA funds are an important resource for local communities, they do not provide quite as much money for legal aid for the poor

as a first glance at the numbers might suggest.

Even if all available IOLTA funding were actually going to fund unrestricted legal aid, it would not be a secure source of funding. When interest rates are low, the funds generate less money for legal aid. Over the course of the past decade, many banks have reduced the interest rates they pay on IOLTA accounts and raised the service fees that they charge. The result is that IOLTA funds have less money to distribute to legal services programs than they would otherwise have. In Florida, for example, the average interest rate on IOLTA accounts has fallen by almost two-thirds, from 3.15% in 1990-1991 to 1.08% in 1999-2000. Banks' service fees have almost doubled during that same period.

Another threat to IOLTA comes from some conservative law firms, which have sued to establish that IOLTA funds are unconstitutional "takings" of private property. Although the lawsuits against IOLTA funds have so far been unsuccessful, IOLTA opponents have vowed to keep fighting.

Where Does IOLTA Funding Go? A Look at a Few States in Which a Substantial Amount of IOLTA Funding Goes for Purposes Other Than Legal Aid Programs

In some states, all or most IOLTA funding goes to legal aid programs. In the following four states, however, a substantial amount of that money goes elsewhere.

Alabama

In Alabama, legal aid programs received \$421,875 of the approximately \$1.4 million available in 2000, and another \$180,000 went to cover the costs of running the volunteer lawyer referral programs administered through the state and local bar associations. The remaining funding went to programs including law libraries and domestic violence shelters.

(Source: Alabama Law Foundation, 2000)

Idaho

In Idaho, only \$125,400, or 48%, of the \$260,000 that the IOLTA fund distributed in 2000 went to legal aid programs, and that money was exclusively dedicated to a program providing legal representation to domestic violence victims. The remaining funding went to programs providing services as diverse as legal education for youths, homelessness prevention, and small claims mediation.

(Source: Idaho Law Foundation, Inc., 2000)

Kentucky

In Kentucky, in 2000 the IOLTA fund awarded a total of \$690,000 to organizations around the state, granting \$537,000 to legal aid agencies and the remaining funding to such other initiatives as Spanish language services for the Department of Public Advocacy. However, a closer look at the Kentucky IOLTA funding reveals that only \$33,000 of the money for legal aid supports the provision of legal assistance by legal aid lawyers, with the remaining \$498,110 paying staff salaries and administrative costs for the volunteer lawyer referral programs of the bar associations and legal aid providers.

(Source: Kentucky IOLTA Fund, 2000)

Louisiana

In Louisiana, of the \$2.2 million available in IOLTA funds in 2000, only 57% supported legal aid lawyers, with another 10% supporting pro bono referral programs. The remaining funding went to programs including court-appointed advocates for foster children, law-related education, and a state bar committee on alcohol and drug abuse.

(Source: Louisiana Bar Journal, 2000)



Earmarked and Restricted Funding

A simple lack of money is not the only reason that non-federal revenues for legal aid fail to fill the gap left by decreases in and restrictions on federal legal aid funding. Another reason is that much of the newly found revenues are either earmarked for certain populations or purposes or encumbered by restrictions barring their use for certain populations or purposes. For example, Colorado, Georgia, Illinois, Montana and West Virginia all authorize general appropriations or filing fees for legal aid, but all also earmark these funds exclusively for victims of domestic violence. Although this funding undoubtedly saves the lives of many battered women, it does nothing for the many people encountering other kinds of legal problems, such as evictions, difficulty obtaining Medicare or veterans' benefits, and so on.

Taking a slightly different approach, in 1997 Indiana allocated \$500,000 in general appropriations for civil legal aid, with the proviso that the money cannot be used to bring class actions; to represent prisoners; to influence legislation, regulations, or general policies of federal, state or local governments; or in connection with the reapportioning of legislative or judicial districts. Likewise, since 1995 recipients of state funds in Montana and Tennessee have been prohibited from using those funds to bring class action lawsuits on behalf of clients.

Restrictions like these often stem from government officials or others who simply want to ensure that low-income people do not have the ability to challenge them, regardless of whether those persons' claims are just. In Texas, for example, a Voting Rights Act suit filed by Texas Rural Legal Aid aroused the ire of some elected Texan officials. When the state legislature considered establishing a court filing fee surcharge to benefit legal aid, President George W. Bush — then the Governor of Texas — indicated he would oppose it unless legal aid programs were restricted in how they could use the money generated. As a result, the \$3 million now provided by Texas for legal aid is burdened by restrictions that are in some ways even more severe than those that restrict LSC money. For example, the Texas funds cannot be used to sue any government official, except in cases seeking governmental benefits such as public assistance,



Rep. Melvin L. Watt, D-North Carolina, discussing the shortage of federal funding for the federal Legal Services Corporation: “I say, what are we saying to people? Should they take to the streets and try to get their rights redressed in the streets, or should they continue to have confidence in our legal process and go through the legal process? What obligations do we have as a Congress to encourage them to use the legal process?”

(Source: Statement on the Floor of the House of Representatives, June, 2000)

Medicaid, or subsidized housing. Even LSC funds can still be used to enable poor people who are victimized by government to sue government officials, unless the case involves a challenge to a welfare law. The Texas money also comes with restrictions identical to many of the LSC restrictions. For example, recipients cannot use the Texas money to file class-action suits or abortion-related litigation.

In 2001, Virginia followed Texas' example. In Virginia, agribusiness interests wanted to make sure that their employees could not enforce minimum wage, overtime and health and safety laws. So this industry focused its lobbying efforts on the Virginia state legislature, which has been providing approximately \$3.4 million in funding for civil legal aid for low-income residents each year. These funds consist of \$1.8 million generated by surcharges on court fees and fines, and a direct appropriation of \$1.6 million from the state's general budget. The money has been important to Virginia's poor. Homeless people and elderly homeowners caught in finance company scams in Virginia, like many other poor people, have been able to turn to programs such as the Central Virginia Legal Aid Society for help. Just as importantly, Virginia's state funding had enabled undocumented migrant workers, who cannot receive LSC-funded legal representation because of Congress's restrictions, to obtain legal assistance from the Virginia Justice Center for Migrant and Immigrant Workers in cases involving troublesome workplace conditions, claims for back pay, and more.



Pressure from agribusiness groups led Virginia legislators to threaten the imposition of a modified version of the federal restrictions on all state appropriations, filing fees and IOLTA funds. These so-called copy cat restrictions included prohibitions against abortion-related litigation, representation of undocumented immigrants, challenges to welfare reform, and class action suits. In a last ditch effort to avert these restrictions, the Legal Services Corporation of Virginia was forced to agree to no longer fund legal representation for migrant workers in employment matters in exchange for withdrawal of restrictions legislation. The practical effect of this agreement may be to leave thousands of undocumented workers without any legal representation. Virginia employers

The \$3 million now provided by Texas for legal aid is burdened by restrictions that are in some ways even more severe than those that restrict LSC money.

are now able to hire these workers, many of whom are working legally in the U.S. on special visas sought by their employers, while refusing to pay them a legal wage, with very little fear of being held accountable for their wage and hour and worker safety violations.

Non-Federal Funding Tainted by Federal Restrictions

Even non-federal legal aid funding that state legislatures, IOLTA boards, charities, and other funders intend to be used to serve *all* needy people as effectively as possible becomes encumbered by the

federal LSC restrictions when it goes to legal aid programs that also receive LSC funding. That is because in 1996 Congress prohibited programs that receive any LSC funding from using their LSC funding or funding from other sources to bring class actions, collect attorneys' fee awards from their clients' opponents, represent undocumented workers, or do anything else that they cannot do with their LSC funding.

State justice systems have responded to these restrictions in various ways, and with varying degrees of success. In some instances, grantors have reallocated non-LSC funds to legal aid programs that do not receive any LSC funds; in other instances, LSC-funded programs have actively transferred their non-LSC funds to non-LSC programs. In a very few instances, LSC-funded programs have sought to meet criteria promulgated by LSC that authorize LSC-funded programs to affiliate with physically and financially separate programs that conduct the activities otherwise off limits to LSC funded programs. Each of these scenarios is dependent on there being a sufficient amount of non-LSC funding available to finance the work of non-LSC lawyers in a given community. Where there are no non-LSC programs available to receive the LSC-program's unrestricted funds, or where the amount of non-LSC funding available is insufficient to support creation of physically separate programs (for example, with separate staff and office space), the available non-LSC funds ultimately continue to go to the LSC programs, where they remain subject to the LSC restrictions.

In such instances, even when there are funders who want to provide legal aid for people excluded by the federal restrictions, their funding is often unavailable to help those people. For example, in Missouri 100% of the IOLTA funds allocated to legal aid programs is awarded to LSC grant recipients, making it nearly impossible to find a legal aid attorney to participate in

Even non-federal legal aid funding that state legislatures, IOLTA boards, charities, and other funders intend to be used to serve all needy people as effectively as possible becomes encumbered by the federal LSC restrictions when it goes to legal aid programs that also receive LSC funding.



When you combine all of the different types of non-federal funding that go to legal aid programs nationwide, it becomes apparent that through the LSC restrictions, Congress is controlling a huge amount of other funders' money — \$251,158,672 in 1999 alone.

class action suits, engage in welfare reform litigation or represent a client in an abortion-related case. In both Arkansas and West Virginia, 96% of IOLTA funding for legal aid programs goes to LSC-funded organizations, leaving only \$22,237 and \$219,684, respectively, for activities forbidden with LSC funds.

When you combine all of the different types of non-federal funding that go to legal aid programs nationwide, it becomes apparent that through the LSC restrictions, Congress is controlling a huge amount of other funders' money — \$251,158,672 in 1999 alone. That money is unavailable to the many people excluded by the LSC restrictions.

Decreasing Pro Bono

In 1995, when Congress was debating whether to completely eliminate LSC's funding, Senator Phil Gramm, R-Texas, read into the Congressional Record a letter from former LSC President Terrance J. Wear, promising that the end of LSC would not mean the end of legal aid for the poor. As Wear explained it, "There also are other substantial private pro bono efforts that are underway to aid poor persons. . . . These kinds of activities are underway in many states; and will cushion the termination of federal funding for legal services."

Wear was partly right — lawyers' willingness to contribute their time has certainly enabled many people

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HERALD-TRIBUNE EDITORIALS

Advice for a price

Lawyers shirking their responsibility to the poor

Four years ago, when Congress began cutting programs that provide legal aid to the poor, proponents of the move said the private sector would step in to fill the gap. It hasn't happened. The legal community and leaders on Capitol Hill need to act quickly to bolster legal services for people who cannot afford to pay.

In an annual survey released last month, American Lawyer magazine found that the nation's 100 highest-grossing law firms are posting record profits but are doing far less pro bono work. Lawyers at the top firms are donating about 36 hours a year, down from 56 hours in 1992. The American Bar Association recommends a minimum of 50 hours a year. Among the top 100 firms, only 18 exceeded that standard.

For generations, America's less affluent citizens have relied on lawyers to take on divorce cases, Social Security mix-ups, landlord disputes and similar noncriminal problems at no cost. Help also came from the nonprofit Legal Services Corp., but Congress cut its budget by one-fourth in 1996 and restricted the type of cases the group could accept. The number of pro bono hours began declining

during the recession of the early 1990s. In the current economic boom hasn't it changed? In many areas, most firms have cut back to keep up with billable business. The Georgetown Law Institute at the Georgetown Law School says lawyers now bill an average of 262 hours a year, up from 1700 a few years ago.

Some observers say firms are more business to pay for salary to keep younger attorneys from leaving or to attract start-ups. "We have to work hard to pay for these attorneys," says Payton, president-elect of the Washington, D.C., bar. The American Bar Association and other groups are pushing programs to boost pro bono work. The American Bar Association's Lawyers for One America, for example, helps business lawyers take on cases for Americans who hope to start a business.

Those efforts sound promising, but the response isn't enough, in light of the fact that the number of lawyers in the profession is rising and their expenses are rising. Until it can live up to its responsibilities, the profession will have to explore ways to shore up legal ser-

Source: Sarasota Herald-Tribune, Aug. 29, 2000

LEXINGTON
HERALD-LEADER
Thursday, January 25, 2001 www.lexington.com Metro Final Edition - 00'

Legal Firms Cutting Back On Free Services for Poor

By GREG WINTER

Many of the nation's biggest law firms — inundated with more clients than they can handle — surveyed reported that their lawyers averaged that many hours less than half the years earlier.

es with strong pro bono work were public servants. In the past, it was a point of pride, a source of cultural shift may have been. In February, a court conducted a private law firm in center of pro bono than 25 percent of spent 50 hours or more helping clients who it found.

seeing is a sea change. Just as a rogue Eugene R. Fidell, chairman of the District Court in

large firms raised or new associates \$25,000 this year, sued them from internet start-ups, but the ebb in pro bono only accelerate.

Any volunteers? The Kentucky Bar Association recommends that lawyers donate 50 hours of legal service each year. In 2000, relatively few of the state's lawyers report to that level of commitment.

25,000 in Lexington

200 lawyers (25.0 percent) reported that they had donated 50 hours of legal service each year.

Source: Kentucky Bar Association

0800-369-0000/0100

Donated legal help in short supply in state

Only 5% of Kentucky's lawyers meet bar association's guidelines

By John Chaves

recommended by the Kentucky Bar Association.

Low interest in working pro bono — is creating a crunch at the Justice County Bar Association Pro Bono Program. Hundreds of poor people turn to the Pro Bono Program each year, looking for lawyers for their divorce, consumer-protection cases and other common-law matters. Interestingly, the lawyers aren't there.

"The handful of lawyers who do this for us have been very generous with their time. But we can't find that

up just so often. We haven't been turned down yet, but I suspect it's going to happen soon," said Katherine Siker, director of the Pro Bono Program.

The Pro Bono Program called for more volunteers in a Jan. 4 letter mailed to 307 law firms in Lexington. So far, only 36 firms have responded. Siker said. But the letter generated some heat in downtown law offices.

"I was not aware until I received that letter that there was a shortage of that the shortage was that severe," said Walter Byars Jr., who heads the Lexington office of Stone & Harrison, one of the state's largest law firms.

"Stone & Harrison encourages its lawyers to donate time to the community in a number of ways. Some send me an e-mail list of pro bono cases, so I know where they are working," Byars said. "But to what extent, and how we compare to other firms, I don't know."

Fayette County opposes the report. Several national surveys indicate that pro bono work has declined in recent years, even in the recession-plagued states. A recent National Law Journal survey of top law firms

"There's a problem with attorneys not realizing the obligation of our profession to serve those in need," Warren Miller, Lexington lawyer.

Source: Lexington Herald-Leader, Jan. 25, 2001

Source: New York Times, Aug. 17, 2000





Rep. Maxine Waters, D-California:
“Pro bono services will never be able to replace federally funded Legal Services. In fact, most pro bono services are provided through the Legal Services organization. Private attorneys are recruited by and use the system of legal services organizations to volunteer their time.”

(Source: Statement on the Floor of the House of Representatives, June, 2000)

to obtain legal representation when there were no legal aid programs with the resources to help them. Unfortunately, Wear was wrong to imply that lawyers’ pro bono hours could ever satisfy the overwhelming need for legal aid that exists in this country. As valuable as pro bono is, the hours contributed by the private bar have never been enough to meet the need. There is a particular shortage of pro bono services in rural areas, where there are few lawyers, and where the few lawyers who do exist rarely work for the sort of large firms that

can afford to contribute vast amounts of pro bono time. And there are some types of cases — such as employees’ wage, hour and job discrimination cases — that most private lawyers are wary of handling, because of either real or perceived conflicts of interest. Also, there are whole areas of law where private lawyers know little. When those lawyers provide representation in such areas, they must spend a lot of time mastering the law, and their representation is consequently inefficient.

More troubling still, pro bono is not consistently available. According to *American Lawyer* magazine and *The New York Times*, while lawyers at the country’s largest firms each contributed an average of 56 pro bono hours in 1992, those same lawyers contributed an average of only 36 pro bono hours in 1999. With the booming economy, and with law firms requiring that associates work more hours to offset rising associate salaries, many lawyers simply do not have the time to contribute to pro bono that they used to. Although this is probably part of a cycle, and lawyers’ pro bono hours will undoubtedly rise again sometime in the future, families being evicted, women seeking assistance with domestic violence restraining orders, and the many other low-income people in this country simply cannot rely on pro bono to meet all of their legal needs.

As valuable as pro bono is, the hours contributed by the private bar have never been enough to meet the need.



CONCLUSION: THE FUTURE OF CIVIL LEGAL AID

Ironically, the regional disparities that inspired President Johnson to create a federally funded legal aid system have reemerged, as enemies of LSC have scaled back its size and scope. As was the case over 40 years ago, a low-income person in Nebraska may once again have significantly more difficulty finding an attorney than a similarly situated person in New York. Additionally, the federal restrictions on offices that accept any LSC funding have created groups of people across the nation with virtually no access to legal aid. State access to justice systems — bar leaders, legislators, courts, and private donors — are working

hard to identify funds to restore the level of legal aid that the federal system once provided, but more is needed from all of these sources.

No matter how hard all of these people work, though, unless Congress steps up to the plate and both provides adequate funding for legal aid and removes the restrictions that deprive many clients of representation, Congress' vision of "equal access to the system of justice in our Nation for individuals who seek redress of grievances" will remain just that — a vision.



Rep. Jim Ramstad, R-Minnesota (co-sponsor of 2000 Serrano-Ramstad-Delahunt LSC funding amendment): "So we all know what is going on in this country. There are not enough resources at the current level of funding to help people and to make those words on the Supreme Court meaningful, 'Equal Justice Under Law.' So, Mr. Chairman, let us not shut the courthouse door to poor people in America. Let us give the most vulnerable Americans their day in court like every other American."

(Source: Statement on the Floor of the House of Representatives, June, 2000)





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