

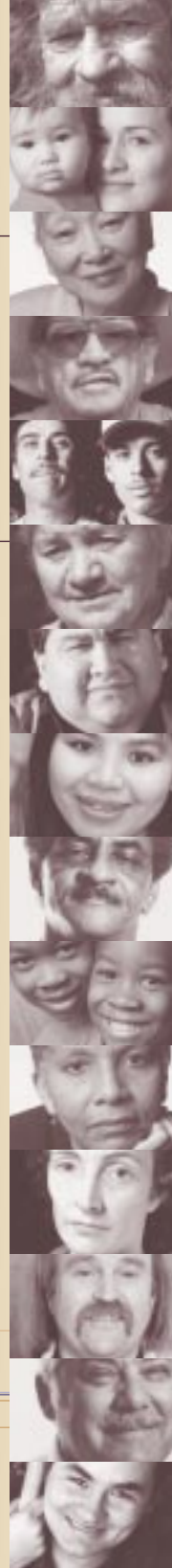
MAKING THE CASE:

LEGAL SERVICES FOR THE POOR

*A Close Look
Through the Lens
of the Maryland
Legal Aid Bureau*


BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW

THE ACCESS TO JUSTICE SERIES



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This paper is the first of 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 Poverty Program's Director, David S. Udell, and Staff Attorney, Kimani Paul-Emile. The following individuals have been consulted as advisors for this series: Bonnie Allen, William Beardall, Martha Bergmark, Ann Erickson, Victor Geminiani, Peter Helwig, Steve Hitov, Carol Honsa, Alan W. Houseman, Esther Lardent, Linda Pearl, Don Saunders, Julie M. Strandlie, Mauricio Vivero, Jonathan A. Weiss and Ira Zarov.

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The first installment of the Center's Access to Justice Series, *MAKING THE CASE* has the ambitious mission of describing the compelling work of our nation's Legal Services Corporation.

Written through the lens of Maryland's Legal Aid Bureau, *MAKING THE CASE* provides a 360-degree examination of many of the inspiring and infuriating aspects of how our nation does, and does not, provide civil legal assistance to its weakest members. It tells a story of history, from the charitable work of lawyers in the late 19th century to the 1974 birth of the Legal Services Corporation to the often besieged institution that exists today. It tells a political story, profiling attacks by foes of legal services, including the highly controversial restrictions Congress imposed on the Legal Services Corporation.

And most importantly, the Access to Justice Series provides readers with personal stories of individuals and communities, often the poorest among us, whose lives are made better by the work of dedicated legal professionals across the nation.

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



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INTRODUCTION



Frederick office of the Maryland Legal Aid Bureau

It's shortly after 4 o'clock on a Tuesday afternoon, and in the 19th-century row house in Frederick, Maryland, that serves as the local office of the statewide Legal Aid Bureau, staffers discuss how to help a retired couple whose landlord is trying to force them out of the federally rent-subsidized apartment where they've lived for the past 15 years. They're in danger of eviction, it seems, because

the couple's new downstairs neighbor has complained that they make too much noise.

"It turns out to be the husband's noise," explains attorney Katherine Jones, who is representing the couple. "It's because of his disability. He uses a cane or a walker to get around."

"How long have the complaining neighbors been downstairs?" asks Debra Gardner, the office's chief attorney.

"Four or five months," Jones says.

"But he's had this disability for years?"

Jones nods. After initially being turned down on her request for a jury trial on the eviction, she's managed to obtain one. In addition, she's filed a Fair Housing Act countersuit against the landlord. The discussion turns to the possibility of a settlement. What if the landlord provided the couple with a first-floor apartment in another building? That might be a benefit to an older person who has trouble getting around, but it would mean being separated from longtime neighbors who give them rides for shopping and medical appointments. What about the expense of moving? And last but not least, as Jones notes, "They really don't want to move. It'd be a big emotional tear."

As Jones discusses the facts, Gardner scribbles a notation onto a log sheet as part of the documentation required by the Legal Services Corporation (LSC), a federally-funded organization that supplies money to underwrite the efforts of the Legal Aid Bureau and nearly 270 other state and local providers of legal assistance to the poor across the nation.

LSC-funded programs handle about 1.5 million legal matters for poor people annually. Here is a sampling of cases handled in recent years by LSC-funded providers around the nation.

- **In Wheeling, West Virginia, an LSC-funded program helped a 47-year-old dialysis patient by preventing officials from cutting off the Medicaid waiver that pays for the treatments and medicine necessary to keep her alive.**
- **In suburban Philadelphia, another LSC-funded program helped a 35-year-old mother obtain protection from an abusive spouse and custody of her children.**
- **In Miami, Florida, thanks to the efforts of an LSC-funded program, a school district was persuaded to enter mediation, resulting in a six-year-old girl with Down Syndrome getting the services she needed to participate in a first-grade classroom.**
- **In Water Valley, Mississippi, an LSC-funded attorney helped an elderly, illiterate woman cancel a mortgage on her home that a con artist had tricked her into taking out.**
- **In Long Beach, California, an LSC-funded program helped tenants of an apartment building with health and safety violations find better housing.**

(Sources: *Congressional Record*, news reports)

For most of its nearly 25 years of existence, the federal program that helps keep Gardner and her colleagues in business has been under continuous attack; its opponents portray LSC-financed lawyers as left-wing ideologues, squandering tax money to file frivolous lawsuits on behalf of drug dealers, illegal immigrants and welfare cheats. If those accusations that LSC provides a lavish \$300-million-a-year subsidy for political activists don't quite jibe with the thrift-store furnishings in the Legal Aid Bureau's Frederick office, neither does the reality of LSC-funded poverty lawyers and their clients.



Maryland Legal Aid Bureau attorney with client

Back at the Frederick office, the discussion turns to the nuances of housing and disability law, and possible courtroom strategy. Then it's quickly on to the next case: A client who's belatedly being dunned by the local housing authority. Years before, the agency had made a small error in calculating the amount the woman was entitled to receive from the federal Section 8 program, which assists low-income people in paying their rents in private apartments. By the time they discovered their mistake, the years of overpayments had amounted to \$10,000. The woman agreed to repay the money. But when she was late with a \$50 installment, the agency wouldn't accept it, and instead terminated her housing benefits completely. "We're talking \$50 out of \$10,000," complains paralegal Kumi Kobayashi, who's handling the case.

Again, tactics are discussed. Did the agency accurately calculate the original error? What documents need to be reviewed for the appeal? "One missed

From Florida to Oregon and from inner-city Chicago to rural Texas, LSC-funded attorneys handle more than 1.5 million cases a year, dealing with a wide range of matters, including housing, employment, government benefits, consumer protection, family law, civil rights, and other issues.

payment shouldn't result in a complete loss of benefits," Gardner says, a trace of indignation in her voice. "Even if that's what the regs technically say. This is an equity and fairness issue."

The afternoon's agenda at the Legal Aid Bureau outpost in Frederick, of course, provides just a tiny glimpse of what LSC-funded attorneys accomplish across the nation. From Florida to Oregon and from inner-city Chicago to rural Texas, they handle more than 1.5 million cases a year, dealing with a wide range



The Legal Aid Bureau's clients include Black housing-project residents in Baltimore, poor Whites in the hills of Western Maryland, Hispanic laborers in the tomato fields and seafood-processing plants of the state's rural Eastern Shore, children in foster care, and elderly nursing-home residents throughout the state.

of matters, including housing, employment, government benefits, consumer protection, family law, civil rights, and other issues.

Indeed, Maryland's statewide Legal Aid Bureau — the fourth largest LSC-funded program in the nation, according to its executive director, Wilhelm Joseph — offers a microcosm of poverty law's diversity. In addition to the Midwestern Maryland office in Frederick, the program maintains 11 other offices around the state. Its 200 staffers, including 97 attorneys, handle upwards of 30,000 cases a year.

"We have a little bit of everything," says Joseph, a veteran of LSC-funded programs in Mississippi and New York. Indeed, Legal Aid's clients include Black housing-project residents in Baltimore, poor Whites in the hills of Western Maryland, Hispanic laborers in the tomato fields and seafood-processing plants of the state's rural Eastern Shore, children in foster care, and elderly nursing-home residents throughout the state.

And just as the clients are diverse, so are their needs. In Frederick, Legal Aid has helped a woman get care for a painful dental condition that prevents her from complying with "workfare" requirements, and has taken up the cause of housing-project residents in a civil rights case. In the Maryland suburbs of Washington, D.C., a Legal Aid attorney guides downsized, former white-collar workers through the

maze of bankruptcy. In inner-city Baltimore, Legal Aid helps protect a mother of two from an abusive ex-boyfriend. On Maryland's agricultural Eastern Shore, migrant laborers cheated out of wages or mistreated by

employers have turned to Legal Aid for help. In western Maryland, a Legal Aid attorney helps a mother obtain a court order to protect a child from the child's abusive father, and represents a nursing-home resident who is resisting transfer to a facility far from her family.

Beyond that, the Legal Aid Bureau, in many ways, illustrates the situation of LSC-funded lawyers across the nation. The Bureau's staffers struggle to cope with low pay — the starting salary for attorneys is \$29,500 a year — and a workload that may mean juggling 70 to 80 different cases at a given moment. They make do without amenities that many private lawyers might consider essential. They must constantly look over their shoulders at political opponents in

their own backyard who are leading the charge to cut off their funding. They're burdened with congressionally-imposed restrictions which prohibit them from using legal strategies and tactics that private-sector lawyers are free to employ, and bar them from representing certain types of impoverished clients completely.

Remarkably, despite those massive hindrances, Maryland Legal Aid attorneys, like their LSC colleagues in communities across the nation, still manage to provide services to thousands of poor people in Maryland, and occasionally win significant legal victories. But pride in those achievements is tempered by the knowledge that because of their limited resources, they're unable to help the 80 percent of Maryland's poor who need legal assistance but can't get it. And beyond that, there's the frustration of restrictions that prevent them from representing clients to the best of their ability, and make it difficult to attack the underlying problems.



Maryland Legal Aid Bureau Executive Director Wilhelm Joseph

A 1994 American Bar Association study showed that at least 40 percent of low- and moderate-income households experience a legal problem each year. Most do not turn to the court system to solve it because they think that the system will not help them.

(Source: *The Washington Post*, February 6, 1994)

THE DEVELOPMENT OF CIVIL LEGAL ASSISTANCE FOR THE POOR

The Legal Aid Bureau's history closely mirrors that of the poverty-law movement in America as a whole. Both existed long before the federal Legal Services Corporation came into being, but were dramatically transformed by the additional resources that federal backing could provide.

Starting in the late 1800s, lawyers in New York and other American cities began to form societies to offer legal assistance to immigrants and other poor people. In Baltimore, the city's Charity Organization Society formed the Committee on Law and Vagrancy, composed of lawyers who donated their services to impoverished clients. But the need exceeded the amount of pro bono help available, and in 1911 charitable organizations formed the Legal Aid Bureau, which opened an office and hired a staff of lawyers — albeit, on a part-time basis — who handled several hundred cases a year on behalf of poor clients.

In 1929, a Baltimore attorney named H. Hamilton Hackney assumed leadership of the organization. Hackney believed that justice shouldn't be a matter of charity, that people should be secure in the knowledge “that their poverty does not necessarily mean that they will be in a position of inequality before the law.” In the 1920s, the right of the poor to have access to civil litigation was a particularly novel notion; it was not until decades later that the U.S. Supreme Court recognized that poor clients had the right to counsel in criminal cases. But Hackney was committed to providing equal access in civil cases, and to that end he

reorganized the Bureau and began lobbying for government support. When the Great Depression hit, Legal Aid's poverty practice mushroomed. By 1932, Legal Aid was providing services to 3,200 clients a year. The organization eventually obtained financial support and free office space from the Baltimore city government, and additional help from the federal government in the form of attorneys paid by the Works Progress Administration.

Some of the legal problems that Hackney's staff took on in those days were surprisingly similar to what lawyers at LSC-funded organizations deal with nearly 70 years later, according to period documents and newspaper articles. Legal Aid attorneys staved off foreclosures on clients' homes, settled landlord-tenant disputes, and helped their clients deal with furniture dealers when they fell behind on their payments. They took employers to court who tried to cheat laborers out of their \$9-a-week wages.

In 1932, such wage cases were the largest portion of Legal Aid's caseload, amounting to nearly 20 percent of the organization's work.

Hackney was also ahead of his time in realizing that taking on clients' problems piecemeal wasn't the most effective way to help. Under his guidance, Legal Aid compiled statistics that illustrated the legal dilemmas of the poor, and it sometimes recommended remedial legislation to further protect their rights. But like other legal service societies of the time, for the next several decades, Legal Aid lacked the resources and clout to effect meaningful change. Three decades later, in 1962,

**FREE LEGAL
AID BUREAU
SETS RECORD**

**First Six Months of
1931 Busiest in its
History, H. Hamilton
Hackney Declares**

*(Source: The Baltimore American,
October 11, 1931)*



the organization was still scraping by on a \$64,000 budget largely gleaned from private charitable contributions; only six lawyers were on staff to cope with the more than 9,000 clients who sought assistance. They managed to get fewer than 600 of those cases to court. Still, by nationwide standards, it was an impressive effort. At the time, private legal aid societies around the nation collectively were able to raise only about \$5 million to represent the poor.

Then, in 1964, Congress passed the Economic Opportunity Act, enabling President Lyndon B. Johnson to launch his War on Poverty program. Johnson administration officials, influenced by a

seminal *Yale Law Review* article by Jean and Edgar Cahn, decided that legal representation for the poor would help further the cause. The federal Office of Economic Opportunity, the command center of Johnson's anti-poverty effort, created an Office of Legal Services, whose first director, Clinton Bamburgher, sought to utilize "the forces of law and the powers of lawyers...to defeat the causes and effects of poverty." By 1966 OEO was pumping \$20 million into 130 local legal services organizations throughout America.

In Maryland, federal officials awarded the Legal Aid Bureau a grant that quintupled its budget, and proposed that the organization open 10 new offices in low-income neighborhoods. That ambitious plan was fought vigorously and ultimately stymied by members of the local legal community (a group that today, in contrast, lobbies just as forcefully for state funding to bolster Legal Aid against the threat of federal cutbacks). With the help of local churches involved in social activism, a compromise was worked out. By 1970, the Legal Aid Bureau boasted an \$800,000 budget (including a \$450,000 federal grant) and used those resources to counsel nearly 22,000 clients.

With the infusion of federal money, Legal Aid, like other programs around the nation, at last had the resources to attack some of the underlying systemic problems that plagued the poor. Legal Aid lawyers still helped clients who had disputes with their landlords or who had been cheated by the fine print in installment plans. But Legal Aid also helped poor people set up welfare-rights organizations to present their views to bureaucrats and legislators, so they might have some input in policy decisions that affected their lives. Beyond that, Legal Aid began litigating to challenge aspects of the system that its clients viewed as unfair. After state welfare officials refused a poor person's request for an emergency grant to obtain furniture, for example, Legal Aid filed a suit on the person's behalf — challenging not just the fairness of that particular denial, but more importantly, whether the system was set up in a way that routinely treated people unfairly. In that case, *Murray v. State of Maryland*, the state's Court of Appeals established a poor person's right to obtain a judicial review of any final decision by the state Department of Social Services — a precedent that gave the poor a much-needed check-and-balance to the power of agency officials over their lives.

Legal Aid And Lawyers

By H. HAMILTON HACKNEY,
COUNSEL FOR THE LEGAL AID BUREAU,

Address Delivered Yesterday Before the "Luncheon Club" of the Bar Association of Baltimore City at the Southern Hotel

We are faced with the dilemma that the machinery of justice can be operated only by attorneys, that attorneys must be paid for their services and that poor persons are unable to pay for them. This means that one of three things must happen. First, that the poor will not get justice, that legal rights will not be safeguarded, and our proud boast that all men are equal before the law is meaningless. This situation under our democratic form of government and in our present stage of civilization is unthinkable. Second, that individual lawyers will have to do charitable work themselves, this is unsatisfactory to all concerned, because it is burdensome to the individual lawyers and especially to the more charitable-minded ones, and furthermore, only scratches the surface of the matter, because the great bulk of poor persons do not go to a lawyer's office asking for free services for which they cannot pay. Third, that an organization will be provided which will hold itself out as being open to all the poor of the city who are worthy, and unable to pay a fee.

(Source: *The Daily Record*, April 1, 1932)

LSC's BEGINNINGS AND STRUGGLES

In the early 1970s, however, the Nixon Administration had begun to dismantle Lyndon Johnson's poverty program, and federally-funded legal services for the poor came under harsh

attack from conservatives. Nixon's vice-president, Spiro Agnew, was the former governor of Maryland, and had faced lawsuits by Legal Aid attorneys on behalf of clients affected by cutbacks in state Medicaid benefits. Not surprisingly, Agnew became one of the OEO Legal Services program's most vociferous critics, denouncing its staff as "ideological vigilantes," and attacking the program as "tax-funded social activism." Conservatives proposed abolishing the federal Legal Services program and giving the funds to state governments to run their own programs. Nixon, however, after consultation with experts, decided to keep the federal Legal Services program, and agreed to the creation of a separate corporation that would be "truly independent of political influences." Nixon and Congress went back and forth for several years over how the corporation's board should be selected, and what restrictions should be imposed upon federally-funded lawyers. But after several years of negotiation and a strong lobbying effort by the American Bar Association, a compromise was reached, and in 1974 Nixon signed into law a bill creating the federal Legal Services Corporation.

To get the bill approved by conservatives in Congress and the Administration, federally-funded poverty lawyers found themselves for the first time facing restrictions on what sort of cases they could accept. At the time, current Legal Aid Executive Director Wilhelm Joseph was a poverty-lawyer in Mississippi, where he challenged towns to pave sidewalks and provide

"...if the laws and the courts are to protect all and impartially, one should not be prejudiced merely because his purse is empty. It is obviously a defect in the system if the justice to be meted out depends to the slightest degree on a man's financial standing."

H. Hamilton Hackney, September 20, 1930

garbage pickups to Black neighborhoods, just as they did for white ones, and sued the state's higher education system for not providing equal funding levels to Black colleges.

"Back then, every major committee in the Senate was headed by a Southerner, mostly segregationists," Joseph notes. "So Congress got Nixon to say that LSC lawyers could not file school desegregation cases. We also couldn't be involved in draft or abortion cases. They didn't want us to have anything to do with organizing, or social protests. And we couldn't be involved in post-conviction civil challenges where we said the jury was not put together fairly." Additionally, LSC-funded organizations were barred from using private funds to undertake any activities not permitted with federal funding, although non-LSC funds were unrestricted.

On the other hand, under LSC, the federal government dramatically escalated its support of poverty law, from \$71.5 million in 1975 to \$321.3 million in 1981. That surge funded both the expansion of existing Legal Services programs, and the creation of new ones in rural areas where poor people previously had little or no chance to find a lawyer. Moreover, LSC-funded lawyers, despite the new limitations, could take on other legal problems on their clients' behalf — and do it on a much greater scale than before, with their increased funding.

In 1974, the same year that LSC began, Charles H. Dorsey Jr. became executive director of the Legal Aid Bureau in Maryland. Dorsey, who grew up in the segregated Baltimore of the 1930s and 1940s, had risen to become the first Black graduate of Loyola College, and the first Black attorney to serve on the state Board



According to a July 1999 Harris poll, 66 percent of Americans believe that federal funding should be provided to low-income people who need assistance in civil cases.

(Source: Legal Services Corporation)

of Law Examiners. Though politically conservative — he was a longtime Republican — Dorsey had a strong sense of fairness. In the words of his brother, he had “an undying belief that poor people were entitled to the same level of legal representation as anyone else in this country.”

Under Dorsey's guidance, Legal Aid — whose budget, with the help of LSC and state grants, had grown to \$12.5 million — expanded to operate 14 offices across the state, and reached out to rural as well as the urban poor. Legal Aid attorneys began to take on bigger cases on behalf of their clients, often aggressively using the tool of class-action litigation. Starting in the late 1970s, for example, they championed the cause of migrant agricultural workers, suing labor camps to improve living conditions and litigating to ensure that growers used available, qualified American workers rather than laborers brought in from other countries. Joining forces with LSC-funded lawyers in Virginia, Legal Aid, between 1983 and 1986 alone, forced growers to pay more than \$2 million in back wages that they owed to workers. In the early 1980s, Legal Aid sued the state's steel industry, negotiating a settlement to eliminate practices that prevented women and minorities from obtaining higher-paying jobs.

Despite the fact that Legal Aid received federal and state government funding, Legal Aid lawyers showed no reluctance to take on government agencies that failed low-income communities. In particular, they

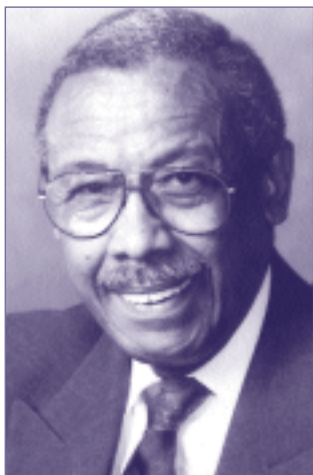
championed the cause of mentally disabled people, who traditionally had been allowed little say in their own lives. In 1979, Legal Aid won a landmark case in the state courts, guaranteeing the mentally disabled the right to have attorneys represent them at commitment hearings. That same year, they won a federal decision, *Johnson v. Solomon*, that compelled mental institutions to regularly review the cases of child patients and determine whether they had improved enough to be released.

President Reagan submitted seven straight budgets without an appropriation for LSC.

Legal Aid attorneys also prevailed in a U.S. Supreme Court case, *Griffin v. Richardson*, which overturned as unconstitutional a federal rule barring children born out of wedlock from receiving their deceased fathers' social security benefits. The victory not only improved the lives of impoverished children in Maryland, but also helped 30,000 children across the nation.

Dorsey, recalls former Legal Aid attorney Ethel Zelenske, saw such litigation as a way not only to help Legal Aid's plaintiffs, but to attack problems that made life more difficult for poor people throughout the state. “It wasn't just that we were allowed to do the big cases back then,” Zelenske says. “We were encouraged to do it.”

But in Maryland and elsewhere across the nation, LSC-funded lawyers' efforts were drawing ire from conservatives. In the 1980s, President Ronald Reagan — who as California governor in the 1960s, had tried to stop federally-funded poverty lawyers from filing suits on behalf of farm workers — sought to eliminate the LSC. Reagan submitted seven straight budgets without an appropriation for the Corporation. Some of the funding was restored by a sympathetic Congress, but even so, in Maryland, the Reagan cuts meant a loss of \$1.2 million in annual funding in 1982. The sudden shortfall forced Legal Aid to cut the number of attorneys in most offices from three to two, and those who remained sometimes were forced to make hard choices about who most needed help. Bankruptcies and disability-benefits cases, for example, had to be turned away, so there would be enough staff to handle child-custody cases where there was risk of harm from an abusive parent. In response, Legal Aid was compelled to turn back to the local community for help.



Former Maryland Legal Aid Bureau Executive Director Charles H. Dorsey



Some LSC-funded programs also receive non-LSC funds, from such sources as court filing fees, state abandoned property sales, state and local appropriations, Interest on Lawyers' Trust Accounts (IOLTA), and personal donations. Also, certain legal services programs in Maryland and other states provide similar assistance with wholly non-LSC funding. In Maryland, approximately \$19 million in non-LSC funds was distributed in 1999 to diverse recipients that included the LSC-funded Maryland Legal Aid Bureau (which received \$2.5 million) and 29 non-LSC-funded programs.

In response, in 1982 the Maryland legislature established the Maryland Legal Services Corporation (MLSC) to provide additional non-federal funding to the Legal Aid Bureau, as well as to support other, smaller non-LSC organizations around the state who helped represent the poor. To come up with the funds to do that, MLSC set up an Interest on Lawyers' Trust Account program (IOLTA), a method used elsewhere around the nation. Attorneys frequently receive and hold sums of money for their clients, such as real estate settlements and awards in personal injury cases; usually, the amount is either too small or held too briefly — sometimes just a few days — to earn any net interest before

it is passed along to the client or paid out on the client's behalf after bank administration fees are deducted. Under MLSC's supervision, thousands of lawyers voluntarily pool these small sums in a few bank accounts. MLSC then collects the substantial interest on those large cumulative accounts — interest that otherwise would never exist — and uses it to fund legal assistance to the poor. "It's a way to turn nickels and dimes into dollars," Arthur W. Machen Jr., chairman of the Maryland Bar Association committee that designed the program, told *The Washington Post* in 1983.

While the IOLTA funds helped, the \$200,000 that Legal Aid received in the first year of the IOLTA program only made up for a sixth of the lost LSC money. Worse yet, Legal Aid and other LSC providers were under another sort of attack by the Reagan Administration. In 1985, after the Washington County Fruit Growers Association complained about the zeal with which Legal Aid represented migrant workers, the LSC management controlled by the Reagan-appointed board sent auditors to Legal Aid, and demanded to see confidential client files. Such disclosure was opposed by the American Bar Association on ethical grounds,

Annual LSC Appropriations 1980 - 1998

Grant Year	Annual LSC Appropriation (\$)*	Percentage Change from Prior Year
1980	300,000,000	11.10%
1981	321,300,000	7.10%
1982	241,000,000	-25.00%
1983	241,000,000	0.00%
1984	275,000,000	14.10%
1985	305,000,000	10.90%
1986	292,363,000	-4.10%
1987	305,500,000	4.50%
1988	305,500,000	0.00%
1989	308,555,000	1.00%
1990	316,525,000	2.60%
1991	328,182,000	3.70%
1992	350,000,000	6.60%
1993	357,000,000	2.00%
1994	400,000,000	12.00%
1995	400,000,000	0.00%
1996	278,000,000	-30.50%
1997	283,000,000	1.80%
1998	283,000,000	0.00%

*Not including special supplemental, emergency, and Veterans Court funds.
(Source: 1998 LSC Fact Book)

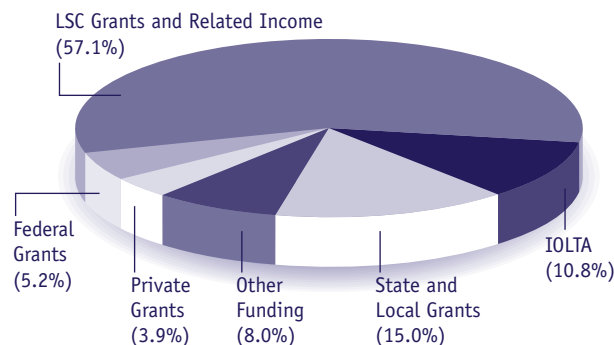


and Dorsey refused to allow it. LSC responded by announcing that it would cut off Legal Aid's entire \$3.5 million federal allocation. Legal Aid responded by filing suit in federal court and obtaining an injunction against LSC, barring the cutoff. The tactics employed by the Reagan Administration were used elsewhere in the nation to intimidate LSC-funded organizations that handled migrant cases. In one instance, the monitoring team sent to Texas Rural Legal Assistance included a former Immigration and Naturalization Service official who had been a defendant in a suit brought by TRLA.

But even as it struggled to fend off Reagan Administration attacks, Legal Aid sometimes irked local politicians and bureaucrats as well with its willingness to take on unpopular causes. Its lawyers filed federal suits that compelled state officials to eliminate overcrowding at the Maryland Penitentiary, challenged restrictions on mail for inmates, and required

safeguards to be taken in the confinement of mentally ill inmates. In 1987, when a state contract with Legal Aid to provide legal representation to the mentally handicapped was up for renewal, then-Governor William Donald Schaefer tried to make the deal contingent upon Legal Aid agreeing not to file any suits against state agencies. Dorsey refused to make such a concession; as the Cahns had noted in the seminal 1964 article, one of the purposes of government-financed legal representation for the poor is to overcome their "lack of leverage" against the sometimes overreaching power of government itself. Ultimately, when Dorsey agreed to give the state 30 days' time to negotiate a settlement before Legal Aid filed suit, the governor backed down on his threat. (Two years later he would make a similar threat to delay state contracts with Legal Aid, after another public interest law firm, the Disability Law Center, filed a suit against the state.)

1997 LSC and Non-LSC Funding — for All LSC Programs



Funding Type	Amount (\$)
LSC Grants and Related Income	304,258,710
Other Federal Grants	27,814,679
State and Local Grants	79,884,074
Private Grants	20,747,857
Interest on Lawyer Trust Accounts (IOLTA)	57,452,515
Other Non-LSC Funding	42,862,053
Total	533,019,888

(Source: 1998 LSC Fact Book)



THE RESTRICTIONS

One particularly sore point for Governor Schaefer was Legal Aid's battle in the mid-1980s to force social services officials to protect foster children in the city of Baltimore from abuse and neglect. To that end, Legal Aid had unleashed a potent legal weapon, one that Congress no longer allows LSC-funded lawyers to use: the class-action suit.

In 1983, Legal Aid attorneys, assisting the state in complying with a federal requirement for periodic reviews of the cases of children placed in foster homes, came across a 9-year-old Baltimore boy who in legal documents and newspaper headlines would become known only by his initials, L.J. Social services officials in Baltimore placed him with a foster mother whom they had failed to adequately screen or supervise. For the six years L.J. was in her care, as he explained to Legal Aid attorneys, she "beat me every day." L.J.'s scars covered virtually his entire body.

Horrifying as L.J.'s case was, Legal Aid's investigation turned up even more shocking ones. One foster mother had no idea how to care for an infant, and tried to feed the baby by chewing up food and then placing it into the child's mouth. In one foster home, a 6 year-old mentally handicapped girl was forced to lick up her own vomit, while in another, the girl's 12-year-old

Legal Aid attorneys uncovered evidence that abuse of foster children was a pervasive problem in Baltimore; of 149 children in the system, 42 had been mistreated by foster parents, and 18 of those cases revealed "a pattern of physical, sexual and emotional abuses."

Maryland's abused foster children weren't, by any means, the only poor Americans to be helped by class-action suits that LSC funded lawyers filed from the 1970s through the mid-1990s. Across the nation, poor people were able to obtain substantial improvements in their lives as a result of class-action suits brought by LSC-funded lawyers.

- In Massachusetts, LSC-funded lawyers prevented the state from cutting off mothers' welfare benefits because the mothers were unable to locate their children's deadbeat fathers.
- In southern California's San Fernando Valley, LSC-funded lawyers sued police for not actively responding to domestic violence cases, and forced a change in department policy.
- In Oregon, "We filed a number of large class-actions against several growers who were basically not paying workers," explains Oregon Legal Services Executive Director Ira Zarov. "In fact, the U.S. Attorney worked with us on several peonage cases in which workers were being treated like slaves. In cases like that, filing an individual lawsuit on behalf of one worker wasn't effective, because the grower could say, 'I'll pay this one person off, and get rid of him.' It's because of class-action cases that the very worst abuses have been controlled here and most of the unscrupulous growers have been replaced by reputable farmers."



State to pay \$595,000 in abuse suit

Settlement reached on child foster care

By Eileen Canzian

Maryland officials have agreed to pay more than half a million dollars to the lawyers who sued the state over the abuse of children in Baltimore's foster-care system as part of a settlement of the nearly 4-year-old lawsuit.

The agreement to pay \$595,000 in lawyers' fees and other expenses was filed in U.S. District Court in Baltimore yesterday along with a federal judge's final approval of a consent decree in the case, the re-

When the restrictions took effect in August 1996, they forced LSC-funded organizations to withdraw from more than 600 class-action lawsuits across the nation.

sister was sexually abused by a foster father who had a criminal record and a history of emotional disturbances. Another child's foster mother neglected to have her treated for a serious medical condition, and as a result, she eventually became blind in one eye.

As Legal Aid attorneys continued to investigate, they uncovered evidence that abuse of foster children was a pervasive problem in Baltimore. At their request, a New York University social work professor who reviewed the cases of 149 children in the system found that 42 had been mistreated by foster parents, and 18 of those cases revealed "a pattern of physical, sexual and emotional abuses."

Though critics have depicted LSC-funded lawyers as eager to file lawsuits, the L.J. case belies the stereotype. Instead, Legal Aid approached state social services officials with its findings, and spent five months trying to negotiate an agreement to remedy the lack of supervision and other systemic problems that endangered Baltimore's foster children. But state officials balked when Legal Aid asked them to sign a consent decree and file it in federal court, which would enable a judge to monitor the state's compliance. Instead, "We were supposed to take it on faith," Legal Aid's lead attorney, William Grimm, told *The Baltimore Sun*.



“The safety net for assuring even minimal levels of access to justice for all Americans is in serious danger of unraveling and tearing apart. The stark facts are that during the past decade of extraordinary economic prosperity for most Americans, funding for programs that serve the legal needs of the poor and near-poor has been relentlessly attacked.”

New York State Bar Association President James C. Moore, in a speech at the National Press Club in Washington, DC, October 1998

If Legal Aid had filed individual lawsuits on behalf of the children, state officials might have dragged the case out for years and years, and even a victory wouldn't likely have remedied the system-wide problems that the state wasn't willing to fix. So instead, in December 1984, Legal Aid — with assistance from the Children's Defense Fund and a local law firm, Whiteford, Taylor and Preston — filed a class-action suit against top state social services officials and 20 case workers in charge of monitoring. The suit not only sought \$15 million in damages on behalf of L.J. and the other four abuse victims, but major changes in the way the foster-care system in Baltimore was run — a remedy that would benefit a class that included all of the nearly 3,000 foster children in the city of Baltimore.

The case dragged on for several years — in part, as the court would conclude, because state officials failed to turn over necessary information to the plaintiffs, and denied the existence of child abuse records that in truth were routinely compiled. Eventually, after hearing testimony from both sides, U.S. District Court Judge Joseph C. Howard in July 1987 ruled that Baltimore's foster children were “at risk of irreparable physical and emotional harm,” and ordered the state to make immediate changes in the system, such as requiring staff to make weekly monitoring visits to foster homes

where there were suspicions of possible abuse. In addition, Howard punished the state for its attempts to hide the child-abuse records by awarding legal fees to Legal Aid and its partners in the suit.

An appeals court upheld Howard's decision, and in 1989, the U.S. Supreme Court declined to hear the state's appeal of another aspect of the case, letting stand lower court rulings that L.J. and the other four identified plaintiffs were entitled under federal law to sue state officials for damages. Faced with the prospect of a trial and a potentially massive judgment against them, state officials finally gave up the fight. Ultimately, they paid \$575,000 to set up a trust fund to benefit the five named plaintiffs; more importantly, they agreed to major improvements in the foster-care system, ranging from smaller caseloads for workers who monitor foster children and specific time-frames for investigating abuse allegations, to special training for foster parents to help them cope with children's emotional problems.

Even Maryland Attorney General J. Joseph Curran, whose office sometimes found itself defending the state against Legal Aid class-action suits, agreed that they were a valuable tool for obtaining justice. “Sometimes Legal Services attorneys best enforce the law by filing class-actions against the state,” he wrote in a 1995 letter to U.S. Rep. Jack Reed, D-Rhode Island.



“Sometimes Legal Services attorneys best enforce the law by filing class-actions against the state.”

Maryland Attorney General J. Joseph Curran

“Although I am happy to say that I believe the state of Maryland has had the better legal position in most of the cases, sometimes we don’t. Government is not infallible. As uncomfortable and irritating as it may be, sometimes it is class-actions by Legal Services lawyers that require the state to do what it is legally bound to do.”

But now, LSC-funded lawyers can no longer do that. In the spring of 1995, around the time that Legal Aid Executive Director Dorsey died of a heart attack at age 64, conservatives in the newly GOP-controlled Congress were moving to achieve what the Reagan Administration hadn’t been able to accomplish — do away entirely with the LSC. LSC’s funding was cut sharply, from \$400 million to \$278 million. (In Maryland, Legal Aid lost \$1.4 million, a 34 percent drop in its federal funding.) The cuts were part of a plan by the GOP House leadership to gradually defund and eliminate the program over a three-year period. (Since then, congressional supporters of LSC twice have managed to stall the second part of the funding phase-out, by amending appropriations legislation on the House floor in 1997 and 1998 to restore funds for LSC.)

In addition, other longtime critics of LSC, who sought to “reform” the program rather than eliminate it completely, succeeded in placing major restrictions on

what LSC-funded lawyers could do. In addition to prohibiting class-actions, they eliminated the collection of attorneys’ fees, rulemaking, lobbying, litigation on behalf of prisoners, representation in drug-related public housing evictions, and representation of certain categories of immigrants. They also barred LSC-funded attorneys from challenging state welfare-reform laws under any circumstances — even if a state measure unlawfully violated a federal statute.

When the restrictions took effect in August 1996, they forced LSC-funded organizations to withdraw from more than 600 class-action lawsuits across the nation. In Maryland, Legal Aid found itself in the frustrating position of monitoring state social service officials to ensure that they actually made the hard-won improvements in the foster-care system required by the L.J. case, but lacking the authority to enforce the L.J. requirements when violations are detected. It is not surprising that LSC-funded lawyers and others see the class-action suit as a potentially powerful tool to correct injustice, one capable of affecting pervasive, permanent solutions — not just for the plaintiffs in the suit, but for large numbers of people who might benefit as well. “It was a powerful tool for all of us,” says Ira Zarov, executive director of Oregon Legal Services. “It’s a shame we can’t use it any more.”

But other restrictions, Legal Aid lawyers say, have been equally as devastating. “The restriction on collecting fees in cases really hurts,” explains Debra Gardner in the Frederick office of Legal Aid. “Not only does it give defendants a windfall that they don’t deserve, but we lose significant leverage. In some consumer-fraud cases, for example, the monetary damages we could win for a single client are often not that great. But if a defendant knows he can be made to pay a lot more in legal fees, that’s a much more significant deterrent.”

Moreover, when a LSC-funded attorney represents an individual in a case, it means there’s one less staff member available to assist other potential clients with their claims. Thus, because LSC-funded lawyers are now prohibited from collecting attorney’s fees, valuable federal, state and private resources cannot be used for their intended purpose, and the wrongdoer is never held accountable to the public for the loss.

After Legal Aid and other LSC-funded organizations were banned from representing prisoners, another poverty-law organization was able to pick up the state contract to provide legal assistance to Maryland’s prisoners. Even so, Legal Aid attorneys note that nobody was hired to replace them as representatives of another group of prisoners — those in jails administered not by the state of Maryland but by the individual counties. Some of the latter are those awaiting trial, and thus, are presumed innocent. The remainder are nonviolent offenders serving relatively short sentences. These individuals have no access to legal representation in their civil litigation disputes. According to Legal Aid attorney Frank Johnson, many of these prisoners still contact him with requests for help in legal matters unrelated to their criminal cases, or complaints about mistreatment. But he can do little except try to find them other representation — usually, a futile task.



Maryland Legal Aid Bureau Chief Attorney Debra Gardner (photo reprinted by permission of the *Frederick News-Post*, photographer Skip Lawrence)

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Debra Gardner



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Maryland Legal Aid Bureau Executive Director Wilhelm Joseph

“We used to assist people in local jails who weren’t getting medical treatment,” Gardner says. “For example, we had a fellow who was in pretrial detention, and he broke his jaw in a basketball game during exercise period. They wouldn’t give him X-rays or even take him to a doctor, until he developed a terrible infection. Even then, they mishandled the antibiotics by forcing him to keep them in his cell, without refrigeration. We got him some help, but today, he’d have no one to turn to. If you’re in jail, you’re basically out of luck.”

The ban on legislative lobbying on behalf of poor clients also came at a particularly inopportune time. Bob Wilbert, chief of Legal Aid’s office on Maryland’s Eastern Shore, and other Legal Aid lawyers were working with the American Association of Retired Persons and other groups to convince the Maryland Assembly to pass a bill that would have helped Marylanders avoid losing their homes in bankruptcies. Maryland and Delaware, Wilbert explains, are the only two states in the nation that don’t offer a homestead exemption. “The way it is, you can only protect \$6,000 worth of assets in Maryland, so if you’ve got \$10,000 equity in your home, you’re out of luck,” he says.

Another Legal Aid attorney, Katharine Jones, wrote the legislation, and Wilbert was set to canvass the halls of the Maryland capitol, armed with examples from his caseload to persuade legislators. “I had a client, a grandmother, who’d co-signed a car loan for her granddaughter, and ended up losing her house. It’s a case of something that most everybody in the state would probably support, except perhaps creditors.” Instead, Legal Aid abruptly was forced to pull out of the effort, which then failed. Though elderly and poverty activists are still trying to pass the measure, Wilbert, to his frustration, notes that “I can’t even provide them with information, unless they ask for it.”

The restrictions are equally galling to Dorsey’s successor as executive director, Wilhelm Joseph, who’s particularly disturbed by the rule that bars Legal Services lawyers from challenging welfare-reform laws on behalf of their clients. “Believe it or not, if a client walks in the door and says, ‘In Maryland, they are implementing welfare reform in a manner that’s unconstitutional,’ we can’t do anything to challenge it.” Filing a constitutional challenge, he complains, “is a right that’s reserved, apparently, for people who have money to sue.”



THE CLIENTS

Legal Services' clients have been stereotyped by the program's opponents as welfare cheats or drug dealers trying to avoid eviction from public housing. In Maryland, however, some Legal Aid offices find that anywhere from one-third to one-half of their clients work. "I've had jobs all my life," explains "C.," a Legal Aid client in Frederick. "I've worked in factories, assembly lines, office work." At age 40, the single mother is working part-time while she, at last, realizes her longtime ambition of earning a college degree in social work. Legal Aid, she says, has helped her keep on track, by straightening out problems with the Section 8 housing benefits that she depends upon to get by.

In suburban Washington, D.C., Frank Johnson notes that many of the people who come to his office for help in filing bankruptcies once were comfortably middle class. "We have people coming in who in the late 1980s were earning \$35-40,000 a year," he says. "Then they got riffed, downsized, laid off, whatever you want to call it. They came back into the workforce eventually, but at much lower paying jobs, and no benefits. And usually they've still got their old debts to deal with."

An increasing number of Legal Aid's clients are elderly nursing home residents. "There are 30,000 of them in Maryland, and 60 percent are on medical assistance, which means they have \$2,500 or less in assets and that all but \$40 of their monthly benefits go to the nursing home,"

Legal Services' clients have been stereotyped by the program's opponents as welfare cheats or drug dealers trying to avoid eviction from public housing.



Maryland Legal Aid Bureau client waits to meet with an attorney



explains Legal Aid attorney Susan Shubin, one of two staffers who specializes in representing nursing home residents. “By definition, they’re financially qualified to be Legal Aid clients. Most of these people have never accessed the social welfare system before, and for them, the voluminous rules are especially bewildering.”

On Maryland’s rural Eastern Shore, Bob Wilbert says, “I’ve had people, other lawyers, say to me, ‘Legal Aid — the only thing you do is help migrant workers sue farmers, and put them out of business,’ I’ve never put anybody out of business, and it’s kind of ironic,

\$38,000 in back wages — more than a year’s wages — that his former employers had unlawfully withheld. During the trial, Gregorio described his humiliation in being unable to provide food for his two children and his pregnant wife. Later, he explained that what was even more important to him than money was the court’s vindication of his right not to be treated contemptuously by his employers.

Then there is “Alice,” whose 14-year-old daughter was physically assaulted by another student at school and suffered a detached retina and other injuries that

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Maryland Legal Aid Bureau Attorney Frank Johnson

because I’ve actually had clients who were farmers — they came to us for help in filing personal bankruptcies.” Wilbert’s usual response is to explain that he spends his workdays helping people obtain rights and benefits to which they’re already legally entitled. “Even if you’re poor or on welfare, you still have the same legal rights as everybody else, but you can’t use your rights unless you can obtain legal representation.” Basically, he sees his role as helping “to level the playing field.”

The experience of “Gregorio,” a client in the Frederick office, underscores the importance of having that sort of help. Gregorio was a stable hand on a horse farm on the Eastern Shore of Maryland. Debra Gardner won a court victory for him, enabling him to get

required extensive medical care. One day, when she went to fill a prescription for her daughter, she discovered that her daughter’s medical assistance benefits mysteriously had been cancelled by the state. “No letter in the mail informing me why, nothing,” she recalls. “I’d call (state officials) and say, what can I do? But I couldn’t get any answers.” She contacted the Legal Aid office in Frederick, where a staffer made calls on her behalf and managed to get the coverage quickly restored. “(Legal Aid) has made the difference in my kids being okay,” she explains. “Dealing with the social services system is extremely complex. But when you have somebody who has legal knowledge in your corner, it immediately changes everything. Otherwise, you’re an ongoing victim.”



LSC's PRESENT CHALLENGES AND UNCERTAIN FUTURE

Given their limited resources,

however, Legal Aid's attorneys say it's increasingly difficult to keep up with the demand. In 1998's contentious budget negotiations, Congress increased LSC funding by 6 percent, to approximately \$300 million. The improvement is illusory, when one considers that it's actually \$21 million less, in non-inflation adjusted dollars, than the government spent supporting poverty law in 1980. In Maryland, LSC-funded lawyers at Legal Aid have been forced increasingly to look

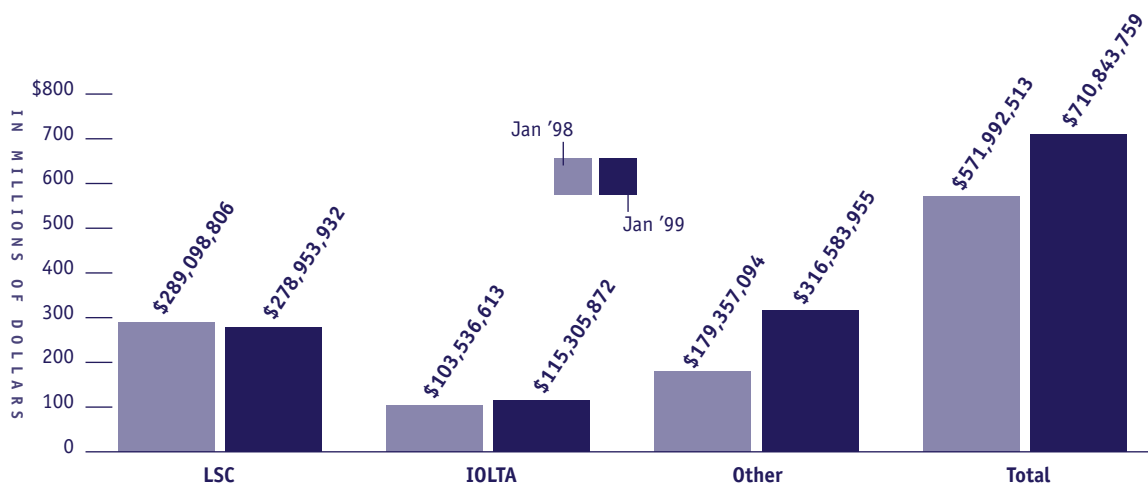


Maryland Legal Aid Bureau's information and referral intake system

elsewhere for support. Legal Aid was cheered when the state legislature this year passed legislation adding a \$2 surcharge to the filing fee in district court, and \$10 in circuit court, to help subsidize poverty lawyers in the state, including Legal Aid. That move, Joseph estimates, will add \$1.2 million to Legal Aid's revenues.

But that gain might be canceled out in the future by the possible loss of IOLTA funds. In June 1998, in a case brought by the conservative

Resources for Civil Legal Assistance Nationally (LSC and non-LSC programs)



This chart provides an approximate overview of revenues available nationally for civil legal assistance, including LSC- and non-LSC-funded programs, as of January 1998, and January 1999. (Source: *The SPAN Update: A Guide to Legal Services Planning 1999*)



In 1997, LSC-funded programs employed about 3,500 attorneys across the nation; they were assisted by about 59,000 private attorneys, the majority of them providing services on a pro bono basis. The programs closed 1.2 million cases and provided services for 1.9 million clients. Even so, the American Bar Association has estimated that collective effort is meeting only about 20 percent of the legal needs of the poor.

(Source: ABA Journal, September 1997)

Washington Legal Foundation, the U.S. Supreme Court ruled by a narrow 5-4 majority that the net interest on clients' funds pooled in IOLTA accounts belonged to the clients, even if the amount of the funds invested was so small or held so briefly that it wouldn't generate any net interest if the client's attorney had deposited the money in a bank separately. The actual impact of the decision is unclear, because the high court stopped short of deciding whether use of such funds was a government "taking" of property barred by the Fifth Amendment, or what, if any, compensation clients might be entitled to. Even if IOLTA remains legal, according to the most recent figures, the amount of revenue from the accounts has dropped, in part because of lower interest rates, from \$5.2 million in 1992 to \$3.7 million in 1997. Moreover, in Maryland, the IOLTA funds are subject to the same set of restrictions, described above, that circumscribe the uses for LSC funds.

Legal Aid attorneys, like their LSC-funded counterparts elsewhere in the nation, also still worry about politicians in their backyards who want to zero out LSC completely. Legal Aid's Frederick office is in the district of Republican Congress member Roscoe Bartlett, one of 27 conservative members to sign a manifesto urging the elimination of the "reckless and

irresponsible" LSC. "The Legal Services Corp. is a corrupt agency that is saddling future generations with billions of dollars of debt and entangling millions of Americans in a cycle of government dependency," Bartlett and the other members wrote. "In this deficit-conscious Congress, we should not be forced to make deep cuts in other programs in order to pay for the incalculable costs of this agency."

In the Frederick office, the resources available to provide legal aid for the poor are hardly "incalculable." Gardner notes that neither the congressman nor his staff has ever ventured into her office, where only four of the six phone lines are in good working order. "We've got static on the other two — I think the rats have been gnawing on them." One mitigating factor: clients themselves often don't have phones. Indeed, attorneys and paralegals have to depend on neighbors to give them messages about court dates or documents that need to be filed; otherwise, they have no choice but to wait until the clients show up again at the front door.

Bartlett and other opponents have claimed that LSC-funded lawyers could be replaced by private attorneys who donate their services. Yet they ignore the fact that Legal Aid lawyers such as Frank Johnson already steer clients to privately funded attorneys — pro bono



lawyers and public interest lawyers in non profit firms — whenever they can find one. Even in Maryland, a state with numerous pro bono organizations, there isn't enough free representation available. Winifred Borden, executive director of the Maryland Volunteer Lawyers Service, the state's largest pro bono organization, has nearly one-tenth of Maryland's 20,000 attorneys in her database, but only about 600 actively take on cases. A client may have to wait three to five months for pro bono representation in a child-custody dispute or a bankruptcy action, two types of cases that few volunteers have the willingness or expertise to handle. "In those areas, the demand is huge," she says. "There certainly are people who we end up turning away."

In other states around the nation, finding representation can be much more difficult. "If every lawyer in the state took three divorce cases, I still wouldn't be meeting the requests for services," Phyllis Thornton, executive director of the Mississippi Bar's Volunteer Lawyers Project, told the Memphis Commercial Appeal in 1997. "We have over 15,000 requests for lawyers a year In reality, we complete about 1,500 cases."

Even if private attorneys were willing to volunteer their services, they may not necessarily be well versed

in the intricacies of Section 8 housing benefits or Medicaid regulations, or other legal problems that poor people encounter. "The Legal Services Corporation provides something that is very special," U.S. Rep. Elizabeth Furse, D-Oregon — herself a former attorney for the Native American Program of Oregon Legal Services — told her House colleagues in 1996. "It provides special expertise that is not available if someone just goes out and seeks a random pool of pro bono lawyers."

Moreover, the additional non-profit organizations that provide legal representation to the indigent without LSC funds (i.e. with IOLTA and other funds) also are unable to address sufficiently the needs of the estimated 1,000,000 low-income individuals residing in Maryland. This is so despite the fact that Maryland has 29 such organizations and has more non-LSC funding for legal representation for needy individuals and families than any other state in the nation. Robert Rhudy, the head of the state organization responsible for administering non-LSC funds to legal services providers throughout the state, estimates that even with all the non-LSC funding made available in Maryland, less than one-third of those eligible receive necessary legal assistance.



CONCLUSION

Unless Congress experiences a change of heart on

LSC funding and restrictions, it's likely that Legal Aid and other legal services lawyers across the nation—whether funded by LSC or by revenues from other sources — will continue to struggle to meet an impossibly large need. What keeps them at it? “Being inspired by the clients,” Gardner explains. “I don’t know if I could go through the kinds of things these people have to go through. It makes you see things in a different light.” Recently-hired paralegal Kumi Kobayashi, who calls herself “the perky phone voice” of the Frederick office, has a particular insight into their circumstances. She first came to the Bureau a year and a half ago as a young single mother, struggling with local social services officials who’d denied health care benefits to her infant son. When a Legal Aid staffer was able to straighten things out with a few phone calls, Kobayashi came away impressed. “Getting \$113 in benefits for someone may not seem like much,” she admits. “But when you’re poor, that can change your whole life.”



Maryland Legal Aid Bureau Paralegal Kumi Kobayashi (photo reprinted by permission of the *Frederick News-Post*, photographer Skip Lawrence).

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