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## WHY THE LEGAL SERVICES CORPORATION MUST BE ABOLISHED

### INTRODUCTION

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

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

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

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

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

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

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

## LEGAL SERVICES AS POLITICAL MOVEMENT

Legal Services sees itself as a “movement.”<sup>4</sup>

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

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

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

The LSC says grantees handled 1.6 million matters last year. Supporters say allegations of ideological bias are without merit and that, due to sheer volume, it is inevitable that the program will become involved in some controversial cases. But a review of thousands of cases and news articles<sup>10</sup> clearly indicates that the LSC has never filed a major

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

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

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

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

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

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

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

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

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

## AVOIDING ACCOUNTABILITY

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

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

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

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

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

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

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

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

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

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

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

## POLITICS AND SURVIVAL

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

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

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

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

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

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

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

18 *Ibid.*, p. 63.

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

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

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

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

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

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

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

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

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

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

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

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

## PROMOTING WELFARE DEPENDENCY

LSC grantees have won hundreds of billions in expanded welfare, AFDC,<sup>26</sup> Medicaid, and food stamp benefits. Legal Services also has expanded welfare by seeking to nullify any “moral” conditions connected to its provision, such as a requirement for identifying the fathers of illegitimate children;<sup>27</sup> by attacking citizenship<sup>28</sup> and residency requirements;<sup>29</sup> and by signing up thousands of alcoholics and substance abusers for Social Security disability insurance benefits.<sup>30</sup> Western Massachusetts Legal Services (WMLS) has published a brochure advising lottery winners that they can stay on welfare by such devices as prepaying rent, buying a special gift, or taking a vacation.<sup>31</sup> In 1994, WMLS filed suit to get Arthur Cooney back on welfare after he admittedly had spent the \$75,000 he won in a 1992 lottery on drugs and gambling.<sup>32</sup>

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

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

Asserting that the program’s “benefits” outweighed its “cost” by a ratio of 7 to 1, Johnson further calculated that since benefits were won in the form of entitlements, and therefore would continue many years into the future, the actual ratio was closer to 34 to 1.<sup>35</sup>

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26 Aid to Families with Dependent Children.

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

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

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

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

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

32 *USA Today*, January 10, 1994.

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

34 *Ibid.*, p. 232.

35 *Ibid.*, p. 233.

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

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

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

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

## HELPING TO DESTROY PUBLIC HOUSING

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

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

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

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

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

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

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

months. The Interim Council of Presidents, the organization representing public housing tenant groups, filed a brief in support of faster evictions. Tenants say they cannot sit out at night, let their children play after dark, or even visit others in their own buildings.<sup>40</sup>

In Pennsylvania, when the Philadelphia Housing Authority (PHA) attempted to evict a woman who allegedly was dealing drugs, loan sharking, and extorting money from other tenants, an LSC grantee filed a federal civil rights suit on her behalf and won on the grounds that the PHA had not given her adequate notice of the charges. Legal Services lawyers obtained \$5,500 in legal fees. In 1993, another tenant set fire to her unit and the PHA won her eviction in state court. Legal Services filed a federal civil rights case and won a stay of the eviction. As of June 15, 1995, the case was still pending.<sup>41</sup>

In Pittsburgh, Neighborhood Legal Services (NLS) has sued Northside Tenants Reorganization (NTR) repeatedly to prevent evictions of tenants responsible for drug dealing, violence, and vandalism. NTR is a tenant group which manages and owns its own low-income housing. NTR Executive Director Harriet Henson and a building manager say they saw a tenant's boyfriend complete a heroin deal. "It took us two years to evict because NLS took us to appeal and appeal and appeal."<sup>42</sup>

## UNDERMINING THE FAMILY

Some Legal Services cases undermine the rights of parents. In 1994, notwithstanding a congressional ban on involvement in abortion litigation, the National Center for Youth Law (NCYL), co-counsel with the American Civil Liberties Union, succeeded in overturning a 1987 California law requiring a teenager to seek the approval of a parent or juvenile court judge before getting an abortion. NCYL sought legal fees for 681 hours at \$300 per hour from the state. It was awarded two-thirds of the amount it sought, pending eventual success before the California Supreme Court.<sup>43</sup>

In another area, the San Francisco-based National Center for Youth Law in April 1995 admonished Idaho parents about inviting police into their homes to search for drugs they suspected their children of using. The innovative Canyon County, Idaho, program is completely voluntary, and police make no arrests unless the drugs they find are especially dangerous or in large quantities.<sup>44</sup>

Other cases also carry serious implications for adoptive parents. In 1993, for example, the Idaho Legal Aid Society (ILAS) sued to take a four-year-old child away from his legal parents. Karla and Leland Swenson had adopted a half-Sioux boy in 1989 when he

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40 Shawn G. Kennedy, "Tenants Press for Easier Eviction of Drug Dealers," *The New York Times*, August 15, 1995, p. B1.

41 Testimony of Michael Pileggi, Counsel, Philadelphia Housing Authority, Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, U.S. House of Representatives, June 15, 1995. In 1994 and 1995, PHA has paid a total of \$194,281 in legal fees to Legal Services lawyers who claim they are entitled to \$150 per hour. Federal judges presiding in these cases repeatedly have expressed alarm at these fees. Most of the cases could be brought in state court, but Legal Services entities typically prefer the federal courts where they can collect attorney's fees.

42 Testimony of Harriet Henson, Executive Director, Northside Tenants Reorganization, Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, U.S. House of Representatives, June 15, 1995.

43 Bill Kisliuk, "Judge Says MoFo Entitled to \$1.2 million for Abortion Case," *The Recorder*, December 16, 1994, p. 1.

44 Elizabeth Ommachen, "Parents Take Drug Searches to Kids' Rooms," *The Idaho Statesman*, April 3, 1995, p. 1A.



was one-day old and were raising him on their dairy farm. ILAS claimed the boy should live with Indian relatives even though neither of his natural parents had sought custody. Representing the natural father's Indian sister, ILAS argued that a tribe's efforts to preserve its cultural integrity took precedence over the best interests of the child. The Swensons sold their home to raise funds to continue the legal fight.<sup>45</sup>

In New Jersey, Somerset-Sussex Legal Services is seeking to take a one-year-old boy away from his adoptive parents because his natural father wants him back. Reverend Paul Rack and his wife adopted the baby in February 1994 when he was three weeks old. According to a letter circulated by community leaders in support of the Racks, the natural father is unemployed, has a criminal record, and already cannot support several other children.<sup>46</sup>

In a third case, however, Legal Services fortunately did not fare well. Pennsylvania's Lehigh Valley Legal Services sued to get parental rights for the 16-year-old father of a child conceived by his rape of a 13-year-old. The rapist has a long criminal record and two other illegitimate children. In March 1995, the judge ruled against LVLS and criticized "misguided adults" for bringing the case.<sup>47</sup>

Several LSC actions advance goals of homosexual activists. In 1993, James Cox and his male "partner" attempted to adopt a child. The Florida Department of Health and Rehabilitative Services denied their application because Florida law prohibits homosexual adoption. The American Civil Liberties Union Foundation successfully sued, the state appealed, and the statute in question was upheld by the Florida Supreme Court on April 27, 1995.<sup>48</sup> Legal Services of Greater Miami filed a brief in support of the ACLU Foundation's position in this case.

In a similar 1994 case, Brooklyn Law School's Family Law Clinic, another LSC grantee, successfully represented a lesbian seeking to adopt her female "partner's" child. A Family Court ruled that a same-sex partner had the same rights as a stepparent for purposes of the adoption statute.<sup>49</sup> In a 1989 case also attempting to equate homosexual relationships with the traditional family, the Legal Aid Society of New York and Community Action for Legal Services, Inc., filed *amicus curiae* briefs in state courts arguing that a "gay life partner" should have the same right as a spouse to remain in a rent-controlled apartment after the tenant's death. The New York Supreme Court agreed.<sup>50</sup>

LSC lawyers even have attempted to secure legal recognition of a right to public housing for minors. In a 1993 case, a U.S. Court of Appeals upheld federal requirements that public housing be leased to tenants at least 18 years old, and in 1991, Central Pennsylvania Legal Services sued the Reading, Pennsylvania, Housing Authority for refusing to lease a unit to an unemancipated and unmarried 16-year-old girl.<sup>51</sup>

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45 Timothy Egan, "Half-Indian Boy's Future at Stake," *Dallas Morning News*, October 31, 1993, p. 1A.

46 Associated Press, "Somerville Couple Battling Birth Father Over Adopted Son," *The Record*, June 4, 1995, p. A17.

47 Gay Elwell, "Judge Says Teen-Age Rapist Does Not Have Parental Rights," *The Morning Call* (Allentown, Pennsylvania), March 2, 1995, p. B3.

48 *Cox v. Florida*, No. 82,967 (Florida Supreme Ct.) April 27, 1995.

49 Jane Hutta, "Analysis Offered on Adoption Ruling," *New York Law Journal*, December 23, 1994, p. 2.

50 *Braschi v. Stahl Associates*, 1989 WL 73109 (New York Supreme Ct.) 1989.

## PROMOTING ILLEGAL IMMIGRATION

The Legal Services apparatus has been equally active on issues pertaining to illegal immigration. When the voters of California passed Proposition 187 in 1994 to deny public benefits to illegal aliens, California Rural Legal Assistance, the American Civil Liberties Union, and other groups filed suit to stop its implementation.<sup>52</sup> Prior to election day, LSC grantees campaigned against the measure. Claudia Smith, a lawyer with California Rural Legal Assistance, told the media that "It's just a question of whether we have the time or the resources to lay Prop 187 bare."<sup>53</sup>

The National Immigration Law Center (NILC), a Legal Services support center, sued the state of California over a 1992 law requiring those seeking emergency health services under Medi-Cal to disclose their immigration status. Legal Services attorneys contended that the law should be struck down because it would deter undocumented immigrants from seeking emergency services. The California Supreme Court rejected this argument in December 1994.<sup>54</sup> The NILC also condemned Congress's insertion of a stipulation into the \$9 billion earthquake relief bill last year prohibiting non-emergency aid to illegal aliens. The amendment denied illegal aliens access to home repair loans, disaster grants, and U.S. Department of Housing and Urban Development (HUD) housing assistance, although it did allow them to collect emergency food and clothing.<sup>55</sup>

The National Immigration Law Center also sued to force the U.S. Immigration and Naturalization Service (INS) to stop asking resident aliens to pay \$70 to renew green cards issued before 1978. The replacement program was part of an INS effort to end widespread document fraud. Legal Services claimed the \$70 fee was excessive. A federal judge in Sacramento, however, disagreed and upheld the fee in November 1993.<sup>56</sup>

This Legal Services activity extends even to the deportation of criminals. In Georgia, for example, the Atlanta Legal Aid Society attempted to halt the deportation of Cuban nationals convicted of committing serious crimes, including attempted murder and drug trafficking. Arriving in 1980 via the Mariel Boatlift, the Cubans committed these crimes while on immigration parole. After their release from prison, their immigration parole was revoked, and authorities subsequently placed them in detention to await return to Cuba. Atlanta Legal Aid lawyers said their detention violated their constitutional rights and international law. In 1993, a U.S. Appeals Court rejected the petition.<sup>57</sup>

In Massachusetts, Greater Boston Legal Services sued to stop the deportation of an alien resident who had been convicted of serious drug offenses. A Dominican woman was tried, convicted, and sentenced on four drug offenses that took place in 1982, including possession of and intent to distribute cocaine. Twelve years later, in 1994, a U.S.

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51 *Rodriguez v. Reading Housing Authority*, 8 F. 3d 961 (U.S. App. Ct.) 1993.

52 Hannah Nordhaus, "No Quiet Fronts in This War," *The Recorder*, November 10, 1994, p. 2.

53 Craig Hines, "California Plan Would Cut Off Illegal Residents," *Houston Chronicle*, September 25, 1994, p. 1.

54 "Right to Ask Immigration Status," *BNA Health Care Daily*, December 30, 1994.

55 Hugh Dellios, "Quake Aid for Illegal Immigrants," *Chicago Tribune*, February 9, 1994, p. 1.

56 K. Connie Kang, "Judge Upholds \$70 Fee," *Los Angeles Times*, November 6, 1993, p. A30.

57 *Gisbert v. U.S. AG*, 988 F. 2d 1437 (U.S. App. Ct.) 1993.

Court of Appeals let the deportation order stand.<sup>58</sup> Another case involved the ability of the INS, under the 1986 Immigration Control Act, to deny residency to immigrants with one felony or three misdemeanors. In 1992, California Rural Legal Assistance sued the INS to stop the denial of temporary residency to immigrant agricultural workers with criminal records, arguing that this practice violated both the workers' Fifth Amendment rights and the Administrative Rules Procedure Act. In 1994, a U.S. Appeals Court rejected the Fifth Amendment claims but upheld Legal Services' challenge on administrative grounds.<sup>59</sup>

Two LSC grantees sued California's Department of Motor Vehicles for refusing to issue drivers' licenses to illegal aliens. As required by law, the DMV requires that all applicants provide proof of legal residency to obtain licenses. The National Immigration Law Center and California Rural Legal Assistance sued the DMV on behalf of several illegal aliens whose applications had been rejected. A state appeals court ruled that the "DMV is not only authorized but obligated" to deny licenses to illegal aliens.<sup>60</sup>

In yet another California Rural Legal Assistance case, the organization in 1982 sued U.S. Attorney Joseph Russoniello for investigating allegations that unqualified aliens had been registered to vote. The purpose of this investigation was not to prosecute improperly registered voters, but to find out whether someone was deliberately signing up unqualified residents. CRLA sued Russoniello on the grounds that his investigation of Spanish-speaking residents was "invidious discrimination." The Ninth Circuit Court of Appeals rejected this argument.<sup>61</sup>

The extremes to which such litigation can be pushed may be indicated in a 1991 case. Two LSC grantees, Texas Rural Legal Aid and the Los Angeles-based National Health Law Program, filed a complaint with the Department of Health and Human Services asking it to sue the McAllen, Texas, Medical Center because its security guards wore uniforms allegedly resembling those of Border Patrol agents. Legal Services said this discriminated against illegal aliens because it discouraged them from seeking care.<sup>62</sup>

## PROMOTING RACIAL PREFERENCES

The Legal Services apparatus certainly is no stranger to litigation that promotes racial preference. In 1978, LSC filed an *amicus* brief supporting the University of California's minority set-aside program in the famous *Bakke* case. The U.S. Supreme Court, however, declared the UC-Davis set-aside unconstitutional because it reserved places for minorities exclusively because of their race.<sup>63</sup>

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58 *White v. INS*, 17 F. 3d 475 (U.S. App. Ct.) 1994.

59 *Naranjo v. U.S. INS*, 30 F. 3d (U.S. App. Ct.) 1994.

60 *Lauderbach v. Zolin*, Cal. App. 4th 578, May 30, 1995.

61 *Olagues v. Russoniello*, 770 F. 2d 791 (U.S. App. Ct.) 1985.

62 Sandy Lutz, "Border Hospital's Guard Garb Ripped," *Modern Healthcare*, December 17, 1990, p. 8, and "Hospital Faces Civil Rights Complaint," *Modern Healthcare*, January 28, 1991, p. 12.

63 *Regents of Univ. of California v. Bakke*, No. 76-811 (U.S. Sup. Ct.) 1978, and Dooley and Houseman, *Legal Services History*, p. 10.

In a 1992 case, the outcome was somewhat different. The Cincinnati, Ohio, quota system, adopted in the 1970s, required that at least 18 percent of all fire personnel be minorities. To achieve this numerical goal, the fire division made it a practice to insure that at least 40 percent of all new recruits were minorities. White applicants who scored higher than minority applicants on the civil service exam but were rejected sued the city for reverse discrimination. A U.S. Court of Appeals agreed with the Legal Aid Society of Cincinnati's position and ruled that the white applicants' constitutional rights were not violated.<sup>64</sup>

## HELPING CRIMINALS

In addition to litigating in behalf of criminals the government is seeking to deport, Legal Services lawyers have been active in behalf of domestic criminals. Starting in 1991, for example, Georgia Legal Services has filed petitions for the release of David Nagel from a maximum security mental hospital. Nagel was imprisoned for murdering both his grandparents by slitting their throats in 1981 when they refused to give him the car keys.<sup>65</sup>

In Florida, Greater Orlando Area Legal Services in 1989 successfully sued the Orange County Jail to stop segregation of HIV-positive inmates. Infected inmates now are placed in the general prison population without notification to other inmates in order to insure their "privacy." The suit was filed on behalf of 18 former inmates, most of whom were deceased when the case was settled in 1994. After four and a half years of litigation, a federal judge ordered Orange County to pay Greater Orlando Area Legal Services \$81,500 in legal fees.<sup>66</sup>

## CONCLUSION

The Legal Services Corporation cannot be reformed. Because money is fungible in the hands of private groups with more than one funding source, no new restrictions can insure the accountability of taxpayer funds. Most legal problems faced by the poor fall into several basic categories: family, including divorce, custody, guardianship and child support; housing, including landlord/tenant controversies; financial, including bankruptcy, wills, estates, and inability to pay bills; consumer; employment; and public benefits. While taxpayer funds are provided to Legal Services for the handling of individual cases, too great a portion of such funds are used to pursue class action suits and ideologically important test cases.

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<sup>64</sup> *Jansen v. City of Cincinnati*, No. 89-3783 (U.S. App. Ct.) 1990.

<sup>65</sup> Barry Siegel, "A Killer's Sanity May Free Him," *Los Angeles Times*, November 12, 1994, p. 1.

<sup>66</sup> Jim Leusner, "Jail Will Stop Segregating AIDS Inmates," *The Orlando Sentinel*, September 30, 1994, p. C1.

Legal Services has helped to destroy the independence and dignity of poor people and to create a permanent underclass. Its activities undermine both the family and the larger community. For the sake of the American taxpayer—and for the sake of America's poor—it is time to abolish the Legal Services Corporation.

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