

This Divided Jurisdiction:

Nonprofit Legal Services in New Orleans

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Abstract

Over the past 90 years lawyers in New Orleans have created a number of organizations to provide a variety of legal services for the poor. A pattern that has appeared throughout that period reveals that those organizations that provide direct service to individual clients receive quiet acceptance, while those that practice law reform having broad effect are subjected to forms of intimidation and harassment. This paper will discuss the development of nonprofit legal service organizations nationally and in New Orleans, but will focus on three specific negative experiences of local legal service organizations. It will explain those negative incidents and experiences by reference to social structure and to the positions in that structure of those involved. It will refer to the works of leading researchers and authors, including historian Maurice Dobb, philosopher C. B. Macpherson, and lawyers Michael E. Tigar and Madeleine R. Levy to explain the ways in which the social structure shaped the attitudes, ideas and actions displayed.

Numerous publications have documented the national growth of the legal aid movement as well of the Legal Services Program and the Legal Services Corporation. However, discussion of other local legal services and offices is conspicuously absent from the literature. This paper's discussion of local nonprofit legal services organizations and their experiences in New Orleans will fill a gap in the literature, will contribute to a greater understanding of non-profit legal services for the poor, and may serve as a cautionary tale for legal services organizations elsewhere.

1. Introduction

1.1 Purpose of Study

The search for equal justice has had a long history in New Orleans, as it has throughout the United States. Over the past 90 years city lawyers have created a number of organizations to provide legal services for the poor, beginning with the short-lived New Orleans Legal Aid Society in 1913.¹ Currently numbering about 14, these offices (listed in Appendix B) have varied in their operations and in the services that they provide. Some have been encouraged, promoted and financed by government of one level or another, while most were created and operated independently of government and financed through private donations and other fund-raising activities. Some organizations have provided specific services to individuals, while others have been more ambitious and worked toward law reform in order to have broader effect.

A review of the experiences of these legal service organizations reveals a consistent pattern throughout their histories. Those organizations that provided direct service to individual clients have received quiet acceptance in the community, while those that included law reform as an objective have been subjected to various forms of intimidation and harassment. The specific problems that legal service organizations have encountered include investigation and interference in the operation of the New Orleans Legal Assistance Corporation in 1970, interference in the use of international law students and interns by the Louisiana Capital Assistance Center in 2003 and 2004, and threats to programming and funding of the Advocacy Center, also in 2003 and 2004.

This paper studies the currently-existing organizations that provide legal services to the poor in New Orleans, focusing on those reform-oriented organizations and their experiences. It describes the types of organizations that are present, the different services that they provide, their staffing, their funding, their clientele, and their reception or acceptance in the community, and it analyzes this information with reference to major works such as Studies in the Development of Capitalism by Maurice Dobb,² The Political Theory of Possessive Individualism by C. B. Macpherson,³ The Price of Citizenship by Michael B. Katz⁴ and Law and the Rise of Capitalism by Michael E. Tigar and Madeleine R. Levy.⁵

1.2 Findings

This study reaches the following conclusions concerning the problems of the legal services organizations:

1. The problems that the New Orleans Legal Assistance Corporation (NOLAC) experienced in 1970 were due a change in administration to a Republican Party that (1) frowned upon activism in service to the poor, and (2) was sensitive to calls for relief from state Republican parties and governments.
2. The problems that the Louisiana Capital Assistance Project experienced since 2002 stem from its challenges to community and social standards of punishment, its success pointed to failures in

the justice system, and it jeopardized the reelection of judges, district attorneys and other law enforcement officers

3. The problems that the Advocacy Center experienced in 2003-2004 were due to its effective (and mandated) advocacy on behalf the disabled and elderly, its reports on problems in the nursing home industry, and its promotion of efficient and economical in-home care and the reduction of institutional care, which threatened the reputations and profits of powerful and well-placed leaders in the nursing home industry.

1.3 Significance of the Study

Numerous publications have documented the growth of the legal aid movement during the early 20th century, as well as the later growth of the Legal Services Program and the Legal Services Corporation. These reports have been national studies with few references to local offices, and discussion of the many local legal services and offices that have developed over the past century is conspicuously absent from the literature. This dissertation will discuss the currently-existing local nonprofit legal service organizations that developed in the City of New Orleans over the past 70 years, thereby filling a gap in the literature.

Beyond that, however, this dissertation will discuss negative reactions experienced by those legal services that engaged in law reform activities. It will highlight the social context in which legal services for the poor operate and the underlying social processes at work. This will contribute to a greater understanding of the law in modern society and may serve as a cautionary tale for other legal services organizations elsewhere.

2. National and Local New Orleans Legal Services

The development of nonprofit legal services in New Orleans followed the development of legal services nationally. This section begins with a discussion of the national development of the nonprofit sector and of nonprofit legal services specifically, which provides the context for the later discussion of nonprofit legal services in New Orleans.

2.1 Early Informal Legal Aid

Boston lawyer Reginald Heber Smith published the first major study of legal services for the poor, Justice for the Poor, in 1919. He stated that during the colonial era and immediately following independence lawyers played a minimal role in court proceedings. The poor pleaded their own cases in the lower courts, for “there was little law and few precedents,”⁶ and “lawyers had repeatedly been excluded by assembly enactments from appearing in the courts.”⁷ Social scientist Peter Dobkin Hall commented that Puritan settlements in New England banned the practice of law “as inimical to the public interest; magistrates favored arbitration of disputes over adversary proceedings.” Significant adoption of English law and legal forms did not begin until the 1790s.⁸

Smith recognized that “legal aid work of an informal, unorganized, individual sort has always existed,” provided by the earliest law offices in the country and by charity organizations that called upon individual lawyers for specific cases. However, this informal type of legal assistance was “transitory and fleeting.” It “failed to affect the administration of justice, it offered nothing permanent on which to build, and when the enormous demand for legal assistance came with immigration and the growth of great cities in the last quarter of the nineteenth century, it collapsed.”⁹

2.2 The Development of Formal Legal Aid

Smith explained that organized legal aid initially appeared as the work of benevolent societies. The German Society of New York created the first legal aid service in 1876 “to render legal aid and assistance, gratuitously, to those of German birth, who may appear worthy thereof, but who from poverty are unable to procure it.” Similarly, in 1886 the Chicago Women’s Club created The Protective Agency for Women and Children. However, Smith considered that the Bureau of Justice, created by the Ethical Culture Society of Chicago in 1888, was “the first true legal aid organization,” as it “undertook to supply legal services in all cases to all persons, regardless of nationality, race, or sex.”¹⁰ Legal aid services were established in Jersey City in 1894 and Boston in 1900, bringing the total to four services at the turn of the century. By 1913 legal aid services existed in 28 cities, including New Orleans,¹¹ and by 1916 there were 41 legal aid services in 37 cities (with multiple services in Chicago and New York).¹²

Smith visited all of the then-existing 41 legal services offices in the country,¹³ described the services that they offered and made recommendations for future legal services for the poor. He estimated that “over 35,000,000 men, women, and children” were “debarred from legal advice and the essential services of the lawyer in court” due to their inability to pay legal fees.¹⁴ He also found that the greatest majority of the legal problems of the poor fell into four general categories – claims for wages; domestic difficulties; personal injuries; and miscellaneous small debts and claims (“as for rent, groceries, loans, and arising out of chattel mortgages and assignments of wages, in which the poor may appear either as plaintiffs or defendants”).¹⁵

Smith learned that five general types of organizations provided legal services to the poor – private corporations societies, public bureaus, departments of organized charities, bar association societies and law school societies. Of these, he considered that the law school and bar types of association were relatively insignificant in the numbers of cases that they handled.¹⁶ He then distinguished nine types of agencies within those general types of organizations.¹⁷ He stated, though, that the ninth, the legal aid organization, was “the last and greatest remedial agency” which had “done more to place the poor in a more equal position before the law than all the other agencies combined.”¹⁸

Smith saw a number of problems with the agencies that he visited, stating that they were small and isolated from each other, many of them dealt with differing aspects of the problems of the poor, the agencies and the services that they offered lacked consistency, and many agencies had no relationship with justice or legal institutions. The characteristic that they shared in common was their attack on the expense of counsel.¹⁹

Working from the premise that legal representation was a constitutional right,²⁰ Smith presented a series of recommendations for improving legal services for the poor. Concentrating on the development of the legal aid organization as the “greatest remedial agency,” he observed that some organizations specialized in particular types of cases, and recognized that large cities may need special organizations for special purposes. However, he argued that there was no need for “divided jurisdictions,” but that legal aid services should develop specializations within a single society or bureau. He stated that “one organization . . . can secure the same efficiency through departmental specialization, and in addition it secures unity of purpose, control, and policy, better coöperation, less duplication, and it effects many economies in the overhead and administrative expenses.”²¹

Smith also observed and supported legal aid societies adopting advocacy and law reform roles through the pursuit of remedial legislation, appellate law, and preventive law. He explained that through its daily work the legal aid society finds legal abuses that other law offices would not see, as well as other instances where improvements in the law would “make the course of justice run more smoothly.” In view of this, legal aid organizations took up “the burden of trying, through remedial legislation, to keep the law equal.”²² He considered that through legal aid organizations’ use of appellate law, court decisions establish precedents that serve to “fix the law for all similar future cases.” He stated that “a proper and equitable decision may have as much effect in safeguarding the rights of the poor as a remedial statute,” for decisions in such cases affect not only the specific individual involved, but “on it may depend the right to protection and

redress of countless persons similarly situated.”²³ He discussed the new field of “preventive law,” or “the process of searching for the cause of the wrong condition and then of ascertaining the cure” in law as a third area of advocacy for legal aid agencies.²⁴ He stated that, while legal aid agencies could do some preventive law work on their own, they could accomplish more in cooperation with other organizations. Therefore, he suggested that a Bureau of Justice be established to “provide the means for the scientific study of the law, for detecting its shortcomings, and for providing the necessary information by which alone constructive remedial work is made possible.”²⁵

Finally, Smith argued in favor of public legal aid, stating that “all the basic component parts of the administration of justice are in the control of the state, except the part taken by attorneys in bringing and defending civil suits and in defending criminal matters.”²⁶ He viewed the attorney as supplying “the motive power to make the machinery of justice move,” and he asserted that “equality can be had only if the attorney’s services are available to every one.”²⁷ Therefore, he argued, “the state should pay for lawyers to represent poor persons in proper cases where the attorney’s services are necessary to secure equality before the law.”²⁸ He observed that “the privately supported agencies are unable to meet the entire need because they lack the necessary funds,” while “the state can recognize no such limitation.”²⁹ He further stated that “it is the affirmative duty of the state, at public expense, to do all that is needful to secure justice to every one,”³⁰ and he argued that cost should not be a barrier to the public provision of legal aid, for “legal aid work is the least expensive of all so-called charitable undertakings.”³¹

Legal aid organizations of various types developed throughout the first half of the 20th century. Table 1 indicates the growth in the number of cases handled, their cost, and monetary amounts won, at 10-year intervals from 1876-1948.

By the early 1960s there were 236 legal aid organizations and 110 defenders offices in the United States, and “in 1962 the combined budgets of all the legal aid societies in the entire nation totaled less than \$4 million.” These offices and budgets provided “the equivalent of 400 full-time lawyers . . . to serve almost 50 million Americans.” The resulting ratio of one legal aid lawyer to approximately 120,000 poor people compared to “almost 250,000 full-time attorneys to take care of the remaining 140 million, a ratio of one lawyer for every 560 persons.”³²

2.3 The Legal Services Program

In 1964 the Johnson administration announced the creation of the Legal Services Program (LSP) within the Office of Economic Opportunity (OEO), although the government would not pass legislation officially creating the LSP for almost two more years. In contrast to the low profile of the earlier legal aid organizations, the LSP, as part of the war on poverty, was oriented toward more prominent law reform activities. E. Clinton Bamberger, Jr., the first director of the LSP, stated at the November 18, 1965, annual meeting of the National Legal Aid and Defender Association (NLADA) that

Table 1: Volume and Cost of Legal Aid in the United States, 1876-1948

Year	No. of Cases	Cost of Operation	Amount Collected for Clients
1876	212	\$1,000	\$1,000
1886	3,462	3,820	19,357
1896	15,017	13,450	76,695
1906	37,603	53,347	99,049
1916	117,201	181,408	340,199
1926	152,214	369,264	645,991
1936	260,400	566,220	526,903
1946	301,628	1,033,812	751,706
1948	344,616	\$1,519,076	\$738,499

Source: Table 18: Volume and Cost of Legal Aid in the United States 1876-1948, in Brownell, Legal Aid in the United States, p. 167-168.

Lawyers must be activists to leave a contribution to society. The law is more than a control; it is an instrument for social change. The role of [the] OEO program is to provide the means within the democratic process for the law and lawyers to release the bonds which imprison people in poverty, to marshal the forces of law to combat the causes and effects of poverty.³³

He later commented that “we are engaged in giving arms, not alms, to the poor.”³⁴

In words that echoed Smith’s, Earl Johnson, Jr., the first Deputy Director of the Legal Service Program, explained that law reform “offered the possibility of benefiting many of the poor who could not possibly be served directly at Legal Services offices. A single test case or legislative change or modified administrative regulation can benefit thousands of individuals.”³⁵

In 1966 the LSP began accepting applications from local organizations wishing to participate in the program, and it grew quickly. By June 30, 1966 the OEO had funded legal assistance programs in 130 communities and had made another 25 grants to law schools, at a total cost of over \$25 million.³⁶ By June 30, 1967 the number of grants had increased to 300 agencies in 210 communities, and the annual budget had increased to over \$40 million.³⁷ A year later the LSP employed 2000 lawyers.³⁸

The LSP took several novel steps to aid in combating poverty through law reform. It published a national newspaper, Law in Action, between March 1967 and July 1968 to publicize law reform successes; it published summary accounts of legal memoranda and pleadings in its internal journal Clearinghouse Review as a resource for lawyers; and it published Poverty Law

Report as a “looseleaf reporter.” The LSP established the Project Advisory Group, which consisted of agency directors and staff lawyers, to advise the national leadership of the LSP.³⁹

The LSP also created the Reginald Heber Smith Fellowship program at the University of Pennsylvania, which provided five weeks of specialized training for lawyers. It covered “topics unfamiliar at that time in the curriculum of most law schools – welfare law, consumer protection, housing code enforcement, and test case litigation.” The broad purpose of the Fellowship program was to “avoid the stigma of Federal government control and yet achieve the objective of central recruitment and selection of high-quality lawyers who possessed a broad conception of their role.” In fact, “by 1971, almost 25 percent of all Legal Services attorneys then employed had been recruited through this program.”⁴⁰ The LSP also established a dozen national law reform centers that could initiate lawsuits or legislative proposals, could assist agencies that were short of time with litigation, and could provide training and research material to attorneys in local agencies.⁴¹

Public statements from the LSP indicated that the Program would offer legal services to the poor in civil cases,⁴² although the legislation that created the LSP in 1966 contained no such limitation. It stated only that the Program should provide legal advice, representation, research and information to further the cause of justice among persons living in poverty.⁴³ The Economic Opportunity Amendments of 1967 explicitly forbade the use of Legal Services funds or personnel for defense in criminal cases “except in extraordinary circumstances where, after consultation with the court having jurisdiction, the Director has determined that adequate legal assistance will not be available for an indigent defendant unless such services are made available.”⁴⁴ This amendment should have had little effect on Legal Services practice, however, for the Program was explicitly created to serve those who did not have adequate legal assistance available to them.

Many Legal Services offices embraced the national objective of law reform and applied it with the wide latitude that the legislation offered them. Legal Services lawyers won numerous prominent cases against businesses and governments, and obtained significant gains for the poor.⁴⁵ These legal actions and successes led to considerable opposition against legal services and to attempts to limit the actions of LSP offices and lawyers, and the attempts intensified after the Nixon administration took office in 1969.⁴⁶

2.4 The Legal Services Corporation

Shortly before leaving office, President Nixon signed the Legal Services Corporation Act of 1974 which removed Legal Services from the OEO as a program and established a separate Legal Services Corporation (LSC).⁴⁷ This Act contained the first legislated restrictions on Legal Services activity, specifically stating that LSC funding may not be used for: advocating or opposing any ballot measures, initiatives, or referendums; any class action suits (“except with the express approval of a project director of a recipient”) or appeals; representation in fee-generating cases; legal assistance in school desegregation; procuring therapeutic abortion; or cases arising out of violation of the Military Selective Service Act or desertion from the Armed Forces.⁴⁸

The LSC fared well under the Ford and Carter administrations, and by 1980 it had achieved a previously-identified goal of reaching a “minimum access” level of service by which

“each legal services program received LSC funding at a level sufficient to theoretically support two lawyers for every 10,000 poor people in its service area.” The following year it had a budget of \$321.3 million and funded “325 programs that operated in 1,450 neighborhood and rural offices throughout the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, Micronesia, and Guam.”⁴⁹

Ronald Reagan, likely still bearing resentment against Legal Services from the 1960s when some of its offices successfully sued the Government of California while he was governor, intended to eliminate the LSC when he assumed office as President in 1981. For the fiscal years 1982-1988 he recommended an appropriation of \$0 for the Corporation, but Congress, after lobbying by the American Bar Association (ABA), funded the LSC at reduced levels, as shown in Table 2.⁵⁰ In 1981 Reagan declined to nominate replacements for the Board of Directors whose terms had expired, but relied on a series of recess-appointed Boards. During his second term he consistently nominated opponents of the LSC as Board members.⁵¹

Table 2: The Legal Services Corporation Budget 1976-1989, in millions

Fiscal Year	LSC Request	President's Recommendation	Approved by House	Approved by Senate	Final Appropriation
1976	\$96.466	\$71.5	\$0	\$96.466	\$92.33
1976 -Adj. ¹	27	24.63	n/a	n/a	24.63
1977	140.97	80	110	130	125
1978	217.053	90/175 ²	217	195	205
1979	304.032	255	285	255	270
1980	337.5	291.8	305	291.8	300
1981	353	321.3	321.3	300	321.3
1982	399.637	347/0 ³	241	241	241
1983	265	0	241	241	241
1984	251	0	0	257	275
1985	325	0	0	297.55	313
1986	305	0	305.5	306.4	292.363
1987	305.5	0	305.5	305.5	305.5
1988	305.5	0	305.5	310	305.5
1989	250	250	0	308.5	305.5

Source: Rowley, *The Right to Justice*, p. 177.

Notes 1. Fiscal year changed from July 1 to October 1

2. \$90 million recommended by Ford; \$175 million recommended by Carter

3. \$347 million recommended by Carter; \$0 recommended by Reagan

In 1982 and 1983 Congress placed new restrictions on LSC offices and lawyers. It prohibited the “use of LSC funds for lobbying and rulemaking,” prohibited “representation of certain categories of aliens using LSC funds,” it required “that state and local bars make appointments to program boards and imposed new procedural requirements for class actions.” A budget reduction of 25 percent from 1981 to 1982 also necessitated that a significant number of offices be closed, attorneys and paralegals be laid off, and services be cut back.⁵²

In 1984 the LSC, at the urging of the ABA, required that its grantees allocate 12.5 percent of their LSC grants toward “private attorney involvement” (PAI). Most of this PAI funding went to increase pro bono work, but some funding went to other forms of legal services such as *judicare* or contracts.⁵³ This had a number of positive effects. The involvement of private lawyers in legal services led to an increased familiarity with its issues and practice, helped to overcome some lingering opposition within the law community, and increased support for the Legal Services program.⁵⁴

While experiencing a reduction in funding, and fearing a total loss of government funding the LSC began to obtain funding from several other sources. Some programs already received private donations and funds from foundations and local or state governments, but they now began to seek funds from sources such as United Way agencies, bar associations, contracts, other federal funds (such as the Older Americans Act, Community Development Block Grants, and Revenue Sharing), and Interest on Lawyer Trust Accounts (IOLTA).⁵⁵ IOLTA allows lawyers to pool clients’ funds – including small amounts and short-term amounts – that were being held in small non-interest bearing accounts, and to earn interest on the pooled funds.⁵⁶ The first Bush administration restored some funding to the Corporation, but not to the pre-Reagan levels in inflation-adjusted dollars.⁵⁷

Following the election of 1994 the new conservative Congress threatened, once again, to eliminate the Legal Services Corporation. Anticipating budget cuts and new restrictions on legal services activities, the LSC

initiated a strategic program in 1995 that required all of its grantees, along with non-LSC funded providers, bar associations and state ‘access to justice’ commissions, law schools, and other important stakeholders in each state, to engage in a state planning process. The goal was to develop a comprehensive, integrated system of legal service delivery for each state.⁵⁸

As expected, the 1996 appropriations act cut LSC funding by 30 percent, from \$400 million in 1995 to \$278 million, and “prohibited representation of certain categories of clients, including prisoners, specified groups of aliens, and public housing residents who were being evicted based on drug-related charges,” regardless of the source of funding that the LSC offices received. It prohibited LSC-funded programs from “participating in class actions, welfare reform advocacy, and most affirmative lobbying and rulemaking activities,” and from “claiming or collecting attorneys’ fees.” Also, “funding for national and state support centers, the Clearinghouse Review, and other entities that had provided support, technical assistance, and training to LSC-funded legal services programs” was eliminated.⁵⁹ Some of the restrictions, such

as limitations on the use of non-LSC funds and the restriction on activities concerning welfare reform, were later challenged in court and struck down.⁶⁰

Appropriations for the LSC have slowly grown from \$278 million in fiscal year 1996 to \$338.5 million in fiscal year 2003, and funding from additional sources has increased the total to over \$950 million. However, this additional funding is not secure, fluctuates with changes in the economy, and some donors have imposed restrictions on its use.⁶¹ Table 3 shows the history of LSC funding.

Since 1996 NLADA, the Center for Law and Social Policy (CLASP) and the ABA have joined LSC in working toward the development of integrated state-wide legal services systems. NLADA and CLASP created the Project for the Future of Equal Justice, while NLADA and the ABA created the State Planning Assistance Network (SPAN), both of which provide assistance to the states in their efforts. LSC promoted mergers and reconfigurations of the offices that it funded, so reducing the number of offices but giving them larger budgets and having them serve larger populations over greater geographic areas.⁶²

2.5 Legal Services in New Orleans

The Louisiana Bar Association established the short-lived Legal Aid Society in 1913 as the first nonprofit legal service in New Orleans.⁶³ The bar association paid little attention to the service, and the Society, which operated until 1923,⁶⁴ was “wholly inadequate to cope with the need of the poor for legal assistance.”⁶⁵ Since that time New Orleans lawyers have created a number of organizations that provide a variety of legal services. This section of the paper provides a brief discussion of currently-existing organizations.

The currently-existing organizations, listed in Table 4, provide a range of legal services to the poor. Half of the organizations – the Legal Aid Bureau, New Orleans Legal Assistance, the Advocacy Center, the New Orleans Pro Bono Project, Catholic Charities Immigration Legal Service, Catholic Charities Project Save and AIDSLaw of Louisiana – provide legal services in civil cases. Five organizations – Louisiana Capital Assistance Center, Center for Equal Justice, Capital Post-Conviction Project of Louisiana, the Capital Appeals Project and A Fighting Chance – provide services in capital cases. The Juvenile Justice Project of Louisiana provides legal services to juveniles within the justice system, and the Innocence Project New Orleans works to overturn the convictions of people who are probably innocent.

Many of these organizations have seen changes in the services that they provide, and in some cases in the structures of the organizations themselves. The Legal Aid Bureau, organized informally in 1932⁶⁶ but incorporated in 1935,⁶⁷ provided assistance in both civil and criminal cases from 1940 into the 1970s,⁶⁸ but now provides assistance in civil cases only in six parishes.

New Orleans Legal Assistance, incorporated as the New Orleans Legal Assistance Corporation in 1967,⁶⁹ initially provided a full range of civil and criminal legal services, and engaged in aggressive law reform activities through class action law suits. However, its activities were constrained through decisions of the Legal Services Program and legislated restrictions on the Legal Services Corporation. It became an office of the Southeast Louisiana Legal Services (SLLS) in 2003, and as part of SLLS provides legal assistance in civil cases in ten parishes.

Table 3: LSC Funding 1975-2003 (in actual dollars and adjusted for 2003 dollars)

Grant Year	Annual LSC Appropriation in Actual Dollars	Annual LSC Appropriation in 2003 Dollars
1975	71,500,000	245,332,714
1976	116,960,000	379,451,951
1977	125,000,000	380,775,578
1978	205,000,000	580,414,110
1979	270,000,000	686,528,926
1980	300,000,000	672,087,379
1981	321,000,000	652,497,030
1982	241,000,000	461,021,762
1983	241,000,000	446,672,691
1984	275,000,000	488,594,803
1985	305,000,000	523,262,082
1986	292,363,000	492,428,922
1987	305,500,000	496,437,500
1988	305,500,000	476,714,286
1989	308,555,000	459,348,815
1990	316,525,000	447,058,263
1991	328,182,000	444,804,678
1992	350,000,000	460,513,186
1993	357,000,000	456,070,588
1994	400,000,000	498,245,614
1995	400,000,000	484,514,436
1996	278,000,000	327,079,669
1997	283,000,000	325,494,081
1998	283,000,000	320,501,840
1999	300,000,000	332,412,965
2000	303,841,000	325,720,375
2001	329,274,000	343,218,410
2002	329,300,000	337,903,168
2003	338,646,000	336,646,000

Source: Houseman and Perle, Securing Equal Justice for All, p. 36.

The Advocacy Center, established in 1984, developed out of the earlier Louisiana Center for the Public Interest (of 1973) and the Advocate for the Developmentally Disabled (created as a unit of NOLAC in 1977). It runs both federally funded programs and contract programs, and is one of the few local nonprofit legal service organizations that undertakes class action lawsuits.⁷⁰

Table 4: Current Organizations

Year Created	Organization	Mission
1935	Legal Aid Bureau	Provides civil legal services to the indigent
1967	New Orleans Legal Assistance	Provides civil legal services to the indigent
1984	Advocacy Center	Provides legal services to the elderly and the disabled
1986	New Orleans Pro Bono Project	Provides free civil legal assistance to indigent clients
1986	Catholic Charities Immigration and Refugee Services	Provides legal services to poor refugees and immigrants
1986	Catholic Charities Project Save	Provides legal services to victims of domestic violence
1989	AIDSLaw of Louisiana	Provides legal services to indigents with HIV/AIDS
1993	Louisiana Capital Assistance Center	Provides legal services to indigent death penalty defendants
1997	Juvenile Justice Project of Louisiana	Advocates for the transformation of the juvenile justice system
1999	Center for Equal Justice	Provides legal services to individuals who are facing the death penalty
2000	Capital Post-Conviction Project of Louisiana	Provides legal representation to indigent persons under the sentence of death, and advises lawyers with defendants facing a death sentence
2001	The Capital Appeals Project	Represents indigent prisoners on death row.
2001	Innocence Project New Orleans	Provides legal representation to indigent prisoners serving life sentences who are likely innocent
2002	A Fighting Chance	Provides investigative assistance to Louisiana's poor facing the death penalty; educates capital defense investigators; improves investigative standards

The Pro Bono Project was created by the Louisiana Bar Association in 1986 to coordinate the pro bono legal aid work of local lawyers in civil law. It was incorporated as an independent organization in 1991.⁷¹

The Catholic Charities in New Orleans initially provided immigration resettlement services (and related legal services) to Cuban refugees who fled the Castro regime in the 1960s, and then to Vietnamese refugees after the fall of Saigon in 1975. Catholic Charities became accredited in immigration law and formalized their Refugee Resettlement Services in 1986 when Congress offered amnesty and legal status to undocumented immigrants.⁷²

AIDSLaw of Louisiana began through the informal efforts of local lawyers during the 1980s. As the demand for services and workload increased, AIDSLaw was formally incorporated in 1989.⁷³

Executive Director Nick Trenticosta created the Center for Equal Justice when the Loyola Death Penalty Resource Center, where he had worked, closed in 1999.⁷⁴ Finally, A Fighting Chance grew out of a service of the Louisiana Crisis Assistance Center.⁷⁵

2.6 Staffing and Funding

Nonprofit legal services organizations have made significant contributions to both legal representation and funding in New Orleans, as Table 5 indicates. In 2002 the 14 organizations discussed employed approximately 121 legal staff, including attorneys, paralegal employees, ombudsmen and investigators. This does not indicate the full extent of their influence and effectiveness, however. The Pro Bono Project, which does not provide legal services directly, coordinates the pro bono work of 1,400 lawyers in New Orleans. Also, AIDSLaw of Louisiana has access to 80 volunteer lawyers throughout the state.

In 2002 the organizations had budgets that totaled approximately \$10.7 million. Several of the services, including New Orleans Legal Assistance, the Advocacy Center and the Capital Post-Conviction Project of Louisiana, are government-mandated and receive substantial government funding. All organizations receive funding from a variety of sources, including bar associations, corporate donations, private donations, and fund-raising activities such as educational programs, social programs, and the charging of fees.⁷⁶ In fact, even independent programs that are not government-mandated may receive government funding. For example, Catholic Charities Immigration and Refugee Services received funding from the Louisiana Department of Health and Hospitals, the Louisiana Department of Education, the Louisiana Office of Community Service, the Louisiana Commission on Law Enforcement and the City of New Orleans.⁷⁷ The Juvenile Justice Project of Louisiana received funding from the Louisiana Indigent Defense Assistance Board,⁷⁸ and the Pro Bono Project received funding from HUD.

In terms of legal representation provided, five selected programs closed approximately 7,500 cases in 2002. These are listed in Table 6.

In spite of the labor-power and funds devoted to providing legal services to the poor, only a small part of the need is being satisfied. A 1991 study by the Louisiana Legal Consortium reported that “only 7.17 percent of the legal needs of Louisiana’s poor were being addressed by existing programs” compared to “15 to 20 percent of the civil legal need of the poor” nationally.⁷⁹ More recent estimates indicate that two-thirds of the legal services needs of poor HIV/AIDS clients⁸⁰ are satisfied, one-third of the legal services need of poor victims of domestic violence is satisfied,⁸¹ and five percent of civil legal services needs of the general poor population are satisfied.⁸² Clearly, while the nonprofit organizations are providing needed legal services, more needs to be done.

Table 5: Organizations' Revenue and Staff

Year Created	Organization	Revenue 2001	Revenue 2002	Legal Staff
1935	Legal Aid Bureau	\$283,431	\$279,651	3.5 lawyers 1 paralegal
1967	New Orleans Legal Assistance	\$2,578,516	\$2,772,903	~23 attorneys ~6 paralegals
1984	Advocacy Center	\$2,653,443	\$2,875,387	~53 attorneys, paralegals, etc.
1986	New Orleans Pro Bono Project	\$320,273	\$362,758	
1986	Catholic Charities Immigration Legal Services	\$662,376 (expenses)	\$649,418 (expenses)	1 attorney 1 citizenship 1 immigration
1986	Catholic Charities Project Save		~\$240,000 (interview)	3 attorneys 1 paralegal
1989	AIDSLaw of Louisiana		~\$300,000 (interview)	3.5 attorneys
1993	Louisiana Capital Assistance Center	\$1,146,087	\$770,488	5 attorneys
1997	Juvenile Justice Project of Louisiana	\$1,342,965	\$758,281	4 attorneys
1999	Center for Equal Justice	\$252,190	\$221,836	1 attorney
2000	Capital Post-Conviction Project of Louisiana	\$1,520,000	\$996,465	2 attorneys
2001	The Capital Appeals Project	\$333,801	\$350,634	4 attorneys
2001	Innocence Project New Orleans		\$98,662	5 lawyers
2002	A Fighting Chance		not available	5 investigators
	Totals		\$10,676,483	123 legal staff

Sources: Budget information is from organizations' IRS Form 990, except Catholic Charities Project Save and AIDSLaw of Louisiana, which came from personal interviews. Legal staff numbers is derived from organizations' annual reports and internet pages.

2.7 The Controversies

Despite the service that these organizations provide, and the great need that remains, several of these services have been caught up in controversy and opposition. This section of the paper reviews three of those controversies in New Orleans.

Table 6: Selected Organizations and Cases Closed in 2002

Organization	Cases Closed in 2002
Legal Aid Bureau	~700
New Orleans Legal Assistance	4,549
New Orleans Pro Bono Project	902
Catholic Charities Project Save	371
AIDSLaw of Louisiana	1,038
Total	~7,560

Sources: All figures are from internal agency reports, except the Legal Aid Bureau figure, which is from a figure of 600-800 given verbally during an interview.

2.7.1 New Orleans Legal Assistance Corporation

Following its creation in 1967, the New Orleans Legal Assistance Corporation became an active and well-respected organization among their client population and other social service agencies. By July 1970 it had a staff complement of 54 distributed among 7 offices throughout the city. In addition to the Director and Assistant Director, the staff included 9 attorneys, 8 Reginald Heber Smith Fellows, 8 “VISTAs” (Volunteers in Service to America lawyers), 13 paraprofessionals, and 12 clerical employees.⁸³

Consultants Auerbach Associates reported in 1970 that NOLAC was ‘fearless in law reform, caring little about the controversy that results.’⁸⁴ During the period 1968-1970 NOLAC sued prisons, schools, hospitals, the Orleans Parish Welfare office, the Commissioner of Public Welfare in Baton Rouge, the Agriculture Department, the New Orleans Housing Authority, the chief of police, and the mayor.

These cases brought significant benefits to people throughout the poverty community. The state juvenile prison at Scotlandville was desegregated. Conditions of confinement at the Orleans Parish Prison were found to be unconstitutional. City and state vagrancy laws were declared unconstitutional. Public housing tenants won protection from eviction without due process of law. Residency requirements were stricken from welfare eligibility nationally. Indigent patients were found to have the right to sue hospitals to enforce the provision of free care to the poor (under the Hill-Burton Act). The cost of food stamps was lowered, and food stamp eligibility requirements were made more reasonable. College students were found to have the right to counsel at expulsion hearings. Also, a case involving 1200 families in a “vacuum hoax” decided that contracts involving people who couldn’t afford to pay for a vacuum cleaner were void.⁸⁵

This work was met with considerable approval locally, as well as nationally at the OEO, and NOLAC’s first three annual evaluations were laudatory. The 1968 evaluation stated that “NOLAC has the potential of becoming one of our best legal services programs.”⁸⁶ The 1969

evaluation stated that “the evaluation team found NOLAC to be an outstanding program,”⁸⁷ and the 1970 evaluation stated that “The NOLAC program is one of the best in the LSP system.”⁸⁸

The attitude of the OEO and LSP head office in Washington toward NOLAC changed in the fall of 1970, however. In mid-September of that year two NOLAC lawyers, Robert Glass and Ernest Jones, acted as legal counsel for a group of Black activists (now recognized as being members of the Black Panthers) who were in a gun battle with New Orleans police. NOLAC was soon visited by several forms of misfortune, including:

- September 30: IRS investigated NOLAC for possible illegal political activity⁸⁹
- September 30: OEO investigated NOLAC for possible violation of OEO guidelines⁹⁰
- October: A handbill falsely linked a NOLAC lawyer to Black Panther fundraising⁹¹
- October 28: Telegram from LSP listed apparent violations of OEO guidelines and threatened NOLAC with suspension or termination of funding⁹²
- November 30: Columnists Evans and Novak falsely condemned NOLAC nationally⁹³
- December 30: OEO ordered NOLAC to fire two lawyers representing the Black Panthers⁹⁴
- January 1971: OEO Regional Office evaluated of NOLAC⁹⁵

NOLAC was finally cleared of all charges against it, and continued funding was assured. However, this only occurred after NOLAC agreed to special conditions in its contract, including increased oversight; changes to accounting, record keeping and documentation procedures; and specific conditions and limits on criminal representation, among others.⁹⁶

2.7.2 Louisiana Capital Assistance Center

At the time that the Louisiana Capital Assistance Center (LCAC) – originally the Louisiana Crisis Assistance Center – was founded in 1993, Louisiana had “the highest per capita execution rate in the country, due in part to a bar association policy of not reimbursing lawyers for their defense of indigent clients”⁹⁷ and a maximum allowable payment of \$1,000 for the defense of a capital trial by state indigent funding.⁹⁸ LCAC founder Clive Stafford Smith has stated that “the justice system . . . is shockingly weighted in favour of those with money. It is the poor who end up on death row, all too often . . . because they get bad lawyers.” He also observed that “if you get competent representation at trial then, short of a lightning bolt from the sky, you don’t get the death penalty.”⁹⁹ An opponent of the death penalty, Smith worked to get a defendant off death row when innocence could not be established.¹⁰⁰

The work of the LCAC has been “devastatingly effective.”¹⁰¹ It established the Orleans Parish Preliminary Hearing Project to deal with the earliest stages of cases, and saw charges dismissed in 100 (or 84%) of 119 cases.¹⁰² Smith has stated that he has lost only six of about 300 cases, meaning that only six of his clients have been executed.¹⁰³

Clive Stafford Smith commented on the practice of due process, stating that . . . we have to take care when we punish people. In part, that means slowing the rush to judgment. In 1987 I tried to delay Edward Earl Johnson’s death and I failed; an innocent man was executed. . . . Delay does not decrease the number of venal police, incompetent defence lawyers and over-zealous prosecutors. However, delay, combined with increased resources, does allow the condemned to expose erroneous convictions. It is no

coincidence that people are now being exonerated from death row, USA, in increasing numbers.”¹⁰⁴

As of 6 October 2004, nationally 117 people have been released from death row since 1973, and eight of those have been exonerated and released in Louisiana.¹⁰⁵

Smith and the staff at the LCAC have not been alone in doing this work and achieving these successes, but they had the help of lawyers and interns from around the country and the world. The use of foreign interns is not uncommon in law offices – in 2001 more than 75 came to the United States to work on death penalty cases.¹⁰⁶ The LCAC “credits the exceptional contributions that interns make” and has had interns perform a range of duties. These have included “legal research, monitoring court proceedings, gathering and summarizing records, social science research, gathering statistical data, interviewing jurors, and visiting clients.”¹⁰⁷ The LCAC had six foreign law interns working in its office in 2003, and others had worked there earlier.¹⁰⁸

The role of the international intern and lawyer was recently jeopardized, however. In June of 2002 the Louisiana Supreme Court “decided that visiting foreign attorneys would no longer be allowed to take the bar examination,” so overturning a ruling that was almost 20 years old. This decision came to light when Richard Bourke, a lawyer from Australia, arrived to work at the LCAC. The Louisiana Bar Committee initially stated that a rule that specifies that “only citizens or ‘resident aliens’ can be admitted to the bar” excluded Bourke. When Bourke argued that his visa allowed him to work in the country (and for almost 20 years had been enough to allow foreign lawyers to take the bar exam) the Court decided that “henceforth only immigrants entitled to live and work here permanently could apply.”¹⁰⁹

U.S. District Judge Jay Zainey cited a “rational basis” for the Supreme Court’s decision, arguing that there was a “near impossibility of tracking down client files, evidence, etc, should a non-resident alien be forced to leave the United States on unfavorable and sudden terms.”¹¹⁰ Others disagreed with this logic. District Judge Eldon Fallon stated that “Nonimmigrant aliens as a class are not necessarily more transient than other groups,” and that “Due to advances in technology, attorneys can provide services and representation to clients from virtually anywhere.”¹¹¹ Meanwhile, lawyers Louis Koerner and Clive Stafford Smith have asserted that the state Supreme Court specifically targeted Smith and the LCAC due to its successes in capital cases.¹¹² The effects of this Supreme Court ruling was not limited to the LCAC, but it also affected other law offices, both nonprofit and for-profit, that also employed foreign lawyers.¹¹³

2.7.3 The Advocacy Center

The Advocacy Center was designated by the Louisiana government as the state’s official protection and advocacy agency for persons with mental or physical disabilities, as required by federal law.¹¹⁴ Ann Maclaine, Director of Legal Services for the Advocacy Center, summarized its mission in the comments that “our first charge, and kind of our primary charge, is to prevent abuse and neglect of people with disabilities.”¹¹⁵

The Advocacy Center administers nine federal programs, and operates another five contract programs, listed in Appendix B. In carrying out its mandate the Center provides direct legal representation to clients; visits group homes and hospitals; provides information about

resources and make referrals to appropriate agencies; recommends changes to external agencies and organizations; educates others concerning the rights of the elderly and the disabled; gives clients “the skills and knowledge to act on their own behalf”; publishes and provides literature concerning the elderly and the disabled; and makes presentations to community groups.¹¹⁶ Since the 1977 establishment of the precursor organization Advocate for the Developmentally Disabled, the staff “have served more than a million Louisiana residents.”¹¹⁷

The Advocacy Center has been both aggressive and effective in improving life for its clients. It has initiated, and won, a number of lawsuits against prominent organizations such as the City Council of New Orleans and NOPSI, the Louisiana Department of Education, the State of Louisiana, Charity Hospital of New Orleans, the Regional Transit Authority (RTA) in New Orleans, Caddo Parish School Board, the Louisiana Department of Health and Hospitals, and Southern University at New Orleans (SUNO). It is also carrying out an ongoing ADA campaign to review facilities throughout New Orleans to ensure that they are accessible.¹¹⁸

In addition to its formal legal work, the Advocacy Center’s role in prevention and advocacy has an investigative component, and it created an investigative unit for the purpose of “investigating incidents of abuse or neglect, identifying trends or patterns of abuse or neglect, conducting select investigations and making findings and recommendations to prevent future incidents.”¹¹⁹ The Center recently published three exposés of mental health and rehabilitative services, group homes, and Louisiana’s service system for people with disabilities.¹²⁰

One of the issues that the Center pursued was the dominance of institutional care for the disabled and mentally ill in Louisiana. The 1999 Supreme Court decision in the case *Olmstead v. L.C. and E.W.* stated that “states are required to place persons with mental disabilities in community settings rather than in institutions when the State’s treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.”¹²¹ However, Louisiana’s nursing homes received 95 percent of the state’s Medicaid budget in 1995 and 86 percent of its budget in 2000. Legislators and state officials were skeptical that the less-expensive home-care would save money, since they expected demand for home-care to rise.¹²²

Following the success of the *Olmstead* case the Advocacy Center filed the *Barthelemy v. Hood* suit in 2000 in order to make in-home care more accessible in Louisiana.¹²³ The Louisiana Department of Health and Hospitals (DHH) settled the case in October 2001, but after a series of missed deadlines for implementation, in 2003 directed “DHH to ask the court for permission to modify the existing deal.”¹²⁴ The judge denied the request to modify the deal, and ordered DHH to comply.¹²⁵ Few applicants have received the in-home care that the lawsuit demanded (125 of 4,600 by July 13, 2004),¹²⁶ but for all of its work on this case, the Advocacy Center was threatened with the loss of its ombudsman contracts with the state, ostensibly due to a conflict of interest in the Advocacy Center’s various duties.¹²⁷

3. Findings

We must now ask ourselves what happened – why were these agencies that were providing needed services abused as they were? In this section of the paper I look behind the scenes to see the individuals and processes that are at work.

4 Analysis

The analysis in this study is based on a series of related concepts, including the philosophy of possessive individualism, the concept of the “undeserving poor,” and the theory of law and the practice of law as aspects of social struggle. Together, these place this discussion in a broad theoretical and social context. However, our discussion of theory must start at the beginning, that is, with a description of our modern capitalist society, which provides the structure and context of the theory.

Historian Maurice Dobb defined capitalism as a social system in which labor- power had become a commodity to be bought and sold on the market. It required that ownership of the means of production be concentrated in the hands of a relatively small class of individuals, so leaving a larger class that was propertyless and whose members needed to sell their labor-power for their livelihood.¹²⁸

The rise of capitalism was accompanied by the rise of the theory of possessive individualism, which philosopher C. B. Macpherson explained arose during the English seventeenth century,¹²⁹ but remains very current today.¹³⁰ The basic assumptions of possessive individualism state that

- (i) What makes a man human is freedom from dependence on the wills of others.
- (ii) Freedom from dependence on others means freedom from any relations with others except those relations which the individual enters voluntarily with a view to his own interest.
- (iii) The individual is essentially the proprietor of his own person and capacities, for which he owes nothing to society. . . .
- (iv) Although the individual cannot alienate the whole of his property in his own person, he may alienate his capacity to labour.
- (v) Human society consists of a series of market relations. . . .
- (vi) Since freedom from the wills of others is what makes a man human, each individual’s freedom can rightfully be limited only by such obligations and rules as are necessary to secure the same freedom for others.
- (vii) Political society is a human contrivance for the protection of the individual’s property in his person and goods, and (therefore) for the maintenance of orderly relations of exchange between individuals regarded as proprietors of themselves.¹³¹

It is easy to see that these assumptions form a secular philosophy suited to the new social world of capitalist economic and productive relations.

While this philosophy may have sounded good to a certain class of people in seventeenth century England, Macpherson explained that the apparent cohesiveness and validity (or

workability) of this philosophy only lasted until the mid-nineteenth century when “an industrial working class developed some class consciousness and became politically articulate,” increasingly challenged market relations, and was given the franchise.¹³²

This philosophy of possessive individualism supports Michael B. Katz’s explanation of the development of the concept of the “undeserving poor.” He stated that “American social programs label those individuals they treat meanly or exclude as morally suspect or unworthy: the undeserving poor, the malingerer, the cheat, the lazy shirker, even, recently, the deceptive child and her dishonest parent.”¹³³ The category of “undeserving poor” also included “people out of work, unmarried mothers, and people of color,”¹³⁴ and “has always included many out-of-work and destitute men . . . Men – now especially young black men – remain the least sympathetic or deserving population.”¹³⁵

The rationale behind the label of “undeserving poor,” then, based on the prevalent theory of possessive individualism, is that those who are poor or unemployed are considered to be willfully so. They are assumed to have chosen not to exercise their independence and take care of themselves by entering the free market where they could easily exchange their labor, but rather they are seen as willfully taking from society what is not theirs. The strength of this attitude can be seen in the popularity and influence of books such as Charles Murray’s Losing Ground which “became the rage among conservative social-policy makers in the White House and throughout Washington” in the mid-1980s.¹³⁶

Lawyers Michael E. Tigar and Madeleine R. Levy related these ideas to the law and the practice of law in their comments that “legal ideology is the expression of social struggle,”¹³⁷ and that laws are

. . . crystallizations of power relationships in a given group or society. Laws lock into words, expressed as commands, the rights or duties which a particular group will use its power to protect or enforce, and provide predictable modes of settling disputes which arise within this context. Law is a superstructure erected upon the base of power relationships.¹³⁸

They further stated that “the system of organization of production for private profit is unable to meet the needs of the people, and the legal ideology of the dominant group is unable to accommodate their demands for freedom and fairness,”¹³⁹ and that an “early task of a dissident group is to explore the limits of the dominant legal ideology in order to see how much can be accomplished within those limits.”¹⁴⁰

Following from the comments from Macpherson, Katz, and Tigar and Levy, we can say that the philosophy of possessive individualism provides strong self-interest (among the successful at least), and a lack of concern if not outright disdain for the poor. In this context neither government nor private for-profit business provide adequate legal services for the poor. In some cases non-profit law office may simply provide a legal service, which is certainly a benefit. Meanwhile, those who engage in law reform activities may well be attempting to change power relationships in society, or exploring the limits of the legal ideology to see what can be accomplished within its limits, and they may be seen as taking part in a social struggle.

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APPENDIX A: ACRONYMS

ABA	American Bar Association
ADA	Americans with Disabilities Act
LAB	Legal Aid Bureau
CLASP	Center for Law and Social Policy
DHH	Louisiana Department of Health and Hospitals
IOLTA	Interest on Lawyer Trust Accounts
LSC	Legal Services Corporation
LSP	Legal Services Program
NLADA	National Legal Aid and Defender Association
NOLA	New Orleans Legal Assistance
NOLAC	New Orleans Legal Assistance Corporation
NOPSI	New Orleans Public Service Inc.
OEO	Office of Economic Opportunity
PAI	Private attorney involvement
SLLS	Southeast Louisiana Legal Services
SPAN	State Planning Assistance Network

APPENDIX B: THE ADVOCACY CENTER'S PROGRAMS

Federally Funded Programs	
Client Assisted Program	to assist clients of Louisiana Rehabilitation Services secure rights guaranteed by the Rehabilitation Act
Protection and Advocacy for Assistive Technology	to assist clients obtain evaluations and appropriate assistive technology equipment or related services
Protection and Advocacy for Beneficiaries of Social Security	to assist SSI/SSDI beneficiaries prepare for, obtain, maintain or advance in employment
Protection and Advocacy for Persons with Developmental Disabilities	to assist individuals with developmental disabilities regarding education, legal rights, accessibility, public benefits, housing, legal status, juvenile issues, and parental rights
Protection and Advocacy for Individuals with Mental Illness	to assist clients who are diagnosed with a significant mental illness or emotional impairment
Protection and Advocacy for Individual Rights	to assist clients who have severe disabilities with abuse or neglect, accessibility, assistive technology, housing, habilitation, rights, financial entitlements, legal status and parental rights
Protection and Advocacy for Traumatic Brain Injury	to assist clients who have traumatic brain injury with abuse or neglect, accessibility, assistive technology, housing, habilitation, rights, financial entitlements, legal status and parental rights
Accessible Housing	with the LSU Human Development Center and the Fair Action Housing Center trains people with disabilities, their families and service providers about housing rights
Help America Vote Act	informs and trains people with disabilities and personnel connected to the voting process about voting rights
Contract Programs	
Community Living Ombudsman Program	assists developmentally-disabled residents of privately operated facilities with protection of rights and quality of life
Elderly Legal Services	provides legal assistance to persons 60 years of age and older in three parishes (Orleans,, Plaquemines and St. Tammany) with abuse / neglect, accessibility, age discrimination, assistive technology, financial entitlements, health care, legal status, long term care, and public housing
Long Term Care Ombudsman Program	assists residents of nursing homes, board and care facilities and skilled nursing facilities of hospitals in 22 parishes with protection of rights and quality of life issues

(table continued)

Ombudsman Legal Assistance Program	assists elderly residents and applicants of nursing homes and board and care homes with residents' rights, abuse / neglect, legal status and public benefits
Louisiana Coalition Against Domestic Violence	assists service providers to recognize and respond to assault and abusive situations concerning people with disabilities, and to better serve people with disabilities regarding sexual assault and domestic violence – in conjunction with the Louisiana Coalition Against Domestic Violence and the Louisiana Foundation Against Sexual Assault

Source: Advocacy Center internet page "The Advocacy Center's Programs" accessed at <http://www.advocacyla.org/programsnew.html> on 9 November 2004.

ENDNOTES

1. Reginald Heber Smith, Justice and the Poor, A Study of the Present Denial of Justice to the Poor and of the Agencies Making More Equal Their Position Before the Law with Particular Reference to Legal Aid Work in the United States (New York: Arno Press and the New York Times, 1919, reprinted 1971), p. 145.
2. Maurice Dobb, Studies in the Development of Capitalism (New York: International Publishers, 1947).
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5. Michael E. Tigar and Madeleine R. Levy, Law and the Rise of Capitalism 2nd edition (New York: Monthly Review Press, 2000).
6. Smith, Justice and the Poor, p. 7.
7. Smith, Justice and the Poor, p. 6.
8. Peter Dobkin Hall, Inventing the Nonprofit Sector and Other Essays on Philanthropy, Voluntarism, and Nonprofit Organizations, (Baltimore: Johns Hopkins University Press, 1992), p. 16.
9. Smith, Justice and the Poor, p. 133.
10. Smith, Justice and the Poor, p. 134-136.
11. Smith, Justice and the Poor, p. 138, 140, 145.
12. Appendix, Table I: 1876-1916, in Smith, Justice and the Poor, p. 253.
13. Douglas McCollum, "Father Time" in The American Lawyer, 6 December 1999, accessed on the American Lawyer Media's internet site on 14 March 2004 at <http://www.law.com/jsp/statearchive.jsp?type=Article&oldid=A10836-1999Dec6>; Minutes of the June 1916 meeting of the directors of the Boston Legal Aid Society, cited in the article "Greater Boston Legal Services Donates 'Boston Legal Aid Society Archives' on 100th Anniversary" accessed on the Social Law Library internet site on 14 March 2004 at <http://www.sociallaw.com/newsletter/october004.html>; Henry S. Pritchett, President of the Carnegie Foundation, in the "Foreword" to Reginald Heber Smith, Justice and the Poor, p. xi.

14. Smith, Justice and the Poor, p. 33.
15. Smith, Justice and the Poor, p. 39.
16. Smith, Justice and the Poor, p. 173-175.
17. Smith's nine types of legal agencies include: (1) small claims court; (2) conciliation courts and conciliation in general; (3) arbitration by courts and other organizations; (4) domestic relations courts; (5) administrative tribunals; (6) administrative officials; (7) assigned counsel; (8) defenders in criminal cases; and (9) legal aid organizations. See Smith, Justice and the Poor, p. 38-40.
18. Smith, Justice and the Poor, p. 128.
19. Smith, Justice and the Poor, p. 38-39.
20. Smith, Justice and the Poor, p. 3-5.
21. Smith, Justice and the Poor, p. 169-171.
22. Smith, Justice and the Poor, p. 203-204.
23. Smith, Justice and the Poor, p. 206-207.
24. Smith, Justice and the Poor, p. 214.
25. Smith, Justice and the Poor, p. 215.
26. Smith listed those basic component parts of the administration of justice that the state controls in the comments that "The state enacts the laws, controls the judges, the clerks, the bailiffs, the sheriffs, the probation staff, the police, the district attorneys, the jurors, and provides court houses." Smith, Justice and the Poor, p. 181.
27. Smith, Justice and the Poor, p. 181.
28. Smith, Justice and the Poor, p. 182.
29. Smith, Justice and the Poor, p. 184.
30. Smith, Justice and the Poor, p. 183.
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32. Earl Johnson, Jr., 1978, Justice and Reform: The Formative Years of the American Legal Services Program, New Brunswick, New Jersey: Transaction Books, p. 9.
33. Johnson, Justice and Reform, p. 75.
34. E. Clinton Bamberger, Jr., "The Legal Services Program of the Office of Economic Opportunity," The Notre Dame Lawyer, 41, 6 (1966): 847, 848.

35. Johnson, Justice and Reform, p. 131.
36. Johnson, Justice and Reform, p. 95.
37. Johnson, Justice and Reform, p. 99.
38. Johnson, Justice and Reform, p. 188.
39. Johnson, Justice and Reform, p. 176-177.
40. Johnson, Justice and Reform, p. 178-179.
41. Johnson, Justice and Reform, p. 180-182. Some of the early principal law reform centers included: a housing law center at the University of California, Berkeley; a consumer law center at Boston University Law School; a juvenile law center at St. Louis University Law School; an employment law center in New York; an education law center at Harvard Law School; a health law center at U.C.L.A. Law School; and an elderly law center at the University of Southern California Law School. Charles K. Rowley, 1992, The Right to Justice; The Political Economy of Legal Services in the United States, Brookfield, Vermont: Edward Elgar Publishing Company, p. 140, lists the National Support Centers in 1987 as being: National Housing Law and Community Development Project; Center on Social Welfare Policy and Law; National Consumer Law Center; National Health Law Program; National Center for Youth Law; National Senior Citizens Law Center; Center for Law and Education; Migrant Legal Action Program; National Employment Law Project; National Legal Center for the Medically Dependent and Disabled; National Economic Development and Law Center; National Social Science and Law Center; Indian Law Support Center; National Center on Women and Family Law; National Committee for Immigrants' Rights; National Veterans Legal Services Project; and Food Research and Action Center.
42. Bamberger, "The Legal Services Program of the Office of Economic Opportunity," p. 849.
43. The text of the Economic Opportunity Amendments of 1966, Public Law 89-794, Sec. 211-1 (b), that created the Legal Services Program states:

In carrying out sections 204 and 205, the Director shall carry out programs eligible for assistance under such sections, which provide legal advice and legal representation to persons when they are unable to afford the services of a private attorney, together with legal research and information as appropriate to mobilize the assistance of lawyers or legal institutions, or combinations thereof, to further the cause of justice among persons living in poverty : Provided, That the Director shall establish procedures to assure that the principle local bar associations in the area to be served by any proposed program of legal advice and representation are afforded an adequate opportunity to review the proposed program and to submit comments and recommendations thereon before such program is approved or funded.

Sections 204 and 205 referred to here concern "use of latest data" in making financial allotments to the Community Action programs, and salary limits for employees of Community Action

programs.

44. The text of the Economic Opportunity Amendments of 1967, Public Law 90-222, which was approved on Dec. 23, 1967, further defined the duties of the Legal Services programs. Section 222 (a) of this law, which discussed special programs and assistance that may be initiated in order to serve critical needs or problems of the poor, included the paragraph:

(3) A 'Legal Services' program to further the cause of justice among persons living in poverty by mobilizing the assistance of lawyers and legal institutions and by providing legal advice, legal representation, counseling, education, and other appropriate services. Projects involving legal advice and representation shall be carried on in a way that assures maintenance of a lawyer-client relationship consistent with the best standards of the legal profession. The Director shall make arrangements under which the State bar association and the principal local bar associations in the community to be served by any proposed project authorized by this paragraph shall be consulted and afforded an adequate opportunity to submit, to the Director, comments and recommendations on the proposed project before such project is approved or funded, and to submit, to the Director, comments and recommendations on the operations of such project, if approved and funded. No funds or personnel made available for such program (whether conducted pursuant to this section or any other section in this part) shall be utilized for the defense of any person indicted (or proceeded against by information) for the commission of a crime, except in extraordinary circumstances where, after consultation with the court having jurisdiction, the Director has determined that adequate legal assistance will not be available for an indigent defendant unless such services are made available.

45. Johnson, Justice and Reform, p. xxix, 189, 232; Terry Lenzner, "Legal Services Fights for the Poor, But Who Fights for Legal Services," in Juris Doctor (February 1971):8-9; Susan E. Lawrence, 1990, The Poor in Court: The Legal Services Program and Supreme Court Decision Making, Princeton: Princeton University Press, p. ix, 9-10, 121, 147; Alan W. Houseman and Linda E. Perle, 2003, Securing Equal Justice for All, A Brief History of Civil Legal Assistance in the United States, Washington, D.C.: Center for Law and Social Policy, p. 13-14.

46. Terry Lenzner, "Legal Services Fights for the Poor, But Who Fights for Legal Services," p. 8-9; Johnson, Justice and Reform, p. xii, 193, 339 n. 41; Vice President Agnew, "What's Wrong with the Legal Services Program," in American Bar Association Journal 58 (1972):930-932.

47. The Legal Services Corporation Act of 1974, Public Law 93-355, approved July 25, 1974, removed Legal Services from the OEO as a program, and established a separate Legal Services Corporation (LSC). Text in Section 1007 (b) (1) of this act specifically states that LSC funding may not be used

to provide legal assistance with respect any criminal proceeding, or to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction.

48. Relevant portions of the Public Law 93-355 of July 25, 1974, Title X – Legal Services Corporation Act, include:

Sec. 1006. (b) (5) The Corporation shall insure that (A) no employee of the Corporation or of any recipient (except as permitted by law in connection with such employee's own employment situation) while carrying out legal assistance activities under this title, engage in, or encourage others to engage in, any public demonstration or picketing, boycott, or strike; and (B) no such employee shall, at any time, engage in, or encourage others to engage in, any of the following activities: (i) any rioting or civil disturbance, (ii) any activity which is in violation of an outstanding injunction of any court of competent jurisdiction, (iii) any other illegal activity, or (iv) any intentional identification of the Corporation or any recipient with any political activity prohibited by section 1007(a) (6). The Board, within ninety days after its first meeting, shall issue rules and regulations to provide for the enforcement of this paragraph and section 1007(a) (5), which rules shall include, among available remedies, provisions, in accordance with the types of procedures prescribed in the provisions of section 1011, for suspension of legal assistance supported under this title suspension of an employee of the Corporation or of any employee of any recipient by such recipient, and after consideration of other remedial measures and after a hearing in accordance with section 1011, the termination of such assistance or employment, as deemed appropriate for the violation in question.

Sec. 1006. (d) (4) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment for use in advocating or opposing any ballot measures, initiatives, or referendums. However, an attorney may provide legal advice and representation as an attorney to any eligible client with respect to such client's legal rights.

(5) No class action suit, class action appeal, or amicus curiae class; action may be undertaken, directly or through others, by a staff attorney, except with the express approval of a project director of a recipient in accordance with policies established by the governing body of such recipient.

Sec. 1007. (a) With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this title, the Corporation shall –

"(10) insure that all attorneys, while engaged in legal assistance activities supported in whole or in part by the Corporation, refrain from the persistent incitement of litigation and any other activity prohibited by the Canons of Ethics and Code of Professional Responsibility of the American Bar Association, and insure that such attorneys refrain from personal representation for a private fee in any cases in which they were involved while engaged in such legal assistance activities.

"(b) No funds made available by the Corporation under this title, either by grant or contract, may be used –

(1) to provide legal assistance with respect to any fee-generating case (except in accordance with guidelines promulgated by the Corporation), to provide legal assistance with respect to any criminal proceeding, or to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an officer of the court or

against a law enforcement official for the purpose of challenging the validity of the criminal conviction;

(2) for any of the political activities prohibited in paragraph (6) of subsection (a) of this section;

(3) to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public;

(4) to provide legal assistance under this title to any unemancipated person of less than eighteen years of age, except (A) with the written request of one of such person's parents or guardians, (B) upon the request of a court of competent jurisdiction, (C) in child abuse cases, custody proceedings, persons in need of supervision (PINS) proceedings, or cases involving the initiation, continuation, or conditions of institutionalization, or (D) where necessary for the protection of such person for the purpose of securing, or preventing the loss of, benefits, or securing, or preventing the loss or imposition of, services under law in cases not involving the child's parent or guardian as a defendant or respondent;

(5) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients;

(6) to organize, to assist to organize, or to encourage to organize, or to plan for the creation or formation of, or the structuring of, any organization, association, coalition, alliance, federation, confederation, or any similar entity, except for the provision of legal assistance to eligible clients in accordance with guidelines promulgated by the Corporation;

(7) to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system ;

(8) to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution; or

(9) to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States.

49. Houseman and Perle, 2003, Securing Justice for All, p. 22.

50. Charles K. Rowley, 1992, The Right to Justice; The Political Economy of Legal Services in the United States, Brookfield, Vermont: Edward Elgar Publishing Company, p. 175-180.

51. Rowley, The Right to Justice; p. 176; Houseman and Perle, Securing Justice for All, p. 28-29.

52. Houseman and Perle, Securing Justice for All, p. 27-28.
53. Houseman and Perle, Securing Justice for All, p. 23.
54. Houseman and Perle, Securing Justice for All, p. 31.
55. Houseman and Perle, Securing Justice for All, p. 31-32.
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60. Houseman and Perle, Securing Justice for All, p. 37-38.
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62. Houseman and Perle, Securing Justice for All, p. 40.
63. Emery A. Brownell, Field Report on the New Orleans Legal Aid Bureau, November 1954, Community Services Council of New Orleans Collection, Louisiana and Special Collections, Earl K. Long Library, University of New Orleans, MSS 34, Box 81, Folder 867, p. 2; Smith, Justice and the Poor, p. 145.
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69. Richard A. Buckley to Social Welfare Planning Council, 28 February 1968, Community Services Council of New Orleans Collection, MSS 34, Box 95, Folder 988.

70. Twenty-Plus Years of Advocacy: Following the Pathway to Inclusion: Productivity, Independence and Integration (New Orleans: Advocacy Center, 1998). The federally funded programs run by the Advocacy Center include: the Client Assistance Program (CAP), Protection and Advocacy for Assistive Technology (PAAT), Protection and Advocacy for Persons with Developmental Disabilities (PADD), Protection and Advocacy for Individuals with Mental Illness (PAIMI), and Protection and Advocacy for Individual Rights (PAIR). The contract programs that the Center runs include the Community Living Ombudsman Program (CLOP), Electronic Funds Transfer-99 (EFT-99), Elderly Legal Services (ELS), Long Term Care Ombudsman Program (OMB), Ombudsman Legal Assistance Program (OLAP), and the Southwest Disability & Business Technical Assistance Center (SWDBTAC).

71. Pro Bono Project internet site “History” page at <http://www.probono-no.org/history.html> accessed 1 November 2004.

72. Susan Weishar, Director of Catholic Charities Immigration and Refugee Services, personal interview, 8 June 2004.

73. Mr. Linton Carney, Executive Director of AIDS Law of Louisiana, personal interview, 8 July 2004.

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