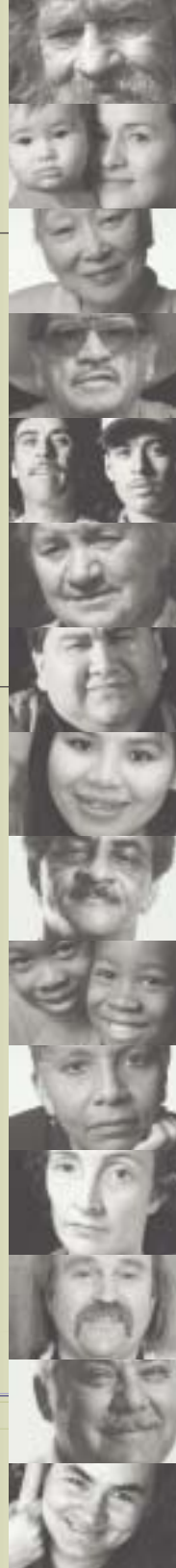


HIDDEN AGENDAS:

# WHAT IS REALLY BEHIND ATTACKS ON LEGAL AID LAWYERS?



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The Brennan Center for Justice at NYU School of Law unites thinkers and advocates in pursuit of a vision of inclusive and effective democracy. Our mission is to develop and implement an innovative, nonpartisan agenda of scholarship, public education, and legal action that promotes equality and human dignity while safeguarding fundamental freedoms.

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## About The Access to Justice Series

This paper is the seventh in a series issued by the Center illuminating the accomplishments of legal services programs throughout the country, and documenting the impact of restrictions recently imposed by Congress on the federally funded Legal Services Corporation. It is the result of extensive investigative reporting by award-winning journalist Patrick J. Kiger in close collaboration with the Brennan Center's Laura K. Abel, Elisabeth S. Jacobs, Jobina Jones, Leena Khandwala, Ilana Marmon, Kimani Paul-Emile, Amanda E. Cooper, and David S. Udell. The following individuals have been consulted as advisors for this series: Bonnie Allen, William Beardall, Martha Bergmark, Ann Erickson, Victor Geminiani, Peter Helwig, Steve Hitov, Carol Honsa, Alan W. Houseman, Esther Lardent, Linda Perl, Don Saunders, Julie M. Strandlie, Mauricio Vivero, Jonathan A. Weiss and Ira Zarov.

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HIDDEN AGENDAS:

# WHAT IS REALLY BEHIND ATTACKS ON LEGAL AID LAWYERS?



The seventh installment of the Access to Justice Series, *Hidden Agendas: What Is Really Behind the Attacks on Legal Aid Lawyers?* shines a bright light on the organizations and individuals responsible for imposing funding cuts and restrictions on civil legal aid lawyers, particularly on those in programs receiving federal funds from the nation's Legal Services Corporation.

These cuts and restrictions directly harm individuals and families unable to afford private counsel, but it is not immediately obvious why anyone would wish these vulnerable people ill. After all, civil legal aid programs have historically represented people for whom many Americans feel tremendous empathy: individuals and families being evicted, deported, exploited by employers, victimized by domestic violence, denied governmental benefits, cheated through consumer fraud, denied fair wages, and more.

So, who is trying to take away the lawyers and deny the vulnerable poor their day in court? It is a narrow band of very aggressive advocacy groups closely allied with agribusiness interests and the Religious Right. Those with the highest profile include the American Farm Bureau Federation, the Christian Coalition, the Conservative Caucus, the Family Research Council, and the National Legal and Policy Center.

Why attack legal aid? These groups say that legal aid pursues a left-wing agenda and helps immoral people, but the attackers' true agenda is to relax legal protections for workers and to impose the attackers' particular vision of correct morality on the entire society. This article reveals these motivations, and, more profoundly, illuminates the importance of preserving access to justice, not only for the most vulnerable members of society, but for us all.

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



HIDDEN AGENDAS:

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**Where do low-income Americans — including** abused women and children in Oregon, elderly victims of consumer fraud schemes in Tennessee, and farm workers cheated of their wages in Florida and Maryland — turn when they have serious legal problems and cannot afford to hire a lawyer? Each year, more than a million individuals turn to legal aid lawyers at the over 200 independent non-profits nationwide that receive federal funding from the Legal Services Corporation



Paul Weyrich (Terry Ashe/TIME/TimePix, reprinted with permission)

(LSC). Although these advocates make a profound difference in many people's lives, since the inception of LSC in 1974 the lawyers have been under nearly continuous attack from enemies who consider LSC an outrage and demand that it be shut down.

Critics denounce LSC as a program run dangerously amok, a haven for ideologically-driven lawyers who use public funding to further their own aims, rather than to help low-income people. The critics accuse LSC-funded

lawyers of promoting divorce and homosexuality, helping drug dealers, and putting farmers out of business. One critic, Howard Phillips of The Conservative Caucus, complains to Congress that the lawyers are "imbued with a neo-Marxist ideology of class warfare and socialist objective." Another critic, Kenneth Boehm, whose National Legal and Policy Center (NLPC) pumps out magazine articles and press handouts called *Legal Services Horror Stories*, asks, "Are [legal aid lawyers] really representing the poor, or are they pursuing their own political agenda?" Yet another attacker, Family Research Council (FRC) President and sometime United States Presidential candidate Gary Bauer, declares, "[LSC is] a taxpayer-funded deep well for anti-family litigation." Harry Bell, a board member of the American Farm Bureau Federation (Farm Bureau), likewise denounces LSC as "an unproductive and unnecessary expense for the federal government." One particularly vehement critic, political fund-raiser and activist Paul Weyrich, goes so far as to describe LSC as "among those government organizations most harmful to our society."

Attacks such as these have inflicted major damage: LSC's critics mounted a well-financed, highly organized publicity and lobbying effort, and it worked. In 1995, the critics convinced Congress to slash LSC's appropriation from \$400 million to \$278 million, as part of a plan to eliminate the program completely over a three-year period. Thanks to energetic efforts by legal aid supporters, the organized bar, and sympathetic members of Congress, LSC's life has so far been spared, but just barely. Today, LSC struggles with an appropriation of just over \$300 million. Even without adjusting for inflation, that is less than the program had at its disposal in 1981. When the figure is adjusted for inflation, it is less than half of the 1981 allocation.

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## Howard Phillips

Howard Phillips is one of LSC's most dedicated foes. While he was the director of the Office for Economic Opportunity under President Nixon, Phillips nearly succeeded in entirely eliminating federal funding for legal aid. In the following decades, Phillips has drifted away from mainstream conservatism and founded a radical third party, currently called the Constitution Party, which is based on the belief that "the U.S. Constitution established a Republic under God, rather than a democracy."

The following excerpts from Phillips' September 2000 acceptance speech for the Constitution Party's Presidential nomination, which included a call for the abolition of LSC, illuminate the views of this vociferous LSC critic:

[O]n Day One, as President of the United States, I will officially acknowledge the legal personhood of the unborn child, and appoint — by recess appointment, if necessary — new United States Attorneys who will make it their top priority to work with state and local officials in prosecuting and closing down every abortuary within their jurisdictions.

\*\*\*

[T]he bipartisan Washington political establishment ignores the prohibition on Congress funding any establishment of religion, looking the other way as Congress doles out scores of billions of dollars annually to organizations whose religion is abortion, whose religion is sodomy, whose religion is environmentalism, whose religion is humanism, whose religion is the overthrow of Western Christian civilization.

\*\*\*

There is absolutely nothing in the Constitution of the United States which authorizes the Congress to either regulate or restrict your right, and my right, to keep and bear arms, and when we assume office, all such restrictions will be declared null and void because they are in conflict with the plain text of the Constitution.

\*\*\*

We will abolish the Federal Election Commission. We will eliminate all ceilings on individual contributions.

As faithful stewards, it is our duty to immediately withdraw the United States from all institutions which challenge and undermine the American system of sovereignty and accountability — and that includes the United Nations, the International Monetary Fund, the World Bank, NAFTA, the World Trade Organization, the Asian Development Bank, the InterAmerican Development Bank, the European Bank for Reconstruction and Development — and, yes, the Federal Reserve.

\*\*\*

[A]s President, I pledge to you that I will veto all further funds for the Internal Revenue Service. I will work to repeal the Sixteenth Amendment, and I will strive to persuade Congress that there should be no direct taxation whatsoever by the Federal government on the American people, with revenues instead to be derived by excises, imposts, duties and apportionment among the states.

\*\*\*

It is to defend the sovereignty of God that we oppose the surrender of tax dollars and policy control to the institutions of the New World Order. . . . The Constitution Party of the United States is ready to oppose any usurpation and to resist all tyranny on the cusp of the 21st Century . . . .

Phillips' presidential nomination acceptance speech goes on to condemn not only Al Gore and Bill Clinton, but also prominent Republicans including Newt Gingrich, Bob Dole, Trent Lott, Dennis Hastert, and "the overwhelming majority of the Republican members of the U.S. Senate."

(Source: <<http://www.constitutionparty.com>>)



In addition, Congress imposed rules in 1996 that banned LSC-funded lawyers from using basic tools of litigation that all other lawyers can use for their clients. For example, LSC-funded lawyers can no longer file class-action suits, lobby legislators on behalf of clients, challenge welfare laws, or collect attorneys' fees awards that judges order their clients' opponents to pay. The fees award restriction, LSC-funded lawyers say, is one of the worst hindrances, because the threat of a fees award is often helpful in deterring wrongdoers from engaging in harmful acts, and because it also provides negotiating leverage that can enable clients to obtain settlements in strong cases without going to trial unnecessarily. Another harmful restriction prevents LSC-funded lawyers from even reaching out to offer legal aid to potential clients. "It's frustrating," explains Bob Wilbert, a lawyer with the Legal Aid Bureau in Maryland, an LSC-funded program. "There are people we used to be able to help. But we can't help [them] now."

Given that legal aid lawyers help individuals and families whose needs are often desperate, it takes some digging to understand why critics would want to attack the lawyers. In many cases, the outraged and righteous rhetoric of the attackers obscures an agenda that many Americans would find troubling or even deeply unsettling. The Farm Bureau attacks LSC out of financial self interest, because it believes that LSC lawyers interfere with profits that come at the expense of low-income Americans. The NLPC directly attacks the clients themselves, particularly immigrants, welfare recipients, and gay men. The Religious Right attacks LSC as part of a world view that it seeks to impose not only on low-income people, but on everyone.

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## Who are the attackers?

**American Farm Bureau Federation:** The "Farm Bureau" and its various state divisions comprise the nation's biggest farm lobby, and together they spend millions influencing Congress and promoting policies that benefit agribusiness, sometimes at the expense of family farmers. The Farm Bureau does not want legal aid lawyers to sue on behalf of farm workers who have been cheated out of their wages or mistreated.

**Christian Coalition:** A longtime foe of LSC, it recently has backed down from its opposition to the program — partly because the Christian Coalition has plenty of its own problems, such as declining money and membership, to worry about, and also because of increasing recognition that many religious organizations support civil legal aid for the poor.

**Conservative Caucus:** Founder and ex-Nixon Administration official Howard Phillips has espoused the abolition of federally funded legal aid since LSC's inception. Phillips left the GOP because it was too moderate for his tastes, and he later formed a far-Right party that seeks to impose a religion-based government on the United States.

**Family Research Council:** Led by former Reagan Administration official and unsuccessful Presidential candidate Gary Bauer, the Family Research Council is continuing the fight that the Christian Coalition abandoned. If the Family Research Council had its way, low-income women would be denied the opportunity to obtain divorces with the assistance of legal aid lawyers.

**National Legal and Policy Center:** Founder and former LSC official Kenneth Boehm was fired by LSC because he did not support the existence of the program he was being paid to represent. The National Legal and Policy Center issues Horror Stories about LSC-funded programs that often are thinly-veiled attacks on low-income people.



# THE FARM BUREAU

**Attacks on legal aid lawyers seem particularly** misplaced when directed at those performing the difficult work of protecting vulnerable migrant workers from unscrupulous employers who pay illegally low wages and maintain dangerous workplaces. The workers' needs are often compelling at a fundamental human level. In Maryland, for example, a Hispanic immigrant stablehand's employers unlawfully withheld more than a year's worth of his wages, leaving him unable to provide food for his two children and pregnant wife. In California, a flower grower held dozens of Mexican immigrant laborers in virtual slavery on his property. In both of these cases, LSC-funded lawyers came to the rescue, helping the workers by suing to correct dangerous working conditions and to obtain back wages. In the case of the flower grower, the lawyers also obtained both \$1.5 million in damages for the laborers and the grower's conviction on racketeering, labor and immigration law charges.

Of course, enforcing workers' rights can cut into the profits of those employers who count on making money by breaking the law. And over the years, enforcement efforts by legal aid lawyers have not pleased big agribusiness which, in the form of the Farm Bureau, the nation's biggest farm lobby, has been one of the most intense opponents of LSC.

Founded in 1919 as a conservative alternative to progressive farming movements such as the Grange, and long an important source of insurance and social contact for farmers across the country, the Farm Bureau

has built itself into a formidable force on Capitol Hill. In 1998, according to the Center for Responsive Politics, the Farm Bureau spent \$4.6 million and employed 17 registered lobbyists on its staff to try to influence Congress. The Farm Bureau is also a potent force in state politics, with 2,800 county chapters.

For several decades, LSC — or rather its elimination — has been one of the Farm Bureau's hot-button issues. In the 1960s, lobbyists from the California Farm Bureau, a Farm Bureau member, urged then-California Governor Ronald Reagan to put a stop to California Rural Legal Assistance, whose LSC-funded lawyers were representing farm laborers. In 1978, the Farm Bureau passed a resolution demanding that the federal government abolish LSC and replace it with a system under which low-income people would receive vouchers that they could use to pay private lawyers. In practice, that might have made it difficult for a farm worker to find any lawyer without a conflict of interest and with the expertise and willingness to take on big, powerful, local agribusiness.

In the early 1980s, the Farm Bureau joined forces with the Conservative Caucus, the Moral Majority, and other groups in a campaign to eliminate LSC. A key complaint was that legal aid lawyers educate farm employees about their rights and help them take group action to enforce those rights. In a 1980 letter to the Chairman of the House Judiciary Committee, for example, the Farm Bureau argued that LSC should be completely defunded, citing reports that "Legal Services attorneys . . . are

**A key [Farm Bureau] complaint was that legal aid lawyers educate farm employees about their rights and help them take group action to enforce those rights.**



soliciting business and stirring up controversy particularly among migrant and seasonal farm workers.”

Of course, because LSC-funded lawyers assist clients with many categories of cases, eliminating LSC would do far more than insulate Farm Bureau members from lawsuits by exploited farm workers. For example, it would rob low-income tenants of the means to ensure that their landlords provide safe living conditions, it would leave elderly people without recourse against unscrupulous businesses that prey on them, and it would leave many victims of domestic violence without recourse against their attackers. But in its zeal to guard its members from the requirements of the labor laws, the Farm Bureau did not hesitate to endorse this drastic measure.

### **Farmworkers often need legal representation in connection with:**

- “[V]iolations of recruitment promises and disputes over wages, working conditions, wrongful terminations, and the job contract”
- “[M]isrepresentations in recruitment that are actionable under the Migrant and Seasonal Agricultural Worker Protection Act”
- “Legal claims involving transportation reimbursement, unpaid wages, . . . blacklisting and retaliation”
- “[J]ob injuries, and other health and safety issues . . . [including] improper use of pesticides”
- Inadequacy of employer-provided housing
- “[P]roblems obtaining workers compensation benefits”
- Violations of employers’ obligations to offer contract workers work or wages for at least 3/4 of the contract period
- “[F]ailure to pay end-of-season bonuses”

(Source: LSC, Erlenborn Commission Report, 1999)

When efforts to abolish LSC stalled in the mid-80s, the Farm Bureau shifted tactics. In 1989, working as part of a group called the Legal Services Reform Coalition, the Farm Bureau backed a proposal by Rep. Charles Stenholm, D-Texas, and Rep. Bill McCollum, R-Florida, to prevent LSC-funded lawyers from assisting certain clients and taking certain types of cases. Among the proposed restrictions were several that would have made it much more difficult for migrant workers using federally funded legal aid lawyers to assert their rights. One would have required migrant farmworkers represented by a federally funded legal aid lawyer to jump through a time-consuming series of administrative hoops, and to go to mediation, before asserting employment rights in court. The restrictions also would have barred legal aid lawyers from ever going to migrant camps without a “documented request” for help. This would have made it difficult for the lawyers to educate potential clients about their legal rights, and even to tell the clients about the lawyers available to represent them at no cost.

Another proposed restriction—prohibiting LSC-funded lawyers from collecting attorneys’ fees awards from private adversaries—was less obviously targeted at farmworker representation. It stemmed from Farm Bureau complaints about cases in which legal aid lawyers successfully obtained court-ordered fees awards from farmers who violated the law. Courts customarily order attorneys’ fees awards in such cases to deter wrongdoers from breaking the law. And fees awards also have the virtue of shifting the cost of law enforcement from the taxpayers, whose taxes finance LSC, to the wrongdoers themselves. The Farm Bureau often complains that taxpayer dollars should not fund LSC, but it apparently also believes that the wrongdoers whose harmful acts necessitate legal aid lawsuits should not fund it either.

Although the Farm Bureau lobbied long and hard to impose the Stenholm-McCollum restrictions on LSC, the restrictions were defeated shortly after they were proposed — in part, because a U.S. General Accounting Office investigation failed to substantiate the Farm Bureau’s accusations that LSC-funded lawyers had committed any abuses in representing farm workers.

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At the same time, the Farm Bureau demanded a say in the composition of LSC's board. In 1989, the Farm Bureau, along with other LSC opponents, pressured the White House into killing the board appointment of former Rep. M. Caldwell Butler, R-Virginia, whose commitment to restricting the work of LSC-funded lawyers they doubted. In 1990, the Farm Bureau also took steps to force LSC Board Vice-Chairman John Erlenborn, another former Republican member of Congress, this time from Illinois, off the LSC Board. Erlenborn had declined to endorse certain legislation that would have restricted LSC's representation of migrant workers, explaining that because his Chicago-based law firm represented agricultural clients, he would need to remain neutral on the issue to avoid a conflict of interest. But the Farm Bureau refused to take "no" for answer. As Erlenborn later recounted in a newspaper interview, "The Farm Bureau went to clients of this law firm and approached them saying, 'The law firm to whom you give a lot business has as a partner, John Erlenborn, who is not helping us.' The obvious implication being: take your business away from the law firm." Faced with causing his firm to lose business, Erlenborn resigned from the LSC Board in 1991. (In 1995, President Clinton reappointed him to the Board, where he again serves as vice-chairman.)

The Farm Bureau continued to oppose LSC during Congressional hearings in the early 1990s, but to no avail. However, after the GOP takeover of Congress in 1994, the Farm Bureau again pushed to eliminate LSC. The plan called for replacing LSC with a program of block grants to state governments, which would supposedly then set up their own systems for providing legal aid to the poor. Rep. George Gekas, R-Pennsylvania, introduced a bill to prohibit lawyers funded through the block grants from using any federal funds in cases

involving housing and employment discrimination, consumer fraud and defective products, utility shutoffs, patients' rights, adoptions, welfare benefits, and constitutional challenges to any statute. "We urge you to oppose any effort to add to the bill provisions allowing causes [of action] related to employment law, constitutional challenges, and consumer fraud," then-Farm Bureau President Dean Kleckner wrote in a letter to a member of Congress in 1995.

Although the block-granting proposal was eventually defeated, the Farm Bureau was partially successful in 1996, when Congress slashed funding for LSC and imposed restrictions on many of the activities that the Farm Bureau had complained of, including representing undocumented workers and collecting attorneys' fees awards from unsuccessful opponents.



Former American Farm Bureau Federation President Dean Kleckner (AP/Wide World Photos, reprinted with permission)

Many of these restrictions have had surprising effects. The undocumented worker restriction, for example, has ended up hurting *documented* workers. As Gregory Schell, managing attorney of Florida Legal Services' Migrant Farmworker Justice Project, explains, when LSC-funded providers are prevented from representing undocumented workers, "employers' perverse response is to make sure that they do not hire any documented workers" so that their employees cannot use legal aid lawyers to enforce their rights.



Additionally, many of the new restrictions harmed individuals other than farmworkers. For example, the restrictions prevented undocumented battered women from obtaining LSC-funded legal help in actions against their abusers. After one woman died when she was unable to obtain emergency assistance from a legal aid office, Congress immediately passed an amendment permitting legal aid lawyers to undertake the narrow category of cases on behalf of undocumented battered women.

The rest of the restrictions remain in place, but the Farm Bureau has given no sign that it is satisfied. In a 1997 position paper, for example, the Farm Bureau continued to take the position that LSC should be eliminated altogether and replaced by block grants to the states that each state could use as it sees fit.

In these battles, much of the Farm Bureau's political clout has come from its oft-repeated claim that it provides the voice for almost five million farm families "joining together to solve common problems." The majority of Farm Bureau members, however, are not family farmers. Rather they are the policyholders of more than fifty Farm Bureau-affiliated insurance companies with no particular ties to agriculture or farming. Indeed, the U.S. Department of Agriculture estimates that only about one million Americans are actually full-time farmers.

The Farm Bureau's bloated farm family membership claim masks both its strong financial ties to agribusiness and its promotion of a political agenda which favors industrialized agriculture over the pressing needs of family farmers. The Farm Bureau's empire of insurance, mutual fund and banking companies is heavily invested in giant agricultural corporations, as well as in the tobacco, oil, automobile, chemical and pesticide industries. These investments generate billions of dollars in annual revenues for the federal, state and county farm bureaus.

One example of farm bureau links to agribusiness is through FBL Financial Group. Originally started by the Iowa Farm Bureau to provide insurance to its members, it has now grown into a \$3.5 billion corporation. It not only sells insurance through Farm Bureau chapters in fourteen states but also invests in agribusinesses such as ConAgra, a Nebraska food company that markets over 70 food brands, including Blue Bonnet, Orville Redenbacher's and Swiss Miss. In 1998, ConAgra had over \$23.8 billion in sales. FBL's investment in

## **Non-citizen farmworkers have a particularly difficult time obtaining legal representation from non-legal aid lawyers:**

- "The migratory and isolated nature of alien farmworker populations makes them extremely difficult for private attorneys to represent. . . . [C]lients generally cannot be accessed by phone or fax, clients may not be able to communicate in writing, and interviewing a client or obtaining or preparing documents may require multiple visits in person to the worker's location."
- "Spanish speaking attorneys are rare, and for attorneys who do not speak Spanish, representing farmworker clients is unfeasible. . . . Many states in the southeastern United States where farmworkers are common lack a significant Spanish-speaking bar."
- "Fees on wage and hour cases, farm labor safety cases, and many workers compensation cases are too low relative to the time needed to resolve the case for most private attorneys to litigate."
- "Alien farmworker representation is . . . compromised by the lack of private attorneys in rural areas. Georgia, for example, has several rural agricultural counties with fewer than five practicing lawyers, and at least one such county with no attorney at all."
- "Private attorneys who engage in the most pro bono work are located in large firms in major cities . . . . The few attorneys who do reside in locations where farmworkers are likely to live and work generally represent agricultural employers and are conflicted out of representing farmworkers."
- "[T]he availability of legal assistance from non-LSC funded, non-profit organizations is limited. . . . Many important agricultural states, such as Arkansas, Kentucky, New Mexico, and Texas have no such entities. . . ."

(Source: LSC, Erlenborn Commission Report, 1999)



ConAgra not only benefits the Iowa Farm Bureau, but it also directly benefits farm bureau leaders across the country. Members of FBL's Board of Directors, among them the heads of the state farm bureaus in Iowa, North Dakota, Kansas and Oklahoma, each receive approximately 1% of FBL's stock. This translates into hundreds of thousands of dollars in stock options for farm bureau leaders, which become more valuable when FBL's agribusiness holdings do well.

These financial ties may explain why the Farm Bureau lobbies aggressively for public policies which favor agribusiness at the expense of small farmers. One case in point is the Farm Bureau's strenuous opposition to national legislation that would put a moratorium on the agribusiness mergers that are squeezing out family farms. Another example is the accusation made by farmers in Iowa that the Iowa Farm Bureau recently spent more time lobbying the Iowa legislature to bail out a bankrupt airline in which it was invested than pushing for much-needed low-interest loans to struggling farmers.

The concerns of many American farmers are articulated by Ron Thorson, a Farm Bureau critic who comes from a farm family and hosts a radio show in rural Illinois. Thorson told a *60 Minutes* interviewer in 2000 that Farm Bureau lobbyists are "sure happy to come to the aid of agribusiness when they need something. But when the American farmer needs some relief, where are they?" Perhaps it is not surprising then, in light of the Farm Bureau's activities, that shortly after the *60 Minutes* piece aired a coalition of over 180 farm and environmental groups called for a congressional investigation into the Farm Bureau's financial dealings and special tax status.

The Farm Bureau's opposition to LSC is unfortunately another glaring example of a policy that serves the interests of agribusiness, not those of small farmers. Enforcement of workers' rights does not have much impact on most small farmers, who generally rely on family labor, not paid labor. But destroying LSC would have a large and adverse impact on small farmers, who

often need legal aid lawyers to help with farm-specific problems such as negotiating with entities that buy farm products, negotiating with creditors, understanding and complying with environmental laws, obtaining insurance proceeds when crops are destroyed by droughts or other natural disasters, engaging in real estate transactions, and fighting foreclosures. And of course small farmers also rely on legal assistance for the whole range of family law, consumer and other issues shared by non-farmers. It can be particularly difficult for small farmers to get help from non-legal aid lawyers for any legal problems that involve highly specialized areas of the law, especially since local lawyers often represent the farmers' creditors and are consequently conflicted out of representing the farmers.

Farmers, who are two times as likely as the rest of the population to be poor, can often qualify for assistance from legal aid offices. Legal aid offices that have stepped up to address farmers' needs include the LSC-funded Appalachian Research and Defense Fund in Kentucky, which has helped farmers enter into bankruptcy and restructure loans from the federal Farmers Home Administration. In Virginia, the LSC-funded Virginia Legal Aid Society has helped several farmers forestall bank attempts to foreclose on their farms. In Michigan, the Southwest Michigan Migrant Legal Council has held seminars for farmers on how legal aid can help them.

This assistance is part of a long tradition of legal aid offices helping family farmers. In the early 1980s, LSC conducted a Congressionally mandated study regarding the needs of the rural poor. As a result of the study, LSC gave a grant in 1981 to the Center for Rural Affairs to produce the *Farm Loan Handbook*, which has served as an invaluable resource for family farmers. In 1986, the LSC-funded Legal Services Corporation of Iowa established its Farm Project, which has represented family farmers in dealings with government and private creditors.

The Farm Bureau's key role in pushing through the 1996 funding cuts and restrictions on LSC has ultimately hurt small farmers, who, like other legal aid

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clients, are finding it harder than ever to get a lawyer to assist them. One person all too familiar with the consequences of the cuts and restrictions is Stephen Carpenter, a lawyer at the Farmer's Legal Action Group in St. Paul, Minnesota, a small non-LSC-funded group that provides legal assistance to farmers and expert advice to lawyers who represent farmers. He says that extreme geographic isolation makes it difficult for many farmers to learn about the legal aid lawyers who possess the knowledge and willingness to help them, and even to learn enough to know when a lawyer

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might be able to help them. If lawyers in LSC-funded programs could reach out to explain to these farmers their legal rights in dealing with entities that buy their products, and in dealing with creditors, the farmers could make better informed decisions about when and how to protect their rights. But, unfortunately, the 1996 outreach restriction makes it difficult for LSC-funded lawyers to provide this important service. Often, Carpenter says, the only people filling the void are non-lawyers with what are at best extremely unorthodox views of the law and at worst dangerously incorrect advice. One result, according to Carpenter, is that in farming communities "there's a level of desperation that's going unaddressed."

Recently, the Farm Bureau and its local divisions have locked their sights on a new legal aid target. Two important sources of funding that supplement federal appropriations for LSC are state-based: state governmental appropriations and special Interest on Lawyers' Trust Account (IOLTA) funds set up by bar associations to pool interest collected on client funds

held by lawyers for short periods of time. Funding sources like these have been particularly important in enabling legal aid providers to continue serving clients who LSC-funded lawyers can no longer represent and who desperately need representation.

Despite popular support for funding legal services in this way, influential organizations that want to secure immunity for the misdeeds of their members have sought to control such funds. In Virginia, for example, the Virginia Farm Bureau convinced several state legislators to introduce a bill in January 2000 that would have imposed on state appropriations and IOLTA funds a set of restrictions modeled on the 1996 LSC funding restrictions. According to Alex Gulotta, executive director of the Charlottesville-Albermarle Legal Aid Society, these attacks came as a direct response to the success of his office's migrant worker project, the Virginia Justice Center, in obtaining \$350,000 in back pay for migrant workers exploited by their employers.

After strenuous opposition from legal services lawyers and community groups, the sponsor of the bill delayed its consideration, saying, "I wanted to make sure that we're not making a broader sweep than we meant to." He has since indicated that in all likelihood he will withdraw his proposed legislation. However, even if this particular bill ultimately goes nowhere, lawyers in Virginia fear that the Virginia Farm Bureau will continue to try to find ways to interfere with effective legal representation for migrant workers. And, with a new appreciation for the fact that state funding can be vulnerable to shifting political winds, the Virginia Justice Center is redoubling its efforts to identify private donors to support its crucial work.

Today, the Farm Bureau and its local divisions have the same choice they have always had: expend more energy fighting funding for civil legal aid nationally and in the states, or spend that energy helping their members to operate their businesses in a law-abiding manner, thereby avoiding conflict with legal services lawyers. Either method will ultimately save their agribusiness members money, but only one method will also fulfill the members' obligation to obey the laws by which the rest of us live.



# THE NATIONAL LEGAL AND POLICY CENTER

**Keeping company with the Farm Bureau, another ardent LSC attacker is the National Legal and Policy Center (NLPC), which is based in Virginia. NLPC's Legal Services Accountability Project, which was first announced in 1995, advertises that it is "committed to researching and exposing abuses within the [federal] Legal Services program."** NLPC Chairman Kenneth Boehm casts himself in the role of credible critic based on his work as an LSC official from 1989 to 1994, including as counsel to LSC's Board of Directors. Boehm has said that his experience working for LSC left him disillusioned with the organization, but he was opposed to the program even before he worked for it. And there is some indication that what Boehm calls disillusionment may in fact be simply a thinly-veiled personal vendetta. Boehm admits that he was fired from the organization he now devotes his life to attacking. Former LSC President Alex Forger, who terminated Boehm not long after taking control of LSC in 1994, explains: "We thought it was inappropriate to have somebody there in his position at LSC who didn't even support the existence of the

program. He was particularly bitter, and joined the enemy camp as soon as he could."

Boehm found a patron for his crusade in multimillionaire newspaper publisher Richard Scaife, who has given away over \$600 million to numerous right-wing groups. Boehm is in interesting company. Scaife was a primary contributor to the \$2.4 million Arkansas Project, the American Spectator's four-year attempt to dig up dirt on President Clinton, and he also subsidized writer Christopher Ruddy's vain attempts to convince America that Clinton aide Vincent Foster's death in 1993 was not a suicide. In 1997 and 1998, two Scaife organizations — the Sarah Scaife Foundation and the Carthage Foundation — contributed a total of \$185,000 to NLPC. Another supporter of NLPC is the John M. Olin Foundation, which contributed \$70,000 to NLPC's Legal Services Accountability Project in 1997.

Boehm is a vigorous anti-LSC spokesman who, by his own account, has given interviews to "more than 300 radio and TV programs" and has testified at more than a half-dozen congressional hearings on LSC. And

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Boehm does not hesitate to play hardball. For example, when Rep. Jon Fox, R-Pennsylvania, successfully introduced a budget amendment to boost LSC's funding during the final Congressional appropriations votes in 1996 and 1997, NLPC filed a complaint against Fox with the Federal Election Commission, charging that a \$25,000 personal loan he had received five years before was an illegal campaign contribution. NLPC filed a second complaint against Fox in January 1998 for another \$10,000 personal loan from the same period, and it subsequently demanded an investigation by the House Ethics Committee as well.

Although NLPC claimed its targeting of Fox was not intended to punish him for his support of legal aid, this was not the first time that Boehm had filed a complaint with a government agency against a political opponent. In 1985, when he headed a group called Citizens for Reagan, Boehm filed Internal Revenue Service complaints against religious groups such as the United States Presbyterian Church, the Maryknoll Fathers and Brothers, and the Sisters of Loretto, alleging that they had violated their tax-exempt status by protesting the Reagan Administration's covert war in Central America. Ultimately, neither the Federal Elections Commission nor the House Ethics Committee chose to pursue the NLPC's complaints against Fox. However, the attacks

certainly did not help the Congressman in a tight election race that fall, which he lost.

This NLPC tactic — attacking politicians who do not toe the NLPC line on LSC — has recently been copied by the Club for Growth, an organization that emerged in December 1999 with a plan to spend \$10 million to influence Congressional races in 2000, including those identified as involving Republican incumbents who voted to support LSC.

Another NLPC tactic is to do what is traditionally called “the political smear.” The five people on NLPC's staff churn out broadsides, dubbed *Legal Services Horror Stories*, which bear a visual parody of Edvard Munch's painting “The Scream” and provide fodder for floor speeches by congressional opponents of LSC. Each *Horror Stories* issue describes particular cases handled by LSC-funded lawyers, exaggerating the facts or implications of those cases for political gain. Many *Horror Stories* reflect the presumption that

federally funded legal aid lawyers should represent only those clients NLPC considers sufficiently worthy. This is a sharp departure from this nation's traditional perspective on legal representation. Even in the criminal justice setting, all low-income people accused of crimes are guaranteed a lawyer, and society expects the judge will exercise an independent role in determining who is guilty and who is not. In contrast, NLPC *Horror Stories* routinely suggest that legal aid lawyers should



Richard Scaife (AP Photo/Keith Srakocic, reprinted with permission)



## A sampling of inflammatory rhetoric from critics of legal service offices:

### Howard Phillips, chairman and founder of The Conservative Caucus:

Legal aid lawyers “transfer wealth from productive, law-abiding citizens to persons who reject work as their duty and regard welfare as their right.”

(Source: *Boston Globe*, October 11, 1995)

### Kenneth Boehm and Peter T. Flaherty, respectively chairman and president of the National Legal and Policy Center:

“Serving the needs of individual poor people is not the primary objective of most legal-services lawyers. Rather, Legal Services grantees seek to ‘rescue’ the poor as a class through litigated increases in transfer payments and government subsidies . . . This isn’t the kind of legal help that poor people need most, and poor people would be better off if Legal Services were abolished.”

(Source: *Los Angeles Times*, September 19, 1995)

### Gary Bauer, president of the Family Research Council:

LSC is a “pot of gold for the far left” with a clear agenda: “Break up the family and replace Dad with a welfare check.”

(Source: *Los Angeles Times*, November 29, 1995)

### Former Representative Robert K. Dornan:

LSC is “one of the most reckless and irresponsible agencies to have ever been created by the federal government . . . [B]y abusing government funds, thereby depriving the poor of the money that is supposed to be spent on their legal representation, LSC grantees have demonstrated that they are primarily concerned with their own personal gain and the monopoly they have on LSC grant money. . . All too often the LSC functions like a queen bee who sends out little liberal worker bees everywhere to drive the radical, left-wing agenda in this country.”

(Source: Congressional Testimony, March 29, 1996)

### Congressman Dan Burton:

“Funding for this abusive, arrogant program must be terminated.”

(Source: Congressional Hearing, April 24, 1997)



decide — based on morality, not on the legal merits of an individual's case — who may receive representation and who may not. In NLPC's world, legal aid lawyers would act as lawyer, judge and jury, all in one.

For example, several *Horror Stories* fault legal aid lawyers for representing clients who are gay or lesbian. In a 1997 story titled “Legal Services Anti-Family Agenda,” NLPC criticizes LSC-funded Brooklyn Legal Services for representing a lesbian at a hearing in which she sought to adopt her longtime partner's infant daughter, who had been conceived by artificial insemination. In another anecdote, from 1995, NLPC objects to a successful 1989 New York state court argument advanced by then-LSC-funded Legal Aid Society of New York City and other LSC-funded entities that Miguel Braschi should be permitted to remain a tenant in the rent-controlled apartment that he had lived in for years with his male life partner, Leslie Blanchard, even though only Blanchard's name was on the lease. Braschi and Blanchard had lived together until Blanchard's death from AIDS. New York's highest court ultimately agreed with Legal Aid that because the law allowed family members to stay in apartments that they had lived in with a leaseholder, Braschi should be allowed to stay in the apartment.

Another premise behind the *Horror Stories* is that legal aid lawyers should refrain from enforcing certain rights that NLPC views as objectionable. Just as the Farm Bureau uses its attacks on legal aid lawyers to try to prevent enforcement of worker protection statutes, NLPC criticizes legal aid lawyers for using federal funding to enforce a wide variety of statutory and constitutional rights of which it disapproves. For example, NLPC's *Horror Stories* criticize legal aid lawyers for attempting to help clients obtain government benefits, including federal black lung disability benefits for miners and their families, public assistance benefits, federal Supplemental Security Income benefits for people too disabled to work, and unemployment benefits.

These criticisms of legal aid lawyers for not passing judgment on the morality of potential clients and for enforcing federal and state statutes provide an odd contrast to another NLPC criticism of legal aid lawyers — that they “promot[e] a left-wing political agenda.” As it turns out, NLPC objects to legal aid lawyers not because they are extraordinarily political, but because they do not share NLPC's own extraordinary politics.

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# THE RELIGIOUS RIGHT

**Religious groups such as Catholic Charities USA**, which provide help to low-income people, are longtime LSC supporters. Nevertheless, LSC was a target for the ire of the politically influential Religious Right movement of the 1980s and 1990s and continues to suffer attacks from this quarter. The Rev. Jerry Falwell's Moral Majority, now defunct, was an early LSC opponent. In 1987, in the course of seeking the Republican Presidential nomination, television evangelist and entrepreneur the Rev. Pat Robertson condemned LSC as a "leftist" organization and pledged that, if elected, he would bring the government to a halt before he would approve "one penny" for LSC. In 1988, in much the same vein, James Dobson, president of Focus on the Family, and Adrian Rodgers, then president of the Southern Baptist Convention, wrote a joint letter to President Reagan asking him to veto the appropriations bill containing legal aid funding.

The Christian Coalition, a byproduct of Robertson's unsuccessful presidential effort, emerged as one of the key antagonists of LSC in the mid-1990s. In May 1995, Ralph Reed, then executive director of the Christian Coalition, held a press conference unveiling the "Contract with the American Family," his organization's 10-point blueprint for reshaping American government and society. Abolishing federal funding for LSC (along with funding for the National Endowment for the Arts,

the National Endowment for the Humanities, and the Corporation for Public Broadcasting) was a key item on the wish list.

Reed explained to his audience, "One of the main reasons why we call for the privatization of the Legal Services Corporation is because they are taking roughly \$500 million a year in taxpayer funds and using it to litigate on behalf of 210,000 divorces every year with our tax dollars . . . . We know that women within the first two years after a divorce suffer a 70% loss in their income. We don't believe the Federal Government should be in the business of encouraging marriages to break-up and for families to shatter [sic]."

Reed's attack on divorce created an awkward moment for some of the Congressional supporters who

had joined him at the press conference in support of the "Contract with the American Family." Because Christian Coalition Congressional allies included then-House Speaker Newt Gingrich, R-Georgia; Rep. John Kasich, R-Ohio; and Sen. Phil Gramm, R-Texas, all of whom had been divorced, critics suggested that they believed only powerful Congressmen, not their indigent constituents, should be able to get divorced.

Beyond that, Reed's statement grossly misrepresented the role played by legal aid organizations. Many clients seeking divorces are victims of domestic violence, who seek refuge in battered women's shelters, which in turn



Former Christian Coalition Executive Director Ralph Reed (Photo by Keith Jenkins, (c) 1996 *The Washington Post*, reprinted with permission)



**LSC's opponents frequently claim that LSC-funded lawyers pursue a left-wing ideological agenda, instead of helping low-income clients. But legal aid lawyers often serve as a check and balance against the power of big government institutions over individuals, a function dear to the hearts of many conservatives. For example:**

**School choice:** Parents from the working class Cypress Hills neighborhood of Brooklyn were discontented with low reading scores, inadequate services and overcrowding in the local public schools. When their complaints were not remedied, they decided to organize their own community school. A lawyer from LSC-funded Williamsburg Legal Services provided legal advice to the parents on matters such as obtaining approval from local school board officials and applying for a private foundation grant.

*(Source: New York Daily News, April 19, 1998)*

**The right to own a firearm:** In 1990, the Richmond, Virginia Regional Redevelopment Housing Administration drew up a new standard lease for public housing tenants prohibiting them from owning firearms. A tenants' organization objected, saying that the Second Amendment of the United States Constitution applied to them just as it did to everyone else. LSC-funded Central Virginia Legal Aid Society took the tenants' case to federal court and called an official from the National Rifle Association to testify as a witness on the tenants' behalf. The judge declined to overturn the ban. Subsequently, Virginia legislators passed a bill guaranteeing the public housing tenants' right to own guns, but it was vetoed by the governor.

*(Source: Washington Post, January 31, 1991; UPI, April 3, 1991)*

**Parental Rights:** In Mississippi, a divorced mother's parental rights were terminated by a local judge, who ruled that the mother had not been sending required child-support payments to her ex-husband and had failed to visit the children regularly. The mother denied the accusations, saying that she had indeed been paying support and that she wanted to visit the children but the local sheriff was unwilling to compel her ex-husband to honor the visitation order. Nevertheless, the state supreme court would not hear her appeal because the mother, a waitress, could not afford the \$2,352 cost of a court transcript. A legal aid lawyer took her case, and he continued to represent her on a pro bono basis even after he was forced to leave legal aid because of funding cutbacks. In December 1996, the United States Supreme Court ruled that courts cannot strip parents of their visitation rights simply because the parents cannot afford an appeal.

*(Source: Washington Times, December 17, 1996)*

refer them to LSC-funded legal aid offices for assistance in escaping abusive spouses. “A lot of our clients don’t have much money,” explains Theresa Clemens, director of A Better Way, a battered women’s shelter in Anderson, Indiana. “So if they hear they can get a free divorce . . . well, that’s a major uplifting thing for them. It gives them the courage to finally go through with something they’ve been trying to do for quite a while.”

When confronted on this point in 1995 by a *Washington Post* interviewer, Reed backtracked a bit. “We would obviously not be in favor of a woman remaining in an abusive or violent marriage,” he admitted. “What we are complaining about is the systematic subsidy for the break-up of families in the inner cities.”

Despite these obvious contradictions, the highly sophisticated and well-financed Christian Coalition continued to press members of Congress to eliminate LSC. In 1997 — a year in which the Christian Coalition spent \$7.9 million on lobbying — and on the eve of a House subcommittee hearing on LSC’s appropriation, the Christian Coalition joined with several dozen other conservative groups — including NLPC and the Farm Business Coalition — in calling for the program’s abolition. But in the face of this mass lobbying effort, many supporters rallied to LSC’s defense, and Congress decided not to kill the program.

In 1998, after LSC Chairman John McKay showed the Christian Coalition that many churches strongly supported LSC, the Christian Coalition finally stopped calling for LSC’s elimination. Decreased contributions and a quarrel with the IRS over tax-exempt status



Former Speaker of the U.S. House of Representatives Newt Gingrich, R-Georgia  
(Photo by Keith Jenkins, (c) 1996 *The Washington Post*, reprinted with permission)

that in 1999 forced it to split into two organizations have further diminished the threat posed by the Christian Coalition.

Despite continued strong church-based support for LSC, other Religious Right groups continue their attacks on LSC, though. The most prominent is the Family Research Council (FRC), the Washington, D.C. wing of James Dobson’s Focus on the Family. The affiliated Political Action Committee, called the Campaign for Working Families, amassed a nearly \$2 million war chest for campaign contributions during the 1997-98 electoral cycle alone.

Since 1988, FRC has been headed by former Reagan policy advisor Gary Bauer. He took a leave of absence in 1999 to run for the Republican Presidential

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## Postcard that the American Family Association urged its members to send to Congress in early 2000

Dear Congressman,

I was appalled to learn that Congress gives my tax dollars to the Legal Services Corporation, only to have the LSC use them to break up an average of 200,000 marriages a year!

Not only that, the Legal Services Corporation, defends drug dealers, child abusers, alcoholics and rapists! What's going on?

Please stop giving my tax dollars to the LSC. When it come time to vote on funding for the Legal Services Corporation, vote for NO FUNDING! Please do not give my taxes to LSC until it does what it was created to do: namely to help poor people who can't afford to hire lawyers – not break up families.

Sincerely,

nomination, but he dropped out of the race in February 2000 after receiving just one percent of the vote in the New Hampshire primary. In the mid-1990s, Bauer and FRC had joined in the Christian Coalition's efforts to destroy LSC. On the same day that Reed unveiled the "Contract for the American Family," Bauer had issued a press release in which he complained that "the liberal, activist legal

services lawyers in this program are militantly intent on using taxpayer funds to obstruct, delay and defeat many of the major objectives of this Congress. Nothing short of a complete defunding will solve this problem."

In 1998, FRC opposed the Senate's confirmation of Justice Margaret Morrow to the U.S. District Court for the Central District of California, arguing that she "fought to allow aggressive political litigation by the

publicly-funded Legal Services Corporation.” The FRC’s objections were based on a 1983 article in which Morrow opposed restrictions on LSC-funded lawyers.

If the rhetoric of LSC’s attackers has started to sound familiar at this point in the article, there’s a good reason. A number of different organizations take turns bashing LSC, but they tend to share the same rhetoric and even the same research. For example, in March 2000 the American Family Association, another Religious Right organization, stated on its website that LSC-funded offices had represented a child molester in a child custody lawsuit and a convicted alien smuggler in a deportation case, and had sought to overturn federal welfare reform. When asked where its information came from, an American Family Association spokesman cited the National Legal and Policy Center.

This reliance on research done by others means that the information is often stale and inaccurate — although one organization may stop using a particular argument when it has been discredited, that does not stop the others from using it. For example, as recently as March 2000 the American Family Association urged its members to send pre-printed postcards to Congress that recycled the Christian Coalition’s embarrassing contention that LSC-funded programs should not be helping low-income



Family Research Council President and sometime United States Presidential candidate Gary Bauer (Beth A. Keiser/AP/Wide World Photos, reprinted with permission)

women get divorced. “I was appalled to learn that Congress gives my tax dollars to the Legal Services Corporation,” the postcards read, “only to have the LSC use them to break up an average of 200,000 marriages a year!”

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# CONCLUSION

**LSC's foes are often motivated by overarching** agendas that go way beyond LSC's elimination. Farm employers seek to loosen farm labor laws, to ensure that they do not get caught when they break the law, and to avoid ever paying attorneys' fees awards to fund enforcement efforts when they are caught. NLPC similarly wants to ensure that the statutes and constitutional rights it disagrees with are not enforced. The Religious Right wants to impose its elaborate vision of morality on the rest of society.

But criticizing LSC-funded lawyers for enforcing the laws is a little like blaming the police for arresting shoplifters. As Rep. Christopher Shays, R-Connecticut,

points out, the real quarrel of LSC opponents — like the Farm Bureau, NLPC and the Religious Right — is with the content of our laws and not with the lawyers who enforce those laws. He asks, “What I cannot understand is why we blame [LSC-funded lawyers] for seeking to enforce the laws we pass and the Constitution of the United States we would die defending. If we do not like the end result of the court decisions, then maybe we have to look at the laws we pass. What [LSC] attempts to do is make sure that all citizens, the poorest, in fact, have the same right to defend themselves in court.”

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