

JOURNAL

From the <i>Journal</i> Committee	2
The Supervisor's Role	3
<i>By Andrea Zigman</i>	
Retaining Staff	6
<i>By Kevin Peter, Development Director, Community Legal Services</i>	
Taking Advantage of the Economic Downturn at Large Law Firms	7
<i>By Esther F. Lardent, President and CEO, Pro Bono Institute</i>	
Features	
Crossword Puzzle: I Get by with a Little Help	11
Worth a Look!	12
Book Review: <i>Negotiating Justice: Progressive Lawyering, Low-Income Clients, and the Quest for Social Change</i>	13
<i>Reviewed by Klaus D. Sitte, Executive Director, Montana Legal Services Association</i>	
Interview with Don Saunders	15
<i>By Meredith McBurney</i>	
Special Feature: State of Support	
Coming Full Circle	17
<i>By Victor Geminiani, Executive Director, Lawyers for Equal Justice</i>	
Skunks at the Garden Party: Serving the Poor in Controversial Cases	19
<i>By Gordon Bonnyman, Executive Director, Tennessee Justice Center</i>	
Forty Years of State Support in Ohio: OSLSA to Ohio Poverty Law Center	23
<i>By Eugene R. King, Director, Ohio Poverty Law Center</i>	
Serving to Lead and Leading to Serve	28
<i>By Erik Cole, Executive Director, Tennessee Alliance for Legal Services</i>	
Reorienting and Expanding our National Advocacy Program	31
<i>By Henry A. Freedman, Executive Director, National Center for Law and Economic Justice</i>	
On the National Consumer Law Center	35
<i>By Will Ogburn, Executive Director, National Consumer Law Center</i>	
Four Testimonials: The Value of Support	38
State-based Advocacy and Support Centers: A Review and Call for Renewal	41
<i>By Neil G. McBride, General Counsel, Legal Aid Society for Middle Tennessee and the Cumberlandands</i>	
Uh Oh... The Little Dog is Actually Catching Up with the Car!	47
<i>By Patrick McIntyre</i>	
State Support and State Level Advocacy: Where We Should Be In Five Years and How To Get There	50
<i>By Alan W. Houseman, Executive Director, Center For Law And Social Policy</i>	



SPECIAL FEATURE: State of Support

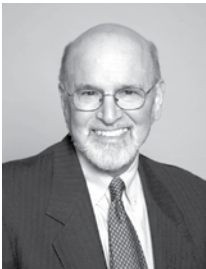
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Reorienting and Expanding our National Advocacy Program

By Henry A. Freedman, Executive Director¹
National Center for Law and Economic Justice

Congress targeted national and state support centers in 1995, because they were instrumental in promoting zealous and effective advocacy for legal services clients.



The “national legal services support” programs funded by the Office of Economic Opportunity and then expanded by the Legal Services Corporation (LSC) had disparate missions, histories, and visions of their role in working with legal services programs.² The Na-

tional Center for Law and Economic Justice (first Center on Social Welfare Policy and Law and then Welfare Law Center — more on that later) was the first such program, already two years old when I arrived in 1967 as a Reginald Heber Smith Fellow.

Ed Sparer, the Center’s visionary founder, had used the civil rights movement as his model for designing a test case law center that would create new, and enforce existing, legal rights, as well as work hand in hand with grassroots groups and the emerging legal service programs around the country. Within a few years the Center had a full Supreme Court docket, including *Goldberg v. Kelly*, the landmark due process decision which we continue to rely upon in our litigation today.

Over the ensuing decades of LSC national support funding, as local capacity for welfare advocacy grew, we increasingly concentrated on providing support to local programs (materials, training, and intensive advice on individual matters), continued limited direct participation in litigation, and opened a Washington office.

When LSC funding was lost, we determined that we could be most effective in pursuing our mission — and in raising needed financial support — by returning to our original concentration on developing and promoting law reform litigation on key public benefits issues. I turn first to transformation of our advocacy program and then to the fundraising and

Board restructuring that made that transformation possible.

Expanding Our Advocacy Program

Since 1995, working with local advocates, we have strived to promote economic justice through impact advocacy and to ensure that government agencies are subject to the rule of law and court oversight when they flout their legal obligations. We have applied our expertise to a broad range of issues in food stamps, Medicaid, cash assistance, child care, and FEMA programs, and have pressed claims arising under an array of civil rights and labor law protections. We have partnered in litigation in a dozen states, and have brought new resources to bear in states where there are no unrestricted legal aid providers. We also initiated a vigorous policy advocacy program on the application of disability rights laws to public benefits.

Our success — and I do believe that is a justified claim — can be attributed to many factors, including the following:

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1. Recruiting Needed Skills.

In addition to retaining outstanding senior staff (Gina Mannix, our Program Director, now has more than three decades of experience with us), we increased our effectiveness and scope by seeking out fresh viewpoints and skills.

- Marc Cohan, for many years one of the premier public benefits litigators in New York City, joined us in 1996 as Director of Litigation, bringing a docket of class actions, some of which are still in active litigation.
- Cary LaCheen, who had already written the manual on applying disability rights laws to public benefits programs,⁴ enabled us to offer new services to people in the field. At the request of local (sometimes restricted) advocates, Cary has now helped the state agencies in Kentucky, New Jersey, North Carolina, Tennessee and Virginia complete major revisions of their welfare manuals to guide staff in how to identify and accommodate people with disabilities, especially the “hidden” mental disabilities.
- Tedde Tasheff brought extensive experience in complex litigation from her work with Citigroup, the SEC, and as a partner in a Midwestern law firm. Esther Lardent of the *Pro Bono* Institute helped us make this connection.

2. Willingness to Try Totally New Approaches

Throughout our history we have continued to work with local welfare rights organizations and have low-income community representatives serving on our Board. After “welfare reform” was adopted in 1996, groups around the country told us that to advocate effectively they needed to communicate with each other, share ideas on campaigns, and organize collective efforts. We identified technology as providing an invaluable resource, secured funding in 1998, and scoured the country for persons who combined backgrounds in organizing and technology to inaugurate and run our Low Income Networking and Communications Project. Over its seven-year life this project brought us into closer contact with grassroots groups and helped groups strengthen themselves while their members learned new skills.⁵

3. Willingness to Partner Collaboratively

We have found that we can be most successful when all groups working on a matter respect each other and function collaboratively with an informal, good faith understanding of the relationship, including the division of attorneys fees, if any are eventually collected. Partners have included local legal aid lawyers, public interest lawyers and policy advocates, community-based organizations, and local *pro bono* lawyers. While LSC-funded programs have not been able to participate in class actions, we have co-counseled with such programs in impact cases and expect that we will be working with many more if Congress removes restrictions as President Obama has requested.

We have also been pleased to have other national partners (such as the American Civil Liberties Union, the National Health Law Program, National Immigration Law Center, and a number of major national law firms) as co-counsel. Firms have provided enormous technological and logistical support, such as setting up a “war room” in the state where the litigation is pending or indexing large quantities of evidence and discovery material.

4. Willingness to Be Full Partners in Litigation Across the Country

Local advocates have often responded with relief to learn that we offer to make ourselves available to work on the ground from beginning to end, interviewing plaintiffs and witnesses, conducting discovery, helping to see every aspect of the case through to the end, and serving as lead counsel as appropriate.

For example, massive delays in processing applications and loss of benefits followed Colorado’s premature launch in 2004 of a flawed new computer system to manage applications and ongoing eligibility for all public benefits programs. We worked with local public interest and private bar co-counsel to develop a major litigation challenge. This included conceptualizing the case, preparing the papers, securing a preliminary injunction (which ordered timely benefit processing, elimination of the backlog of overdue cases, an emergency processing mechanism for those who lost benefits as a result of the new system, detailed reporting by the state agency, improved notices to program beneficiaries, and a stay on collection of overpayments caused by the new system), followed by extensive court proceedings and mediated negotiations taking years that led to a comprehensive settlement. These efforts were integrated with policy advocacy and extensive media coverage.

5. Willingness to Tackle Novel Legal Claims

Three recent cases exemplify our efforts to stretch the envelope:

- Some 2,000 evacuees of Hurricanes Katrina and Rita with disabilities received accessible trailers as the result of our federal class action settlement in *Brou v. FEMA*. Although FEMA estimated that some 25% of Katrina evacuees had some type of disability and approximately 8% needed accessible trailers, it had provided accessible trailers to less than 2% of Louisiana and Mississippi evacuees when the case was filed. Co-counsel included the Mississippi Justice Center, the Louisiana-based Advocacy Center, the California-based Public Interest Law Project, and Kirkland & Ellis.
- In a case of first impression, the Fifth Circuit affirmed the District Court order in *Camacho v. Texas Workforce Commission* which preserved Medicaid for more than 2,200 low-income Texas parents by barring the state from terminating parents' Medicaid due to trivial infractions of welfare rules. This decision discouraged other states from adopting such a provision. We worked with the Texas Legal Services Center; a private law firm, and the El Paso County Attorney.
- After low-income children in Missouri began losing health care coverage under the State Children's Health Insurance Program for six months for minor infractions, such as a premium payment being a day late because the State failed to take an automatic deduction from a checking account, we filed *Julia M. v. Scott*, the first lawsuit of its kind. The federal court issued a preliminary injunction barring the State from terminating the coverage of up to 20,000 Missouri children without providing constitutionally mandated notice and an opportunity to be heard. We subsequently settled the case. Co-counsel was the National Health Law Program.

6. Willingness to Market Ourselves

When we lost all federal funding in 1995, our Board promptly closed our Washington office and ordered a staff reduction in New York. To make clear to our colleagues that we were still in business, we convened a national daylong conference of experienced public benefits advocates to discuss advocacy in light of emerging "welfare reform." The Sunday New York Times gave us front page coverage. Since then we have marketed ourselves to the broader legal aid community through presentations at national and regional conferences and training programs, operating a listserv, writ-

ing *Clearinghouse Review* articles, and the like.

We quickly found that our name "Center on Social Welfare Policy and Law" hurt our marketing, failing to convey our role as zealous advocates. Since we had always been known as the "Welfare Law Center," we adopted that name in 1997. But this too led to confusion — advocates would tell us they did not know that we were a national program, or did not come to us with a good food stamp case because our field was "welfare," not food stamps. After much deliberation, including testing with legal aid advocates around the country, we changed to National Center for Law and Economic Justice (NCLEJ) to make clear that we were a national organization addressing a broad spectrum of economic justice issues.

Raising the Funds and Restructuring the Board

National support, like state support, was nurtured and largely funded by LSC until 1995. NCLEJ had also raised funds privately, especially when crises threatened, but those funds were rarely more than 20% of the budget. When the bottom dropped out in 1995, our Board mandated an aggressive fundraising campaign. I secured the advice of an experienced fundraising and restructuring consultant who had worked with us before, and she provided invaluable counsel. Over the ensuing years, relying entirely on non-governmental funds, we have rebuilt our program and have a budget larger than when LSC funds were at their height.

The Critical Role of Foundations

We would not have made it through 1996 without foundation support. Most critical was the Ford Foundation, which had notified us earlier that its support would end in 1995. I pressed for a reprieve, and after many anxious months the Foundation renewed its grant.

Two efforts helped us with foundations over the next few years.

First, a number of New York foundations new to us supported us because they understood the critical role that impact litigation could play in turning back Mayor Giuliani's then-emerging aggressive, illegal efforts to deny benefits to tens if not hundreds of thousands of eligible families.

Second, there was much foundation interest in "collaboration," and we were successful in demonstrating that we could collaborate with colleagues in effectively addressing issues that fell within current foundation priorities and were in our core areas of concern. In fairly short order we obtained funding for

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Continued from page 33

multi-year collaborative projects with (1) the Child Care Law Center in California and NOW Legal Defense & Education Fund in New York to address child care issues in selected states, (2) ACORN and several other nonlegal organizations to address workfare issues under welfare reform, and (3) the National Employment Law Project and Legal Aid Society to address New York City welfare work program issues. We were also one of the partners addressing racial justice through the Grass Roots Innovative Policy Program led by the Applied Research Center in California. At this time we are collaborating with the Shriver Center on assisting state advocates in campaigns to improve work supports policy and operations in their states (contact us for more information).

The Critical Role of The Board of Directors In Diversifying Our Funding Base

Foundations saved us, but could not sustain us. Their support is highly cyclical, depending on both the stock market and their changing priorities. We are now in a down period (for example, one of our loyal and major funders said that only direct service providers would get grants this year in light of the economic downturn). Fortunately, we have succeeded in diversifying our support with the help of a restructured Board. Most significantly, all of the funding sources discussed below provide general operating support.

The Board we created in 1972, when we left Columbia University was not a fundraising Board. Indeed, we pioneered in having one-third of our Board consist of low-income community representatives from around the country with the balance largely current or former legal services attorneys. In 1995, I was fortunate that Stephen L. Kass, a private lawyer heavily involved in public interest issues over his career, was our chair. He asked a dozen prominent lawyers to sign an emergency appeal sent to hundreds of New York City lawyers, thereby both raising funds and identifying future supporters.

In 1996, we focused on attracting lawyers from major firms to our Board and emphasized the fundraising function of the Board. One of the first additions was Paul M. Dodyk, now chair of the Board. He was a senior partner in a major firm and had been our faculty director when we were housed at Columbia Law School in 1968. He and Kass enlisted colleagues, litigators in other firms, who believed in our work and understood

the role of impact litigation in securing compliance with legal requirements.

Over the years, these new Board members have provided significant support themselves, through their firms, and through their contacts at foundations and elsewhere. Interestingly, one of the attractions to Board service is the opportunity these lawyers have to hear from and interact with the client representatives who validate the importance of our work in the issues they face in their communities.

I am particularly gratified that Board Committees have begun to take more initiative and responsibility on matters such as dinner planning, cultivation events, and governance and compliance issues. For example, the Board has been crucial to our success with an annual awards dinner. We started modestly in 2000, with a 35th anniversary celebration at a banquet hall. In 2004, we graduated to a more upscale venue and used all our connections to secure a star attraction — Senator Edward Kennedy. Since then we have honored many fine people,⁶ but there has been one constant. Our law firm board members insisted, and our experience has confirmed, that to raise significant funds from law firms, we must honor a “client” or potential client (not low-income, as in the case of our clients, but a major corporation that hires many firms as outside counsel).⁷

Another lesson about dinners we learned the hard way: We do not know about lighting, sound systems, and the like. A professional event planner is essential for a smooth and professional evening where the microphones work, the honoree can be seen from all seats, etc.

The Critical Role of Attorneys' Fees

While the amounts and timing of attorneys' fees from successful litigation (including the settlements which we are now achieving in most cases) are quite unpredictable, they have contributed significantly to our budget in recent years. After we faced a cash flow crisis in 1999, due to delays in many receivables, the Board decided to place half of all future fees in a “Stabilization Fund” (a name I learned from helpful staff at Greater Boston Legal Services). With Board approval we are able to access the Stabilization Fund when revenue falls short.

Conclusion

I look forward to the next few years humbled by the challenges we face, with poverty and calls on public benefits rising as the economic crisis lengthens. None-

Continued on page 54

© STATE SUPPORT AND STATE LEVEL ADVOCACY
Continued from page 53

in particular, we should explore options for creating national entities that re-grant funds to state advocacy groups. That is a model that has worked for state advocacy funding in the past.

Conclusion

The civil legal assistance community is committed to the goal of equal justice for all. We cannot achieve equal justice for all without increased funding and improvements in our delivery system. A comprehensive system of state support and a robust system of state level advocacy are critical components of an improved delivery system. Now is the time to give high priority to state support and advocacy, and to put it on the agenda of state Access to Justice Commissions and related entities. We need to assess where we are, consider new approaches and innovations, and develop and implement a concrete plan in each state to ensure that effective systems of state support and comprehensive state level advocacy are in place within the next five years.

- 1 Alan W. Houseman is CLASP's Executive Director, a position he has held since joining the organization in 1982. He has written numerous articles, manuals, papers and books on legal services, poverty law advocacy, and welfare policies, including *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States* (with Linda Perle). In 1968, Alan was a Reginald Heber Smith Fellow with Wayne County Neighborhood Legal Services. In 1969, he founded Michigan Legal Services, a statewide legal services program that represented organizations working on welfare, health, housing, consumer, prison, mental health, education and family policy issues. From 1976 to 1981, he was a senior staff member at the Legal Services Corporation and director of the Research Institute, which he founded and developed. At LSC he also oversaw and was responsible for funding its national and state support centers and the National Clearinghouse. He is a past member of the NLADA board and executive committee and past chair of the organization's Civil Committee. He also is a past chair of the Organization of Legal Services Backup Centers and Vice Chair of the Project Advisory Group. He also has been involved in a variety of capacities with the ABA, including as staff to the ABA Presidential Task Force on Access to Justice; member of the ABA Task Force to Revise the Standards for the Provision of Civil

Legal Aid; member of the ABA Comprehensive Legal Needs Study Advisory Group, the ABA Policy Development Committee of the Comprehensive Legal Needs Study and the ABA Special Committee on Access to Justice; advisor to the ABA Standing Committee on Legal Aid and Indigent Defendants and other ABA initiatives. Alan may be reached at ahouse@clasp.org.

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Continued from page 34

theless, it is exciting to contemplate the possibility of working with many more allies around the country, especially if restrictions on private funding, class actions, and attorneys fees are lifted for LSC funded programs.

- 1 Henry Freedman has been the Executive Director of the National Center for Law and Economic Justice (NCLEJ) since 1971. Before that he taught at Catholic University Law School, served as a Reginald Heber Community Lawyer Fellow at NCLEJ, and was an associate in a New York City law firm. For many years, he chaired the Organization of Legal Services Back-up Centers. In 1981, NLADA awarded Freedman its Reginald Heber Smith Award, and in 2008, Amherst College honored his work at NCLEJ with an honorary Doctor of Laws degree. Henry can be reached at freedman@nclej.org.
- 2 See Re-examining National Support: Recommendations to Enhance its Capacity to Respond to Client Needs, Prepared by the Organization of Legal Services Back-Up Centers (OLSBUC) 1994 at www.nclej.org/1994_OLSBUC_report. OLSBUC, consisting of the directors of the national support centers, was founded in 1970 and did not survive the loss of LSC funds. My collection of OLSBUC papers is in the Equal Justice Library.
- 3 www.nclej.org/ada_manual/contents.htm.
- 4 Unfortunately, the funding world moved on and we had to close the project. For further information, see www.lincproject.org.
- 5 Including Esther Lardent, Paul Krugman, Joseph Stiglitz, Rep. Charles Rangel, and Deval Patrick. See the full list at www.nclej.org/support-ow-past-dinners.php.
- 6 We have honored general counsel or other worthy officers from GE, NBC Universal, MetLife, WaMu, Google, and and this year, Viacom.