

The Catholic Lawyer

Volume 37
Number 1 *Volume 37, Number 1*

Article 2

October 2017

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DEFEND THE RIGHTS OF THE POOR

GORDON J. BEGGS*

I. THE LEGAL AID REDUCTIONS - A CHALLENGE FOR THE CHURCH?

In April of 1996, Congress approved severe reductions in the Legal Services Corporation (LSC) funding of legal services for the poor and crippling restrictions on the types of advocacy available through federally supported legal aid programs.¹ Founded in 1974 and funded by federal tax dollars, LSC has supported the efforts of over three hundred local legal aid societies to provide representation for poor persons facing a wide array of civil law problems.² In 1995, under this program, legal assistance was available without charge to an individual earning less than \$9338 per year, or to a family of four earning less than

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¹ Omnibus Consolidated Rescissions and Appropriations Act of 1996 (hereinafter Omnibus Rescissions and Appropriations Act), Tit. V, §§ 501-509, Pub. L. No. 104-134, 110 Stat. 1321, ___, ___-___ (1996).

² Robert Pear, *As Welfare Overhaul Looms, Legal Aid for Poor Dwindles*, N.Y. TIMES, Sept. 5, 1995, at A1. Mr. Pear states:

Of the 1.7 million cases handled by legal services lawyers last year, 33 percent involved family matters like child support, spouse abuse and divorce. Twenty-two percent involved housing, 16 percent involved welfare and other government benefits and 11 percent involved consumer issues. The remainder dealt with education, employment, health care and individual rights.

Id.

\$18,938 per year.³

Last year, LSC fielded one lawyer for every six to seven thousand poor persons, somewhat short of its own minimal goal of two lawyers for every ten thousand poor.⁴ The 1995 figure starkly contrasts with the overall national ratio of one lawyer for every three hundred persons.⁵ The line of legal aid lawyers representing the poor has been stretched perilously thin.

The current legislation would break it. Congress has slashed funding to \$278 million,⁶ down from \$400 million in 1995.⁷ The legislation also significantly limits legal aid's capacity to earn financial support with successful litigation. Unlike other attorneys, legal aid lawyers can no longer recover attorneys' fees,⁸ which are commonly available in many types of civil rights, housing, consumer, education, and environmental cases.⁹

The legislation includes crippling restrictions on the representation which federally supported legal services lawyers may provide.¹⁰ One set of restrictions prevents effective redress of any illegal private or government action that affects a large

³ Legal Services Corporation Eligibility Rule, 45 C.F.R. § 1611.3 (1995) (requiring legal aid programs receiving LSC funding to establish maximum annual income guidelines that generally do not exceed one hundred and twenty-five percent of current official Federal Poverty Income Guidelines). The 1995 maximum annual income levels are published at 45 C.F.R. Pt. 1611, App. A (1995). *Id.* at App. A.

⁴ Stephen Labaton, *Back From the Brink, the Legal Services Corporation Discovers It's in Danger Again*, N.Y. TIMES, Mar. 31, 1995, at A28.

⁵ *Id.*

⁶ Omnibus Rescissions and Appropriations Act, Tit. V, 110 Stat. at ____.

⁷ Jon Newberry, *Temporary Reprieve for the LSC*, A.B.A. J., Dec. 1985, at 18 (stating 1995 appropriation was \$400 million). *See also* William Booth, *Attacked as Left-Leaning, Legal Services Suffer Deep Cuts*, WASH. POST, June 1, 1996, at A1 (noting cut in funding to LSC was "far deeper than most other agencies took").

⁸ Omnibus Rescissions and Appropriations Act, § 504(a), 110 Stat. at ____ (prohibiting use of LSC funds to assist any person or entity "that claims (or whose employee claims), or collects and retains, attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees."). The act allows legal aid lawyers to recover attorneys' fees for those claims pending prior to the date of its enactment. *Id.* at § 508(b)(3), 110 Stat. at ____.

⁹ *See, e.g., West Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 88 (1991) (indicating that courts may award attorneys' fees in suits under, inter alia, Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(k), Toxic Substances Control Act, 15 U.S.C. §§ 2618(d), 2619(c)(2), Consumer Product Safety Act, 15 U.S.C. §§ 2060(c), 2072(a), 2073, Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6972(e), and Endangered Species Act of 1973, 16 U.S.C. § 1540(g)(4)). *See also* Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 260 & n. 33 (1975) (cataloging federal statutes allowing attorneys' fees awards).

¹⁰ Omnibus Rescissions and Appropriations Act, § 504(a)(13), 110 Stat. at ____ (outlining limitations on use of funds appropriated by the Act).

number of the poor.¹¹ Unlike all other citizens, poor persons represented by legal aid attorneys are disabled from bringing class action lawsuits.¹² Other restrictions limit the forums in which the poor receive legal services representation by prohibiting requests to executives, legislatures, and administrative agencies at all levels of government to change laws, regulations, or policies which result in injustices to the poor.¹³ Additional restrictions specifically prohibit welfare reform litigation and advocacy at a time when efforts are underway in Congress to rewrite this legislation.¹⁴ Still other provisions limit legal aid representation of

¹¹ Omnibus Rescissions and Appropriations Act, § 504(a)(7), 110 Stat. at ____ (prohibiting use of LSC funds to assist any person or entity "that initiates or participates in a class action suit."). The act requires legal aid attorneys to terminate their participation in pending class actions no later than August 1, 1996. *Id.* at § 508(b)(2), 110 Stat. at ____.

¹² *Id.*

¹³ Section 504(a) of the Act prohibits the use of LSC funds to assist any person or entity:

(2) that attempts to influence the issuance, amendment, or revocation of any executive order, regulation, or other statement of general applicability and future effect by any Federal, State, or local agency;

(3) that attempts to influence any part of any adjudicatory proceeding of any Federal, State, or local agency if such part of the proceeding is designed for the formulation or modification of any agency policy of general applicability and future effect;

(4) that attempts to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, or any similar procedure of the Congress or a State or local legislative body;

(5) that attempts to influence the conduct of oversight proceedings of the Corporation or any person or entity receiving financial assistance provided by the Corporation;

(6) that pays for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense, associated with an activity prohibited in this section ...

Id. at § 504(a)(2)-(6), 110 Stat. at ____.

¹⁴ *Id.* at § 504(a)(16), 110 Stat. at ____ (prohibiting use of LSC funds to assist any person or entity "that initiates legal representation or participates in any other way, in litigation, lobbying, or rulemaking, involving an effort to reform a Federal or State welfare system, except that this paragraph shall not be construed to preclude a recipient from representing an individual eligible client who is seeking specific relief from a welfare agency if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation."); see also Pear, *supra* note 2, at A1 ("Legal aid programs for the poor are laying off lawyers and curtailing activities because of Federal budget cuts, at the very time when demand for their expertise is growing as a result of imminent changes in welfare, Medicaid, housing and immigration laws."); Rocco Cammarre, *Reigning in Legal Services*, N.J. LAW., May 6, 1996, at 1 (indicating ban on litigating welfare law changes applies even if agency accepts only one dollar of federal funding).

traditionally oppressed groups, including prisoners¹⁵ and certain aliens.¹⁶

Under the act, the poor will suffer a significant reduction in the legal services available to them. How should the church respond to this legislation?

II. PRINCIPLES FROM SCRIPTURE

As the Old Testament recognizes and our experience confirms, the poor have always been particular victims of injustice. Proverbs says: "A poor man's field may produce abundant food, but injustice sweeps it away."¹⁷ Despite its universality, believers are not to view this problem with indifference: "The righteous care about justice for the poor"¹⁸

Because of the respect that we owe all humanity as the creation of God, believers may not oppress the poor: "He who oppresses the poor shows contempt for their Maker, but whoever is kind to the needy honors God."¹⁹ Proverbs warns: "Do not exploit the poor because they are poor and do not crush the needy in court, for the LORD will take up their case and will plunder those who plunder them."²⁰ Indeed, Proverbs enjoins God's people to assist the poor in securing justice:

Speak up for those who cannot speak for themselves, for the rights of all who are destitute.

Speak up²¹ and judge fairly; defend the rights of the poor and needy.

¹⁵ Omnibus Rescissions and Appropriations Act, § 504(a)(15), 110 Stat. at ___ (prohibiting use of LSC funds to assist any person or entity "that participates in any litigation on behalf of a person incarcerated in a Federal, State, or local prison."). The act requires legal aid attorneys to terminate their participation in pending cases on behalf of prisoners no later than August 1, 1996. *Id.* at § 508(b)(2), 110 Stat. at ___.

¹⁶ *Id.* at § 504(a)(11), 110 Stat. at ___ (prohibiting use of LSC funds to assist any person or entity that provides legal assistance to undocumented aliens). The act also requires legal aid attorneys to terminate their participation in pending cases on behalf of these persons no later than August 1, 1996. *Id.* at § 508(b)(2), 110 Stat. at ___. See also Kenneth F. Boehm, *The Legal Services Corporation: New Funding, New Loopholes, Old Games*, HERITAGE FOUND. REP., MAY 17, 1996, No. 276 (stating bill eliminated all funding for LSC support centers which have engaged in litigation supporting the provision of government services to illegal aliens).

¹⁷ Proverbs 13:23.

¹⁸ Proverbs 29:7.

¹⁹ Proverbs 14:31.

²⁰ Proverbs 22:22-23.

²¹ Proverbs 31:8-9.

In the gospels, Christ's teachings stress his concern regarding justice for the poor. Announcing his ministry at the synagogue in Nazareth, Jesus proclaimed, "The Spirit of the Lord is on me, because he has anointed me to preach good news to the poor. He has sent me to proclaim freedom for the prisoners and recovery of sight for the blind, to release the oppressed, to proclaim the year of the Lord's favor."²²

When a rich young man asked the Lord, "Teacher, what good thing must I do to get eternal life?"²³ Jesus answered, "If you want to be perfect, go, sell your possessions and give to the poor, and you will have treasure in heaven. Then come, follow me."²⁴ Unfortunately, the young man's great wealth occupied the place in his heart that should have been reserved for God, and he went away sad.²⁵

In marked contrast, Zacchaeus, the wealthy tax collector who was singled out for a visit by Jesus, responded, "Look, Lord! Here and now I give half of my possessions to the poor, and if I have cheated anybody out of anything, I will pay back four times the amount."²⁶ Zacchaeus' response, restoring what he had taken from the poor, was cause for rejoicing: "Today salvation has come to this house, because this man, too, is a son of Abraham."²⁷

Christ also emphasized generosity toward the poor when preparing his disciples to confront the world:

Do not be afraid, little flock, for your Father has been pleased to give you the kingdom. Sell your possessions and give to the poor. Provide purses for yourselves that will not wear out, a treasure in heaven that will not be exhausted²⁸

The message of Scripture is clear: In their pursuit of his kingdom, God's people are to be compassionate about justice for the poor.²⁹

²² *Luke 4:18-19.*

²³ *Matthew 19:16.*

²⁴ *Matthew 19:21.*

²⁵ *Matthew 19:22.*

²⁶ *Luke 19:8.*

²⁷ *Luke 19:9.*

²⁸ *Luke 12:32-33.*

²⁹ In recent history, much of the burden of affording justice to the poor in the United States has been borne by the government. Sometimes the churches have served as conduits for this aid through the operation of government-subsidized programs, such as day care or hunger centers. At times the church has offered effective advocacy on behalf of the poor through social concerns committees. Often, however,

III. A PROPOSAL FOR CHRISTIAN LEGAL SERVICES

The promise of Proverbs that "If a king judges the poor with fairness, his throne will always be secure"³⁰ assumes the poor can obtain access to plead their cause before executives, courts, legislatures, and agencies. If our society effectively silences the cry for justice on behalf of the poor, it will achieve neither fairness nor security. In these circumstances the church should consider the development of programs to provide legal services.

While an obvious goal of these programs, as directed by Proverbs, would be to "defend the rights of the poor and needy,"³¹ they should not simply mirror traditional legal aid offices. Christ's teaching suggests that for a Christian legal assistance program, the ultimate concern would extend beyond the material subject of any particular legal action which a poor person might bring to its attention:

Do not store up for yourselves treasures on earth, where moth and rust destroy, and where thieves break in and steal. But store up for yourselves treasures in heaven, where moth and rust do not destroy, and where thieves do not break in and steal. For where your treasure is, there your heart will be also.³²

A poor person seeking assistance may, of course, be rich in the treasures of heaven, but if he or she is not, an effort which offers to address only the specific subject of the case falls short of

the church has been relegated to the sidelines. In an era of falling membership and diminished tithing, the modern church has played only a limited role in our society's overall provision of assistance to the poor. Cf. Thomas J. Paprocki, *Option for the Poor: Preference or Platitude*, *Catholic Social Teaching*, AMERICA, Apr. 22, 1995 at 11. The author, a Catholic priest, credits a single sentence by the Synod of Bishops in their statement, JUSTICE IN THE WORLD, for motivating him to enter law school and establish the Chicago Legal Clinic, a clinic that provides legal services to the poor. *Id.* The motivating statement was, "Action on behalf of justice and participation in the transformation of the world fully appear to us as a constitutive dimension of preaching the gospel." *Id.* See also *Blocking Legal Access for the Poor; Cuts Jeopardize the Rights of All Americans*, L.A. TIMES, Jan. 3, 1996, at B8:

Legal services for the poor have a long history in this country. While the current federal program, administered by the Legal Services Corp., is a legacy of Lyndon Johnson's Great Society, the tradition of helping the poor with basic legal problems dates back to the 19th century. Every program between then and now shared this fundamental tenet: A legal system to which only the financially comfortable have access is inherently unjust and unacceptable in a democracy.

Id.

³⁰ Proverbs 29:14

³¹ Proverbs 31:9.

³² Matthew 6:19-21.

that love which the Lord asks us to extend to our neighbor.³³ The expression of this love could include an opportunity to become acquainted with and embrace the Christian faith, to share in the fellowship of the church, and to receive prayer support and care from a local congregation. From the perspective of the legal aid program, it might even include an effort to offer instruction calculated to help clients manage their affairs according to Christian principles and, to the extent possible, avoid future legal difficulties.³⁴

In this concept, Christian legal service would serve as a gateway to the church. The poor would experience Christ's love, not just in the law, but in the action of the entire church. A holistic program of this type would require a significant degree of integration with the supporting churches and their social service organizations. The integration could include possible volunteer participation by church members in the program. It would certainly require that churches be available as referral sources.

This integration would benefit the churches by providing an ongoing challenge to respond in a vital way to the needs of poor individuals and families who chose to become so involved. It would also afford them the blessing of a partnership with the poor who would in turn contribute their time, talent, and resources to the local church bodies. The hoped for result of this effort, in addition to responding to the legal needs of the poor, would be significant revitalization of the church itself.

The scope, form, and structure of the program could vary significantly depending on the sponsor. At a minimum, it should include a small legal staff with expertise in the legal problems of the poor and a strong commitment to Christian principles and ministry. The office could potentially mobilize volunteers, including attorneys and non-lawyers, to assist in meeting these needs.

The program would require significant start-up capital from the sponsoring church body, though some of this might consist of personnel or physical resources such as part-time staff or office

³³ When asked, "Teacher which is the greatest commandment in the Law?" Jesus replied: 'Love the Lord your God with all your heart, with all your soul and with all your mind.' This is the first and greatest commandment. And the second is like it: 'Love your neighbor as yourself.' All the Law and the Prophets hang on these two commandments." *Matthew 22:36-40*.

³⁴ Cf. LARRY BURKETT, *DEBT-FREE LIVING* (1989).

space. Additional support could be solicited from Christians within the legal community and foundations. Ultimately the program could become at least partially self-sustaining by litigating cases where attorneys' fee awards are available, such as civil rights, housing, consumer, education, and environmental cases. Finally, an opportunity for the clients to provide some form of in-kind support by assisting the office or other church programs should be afforded to maximize client dignity and involvement.

In some respects, this proposal, of course, is reminiscent of the first century church described in Acts, where believers were together, held all property in common, and gave to anyone in need.³⁵ Indeed, the ultimate challenge for the church in the United States today may be to undertake to do more for the poor, even as our government attempts to do less. The advantage of the legal services concept is that it focuses on a specific, current need of an affected individual or family. From that need, it attempts to build a relationship with the Lord and his church which will store up treasure in heaven for all concerned.

³⁵ *Acts* 2:44-45 ("All the believers were together and had everything in common. Selling their possessions and goods, they gave to anyone as he had need.").