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The relentless push to bleed Legal Services dry

Original Reporting | By Heather Rogers | Law, Role of government

June 6, 2012 — Ask people about the things that make America a “country of laws,” and one answer you will likely get is that everyone is entitled to be represented by a lawyer of his or her choice. But that promise has little meaning to more and more families at or near the poverty level. They’re among the millions of Americans for whom having a lawyer is a luxury beyond reach. Such families cannot afford a lawyer to defend them in an eviction proceeding, to fight a wrongful denial of veteran’s benefits, or to help get a restraining order to protect against an abusive spouse.

People without representation have legal rights as a formal matter, said James J. Sandman, president of the LSC, “but if you don’t know what they are and don’t know how to take advantage of them, then they mean nothing.”

While the right of an indigent defendant to have counsel appointed for criminal cases is constitutionally-protected, there is no such right for lower-income people who need to bring or defend civil cases, leaving them with limited access to the justice system. Congress, however, created the Legal Services Corporation (LSC) in 1974 with the intention of providing high quality civil legal aid to poor and working class Americans — those in households at or below 125 percent of the poverty level (currently \$27,938 for a family of four). And independent observers, including bar associations, sheriffs’ offices, and State Supreme Court justices, widely acknowledge that LSC-funded lawyers perform vital work for their clients.

“These are basic legal services for low income people to have a place to live, feed their kids, deal with an abusive spouse, deal with their education so their kids would have more of an opportunity,” explained Esther Lardent, president and chief executive officer of the Pro Bono Institute, a supporter of the LSC. “We’re not only helping those individuals but society overall — there’s a cost if you don’t help people’s situations improve.”

Despite its achievements, conservatives have consistently targeted the LSC, attempting to strip it of resources, and, at times, to abolish it. This pressure began in earnest in 1981, just months after Ronald Reagan assumed the presidency. Until that year, the LSC’s budget had grown consistently. Reagan was unsuccessful in his attempt to shutter the LSC entirely, but he succeeded in cutting its budget by 25 percent. In the following decade, under House Speaker Newt Gingrich, Congress hit the program with even greater constraints. The LSC has been hamstrung by major budget cuts and service restrictions under both Democratic and Republican presidents ever since.

The push against the LSC continues. Just last month, Rep. Austin Scott (R-Ga.) proposed an amendment to the fiscal year 2013 House Appropriations Bill that would have ended all funding for the LSC. (The amendment failed, but garnered 122 votes.)

When asked about whether their constituents have been or would be hurt by cuts to the LSC, the LSC’s opponents in Washington don’t squarely answer the question. Instead, they claim the services LSC-funded programs provide are unneeded, and condemn the LSC as just another “advancement of Big Government,” as Representative Scott stated on the House floor.

In the face of such arguments, the LSC’s proponents have prevented its elimination. But they have done little to replenish, let alone expand, its resources. Similarly, the LSC’s advocates outside of government have been unable or unwilling to raise broader public

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awareness of the importance of the program and secure robust funding to deliver quality legal representation to the millions of Americans in genuine need.

Erin Corcoran is a professor of law and the director of the Social Justice Institute at the University of New Hampshire. From 2007 to 2009, she was on the staff of the U.S. Senate Committee on Appropriations working with Sen. Barbara Mikulski (D-Md.), the chair of the Subcommittee on Commerce, Justice, Science, and Related Agencies, which determines the LSC's funding.

"Most people either don't know what the LSC is or they think they'll never need it," Corcoran said. "But a lot of us could be there, especially with foreclosures and the economy. A lot of us are three steps away from needing that kind of help."

determined by politics, bias, prejudice... We have to give people representation or we have to be honest about it and say it's not a priority in American life."

Massive cuts in real dollar terms

At first glance, it appears that the LSC's current budget is marginally higher than it was in 1981: a total of \$348 million in this fiscal year versus \$321 million back then. But this comparison fails to take into account either inflation or the increasing number of people who are eligible for services. Even if the number of those eligible for services had remained constant, Congress would have had to appropriate \$812 million this year to account for inflation over the past three decades.

In view of the fact that the number of people eligible for LSC-funded services had, by 2010, grown to more than 60 million from just under 43 million, the inflation-adjusted and eligible-population equivalent to 1981 services would require a budget of at least \$1.1 billion (in fact, the LSC estimates, an additional 5 million people have been eligible for services *since* 2010, which would mean that a 1981-equivalent budget would need to be in excess of \$1.2 billion). Thus, that ostensible 8 percent increase over 31 years represents in real terms a cut of between 69 and 71 percent. (See a brief history of cuts to and restrictions on the LSC in the box below.)

According to a 2009 [report](#) by the LSC, the offices it funded to provide civil legal assistance were turning away half of all people who were coming to them for help. The study estimates this to be about one million people per year who are not given assistance because of insufficient resources.

What it means not to have representation

While the numbers vary from jurisdiction to jurisdiction, having to represent oneself is not an isolated occurrence anywhere in the country. In Oregon, 65 percent of people involved in family law cases — which include child custody, divorces, and paternity among other issues — represent themselves. In Maryland, 70 percent of cases involve at least one self-represented party at some point in the case. In New Hampshire, one party is self-represented in 85 percent of all civil cases in the District Court, and 48 percent of all civil cases in the Superior Court. And in domestic violence cases seen in Superior Court in Washington, D.C., almost all parties — fully 98 percent — proceed without representation.

"What does a brief look like when it's written by someone who doesn't know legal language? What does an oral argument look like when the defendant doesn't know where to stand?" asked James J. Sandman, president of the Legal Services Corporation, rhetorically. People without representation have legal rights as a formal matter, "but if you don't know what they are and don't know how to take advantage of them, then they mean nothing."

Kevin Burke has been a judge in Minneapolis for almost thirty years presiding over civil cases. He knows what it's like to preside over a trial when someone lacks a lawyer. "Say I am an abused woman coming from a culture that is male dominated" — as is the case with refugee Somali and Hmong communities in Minneapolis-St. Paul. That person

Phil Bond, managing attorney at a Georgia Legal Services branch office in Macon, said his office took on 76 new clients last January, but that there was three to four times that number of people the office couldn't help. "We don't have the capacity...It's really frustrating."

“need[s] a lawyer to sit with them and say, ‘We need to do something and I’ll stand up for you.’ Of course, we should provide lawyers for people in this situation.”

Judge Burke told Remapping Debate that representation in civil cases is as important as the right to counsel in criminal cases. “If it means taking away your house, all your possessions, and maybe your kid, why is that less important than defense against the chance of going to prison?”

Down, down, down

The cycle of reductions began with the 1982 federal budget. President Reagan persuaded Congress to shear 25 percent of the LSC’s funding. Prior to that, “We felt we could be effective advocates,” said Marcia Cypen, a lawyer and executive director of Legal Services of Greater Miami, “We felt like we were growing and getting new money and new grants. Then 1981 came and it surprised us, it caught us off guard. We had to lay people off for the first time.”

The next major cuts to the LSC came in the mid-1990s with the GOP takeover of Congress and its “Contract for America” spearheaded by then House Speaker Newt Gingrich. Under the 1996 appropriations bill signed by President Clinton, the LSC funding was cut by 30 percent. In addition, Congress imposed new restrictions on the services LSC offices could provide: they could no longer represent prisoners, handle many types of cases involving immigrants, or pursue class-action lawsuits or cases that would bring in lawyers’ fees. They were no longer allowed to lobby on the broader issues faced by their clients. And they were barred from challenging the brand-new 1996 national welfare reform laws.

“This wasn’t about finances,” said Cypen. “The 1996 restrictions were ideological...I can say this because the rules didn’t save the government any money. By taking away attorneys’ fees, in fact, it cost them money because [civil] legal aid organizations would be more reliant on federal dollars.”

According to Gordon Deane, president of the National Organization of Legal Service Workers, President Clinton failed to come to the LSC’s defense. He signed the law with all its cuts and restrictions despite his professed support for the LSC. “It was never Clinton’s priority,” Deane said.

In Fiscal Year 2008, the LSC was funded at \$350 million. Funding was increased during the initial years of President Obama’s term, topping out at \$420 million in Fiscal Year 2010. Since then, there have been renewed funding cuts, with current year funding coming in at \$348 million, slightly lower than Fiscal Year 2008 in nominal terms, but, as documented in the main article, dramatically lower in real terms than it was directly before Ronald Reagan took office.

John T. Broderick Jr., dean of the University of New Hampshire Law School and former Chief Justice of the New Hampshire State Supreme Court, offered an analogy to what happens in an emergency room. A person with an acute medical problem would not be allowed to go without treatment, he said, but that’s what currently happens in the justice system.

Retired U.S. Supreme Court Justice David Souter has referred to courtrooms as “the last safe place in America,” Broderick recalled, explaining that Souter meant that the promise of the justice system is that, “when you enter a courtroom, it doesn’t matter your wealth, status, sex, race.” Broderick added: “Justice shouldn’t be determined by politics, bias, prejudice. If you go into a courtroom but you don’t understand the law, then you can’t use the law. To make those safe places real, we have to give people representation or we have to be honest about it and say it’s not a priority in American life.”

An unnecessary or counterproductive program?

There is a cohort of staunch opponents to the LSC in Congress. In the House, they include the 122 members who voted in favor of Austin Scott’s amendment, all Republicans. This same group, was joined by 39 additional Republicans and two Democrats (a total of 163 representatives), to support a different amendment by one of Scott’s fellow Georgia Republicans, Rep. Lynn Westmoreland. Westmoreland’s amendment proposed shrinking the LSC’s financing next year by almost 40 percent — the program’s largest cut ever. By way of explanation, a press release issued by Westmoreland’s office asserted that, “the LSC has spent much of [its] time attempting to extort employers.”

On the House floor, Scott didn't dismiss the need for legal aid among the poor — I couldn't find any elected official who would. Instead Scott justified his amendment by accusing the LSC of opportunism: "The Legal Services Corporation has, in effect, become bounty hunters who attack farmers and other employers." (Last September, the Equal Employment Opportunity Commission charged a large farm in Rep. Scott's district with a pattern and practice of employment discrimination based on race and national origin, specifically the favoring of migrant workers to the detriment African-American workers. At the end of February of this year, a federal court judge permitted 39 workers, all represented by Georgia Legal Services, to join the case as plaintiffs.)

Neither Scott nor Westmoreland mentioned the impact that lack of access to legal representation has on many of their constituents. Georgia is home to 50 of the country's 400 "consistently poor" counties — where people remain in poverty for generations. But there are few lawyers to serve this population aside from those who work at local organizations financially supported by the LSC. Georgia Legal Services (GLS) is the state's primary source of civil legal aid, serving 90 percent of Georgia's counties. GLS gets most of its funding from the LSC. "Some counties in Georgia have no lawyers at all," explained Lisa Krisher, director of litigation at GLS. "Unlike in D.C. or New York, there aren't lawyers around. If Legal Services went away there simply wouldn't be lawyers available to represent people."

Krisher described some cases in Representative Scott's district in recent years, including some domestic violence cases in which the abuser is a member of law enforcement. If the victim doesn't have proper legal representation, according to Krisher, "She's going to have a hard time convincing a local judge to take a gun away from a police officer or sheriff."

Krisher has also seen what she claims are numerous improper evictions in Rep. Scott's district. In one case, a landlord sued for money the tenant allegedly owed for utilities, but had no supporting documentation. Regardless, the local magistrate judge ruled against the tenant and when GLS's lawyer appealed the ruling, Krisher said, the judge "illegally" amended her decision, requiring the tenant pay an extra month's rent in order to move forward with her appeal. "If our client hadn't come to us she would have been on the street and had a significant judgment against her that she didn't owe," Krisher said.

GLS has also seen a proliferation of debt-buying companies suing people, especially the elderly, for credit card debt for which there are no records. "Judges rule against the alleged debtors in these cases without themselves knowing the law," Krisher explained. There are hundreds of courts in Georgia, and many are presided over by judges who aren't lawyers, such as the magistrate in the case with the landlord. "Some of these judges are excellent but there are others who don't know the law — and [those judges] are not friendly to poor people," Krisher said.

COOK COUNTY SHERIFF: "IT'S JUST NOT FAIR."

Cook County Sheriff Tom Dart is responsible for carrying out the evictions of Chicago homeowners

LSC-FUNDED OFFICE HELPS CLIENT AVOID FORECLOSURE

Marcia Cypen, director of Legal Services of Greater Miami (LSGM), recounted the story of a client who recently avoided foreclosure.

The woman had fallen behind on her \$1,875 per month mortgage payments. By the time she came to LSGM she was facing significant back payments and was afraid she would lose her home to foreclosure.

The lawyers at LSGM helped her apply for the Home Affordable Modification Program (HAMP), the loan-restructuring plan offered by the federal government. The process is lengthy and arduous, especially for people with no legal training. LSGM worked with her in filing documents, following up with bank lawyers, and in protecting her from administrative errors.

HAMP is "different for people representing themselves," said Cypen. "They might have language issues, maybe they're not as well educated."

A week before I spoke with Cypen, her client had qualified for mortgage modification, and thereby had her monthly payments reduced to \$1,059. "Now she and her family are going to keep their house," Cypen said.

But not everyone who walks through LSGM's doors gets the agency's assistance. "There are people who come to our office with this same problem who we can't help because we just don't have the staff to do it," Cypen explained.

"We create categories: If you're over 60, or you have children in the home, or there's a disabled person involved, those cases get priority. If you're a single person or a couple coming in, we might just give you advice but not represent you," she explained. "They're just as much in need... It's hard [for me] to sleep at night sometimes."

Both Scott and Westmoreland justify cutting the LSC's funding with the claim that the LSC is too politicized. "Instead of representing the needy, they have chosen to focus their attention on another activity — actively lobbying, even though it is against the rules," Scott said when he spoke in favor of his recent amendment. Westmoreland has also condemned the LSC for lobbying.

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who have been foreclosed upon, but is concerned that banks have taken advantage of those who can't afford legal representation.

His comments in this video are excerpted from "Fighting Foreclosure: Why Legal Assistance Matters," produced last year by the Brennan Center for Justice at NYU School of Law and by the National Coalition for the Civil Right to Counsel. The video clip is used with permission of the Brennan Center.



Remapping Debate asked each for documentation of this assertion. Westmoreland's communications director, Leslie Shedd, produced a single flier from a legal services organization in North Carolina that receives grant money from the LSC. The flier appealed to migrant farm workers on H-2A visas to protect themselves against unfair wages. It also said George W. Bush drove wages down and that Barack Obama would raise them. In fact, the flier did violate LSC rules in respect to the comments about the current and former chief executives, an internal LSC investigation found, and the LSC disciplined and withdrew funding from the local organization, said Sandman, the program's president. It was, he said, "an example of the LSC following its protocol of swiftly enforcing its rules."

When Remapping Debate, seeking to determine whether the single flier was an isolated incident or part of a pattern, asked for further documentation of lobbying, Westmoreland's office failed to reply.

Scott and Westmoreland also call for cuts because, they say, the LSC is duplicative of assistance from state-level agencies, private donors, and pro bono representation through bar associations and

private lawyers. Because of this, in Scott's words, the LSC is "nonessential."

But the Government Accountability Office (GAO) recently conducted a review of government programs to check for duplication of services. In its final report, the body named 34 agencies that were redundant, but the LSC was not among them. When asked about this, Scott did not respond. Westmoreland's spokesperson, Shedd, said, "With all due respect to the GAO, neither the Congressman nor I believe that the federal government only has 34 areas of overlap and duplication."

Remapping Debate contacted several other Representatives who supported the Scott and Westmoreland amendments; none responded to questions.

Responding to Scott and Westmoreland's assessment that the LSC is unnecessary and duplicative, Phil Bond, managing attorney at a Georgia Legal Services branch office in Macon, said, "Just last Monday we had to turn 29 people away." The office — which has two paralegals, five staff attorneys, and a lawyer on a fellowship — serves 23 counties with over 100,000 low-income people eligible for legal services. Bond said his office took on 76 new clients last January, but that there was three to four times that number of people the office couldn't help. "We don't have the manpower, we don't have the capacity," Bond said. "It's really frustrating."

As for pro bono services provided by the private bar, Bond complimented those efforts but said that "there is no way" that private attorneys were prepared to take on cases involving food stamps, public housing, and similar cases. "These are never issues [they face] in their practices; they're not prepared to advise and represent people who have these needs."

"The Legal Services Corporation," Rep. Austin Scott charged, "has, in effect, become bounty hunters who attack farmers and other employers."

Why hasn't the LSC fared better?

Over time, there has been sufficient bipartisan support for the LSC to defeat attempts to eliminate the program. But the intensity of support — and the priority that the program is given — is limited. The current debate in Congress provides a stark illustration. *No one* is proposing a budget level anywhere near the \$1.1 billion or more that would be needed to fully restore the LSC to 1981 service levels. Instead, the debate is now between a Senate bill that would provide \$402 million in the next fiscal year, and the House bill that would provide \$328 million. There is little optimism among supporters that the \$402 million will be accepted.

Both Rep. Frank Wolf (R-Va.) and Rep. Steve Cohen (D-Tenn.) have spoken passionately against further cuts and in support of the mission of the LSC. Yet neither of them, nor any of the other LSC proponents in the House pushed for a higher funding level.

Remapping Debate asked Cohen whether support for the LSC is truly meaningful if the yearly bipartisan votes to keep the LSC alive include neither funding increases nor the lifting of substantive restrictions on the cases that LSC-funded offices can bring.

"It obviously isn't," Cohen replied.

The non-governmental groups advocating for the LSC also seem to set their sights low.

When Remapping Debate asked the American Bar Association, an outspoken LSC supporter, what budget would be appropriate for the LSC in 2013, Bill Robinson III, its president, said \$402 million. I asked whether that was enough. "It's the Administration's ask," said Robinson. (Indeed, \$402 million is the amount that President Obama requested from Congress.)

Don Saunders, vice president of Civil Legal Services Division at the National Legal Aid and Defender Association, one of the LSC's top advocates, claimed that it didn't make sense to request more given the upsurge of conservatism in Washington. "It's the reality of government spending," he said. "Right now we're looking at enormous challenges with government debate — you have all these politicians now who think government shouldn't be doing any of this."

Others did call for more money. Erin Corcoran, the law professor from the University of New Hampshire and former Mikulski staffer suggested \$1 billion as a reasonable appropriation. Brokerick, the former New Hampshire Chief Justice, who was also an LSC board member until several years ago, said that \$1 billion was the minimum funding needed, suggesting that the LSC might require as much as \$2 billion annually to do its job properly.

Remapping Debate asked some advocacy organizations why, in view of what they themselves have described as persistent underfunding, they don't expand on the type of briefings that they or their lobbyists provide to members of Congress. Why, for example, not bring civil legal services clients to meet their elected officials? Why not raise awareness among the millions of Americans who could be getting free legal assistance if the LSC were allowed to grow?

Gordon Deane, president of the National Organization of Legal Service Workers, dismissed the idea as unrealistic. "The LSC was much more radical in its origins, it had its heyday," Deane said. "Do we try to do that [outreach] again? Can you find people who will find money to organize in the community? You're going to have a hard time doing that."

Corcoran observed that during her tenure on the Senate subcommittee overseeing the LSC's funding, most Senators and their staffers stayed trained on the numbers, not on the real lives their funding decisions affected. "If you have someone sitting across from you in a room who tells you what happened to them and they say, 'If I hadn't gotten help from Legal Services, I would have been in a very bad place,' or, 'I didn't get help because I couldn't access it,' that would make a huge difference." she said. "And I didn't see that type of thing going on."

CHIEF JUSTICES AND COURT ADMINISTRATORS CALL FOR RESTORED FUNDING

Earlier this year, the Conference of Chief Justices of state courts, and the Conference of State Court Administrators renewed their call for funding to be restored to the LSC. A white paper released by the two entities in March noted that, "In inflation-adjusted dollars, LSC's FY 2012 appropriation is an all-time low for LSC funding," and requested that Congress "restore funding to LSC to at least \$404 million for Fiscal Year 2013."

The white paper stated that, "The civil legal problems of low-income people involve essential human needs, such as protection from domestic abuse, safe and habitable housing, access to necessary health care, and family law issues including child custody actions."

In February, the Conferences had already adopted resolutions reaffirming the importance of the LSC and calling upon Congress "to fulfill our nation's promise of 'Equal Justice Under Law,' by restoring funding for the federal Legal Services Corporation to the level necessary to provide critically needed services to low-income and vulnerable Americans."

At that time, the Conferences also stated that, "when large segments of the American population are denied effective access to the justice system and are unable to assert and defend effectively important civil legal rights and prerogatives, public trust and confidence in the justice system itself is placed in jeopardy."

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