

AN UNSOLVED MYSTERY:

WHY ARE ROGUE POLITICIANS TRYING TO KILL A PROGRAM THAT HELPS THEIR NEEDIEST CONSTITUENTS?

 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 third in a series issued by the Center illuminating the accomplishments of legal services programs throughout the country, and documenting the impact of restrictions recently imposed by Congress on the federally funded Legal Services Corporation. It is the result of extensive investigative reporting by award-winning journalist Patrick J. Kiger in close collaboration with the Brennan Center's Laura K. Abel, Elisabeth S. Jacobs, Ilana Marmon, Kimani Paul-Emile, 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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The third installment of the Center's Access to Justice Series, *AN UNSOLVED MYSTERY* describes the important work that advocates funded by the Legal Services Corporation are doing in the very states in which some of the strongest critics of legal services hold elected office.

Focusing in on particular individuals who have received desperately needed assistance from legal services lawyers, and taking stock of the value of the federal dollars transmitted to certain states for the provision of such assistance, this report points out how the opposition of certain rogue politicians to the continued good works of legal services programs runs counter to their constituents' best interests.

The report tells the story of how legal services lawyers are essential in the states and how even some of those initially deeply opposed to the federal program have come around to appreciate its value to the people they represent.

David S. Udell
Director, Poverty Program
Brennan Center for Justice at NYU School of Law



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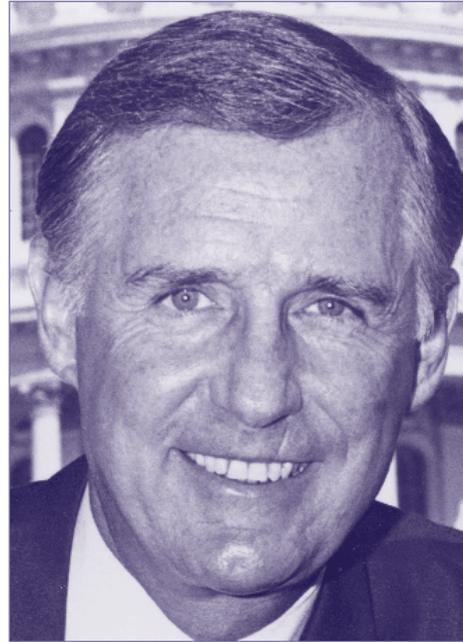
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INTRODUCTION

Of all the critics of federally funded legal services for the poor, few are more vehement than United States Representative Dan Burton. In 1995, the Indiana Republican was one of 27 conservative members of Congress who wrote a letter to then-House Speaker Newt Gingrich, imploring him to abolish the Legal Services Corporation (LSC). Burton and others labeled LSC “a reckless and irresponsible agency” because of the advocacy that federally funded legal services programs across the nation undertake on behalf of the poor. Since then, Burton has appeared at appropriations hearings and given fiery speeches on the House floor, reiterating his unwavering convictions. In a 1996 press release, for example, he charged LSC with regularly spending “millions of taxpayers’ dollars on outlandish test cases to promote a left-wing political agenda that hurts the poor more than it helps.”

Another Indiana resident has a very different view of LSC. For years, Mary Lawton,* a 40-year-old single mother from Bloomfield, struggled to support herself and her son in a variety of low-income jobs; she has been a factory worker, a convenience store assistant manager, and a house-parent in a church home for troubled teenagers. Then, in 1991, Lawton, who already was in poor health due to a chronic thyroid condition, fell down the stairs in her home and severely injured her back, leaving her unable to work.



Rep. Dan Burton

FACT:

Ken Starr’s investigation of President Clinton and his associates cost roughly \$47 million. That sum would have been enough to fund Legal Services of Indiana for 12 years and to provide services to a total of roughly 168,000 clients. The Clintons’ personal legal bills are in the vicinity of \$10.5 million. That amount would have been enough to fund two-and-a-half years worth of legal representation for the poor in Indiana.

(Sources: *New York Times*, October 2, 1999; *New York Times*, August 13, 1999; Interview with Colleen Cotter, staff attorney, Legal Services Organization of Indiana, March 18, 1999)

* Clients quoted or discussed in this report are identified by pseudonyms (with the exception of Brandie Hinds, Berene Murillo, Hector Lopez, Rochelle Winfield, Marie Wright, and Elena, whose names have been published elsewhere).

As a disabled person, Lawton became eligible for federal Supplemental Security Income (SSI) benefits. In Indiana, however, thanks to a peculiarity in the state's regulations, SSI recipients are not automatically eligible for Medicaid healthcare benefits. Just after Lawton was released from the hospital in the summer of 1997, she received a letter informing her that the state was denying her Medicaid coverage. "They said in the letter that if I didn't agree, I could appeal, and my family and friends suggested that I try to get a lawyer," Lawton recalls. "I was worried about affording one. I mean, I didn't have any money at all. I didn't know what I was going to do."

Fortunately, someone suggested to Lawton that she call the local office of the Legal Services Organization of Indiana (LSOI). "I'd had surgery in the hospital, and I was still having a lot of trouble getting around," Lawton explains. "But that wasn't a problem; they didn't even make me come down to the office. They assigned Colleen Cotter to be my lawyer, and she got all the forms ready and mailed them to me to fill out."

For the next year and a half, according to Lawton, LSOI fought to get the state to provide her with medical coverage. Cotter pleaded Lawton's case before an administrative law judge but lost. Then she filed a lawsuit on Lawton's behalf and in the meantime had

Lawton reapply for coverage. When that application was denied, she filed another appeal. In the interim, Lawton's health worsened. Her doctors told her that she needed another operation, but she had no way to pay for it. "I was really afraid, just grasping at straws," she says. Her only reassurance was the diligence of Cotter and other LSOI staffers who kept plugging away at her case.

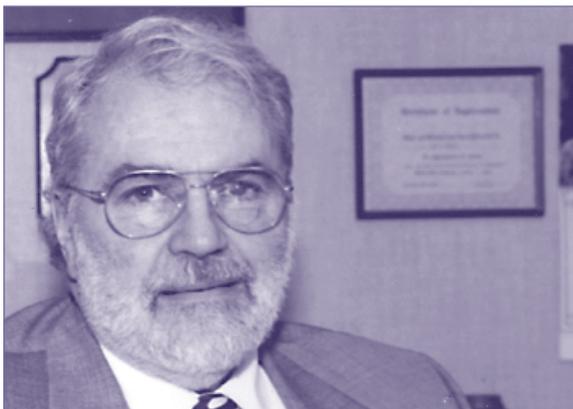
"It really helped, knowing that I wasn't in this thing alone," says Lawton. "I know Colleen had a lot of cases, but she and the others really seemed to dig in for me. They didn't make me feel like I was a nobody, just because I couldn't afford to pay for their services. That's a big thing in my book, because a lot of people would treat you that way. I mean, I'd pay if I could, but I'm in a situation where I can't manage it. But that didn't matter. They were really considerate, too. Every time I called in there with a question, they took care of it. They kept digging into my records, interviewing me again, looking for something we could do."

Eventually, Cotter presented Lawton's case once more before an administrative law judge. This time, the judge decided that Lawton was indeed eligible for Medicaid coverage. At last, she was able to get her operation. "When I got the letter saying the judge had approved my Medicaid, I was just thrilled," she explains. "It's going to make life a lot more bearable."



THE REALITY BEHIND THE RHETORIC

The Legal Services Organization of Indiana, which represented Mary Lawton, is just one example of a disturbing irony: even as political opponents attack LSC, LSC-funded programs in their backyards continue to help thousands of impoverished constituents. “I don’t want to seem like I’m tooting our horn too much,” says Norman Metzger, LSOI’s longtime executive director. “But it’s one thing to say you have a good program . . . where there’s a lot of political support. It’s another thing to say that when you’re in Indianapolis, where our claim to fame is having Danny Burton.”



“It’s one thing to say you have a good program . . . where there’s a lot of political support. It’s another thing to say that when you’re in Indianapolis, where our claim to fame is having Danny Burton [an LSC foe].”

Legal Services Organization of Indiana
Executive Director Norman Metzger

When critics such as Burton denounce alleged LSC abuses, they tend to rely upon anecdotes supplied by Washington-based conservative activists. These are usually shrill allegations about a program in a distant state that supposedly represented a drug dealer or someone seeking a sex-change operation. Year after year, those same anecdotes are repeated, until they become what author and journalist Norman Mailer once described as “factoids” — statements that by sheer repetition come to be accepted as truth. And these extreme anecdotes paint a misleading picture. If critics looked more closely at the full extent of what LSC-funded programs were doing to help people in their own states and legislative districts, they would see that the everyday reality is quite different from the rhetoric.

Indeed, when exposed to more information some former LSC critics have become supporters of the program. Representative Steve Largent, a Republican from Oklahoma, was one of the 27 members of Congress who signed a 1995 letter to then-Speaker Gingrich, demanding that LSC be abolished. In an opinion column in *USA Today*, Largent wrote, “Ever wonder why some prisoners have cushy amenities such as cable TV, why evicting drug dealers from housing projects is so difficult, or why reforming the welfare system is taking so long? Well wonder no more. We have the Legal Services Corporation to blame.” Additionally, he characterized the work of LSC-funded organizations as “helping fathers avoid paying child support or forcing states to provide reimbursement for sex-change operations.” Largent asserted that LSC-funded lawyers “see themselves as social reformers, rather than advocates for the most needy in our society — abused women and children.” Largent’s opposition

What kind of legal problems do low-income people have?

In 1991, Indiana University researchers surveyed low-income families in the state by telephone to determine what sort of problems they had that might require legal advice or representation. They found that the families experienced, on average, two potential legal problems each year.

Difficulty paying utilities	28 percent	Divorce	4 percent
Threatened by bill collectors	22 percent	Paternity dispute	4 percent
Conflict over child support	8 percent	Estate planning	3 percent
Fired from job	4 percent		

Of families who rented their homes, 25 percent experienced problems getting repairs done, 21 percent had problems with rats and roaches, and 17 percent needed to negotiate with a landlord over late rent payments.

(Source: United Way/Community Service Council of Central Indiana, *Legal Needs Study of the Poor in Indiana*, February 1992)

to LSC seemed consistent with his overall philosophy that the federal government had grown too large and pervasive an influence in society and that the taxpayers' burden of supporting big



Rep. Steve Largent

government had to be lightened. But whether or not one accepts that abstract principle, in reality the LSC-funded program in Largent's own Tulsa district bore little resemblance to the outlandish stereotype he propounded.

Legal Services of Eastern Oklahoma (LSEO), serving clients

in 29 counties, has committed its resources to precisely the sort of Oklahomans about whom Largent was rightly concerned. As the *Tulsa World* newspaper reported in 1998, "seventy-seven percent of the clients assisted last year, and 57 percent of the caseload, were women and children living well below the poverty line. Most cases involved custody, support or domestic violence. The agency helped 12,125 children by making sure their homes were safeguarded, that they were protected from abuse, and that relatives received legal assistance with income, government-benefit issues or consumer problems."

That statistical picture is confirmed by the list of 19 clients that one LSEO attorney saw in person or counseled over the phone on a recent day. The list

includes clients such as Susie, a woman who needed advice about seeking a protective order and filing for divorce after her husband punctuated an argument by shoving her into a wall and dislocating her shoulder. Another client, Joannie, needed help because the father of her 12-year-old daughter, weary of paying child support, was trying to wrest custody from her. Yet another client, Diane, wanted advice about getting custody of her grandchildren, ages three and four, who were in foster care because their mother had alcohol and drug problems.



Top: Legal Services of Eastern Oklahoma Legal Secretary and Cherokee interpreter Wynena Daugherty with client Houston Summerfield
Bottom: Legal Services of Eastern Oklahoma's Hugo office



To Largent's credit, after receiving more information about legal services he changed his position in 1998 and voted in favor of maintaining LSC funding. LSC opponents in other states have not been as responsive to accurate information.

Tennessee: Republican Congressman Zach Wamp, a member of the House Appropriations Committee's Subcommittee on Commerce, Justice, State and Judiciary, which oversees LSC's funding, has said that he "identifies with the same goals as the Christian Coalition," a group that has been one of the most vociferous proponents of abolishing LSC. Wamp twice voted in support of cutting LSC's appropriation to \$141 million, the second step in the House GOP leadership's plan for a three-year phase-out of federally-funded legal

aid to the poor. Nonetheless, he made an important concession in an interview with *The Chattanooga Times* in 1995: "I must admit that we have to be extremely careful as we downsize the federal government that we don't trample on the rights of the poor and underprivileged."

He is right to worry. In Wamp's district, Rural Legal Services of Tennessee has been a vigorous advocate on behalf of one of the most vulnerable segments of the poor — children with serious health problems. In 1994, for example, a one-year-old girl was rushed to a pediatric hospital with a dangerously twisted and infected bowel. She underwent emergency surgery, and all but two-and-a-half inches of her small intestine and colon were removed to save her. But the operation made it necessary for her to receive all of her nutrition through an intravenous feeding tube, which in turn further damaged her liver. Doctors said the only way to save her life was through a costly bowel transplant. The insurer who provided health coverage for the little girl under the state's TennCare program repeatedly refused



Left: Rural Legal Services of Tennessee clients Marie Wright and her niece Brandie Hinds
Right: Rural Legal Services of Tennessee client, Brittney

Mother files lawsuit after trying for two years to get dental help for daughter

By **Duncan Mansfield**

Associated Press

Four-year-old Brittney's teeth slowly and painfully rotted away as her mother tried for two years to get help under the state's TennCare health-care program for the uninsured.

Brittney's mother finally found a dentist willing to perform the \$1,000 surgery. But there are some 300 children ahead of her.

U.S. District Judge John Nixon on Thursday waived a filing fee so Brittney's mother, identified only as an Anderson County woman named Callie W., could bring suit in his Nashville court.

She is suing the state Department of Health and Preferred Health Partnership of Tennessee, the Knoxville-based managed care organization under contract with the state to help Brittney and others like her.

Lawyer Neil McBride of Rural

Legal Services, which is representing Brittney, said the federal action is an effort "to get this child care and perhaps damages for any permanent injury because of the two-year delay."

Dr. Wendy Long, TennCare's interim director, said Friday she couldn't address the lawsuit directly, but added, "We believe our dental networks to be adequate at this point in time." PHP did not return calls.

Callie W. said her daughter's teeth "swelled and Brittney couldn't eat" and she had "pain" in late 1996. She filed the lawsuit in Anderson County, an old Brittney was a pediatric dentist.

Callie W. said she had seen several dentists in Anderson County. None would see her under TennCare, according to McBride. So she turned to Rural

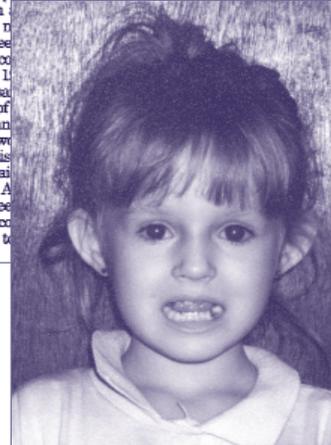
non-TennCare dentist. He examined her June 16, 1997, and found one dead tooth and several teeth needing fillings, crowns or other work. He said it would cost at least \$1,000, according to the suit.

Callie called PHP for referrals. She took Brittney to one of their suggested dentists in July. After examining Brittney, he said he couldn't treat her.

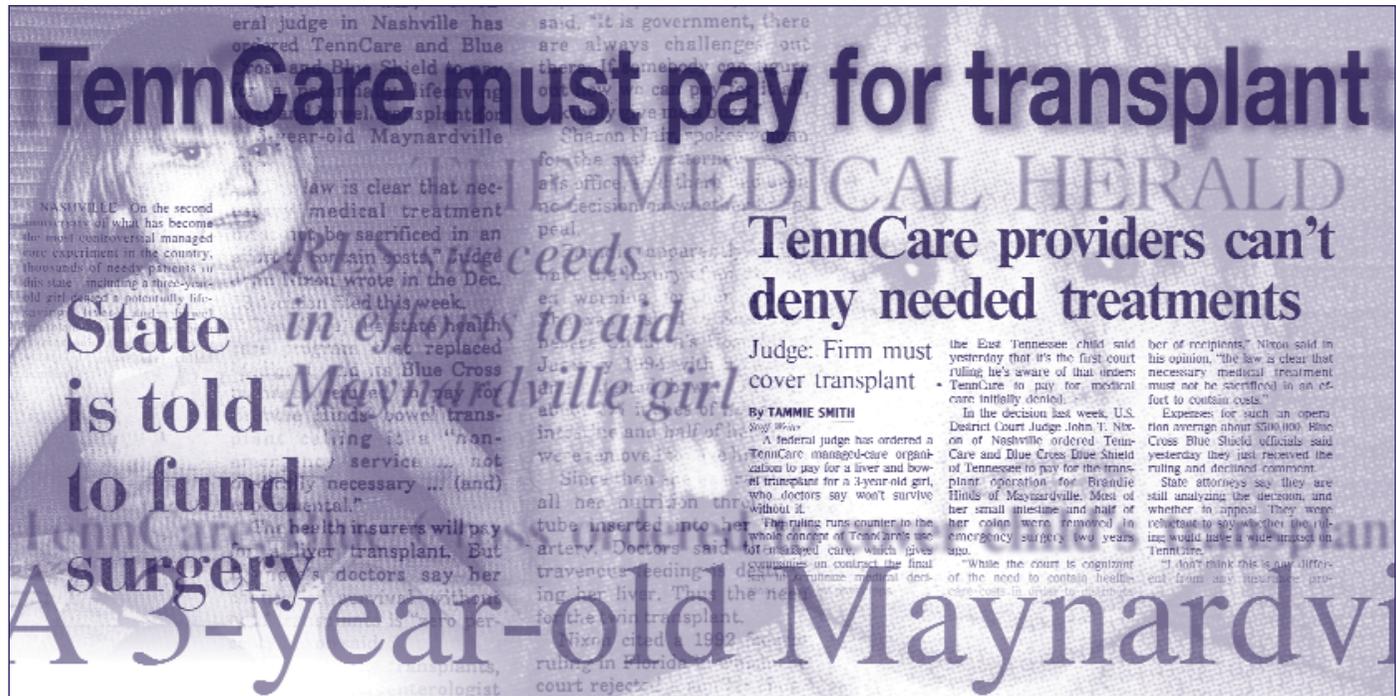
In February, Callie said she had another dentist who said he was not qualified to treat her.

Another dentist in Anderson County, who said he was not qualified to treat her, was referred to her by PHP. She was referred to another dentist in Anderson County, who said he was not qualified to treat her.

Brittney was referred to another dentist in Anderson County, who said he was not qualified to treat her. She was referred to another dentist in Anderson County, who said he was not qualified to treat her.



(Source: *The Associated Press*, August 22, 1998)



(Sources: *The Associated Press*, January 5, 1996; *The Oak Ridger*, January 5, 1996; *The Medical Herald*, February, 1996)

to pay for the operation. The little girl's aunt, her legal guardian, did not know where to turn for help. Lawyers cost money, she assumed, and she did not have any.

Fortunately, a Rural Legal Services of Tennessee attorney, Lenny Croce, learned of her predicament. "I was beating my head against the wall, didn't know what to do," the aunt said in 1996. "When Lenny came to me, at first I didn't pursue it because I was worried about money." Croce took the state and the insurer to federal court, where a judge ordered them to provide the life-saving surgery for the child. Were it not for Croce's help, the aunt noted, her niece would not be alive today. Since then, Rural Legal Services of Tennessee continues to fight for children's health care.

Croce took the state and the insurer to federal court, where a judge ordered them to provide the life-saving surgery for the child. Were it not for Croce's help, the aunt noted, her niece would not be alive today.

For example, during the summer of 1998, an attorney for the program filed suit on behalf of Brittney, a four-year-old girl who had been forced to wait seven months for dental surgery because the only pediatric dentist who would accept her case had 300 other Medicaid recipients on his waiting list. In January 2000 the girl's TennCare insurance company settled the case by agreeing to provide dental treatment within the time periods required by its contract and to provide enrollees with better notice of their children's rights to dental care.

Arizona: Republican Congressman Jim Kolbe, the second ranking member of the House Appropriations Committee's Subcommittee on Commerce, Justice, State and Judiciary, has voted against maintaining LSC funding out of a belief that providing free lawyers for



the poor conflicts with his avowed goal of reforming and streamlining the legal system. “The [private] legal community itself will have to step up to the plate and provide pro bono services,” he told the *Phoenix Gazette* in 1995. There is, however, a big problem with that argument: Private attorneys in Arizona already donate a lot of their time to the poor — sixty-two hours a year on average, according to a 1997 state bar association survey — and that meets only a fraction of the need.

In Kolbe’s own Tucson-area district, LSC-funded Southern Arizona Legal Aid (SALA) has labored to make the legal system work for those who cannot afford private lawyers. For example, SALA has been helping clients enforce the federal Violence Against Women Act, which allows immigrants to file for residency status on their own if they are married to United States citizens or residents who become abusive. Providing free legal advice and representation, SALA is assisting numerous women — many of whom speak little English, have no family and few support structures in this country — escape from abusive relationships.

“They are really the most vulnerable of all,” says Valerie Hink, a SALA immigration attorney. Abusive spouses often use the judicial system to threaten and control their wives. Some abusers refuse to finish paperwork necessary for their wives to gain residency. Others withdraw residency petitions or threaten to report their wives to immigration officials. In addition, the perpetrators often tell their wives that if they contact the police to report the abuse they will be deported and lose their children.

Risking deportation, Elena called 911 after years of physical, emotional, and verbal abuse when her estranged husband refused to return their daughter. Although in the past Elena’s husband had threatened to

have her deported if she called the authorities, she decided that she had had enough. “I was very scared,” Elena told the *Arizona Daily Star*. “What was important to me was my girl.” To Elena’s surprise, the police officers who responded to her call led her to SALA, despite her husband’s pleas to have her sent back to Mexico.

“First of all, I don’t have papers. I don’t speak English,” Elena explains in Spanish. However, with the help of SALA, Elena now has joint custody of her two-year-old daughter and is trying to get full custody. In addition, she has an order of protection against her abusive husband and is in the process of becoming a legal resident — something SALA explained she was entitled to do. Thanks to SALA, Elena has started a new life. She is saving money to buy a car, rent an apartment and learn English. Today, Elena no longer fears the abuses she once endured — being kicked in the face and stomach, thrown across rooms, struck in the face with the telephone, and beaten up and dumped off miles from home. “I’m very safe,” says Elena. “I sleep calmly. I don’t feel alone.”

California: In 1998, during a House debate over whether LSC funding should be preserved, Representative John Doolittle rose to vehemently oppose funding. The California Republican castigated LSC as an “irresponsible” agency, and criticized a Louisiana program’s alleged mishandling of a child abuse case. Tellingly, Doolittle said nothing about Legal Services of Northern California, whose coverage area includes poor residents in Doolittle’s district in the Mother Lode region, the former gold-mining country in the foothills of the Sierras. One possible reason: His staff sends clients to Legal Services of Northern California, explains Executive Director Roberta Ranstrom. “I’m sure he’s aware of it. He has a

While California Republican Congressman John Doolittle castigated LSC as an “irresponsible” agency, he said nothing about his district’s legal services provider, Legal Services of Northern California. His staff sends clients to them all the time, explains Executive Director Roberta Ranstrom. “I’m sure he’s aware of it. He has a philosophical opposition to federal funding for legal services, but they still seek our help.”



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Although Doolittle asserts that LSC-funded lawyers have an “activist and ideological agenda,” the Mother Lode Regional Office, located in Auburn, focuses much of its efforts on providing legal help to senior citizens. For example, it runs training programs that enable the elderly to advocate for their own rights with regard to Medicare and other benefits programs, consumer problems, and housing. “This is a very special note of appreciation and thanks for helping me resolve this six year [benefits] case,” a client once wrote to the Mother Lode office’s managing attorney, Herb Whitaker. “I wanted you to know that you’ve added to my peace of mind in this arduous process.”

Texas: LSC’s most determined opponent in the Senate has been Senator Phil Gramm. In 1995, while serving as chairman of the Senate Appropriations Committee’s Subcommittee on Commerce, Justice, State and Judiciary, the Texas

Republican tried to push through legislation that would have slashed federal spending for civil legal services for the poor in half and abolished LSC altogether. Under this plan, LSC funds would have been funneled directly to state governments in the form of block grants, with little assurance that the states would use the funds to provide help to those in need. Additionally, according to the *New York Times*, Gramm’s unsuccessful bill would have imposed even more draconian restrictions upon LSC than the ones ultimately enacted by Congress. Gramm, for example, would have prevented clients from getting help with divorces.

“They [LSC-funded lawyers] file meaningless lawsuits that increase bureaucracy and the tax burden,” Gramm

told the *Chattanooga Times* at the time. “The legal aid lawyers aren’t just representing the needy, they are espousing an agenda and using



Sen. Phil Gramm

“This is a very special note of appreciation and thanks for helping me resolve this six year [benefits] case. I wanted you to know that you’ve added to my peace of mind.”

Letter from client to Herb Whitaker, managing attorney at the Mother Lode office of Legal Services of Northern California

their tax-paid positions to push it, and that’s what I think is unfair.”

It is safe to say that Gramm, unlike some other critics, is familiar with at least one of the legal services programs in his state. In 1983, Texas Rural Legal Aid (TRLA) challenged the legality of the special election that had returned Gramm to the U.S. House in 1983 after he had resigned his seat and switched from the Democratic to the Republican party. Over the years, TRLA has been a vigorous advocate in numerous other politically controversial cases, in part because it operates in the impoverished southern section of the state, where government has routinely denied rights to poor citizens that are almost universally accepted elsewhere in the United States. If combating such

injustices on behalf of clients is an “agenda,” TRLA attorney Bill Beardall says, so be it.

“TRLA has never really been as radical of an organization as its enemies have portrayed it,” Beardall contends. “We’re simply in

the business of enforcing rights that have been accepted elsewhere. If there’s one thing I learned when we first started here in the late 1970’s, it’s that creating new laws to fix a problem was less important and useful than the day-to-day, ground-level enforcement of laws that have been on the books since the New Deal. That’s as true today as it ever was.”

For example, in 1980, when a farmworkers’ union called a strike against onion growers in Deaf Smith County, Texas, TRLA attorneys visited the picket lines to give the workers advice about their legal right to picket. The growers responded by filing a suit charging

“TRLA has never really been as radical of an organization as its enemies have portrayed it ... We’re simply in the business of enforcing rights that have been accepted elsewhere.”

Texas Rural Legal Aid Attorney Bill Beardall



the workers with violating Texas anti-picketing statutes and accusing TRLA of violating the Legal Services Act by improperly spending federal money for union-organizing activities.

The growers were thwarted in their efforts to use the anti-picketing statutes when the Texas Supreme Court ruled that portions of the laws were unconstitutional. The growers' second complaint, that TRLA was misusing government money, had a certain irony. The growers were politically well connected in Deaf Smith County and were quite willing to utilize that influence to suppress the strike and attack TRLA. To represent them in the lawsuit, the growers hired three lawyers who, at the time, also happened to be county prosecutors. That legal team, in turn, sought advice from the state's then-attorney general on the nuances of the anti-picketing law, and it even used a county sheriff's investigator to gather information for their civil case.

Additionally, the sheriff's office kept TRLA's offices under surveillance and recorded the license plate numbers of all individuals who visited the office. As a federal appeals court later acidly noted, "[t]hese resources would not have been available to litigants operating in a purely private capacity." Ultimately, TRLA and its clients were vindicated in federal court when portions of the Texas anti-picketing statutes were ruled unconstitutional, and one of the labor organizers was awarded damages for the violation of his civil rights.

TRLA also leapt into action in the late 1980's and early 1990's, when Texas health officials neglected their responsibility under federal law to screen poor children for potentially serious medical problems and to inoculate them against diseases. The result was a 1989 measles outbreak in which 2,500 poor children became ill and 12 children and adults died. The hospital bills totaled \$3.6 million — more than 10 times what it would have cost to inoculate 10,000 children against the disease. "We've seen children come in here with chicken pox, coughing, maybe the croup," Elena Vergara, a community organizer in Houston, complained at the time. "[T]hey're not even getting

the attention they need when they're ill." In 1993, TRLA filed a lawsuit against the state on behalf of the children, and obtained a court order requiring the state to give them the services to which they were legally entitled.

In 1995, as a result of a class-action suit brought by TRLA, the Texas A & M University system admitted that it had illegally paid 400 farm laborers as independent contractors rather than as employees, cheating the Government out of about \$86,000 in payroll taxes and depriving the workers of disability and Social Security benefits. The settlement was relatively modest; the university system agreed to cover the back taxes, legal fees, \$120 in compensation to each worker, and the cost of advertising in newspapers to notify workers who had been cheated out of benefits. Even so, workers hailed the decision as sending a powerful message to employers to obey the law. For Berene Murillo, the lone named plaintiff, the settlement meant that she would be eligible for Social Security benefits. "I have always hoed cotton and harvested vegetables," the 55-year-old woman told reporters after the settlement was announced. "I am very proud of my work. But what really bothered me, angered me, was that my bosses never paid into my Social Security, because when I reach my old age and I won't be able to work, I won't have any way to support myself."

More recently, when police in the city of Laredo started arresting Latino laborers who, as generations of laborers before them had done, stood in the city plaza to seek work unloading trucks and doing construction, TRLA represented the workers. The city's excuse was a seldom-enforced local law that made it a crime to ask another citizen for work in a public place. TRLA attorneys filed a federal lawsuit on behalf of the men. "It is a free country. We need a place to work," one of the laborers, Hector Lopez, told a reporter for the *San Antonio Express-News*. A federal judge recently agreed with TRLA that the city had violated the laborers' civil liberties. When TRLA lawyer Israel Reyna told a group of laborers that the police could no longer chase them out of the plaza or any other place for trying to find work, the men responded with cheers.



As foes of legal services wage war on the Legal Services Corporation (LSC) on the Hill, millions of federal dollars are going directly to legal services providers in the foes' states in order to help ensure access to justice for their low-income constituents. Conservative congressman may advance a philosophical opposition to LSC, but none seem to be complaining about the money aiding their constituents.

- In U.S. Rep. Dan Burton's state of Indiana, legal service providers received a total of \$4,745,083 in LSC funding in 1999. They, in turn, provided free legal services for which approximately 574,000 low-income residents, over 10 percent of the state population, were eligible.
- In Oklahoma, \$4,532,847 in LSC grants helped keep access to justice a reality for roughly 510,000 low-income residents in 1999, over 16 percent of the state. U.S. Rep. Steve Largent, once an outspoken critic of LSC, has come to realize the importance of legal services in his state.
- Although U.S. Rep. Phil Gramm is among the most outspoken of LSC's attackers, \$25,005,769 in LSC funds poured into Texas in 1999, funding legal services for which 3,000,515 low-income Texans, nearly 18 percent of the state, were eligible.
- In Arizona, where U.S. Rep. Jim Kolbe has voted against maintaining LSC funding, roughly 564,000 impoverished residents — over 15 percent of the state — were eligible for the legal services funded by the \$7,371,994 that LSC provided in 1999.
- U.S. Rep. John Doolittle of California, a vocal LSC critic in Washington D.C., has said little about the \$30,753,268 in LSC grants that legal services providers in his state received in 1999. Perhaps that is because Doolittle's local offices refer clients to local LSC-funded agencies "all the time," according to Legal Services of Northern California Executive Director Roberta Ranstrom. Over 12 percent of the state's residents, roughly 3,628,000 poor Californians, are eligible for the free legal services provided by local LSC grantees.
- Tennessee U.S. Rep. Zach Wamp has twice voted in support of cutting LSC's appropriation, yet local providers in his state received \$6,162,150 from LSC in 1999. The federal money funded free legal services for which approximately 745,000 Tennesseans living in poverty were eligible. This was over 15 percent of the state's total population.

The above statistics underestimate the actual number of people in a given state eligible for LSC-funded legal services representation because they assume that only those people living below the poverty level can qualify for such aid. In reality, individuals with incomes up to 250 percent of the poverty level can qualify.

(Sources: 1990 Census; Legal Services Corporation, <http://www.lsc.gov>)



WINNING OVER A COMMUNITY

Indiana is a prime example of a place where a legal services program took hold in hostile soil and came to thrive. As LSOI Executive Director Norman Metzger explains, the antipathy in Indiana toward federally-funded poverty lawyers is longstanding. Metzger, who grew up on a farm in rural Indiana, recalls going to Fort Wayne to set up a poverty law program under the auspices of the Johnson administration's Office of Economic Opportunity, the forerunner of today's LSC.

"The first day, I was led around downtown Fort Wayne by the then-county bar association president, Bob Parrish," Metzger recalls. "He was introducing me to various lawyers. We walked up to these two guys, and they just attacked me. 'We're going to sue you for practicing law illegally as a corporation!' they were yelling. Now, that really made me feel at home. But I had a job to do, so I figured I'd stick it out. Remember, this was just after the riots in Detroit. Our theory was that there were some people who had legitimate grievances, so instead of burning down the cities, let's get them into the courtroom.

"One of those lawyers who gave me a hard time was subsequently disbarred, so I never had any problems with him. But three years later, I filed a case on behalf of a 16-year-old girl who'd been involuntarily committed to a psychiatric hospital by her parents. She'd called me from inside the hospital. I filed a writ of habeas corpus and made the hospital administration bring her down to the courthouse for a hearing. So who do you think turns out to be the judge pro tem for the day? The other guy who'd yelled at me. But I presented my case, and he ordered the release of that young person. That's sort of the story of legal services here in microcosm. There is this grudging respect and acceptance that we've earned from many conservative people, judges and lawyers in this state, even if they ideologically object to what we do."

Over the past 25 years, LSC-funded LSOI has grown into a sprawling operation that provides legal representation and advice to low-income people in 59 counties in central and southern Indiana. The program's humble annual budget of four million dollars stretches to support general offices in Indianapolis, Anderson, Bloomington, Evansville, New Albany, and Richmond, in addition to special projects for the homeless, senior citizens, and other clients. In 1998, LSOI's 35 attorneys provided legal assistance to nearly 14,000 clients, including more than 2,000 cases that required extensive legal work. LSOI's mission, as described in a recent grant application, is "to use our resources to provide poor people with a wide variety of aggressive, quality legal services which will effectively help them to gain equal access to the courts, empower them to control their lives, and have an impact on the major causes and effects of poverty."

LSOI's history is filled with impact litigation that significantly changed the lives of Indiana's poor. In 1993, for example, a client named Janice Smith came to LSOI, desperate for help. Her three-year-old son was so severely handicapped that he needed the help of a machine to breathe and had to be fed through a tube. The air passage had to be suctioned many times a day to keep him from choking. Even with daily nursing assistance in her home, Smith found herself exhausted at the end of the day from trying to fill her son's needs while at the same time taking care of her other children. When the state drastically cut back on her home assistance, she did not think she could cope. "I thought taking his hours away was just wrong," she later recalled. LSOI filed a class-action suit on behalf of her and 20 other Medicaid clients who were being denied services. The state agreed to restore the clients' benefits, a resolution that left Smith "relieved and happy."



“If a client couldn’t get representation in a case where he or she had a fundamental right at stake, a right was possibly going to be taken away, we made it a point to argue the legal theory that we should be able to represent that client,” Metzger explains. In the 1970’s and 1980’s, suits filed by LSOI attorneys established the right to counsel for whole classes of formerly powerless people, including abused children and mental patients facing involuntary commitment.

In the 1970’s and 1980’s, suits filed by Legal Services of Indiana attorneys secured the right to counsel for whole classes of formerly powerless people, including abused children and mental patients facing involuntary commitment.

“I had a client who’d suffered a stroke,” says Lundberg. “He recovered enough that he could get around, but he’d lost his ability to speak. He was sufficiently disabled that he was put on the state’s Medicaid program, but the state excluded any coverage for augmentative speech devices. They’d pay for hearing aids, prosthetic limbs, and so on, but not for an indigent person to regain his ability to speak. Now, I’d had a previous client with the same problem, so I knew the problem was an institutional one. Instead of going through the administrative appeal process again, I said

Additionally, LSOI sued jails and prisons all over the state, forcing improvements in conditions. It also pressed the state to provide better care for mentally ill children. Former LSOI attorney Don Lundberg is particularly proud of one of his smaller, less attention-getting cases from that period because of the subtle but significant impact it had on many people’s lives.

to my client, ‘Heck, let’s just go to federal court and change this for everybody.’ He liked that idea, so we did, and the state eventually settled.”

Ken Faulk, another former LSOI attorney, explains: “There wasn’t anybody else to deal with prisoners’ rights or the elderly. If we didn’t take a hard case, it wasn’t going to get done. And Indiana, conservative as it is, wasn’t used to the idea of law reform for poor people or anyone else. It’s a testament to LSOI that we won as many cases as we did — our appellate record was over 50 percent.”

Since Congress imposed a ban on class actions and other restrictions upon LSC-funded programs in 1996, it has become far more difficult for LSOI to attack pervasive social problems with litigation. But even as attorneys chafe against those hindrances to representing clients to the best of their ability, LSOI remains an effective presence in other ways. One reason is that it has developed deep ties and works closely with other community organizations. Longtime LSOI attorney Roderick Bohannon, for example, is also the president of the local NAACP. Former LSOI attorney Faulk is now litigation director for the Indianapolis Civil Liberties Union.

Another reason is that, contrary to opponents’ stereotype of legal services lawyers as litigation-happy, they do a lot for low-income people besides file suits. Housing activist Kamau Jywanza, who works with residents of low-income Indianapolis neighborhoods to improve their living conditions, notes that legal services attorneys have played an invaluable role in assisting that effort over the past two decades. “They didn’t stay in their offices and wait for people to come to them,” recalls Jywanza. “They did a lot of outreach, so people would know their help was available.”

“There wasn’t anybody else to deal with prisoners’ rights or the elderly. If we didn’t take a hard case, it wasn’t going to get done.”

Former Legal Services of Indiana Attorney Ken Faulk





Kamau Jywanza

“Legal services lawyers were there to empower people, to help them learn how to do things for themselves, the right way.”

Kamau Jywanza, housing activist in low-income Indianapolis neighborhoods

When residents wanted to form neighborhood organizations to lobby for their interests, for example, LSOI attorneys did the necessary legal work and gave residents advice on how to meet the necessary state and federal regulations and reporting requirements for nonprofit groups. “Even if a neighborhood group is doing good work, it’s important not to mess up organizationally and run afoul of the rules,” Jywanza explains. “Legal services lawyers were there to empower people, to help them learn how to do things for themselves, the right way.”

On a more nuts-and-bolts level, the attorneys provided advice on utilizing the federal Community Reinvestment Act, which encourages banks to make loans in low-income neighborhoods to help residents finance repairs and renovations for their aging houses. They helped guide residents through the financing process, enabling them to understand the arcane nuances of contract conversions and construction loans.

LSOI belies many of the other negative stereotypes that have been concocted by LSC’s foes. Some conservative critics, for example, have alleged that LSC-funded attorneys encourage divorce and break up poor families. In reality, clients usually seek legal help in carrying out a decision that they have already made independently. One typical client is Rochelle Winfield, a New Albany, Indiana factory worker on disability, who wanted to get out of a bad marriage but had no money for an attorney. After a friend told her about LSOI, Winfield contacted them for help. “I could go on and on,” she told a reporter after receiving her divorce papers in the mail. “They were so understanding of what I’d gone through. I thank the Lord. He sent me that way.”

Many of these clients are in desperate straits. They are trying to free themselves from an abusive spouse or protect their children from violence. In LSOI’s New Albany office, attorney Mark Robinson recently helped a young mother who said that her husband had hit her and had threatened her with worse, until she fled with

her two children. The woman, who, like Rochelle Winfield, worked in a factory to support her family, needed protection. But she did not know where to turn. As a recent article in the *Louisville Courier Journal* depicted, Robinson and his staff could easily spend their week solely handling domestic violence cases. “There’s never enough people for that problem,” LSOI attorney Marianne Conrad told the newspaper.

Rita Rans is a victim assistant for A Better Way, a shelter for battered women in Anderson, Indiana. Rans, a non-lawyer, is trained to guide her clients through a basic divorce, but depends upon legal services attorneys to handle one of her clients’ most desperate needs — obtaining custody of their children. “A lot of times, these women have been afraid to leave abusive husbands, because the men tell them that they’re not going to let them have the kids. When you can tell a woman that you’ve got a lawyer who is willing to fight for her custody rights, it’s hard to imagine how much that means to her. Legal services has been just excellent for our clients. The lawyers they have are very caring. They put a lot of effort into helping these women.”



Rita Rans

“A lot of times these women have been afraid to leave their abusive husbands, because the men tell them that they’re not going to let them have the kids. When you can tell a woman that you’ve got a lawyer who is willing to fight for her custody rights, it’s hard to imagine how much that means to her.”

Rita Rans, victim assistant at A Better Way, a shelter for battered women in Indiana



Rans cites the example of a recent client whose husband allegedly had molested their three elementary-school-age daughters. “She’d been trying to get away from him for years, but she didn’t have any money of her own. The husband could afford to hire a lawyer, and he threw up all sorts of stumbling blocks. But last month, with the help of Christine Douglas, a legal services attorney in Indianapolis, the woman not only was able to get out of the marriage, but she was able to get an order restricting the husband to supervised visitation.”

Burton and other critics have portrayed LSC as fighting to stymie the conservative goal of welfare reform. It is true that in the mid-1990s, when challenges to welfare regulations were still permitted under LSC rules, LSOI did unsuccessfully oppose changes introduced by then-Governor Evan Bayh. Many observers felt these changes imposed too great a hardship on the impoverished. For example, one experimental welfare-reform proposal opposed by LSOI reduced benefits for certain randomly selected families on public assistance and placed members in job training, while other families continued to receive regular benefits.

Former LSOI attorney Lundberg is among those who would like to see Congress lift its restrictions on challenges to welfare rules. “If a welfare bureaucrat makes a decision that makes it difficult for you to get by, it’s not because he dislikes you as a person,” Lundberg explains. “It’s usually because there is a policy in place. If that policy is wrong or unconstitutional, it makes sense for your lawyer to deal with it at that level.” But until that happens, LSOI has found a way to advocate for clients that even conservatives should support: LSOI lawyers have developed innovative programs to increase former welfare recipients’ chances of surviving and succeeding once their benefits are eliminated.

For example, LSOI is currently seeking a grant from the Private Industry Council in Indianapolis for a joint project with Keys to Work, an organization that assists welfare recipients in making the transition to life without public assistance. The project, entitled Step By Step, will help non-custodial fathers earn enough to support their children.

As LSOI attorney Colleen Cotter explains, Keys to Work will help clients get training for specific types of

work, help prepare them for the workplace, and actually help them find employment. LSOI will concentrate on another crucial part of the solution: helping clients keep jobs once they have them. “Before they actually go out there into the working world, they would have an attorney interview them and do a legal needs assessment. Do they have creditors out there lying in the weeds, waiting to garnish their wages? Are they behind on their car payments, so that they’re in danger of having the car repossessed and being unable to get to work? The idea is to anticipate any legal problems that might interfere with them holding a job. What we would do is negotiate with creditors, for example We would work out a payment plan that the person could handle. Similarly, if they’re in arrears over child support and as a result are arrested and thrown in jail, that’s not going to accomplish anything. Instead, we would negotiate an arrangement with the prosecutor and keep them on the job, so they can get back on track and pay what they owe.”

LSOI attorneys already team up with other community organizations to help clients nip crises in the bud. Michael Reinke, director of Shelter, Inc., a Bloomington, Indiana social service organization, enlisted LSOI to help one of his clients. A mentally-disabled woman was in danger of being evicted from a public housing project because she was having difficulty keeping her apartment clean by herself. LSOI attorney Jamie Andree negotiated with public housing officials to stave off the eviction, giving Reinke time to find people to help the woman with her housework. “They enabled us to keep her in her place, so that she didn’t have to become a resident of our homeless shelter,” Andree explains. “Even after we got the place cleaned up, the Housing Authority wanted to kick her out anyway. But the end result is that she’s there now, and the house is in good shape.”

Andree adds that LSOI provides homeless clients with important help. He explains that these clients “may know how to be assertive, but not always in appropriate ways. When they’re confronted with some person in authority who says, the law is this or that, they respond to injustices in ways — yelling or losing their temper or whatever — that actually disempower them. They need to have somebody like legal services who can respond to the people in authority: ‘No, the law is actually this,’ and work something out.”



STRUGGLING TO FILL THE NEED

Opponents say federally-funded legal services programs are unnecessary, that law firms and privately funded legal services could fill the need.

Representative Burton, for example, argued in 1997 that federally-funded legal aid for the poor was unnecessary due to the presence of “a number of organizations around this country that are voluntarily helping the indigent and the poor.” The truth is that the need is so great that both private and publicly-funded help are necessary. Though Indianapolis has a substantial privately-funded Legal Aid Society that handles thousands of civil cases per year, other communities throughout the state lack such extensive pro bono resources.

Critics also charge that legal services lawyers neglect ordinary clients so they can pursue ideologically-motivated cases. This charge is contradicted by the experience of Candace Perry, a non-lawyer advocate for domestic violence victims with the YWCA in Evansville, Indiana. Perry says that LSOI attorneys,

who make domestic violence cases a priority, are so eager to help her clients that they sometimes take on cases that the local Legal Aid Society in Evansville has turned down.

“Recently, legal services helped one of my clients, a woman whose husband has been trying to wrest custody of their children from her,” Perry says. “Thanks to their work, she was able to keep her children.” Perry says that low-income people benefit from LSOI and pro bono efforts such as the Legal Aid Society, “but we need them both.”

The mid-1990s funding cuts that hobbled many legal services programs across the nation took their toll on LSOI. In 1996, Metzger recalls with obvious discomfort in his voice, he had to lay off 23 staff members due to a budget shortfall of one million dollars. That situation prompted Metzger and other legal services providers in Indiana to start the Indiana Equal Justice Fund, an organization that lobbies to raise additional non-LSC funding for legal aid for the poor.

Legal Services Organization of Indiana attorneys, who make domestic violence cases a priority, sometimes take cases at the Evansville, Indiana YWCA that the local Legal Aid Society in Evansville has turned down. Low income people benefit from legal services and pro bono efforts such as the Legal Aid Society, but “we need them both,” says Candace Perry, a YWCA victim advocate.

A diverse range of supporters recognizes the fundamental importance of LSC's commitment to providing access to justice for America's low-income residents:

- **Congressman Elijah E. Cummings (D-Maryland)**

"The Legal Services Corporation is a modest but vitally important and effective program that helps millions of needy families gain access to the justice system in cases relating to domestic violence, housing evictions, consumer fraud, child support, and other critical matters. The legal services program is the only means to assure that the most vulnerable citizens in our country — poor children, battered spouses, the elderly, disabled, migrant workers, and other low-income individuals — have access to legal representation in civil cases."

(Source: 142 Cong. Rec. E1380 (daily ed. July 25, 1996))

- **New Mexico Republican Lawyers Committee for Legal Services Co-Chairman John D. Robb**

"Although the national Legal Services program is bi-partisan, we Republican lawyers believe that it is consistent with fundamental Republican Party principles and positions which support the concepts of a nation of laws, the rule of the law applying to all persons, the effective functioning of our judicial system, encouraging and demanding use of our system, including lawyers, arbitration, mediation, conciliation, courts and other parts of our justice system for the peaceful resolution of disputes instead of street violence and similar unlawful efforts to take justice in one's own hands to resolve grievances. It seems very inconsistent to us to deny people access to the very system which we encourage and expect them to use."

(Source: Legal Services Corporation Oversight, 1996: Hearings before the House Subcomm. on Commerce, Justice, State, Judiciary and Related Agencies of the House Appropriations Comm., 104th Cong. (1996))

- **American Bar Association Standing Committee on Legal Aid and Indigent Defendants Chair Doreen Dodson**

"Justice and fairness are the bedrock principles of our democracy. President Washington wrote that 'The due administration of justice is the firmest pillar of good government.' . . . The provision of civil legal services to the nation's poor through a comprehensive, national system providing civil legal services to the nation's poor must be maintained and strengthened. . . . 'Liberty and justice for all' is our proud national credo, but it is empty rhetoric without the resources administered by the Legal Services Corporation."

(Source: FY99 Appropriations for the Legal Services Corporation and Defender Services: Hearings before the House Subcomm. on Commerce, Justice, State, the Judiciary and Related Agencies of the House Appropriations Comm., 105th Cong. (1997))

- **Navajo Nation Washington Office Executive Director Martin Avery**

"There are virtually no other private attorneys or Navajo Court advocates available for the poor on the reservation. Additionally, the majority of Navajos, including many who are employed full-time, are unable to afford necessary legal services to meet legal challenges. Without DNA-Peoples' Legal Services [the local LSC grantee], many Navajos [would] have no legal representation available."

(Source: Hearings on FY 1998 Appropriations: Hearings before the House Subcomm. on Commerce, Justice, State, Judiciary and Related Agencies of the House Appropriations Comm., 105th Cong. (1997))



It is a measure of the grudging respect that legal services attorneys have earned in conservative Indiana that in 1997, for the first time, the Indiana legislature passed a bill providing \$1 million to be divided among LSOI and the state's various other poverty law programs. While the belated state funding only makes up for a portion of the federal cutbacks, it helps; it is a sign that legal services attorneys' work has won support even in a conservative community.

Former Indiana Bar Association President Joseph O'Connor was among those who successfully lobbied for the new law. "I think it was the worthiness of the cause that overcame people's resistance to it," O'Connor explains. "How can we say our system is equal justice for all, if we deny poor people access to it? Granted, people in Indiana were resistant at first to legal services attorneys. They viewed these folks as wild-eyed radicals out to change all the laws. But over the years, they realized that the legal services people were good attorneys, providing services to people who need them."

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