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NATIONAL LEGAL SERVICES—
THE ANSWER OR THE PROBLEM FOR THE
LEGAL PROFESSION?

BY
CLARA ANN BOWLER*

THE CONCEPT OF a federally financed national legal services pro-
gram for the poor is relatively new and experimental. Since being put
into practice through the Office of Economic Opportunity (OEO),
it has attracted the attention of politicians, lawyers and the general
public by its innovative approaches to the poor and their problems. It
has also provided access to lawyers and legal services for thousands
of people who hitherto had been forced to do without for lack of the
resources to pay a lawyer's fee. At the same time, the national legal
services program has found many enemies in persons who, justifiably
or not, feel threatened by both its litigation and its services to the
poor. In an effort to protect the program from its enemies, the or-
ganized legal profession has proposed a so-called National Legal Ser-
vices Corporation to insulate the national legal services program from
the storms of political controversy. The National Legal Services Cor-
poration proposal, in turn, has been captured by opponents of na-
tional legal services as a means for altering or eliminating them.

This article is an attempt to trace the history and controversies
of the OEO legal services program and the proposed National Legal
Services Corporation. In addition to narrating the course of events,
it examines the problems which the OEO program has raised for the
legal profession and the difficulties the Corporation model has met in
attempting to answer them. Finally, it suggests that the national
legal services concept itself has been a part of the problems it raised
and that these problems may very well spill over beyond the bounds

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of legal services for the poor and the existence of a national program to perform these services.

OEO LEGAL SERVICES

The national legal services program began as a special project of the Community Action program established by the Economic Opportunity Act of 1964. Although supported by the American Bar Association (ABA) as a federally funded traditional legal aid project, the legal services program in practice patterned itself after such privately funded experimental projects as Mobilization for Youth (MYF) in New York City in line with the concept of the neighborhood law office outlined by Edgar S. and Jean C. Cahn. Because the official goals of the program were vague or unarticulated, the actual operation of legal services programs varied greatly depending upon local conditions and the outlook of the local grantee. However, it is not unfair to characterize the OEO legal services program as a successful attempt to channel legal advocacy into the War on Poverty of the 1960's.

The Cahns and the more liberal promoters of national legal services viewed the neighborhood law office as a unique opportunity to activate fully the traditional advocacy skills of the legal profession which had hitherto been only sporadically exercised on behalf of the poverty-stricken.

5. 42 USC § 2809 (a)(3) (1967); Pye, supra note 4.
6. See generally, Carlin, supra note 4. The OEO program was organized for the purpose of funding and supervising projects carried out on the local level by various institutional and individual grantees. Despite guidelines for operation and formal requirements governing federal funding, the day-to-day activities of each project are principally determined by the local promoters on behalf of the grantee. See Finman, supra note 4.
The lawyer's most significant asset, however, is the unique advocacy orientation of his profession—one to which our legal system and the canons of legal ethics commit him. Other professionals... are institutionally given the role of mediating between their employers and the clients. A lawyer need not be apologetic for being partisan, for identifying. That is his function.\(^7\)

They saw the law as a means of balancing the power held by the non-poor in the form of economic wealth, social status and political organization.\(^8\) This balance was to be achieved by lawyers on behalf of the poor who would raise their clearly defined but often unasserted rights, provide legal analysis for the purpose of law reform where the law was vague, uncertain, destructively complex or contrary to their interests, and even represent them in contexts which appeared to be non-legal.\(^9\) In short, access to the law by means of a professional legal advocate was seen as the solution to the ageless problem of poverty.

The fact that certain attributes of the traditional legal profession might hinder lawyers in their advocacy for the poor was not entirely lost on the neighborhood law office enthusiasts.\(^10\) However, some of their early fears turned out to be misplaced. For example, a comprehensive Note in the *Harvard Law Review* speculated that the new legal services program would quickly run into difficulty with the *Canons of Professional Ethics* of the ABA.\(^11\) Canons No. 35 and 47, in particular, prohibited the use of non-lawyers “intermediaries” (OEO grantees?) to promote the professional services of a lawyer unless the agency could qualify as a “charitable society rendering aid to indigents”\(^12\) in the traditional legal aid society manner. But as early as 1963, the U. S. Supreme Court held in *NAACP v. Button*\(^13\) that the State of Virginia could not prohibit the NAACP from referring members to civil rights attorneys under the guise of violating a Virginia statute prohibiting the improper solicitation of legal business and Canons 35 and 47 as adopted by the Virginia Supreme Court of Appeals.\(^14\) The Supreme Court argued that the NAACP’s activities in encouraging civil rights litigation constituted:

modes of expression and association protected by the First and

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7. *Civilian Perspective*, supra note 4, at 1335.
8. *Id.*
9. *Id.* at 1340-45; Carlin, *supra* note 4, at 52-53.
10. *See generally, Civilian Perspective*, supra note 4; *Civilian Perspective Revisited*, *supra* note 4; *Pye, supra* note 4; *Note, supra* note 3.
12. ABA CANONS OF PROFESSIONAL ETHICS No. 35; *see* discussion in Cristensen, *Lawyers for People of Moderate Means* 230, n. 13 and 256-84 (1970).
14. *Id.*
Fourteenth Amendments which Virginia may not prohibit, under its power to regulate the legal profession . . . 15

*Button* was followed by *Bhd. of R.R. Trainmen v. Va. State Bar* 16 which extended the mantle of protected activities to Union sponsored lawyer referral programs designed to assist Union members in collecting damage claims against their employers. *United Mine Workers v. Ill. Bar Ass'n* 17 further expanded *Bhd. of R.R. Trainmen* to include the retaining of a salaried attorney by the union to handle the individual cases of its members.

These decisions had three long-term effects on the future of legal services for the poor. First, they enabled OEO legal services programs to defend themselves against charges of violating ethical prohibitions against the solicitation of legal business, the use of non-lawyer "intermediaries" to promote legal business and the unauthorized practice of law. 18 Second, they opened the door to experiments in pre-paid legal services or insurance plans operated by unions and other organizations for the benefit of their members. 19 Most important for the national legal services program, they led the ABA in 1969 to discard the old *Canon of Professional Ethics* and draft a *Code of Professional Responsibility* which provided an extensive description of approved legal services activities 20 as well as special rules for lawyers engaged in such programs. 21

Some proponents of the neighborhood law office saw the support of the ABA and the organized bar as a threat to attempts of the national legal services program to break away from the limitations of old-fashioned legal aid with its emphasis on settling problems on an individual basis through negotiation and mediation rather than through aggressive advocacy and litigation. 22 Others were concerned that the initial enthusiasm of "young and dynamic lawyers of high quality" would die out leaving the program without the psychological impetus

15. *Id. at 428-29.*
16. 377 U.S. 1 (1964). *But see Id. at 10, Clark, J. (dissent): “Personal injury litigation is not a form of political expression, but rather a procedure for the settlement of damage claims. No guaranteed civil right is involved.”*
18. ABA CANONS OF PROFESSIONAL ETHICS NOs. 27, 35 and 47.
19. ABA COMM. ON PROFESSIONAL ETHICS, FORMAL OPINIONS NOs. 332 and 333 (1973). *See generally ABA SP. COMM. ON PREPAID LEGAL SERVICES, REVISED HANDBOOK ON PREPAID LEGAL SERVICES (2d ed. 1972).*
20. ABA CODE OF PROFESSIONAL RESPONSIBILITY, CANON No. 2, DISCIPLINARY RULE 2-103 (D).
21. ABA COMM. ON PROFESSIONAL ETHICS, OPINION No. 324 (1970); ABA CODE OF PROFESSIONAL RESPONSIBILITY, PREFACE AT VII (Final Draft, July 1, 1969).
22. *See, e.g., Pye, supra note 4; Note, supra note 3.*
necessary to conquer poverty. More sociologically oriented observers felt that legal service lawyers would be hampered by the low prestige attached to working with poverty-stricken clients, the inability of the poor to initiate claims as expected by traditional legal ethics, and the tendency of the legal discipline to focus on the particular case and controversy rather than the broader social problem. All of these problems did appear in one form or another, but they soon faded into insignificance beside the massive political assault on OEO legal services set off by unexpected legal services victories against governmental agencies in the courts.

The most highly publicized political attacks came from California where the California Rural Legal Assistance (CRLA) successfully challenged the legality of Governor Regan's cuts in the California medicaid program and practices of the U. S. Department of Labor concerning Mexican farm laborers. In 1967, Senator George Murphy of California proposed an amendment to the Economic Opportunity Act of 1964 which would have directly prohibited OEO legal services grantees from bringing suits against any governmental agencies—federal, state or local. The amendment was defeated in the Senate. Two years later, Senator Murphy tried a more circuitous approach in the form of an amendment which would have given state governors an absolute veto over any OEO funded legal services project within their state. The second Murphy Amendment narrowly passed the Senate but was killed in a conference committee, mainly because of strong opposition from the ABA.

The following year another assault on the national legal services program was made, this time by means of administrative reorganization rather than Congressional action. OEO Director Donald Rumsfeld proposed to decentralize the OEO program by placing the operation of legal services under the jurisdiction of general OEO regional directors rather than the legal services director in Washington. Legal

23. Note, supra note 3, at 825.
27. James, supra note 3, at 49-50; Robb, supra note 25.
28. 113 CONG. REC. S. 27873 (Oct. 4, 1967); Robb, supra note 25.
29. 115 CONG. REC. S. 29894 (Oct. 14, 1969); Robb, supra note 25. State governors do have a qualified veto over OEO projects under 42 U.S.C. § 2834 (1972) but can be overridden by the OEO Director. Note, supra note 1, at 238.
31. Robb, supra note 25; Sullivan, supra note 4, at 25, n. 82.
services supporters protested against the so-called “regionalization” plan because of the increased opportunity for local politicians to pressure regional directors into stopping law reform activities and the “unethical” subordination of legal services attorneys to non-lawyer regional directors. The controversy culminated in the issuance of a complex set of regionalization guidelines on November 14, 1970, the firing of the director of the legal services program for insubordination on November 21, a noisy protest from the legal services bloc, and the quiet rescinding of the guidelines in early December. As in the Murphy controversies, legal services people invoked the support of traditional legal ethics and the ABA.

Because of the unique and constitutionally privileged status of legal advocacy, the organized bar insisted from the very beginning that the program must be under professional direction administered independently, and in accordance with the highest standards of the profession. The ABA responded in two different ways. First, the Committee on Professional Ethics made an only partially successful attempt to clarify the ethical relationship between a legal services attorney and his employers under the new Code of Professional Responsibility. Second, the ABA and other segments of the organized bar increased their lobbying efforts in Congress on behalf of the national legal services program.

By late December of 1970 the anti-legal services action had shifted back to California where Governor Reagan vetoed an OEO grant of $1.8 million to CRLA citing a report by Lewis K. Uhler of the California Office of Economic Opportunity which accused CRLA of representing accused felons, soliciting clients, encouraging political demonstrations and counseling the United Farm Workers Organizing Com-

33. Regionalization Hearings, supra note 32, at 354-545.
34. Testimony of Jean Camper Cahn, Regionalization Hearings, supra note 32, at 546, 551-52.
35. ABA COMM. ON PROFESSIONAL ETHICS, OPINION No. 324 (1970). Formal Opinion No. 324 drew an analogy between the board of directors of a legal aid society and the senior partners of a law firm and granted the board authority to formulate "broad goals and policies" for its lawyer employees even though some of the board members might be laymen. The relationship of the lawyer employees to a parent funding organization such as OEO was not discussed.
36. Regionalization Hearings, supra note 32, at 140-69.
Rumsfeld's successor as OEO Director, Frank Carlucci, extended funding to CRLA through July 1971 and appointed an independent Commission of three non-California judges to conduct an investigation. The judges vindicated CRLA and Carlucci renewed their funding, but also funded a $2.5 million experimental Judicare program supposedly in response to Governor Regan's proposals to bypass CRLA and pay private attorneys to represent indigent clients on an individual fee basis. By summer, the Reagan affair had become immersed in an extensive Congressional investigation which eventually prompted Congress to attempt to remove the legal services program from OEO in favor of the proposed National Legal Services Corporation.

While the political battle raged in Congress and OEO, certain tendencies began to surface within the ranks of national legal services attorneys which point toward a disintegration of the legal profession as it has been traditionally conceived. One of these trends has been the affiliation of radical or Movement lawyers within the national legal services program. Although greatly exaggerated by conservative Congressmen, there have been a certain number of poverty lawyers who were either radicalized by their legal services experience or who rather naively believed that OEO was underwriting the oncoming social revolution. It may seem to an outside observer that the Marxist orientation of most Movement lawyers should prescribe bombs and barricades in the face of the "onrushing terrorist dictatorship" (the Nixon adminis-


38. CRLA Hearings, supra note 37, at 2-28.


42. James, supra note 3, at xviii, 43-46.
A more legitimate offspring of the neighborhood law office is the group representative modeled on the labor union lawyer. The more classic union lawyer who confines his activities to group, as opposed to individual, interests has tended to gravitate into house counsel positions with the stronger new union groups. However, the OEO group representative has not been able to shake the legal services preoccupation with individual problems so easily. For the most part he continues to represent individuals, but restricts his clientele to members of whatever organization he is currently promoting. Non-members are forced to join or do without legal services. The theory is that legal services alone are not sufficient to overcome poverty and the poor need to organize as other social groups do in order to exert power and influence to promote social change. However, the OEO legal services attorney must operate under the political scrutiny of the same forces who are oppressing the poor and is often too socially alienated from his clients to engage in the direct organizing of poor people's organizations. Therefore he circumvents these political and social barriers by using his monopoly on legal services to the poor to induce membership in existing favored neighborhood and poor people's organizations.

Although this type of activity has not gone without criticism, it is noteworthy that a program designed to improve the lot of the poor by increasing the availability of legal services and expanding access to the

43. "[I]n this period in our history the effective development of a massive defense of the elementary forms of democratic liberties led by radicals is not antithetical to, but in fact accelerates, the radicalization of the millions who are daily being thrown into motion by the attacks and blunders of the governing circles." Kinoy, The Role of the Radical Lawyer and Teacher of Law, 29 GUILD PRACTITIONER 3, 18 (1970). There is, of course, nothing new about socialist lawyers. The National Lawyer's Guild has been in operation since 1937. James, supra note 3, at xiv-xvi.

44. See, e.g., James, supra note 3, at 324-36.


46. "The neighborhood lawyer must guard against devoting large amounts of time to organizations whose intangible benefits accrue only to a small number of leaders whose ambitions need no encouragement. He must also be wary of putting himself into a relationship with a local organization which jeopardizes his general usefulness in the neighborhood. This problem becomes particularly acute when neighborhood organizations conflict with each other." Note, supra note 3, at 820. See also Law Reforming, supra note 3, at 255.
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law is exploiting the traditional scarcity of legal services as a strategic weapon in its general struggle to overcome poverty.

In short, one can view the traditional structure of the legal profession as an attempt to preserve a monopoly over access to the law, thereby creating an artificial scarcity of legal services which inheres to the financial benefit of members of the legal profession. From this viewpoint, national legal services represents a disintegration of the traditional legal profession in that it greatly expands the availability of legal services and increases access to the courts as enforcing mechanisms of the law. If this disintegration is the proper means of insuring justice for the greatest number of people, how can one justify the exploitation of the traditional monopoly of the legal profession as a strategic weapon in the same struggle to break down the monopoly? Or is the relationship between access to the law and justice for the poor more complicated than the neighborhood law office enthusiasts have presented it?

A side effect of the legal services group representative theory is a total breakdown in the classic attorney-client relationship. A clear description of this development can be found in an article by Stephen Wexler. Wexler maintains that

[t]wo major touchstones of traditional legal practice—the solving of legal problems and the one-to-one client relationship between attorney and client—are either not relevant to poor people or harmful to them.

In addition to withholding legal services and sometimes common decency in order to promote poverty organizations, Wexler stresses the


48. Civilian Perspective Revisited, supra note 3, at 936; Cahn & Cahn, Power to the People or the Profession?, 79 Yale L.J. 1005 (1970) [hereinafter cited as Power to the People]; Christensen, supra note 12, at 26-29. The reader should be cautioned that even though this theory has been echoed in studies sanctioned by the American Bar Foundation (a legal research wing of the ABA), it is considered by the profession to be heretical. The more generally accepted theory justifies the traditional structure of the profession as necessary to insure the provision of high quality legal services to the general public.


51. Wexler, supra note 45.

52. Id. at 1050. Compare, Civilian Perspective, supra note 3, at 1345: "Legal theories are, in short, a form of discourse which can on occasion have a force equivalent to that which inheres in organization, status or wealth."

53. Wexler, supra note 45, at 1054. Wexler writes of an anecdote about the lawyer who refused to advise one of his lay organizers about her son's mental disability.
absolute necessity of allowing poverty clients to dictate the poverty lawyer's strategies even though the lawyer may not approve of the method chosen or consider it to be the most effective utilization of his legal skills. Although the Wexler strategy answers the charge that legal services law reform activity is merely an attempt to create a role for middle-class professionals in which they can aid the cause of the poor without losing their professional status or otherwise getting their hands dirty, it is sometimes difficult to see why Wexler's poor people's lawyer should be a lawyer at all. Certainly lay organizers can be bought cheaper.

Both Movement lawyers and group representatives in the national legal services are open to the criticism that they are wasting the expensive and scarce services of traditionally trained lawyers in activities that could be performed just as well, if not better, by non-lawyers trained in the fine art of political organizing. However, even the more traditional service functions of the legal services program are creating problems of rising expectations which might ultimately cause an even broader disintegration of the traditional legal profession and possibly the entire Anglo-American system of justice. The problem is twofold. First, individuals who previously handled their legal problems as best they could without the aid of lawyers have suddenly discovered the availability and value of the legal services attorney and increased their demand for his services. This has created a spiralling resource dilemma in which each increase in the supply of lawyers to the poor raises the demand for their services. Second, the law reform activities of legal services lawyers and privately funded civil rights attorneys have set off a chain of test cases and class actions (not to mention "public interest"

for fear she would stop her organizing work and spend more time seeking help for her own child.

54. For example, a physical assault on a physician at a hospital. See id. at 1064-65.

55. "I ignored the real problems of the recipients . . . in favor of problems which I was disposed to see, on which I could better exercise my skills . . . ." Id. at 1066.

56. Law Reforming, supra note 3, at 255.

57. "We have, then, an inefficient system for dispensing an unsatisfactory product which is kept in unnecessarily short supply by a monopoly-created scarcity of manpower . . . . And we, the producer, in pushing for an expansion of traditional legal services, are thus engaged in a sales pitch for a product that we can't offer within the price of the market it must reach to do any good." Civilian Perspective Revisited, supra note 3, at 936.

58. See 58 FRD 299 (1973) for a discussion of class actions; but see recent limitations on class actions in Zahn v. Int'l Paper Co., 93 S. Ct. 1370 (1973) (jurisdictional amount requirement); and O'Shea v. Littleton, 94 S. Ct. 669 (1974) (case or controversy requirement).
suits) for the purpose of substituting litigation for legislation.\textsuperscript{50} On the client level this litigation has resulted in what the Cahns refer to as the "Rights Explosion" and the "Grievance Explosion"\textsuperscript{60} in which each new civil right leads to ten other proposed "rights" and each wrong righted by the courts creates a hundred new complaints. All of this is compounded by the internal struggle between the individual services attorneys and the law reform attorneys for a greater share of the federal money bag.\textsuperscript{61}

There are presently three different approaches to this problem. The first solution comes from the Cahns who helped create the problem by proposing the nation-wide establishment of neighborhood legal services offices. Their solution is the creation of a new institution in the form of a neighborhood corporation\textsuperscript{62} designed by lawyers but operated by laymen. The structure of this neighborhood corporation is somewhat vague, but it is clearly meant to encompass judicial tribunals with the power to monitor and enforce sanctions against public officials as well as a corporate structure to service the individual and group needs of the neighborhood poor.\textsuperscript{63}

Another approach can be seen in the criticisms of the legal services position made by Geoffrey Hazard.\textsuperscript{64} Hazard believes that poverty is basically a problem of the allocation of economic resources which can only be solved by the redistribution of property. Although legal action can occasionally alleviate problems in individual cases, it can never effect any meaningful redistribution of property within American society. In fact, the essence of Anglo-American civil law and justice is the enforcement of established property claims, an activity which by definition is antithetical to the redistribution of property in favor of the needy.\textsuperscript{65} On the law reform front, Hazard criticizes judicial decisions in test cases and class actions as an ineffective and expensive means of legislative action which could be more effectively carried out by traditional democratic political processes.\textsuperscript{66}

60. *Power to the People, supra* note 48, at 1008-10.
61. Not all individual service proponents are traditional legal aid society supporters. See, e.g., James, *supra* note 3, at 60-61, for some dissent in the ranks of CRLA. See also Wexler, *supra* note 45, at 1049-50, for a discussion of the limitations on the value of test case litigation to the test case client.
62. Not to be confused with the proposed National Legal Services Corporation for funding local legal services projects.
63. *Civilian Perspective Revisited, supra* note 3; *Power to the People, supra* note 48.
64. *Social Justice, supra* note 3; *Law Reforming, supra* note 3.
short, there is no need for new institutions to obtain legal solutions for the special economic and social problems of the poor. The problem for the poor is obtaining power within the existing social and political institutions through leaders of their own choice, using the same rough and ready methods that everyone else does.67

The third approach is that adopted by the ABA, which tends to ignore the disruptive potential of the "Rights" and the "Grievance Explosion" and treats the spiralling demand for lawyers as a "delivery of services" problem.68 A good example of this approach is Barlow F. Christensen who started with the massive demand for free legal services on the part of the poor and discovered that many people above the poverty line also had a need for legal services which was not being met.69 He then proposed increasing the availability of lawyers to lower middle class people through both lowering the cost of producing legal services by means of increased law office efficiency, specialization and the use of paraprofessionals; and increasing access to the lawyers through relaxed ethical bans on advertising, through lawyer referral services and through group legal services.70 Underlying this approach is an attempt to absorb the disintegrating effects of the increased demand for legal services with minimal changes in the internal structure of the profession. In other words the traditional law firm remains (with computers, new office management techniques, specialization and paraprofessionals), but new mechanisms are established to ascertain who needs their services and to distribute the services accordingly.

One of Christensen's (and the ABA's) proposals that is spilling back into legal services for the poor is group legal services—or the delivery of legal services through a lay organization either as a fringe or primary benefit of membership.71 In group legal service plans the purpose of the group is to provide access to the lawyer and/or money to pay for his services, and should be distinguished from national legal services group representation where access to "free" legal services are artificially restricted in order to encourage or coerce membership in a particular group. Christensen's selling point to the organized

67. Law Reforming, supra note 3, at 255. See James, supra note 3, at 238-39, 244-45 for a radical critique of Northern inspired civil rights litigation and judicial legislation in the South.
68. Statement of ABA President Chesterfield Smith, 59 A.B.A.J. 921 (1973); see generally Christensen, supra note 12. There are also signs that this approach is continuing to infiltrate Congress. 59 A.B.A.J. 1175 (1973).
69. Christensen, supra note 12, at 22-26; see also F. Marks, THE LAWYER, THE PUBLIC AND PROFESSIONAL RESPONSIBILITY (1972).
70. Christensen, supra note 12, at 44-56.
71. Id.
bar is that Supreme Court decisions attacking the old prohibition in the *Canons of Professional Ethics* against the use of lay intermediaries to promote the services of lawyers should be accepted by the profession as an opportunity to expand greatly the lawyer's business for both the good of the public and of the lawyer's pocketbook. In short, he joins the Cahns in asking the legal profession to abandon its traditional guild monopoly position in favor of more commercial and businesslike marketing procedures. However, the difference between ABA liberals such as Christensen and the more radical lawyers remains that the ABA is seeking to reaffirm the internal structure of the profession by adapting it to the increasing demand for the services of lawyers, while the radicals are disintegrating the profession in pursuit of a better means to achieve social justice in America.

**The National Legal Services Corporation**

Whatever their ultimate differences in theory, national legal services proponents and the ABA joined together in 1971 in an effort to resolve the more immediate political problems of OEO legal services. The vehicle for preserving the independence of legal services from political harassment was to be an Independent National Legal Services Corporation federally funded on the model of the Corporation for Public Broadcasting. The ABA had been unhappy with OEO's administration of the legal services program since the regionalization controversy and had conducted studies on alternative positions for a legal services program within the federal government structure. The Department of Health, Education and Welfare was rejected because of a possible conflict of interest in litigation against welfare agencies. The Justice Department was also considered to be in a conflicting position because of its obligation to enforce federal statutes which might be challenged on constitutional grounds by legal services attorneys. The judicial branch was rejected because of anticipated funding difficulties. The model of independent executive agencies such as the National Science Foundation was considered, but rejected as being too dependent upon the President. The model of the more independent regulatory agen-


73. *Civilian Perspective Revisited*, *supra* note 3, at 936.


cies was not considered applicable. The idea of an independent national corporation for administering the funding of the national legal services program had also been suggested by the President's Advisory Commission of Executive Organization. It was the Commission's report and the prospect of a Presidential proposal that provided the impetus for action in the 92nd Congress on the creation of a National Legal Services Corporation.

Throughout the National Legal Services Corporation controversy, legal services proponents leaned on the ABA in a desperate attempt to preserve their existence as a federally funded entity. They found a common ground in the traditional duty of a lawyer to represent his client zealously without interference from outside sources, as set forth in the Code of Professional Responsibility. In some respects the ethics issue is unreal because the Code of Professional Responsibility is not binding on Congress or on any individual attorney unless adopted by the state in which he is licensed and practices. However, it provided a conservative argument for legal services' continued independence of action against its conservative political opponents in Congress who continued to propose numerous restrictions on its activities.

The Congressional controversy over the National Legal Services Corporation consisted of two basic arguments; the composition of the board of directors of the Corporation, and the imposition of limitations on Corporation and grantee activities. The board of directors controversy was responsible for the demise of the first two sets of National Legal Services Corporation bills.

In March of 1971, a bipartisan coalition in Congress introduced parallel National Legal Services Corporation bills in the House and the Senate. The object of these bills was to forestall an expected proposal from the President which was expected to be considerably more conservative. The bipartisan bill provided for an incorporating trusteeship made up of members of the ABA, the National Legal Aid and Defender

77. ABA Proposal, supra note 39, at 59.
80. ABA CANONS OF PROFESSIONAL ETHICS No. 7; Ethical Considerations 7-1, 5-23; Disciplinary Rule 5-107(b); ABA Proposal, supra note 39, at 13-17.
81. WISE, LEGAL ETHICS, ix (2nd ed. 1970). The state's general power to regulate the practice of law was not invalidated by NAACP v. Button, 371 U.S. 415, 429-39 (1963). This regulation is commonly done by statute, court rule, state bar association or a combination of the above.
Association (NLADA), the Association of American Law Schools and the National Bar Association. Once the Corporation was in operation, the permanent board of directors was to consist of one-third representatives from the above-mentioned organizations, one-third public members appointed by the President, and one-third representatives of legal services attorneys and clients.  

It was anticipated that legal services clients could be represented by an organization known as the National Clients Council. This was obviously the bill supported by legal services proponents and the ABA.

In early May, the President presented his proposal in the form of another set of parallel National Legal Services Corporation bills introduced in the House and the Senate. The administration bill did not include the incorporating trusteeship and provided that all the members of the board of directors of the Corporation be appointed by the President with the advice and consent of the Senate.

After extensive hearings, the bipartisan bill was incorporated into the Economic Opportunity Act of 1971 (S. 2009) which passed both houses of Congress only to be vetoed by the President in December of 1971. In his veto message, the President stated that the National Legal Services Corporation provisions were, after the child development program, the primary source of his objections to S. 2009. He cited the weakness of the National Legal Services Corporation provisions as the control of the Corporation by "various professional, client and special interest groups, some of which are actual or potential grantees of the Corporation." In other words whereas the ABA hoped to keep the Corporation independent of the Executive branch by insuring that "outside" organizations dominate the board of directors, the President wanted to keep control over the Corporation through his exclusive power to appoint directors.

S. 2009 did not survive the Presidential veto, and the 2nd Session of the 92nd Congress went on to consider a substitute bill, H.R. 12350. In its original form, H.R. 12350 contained another National Legal Services Corporation provision in title ix. This time the board
of the Corporation was to consist of a majority (10 out of 19) of public members appointed by the President, one member representing each of the above-listed interest groups, and two members each representing the legal services attorneys and the National Clients Council. However, while H.R. 12350 was in the last stages of a Senate and House conference committee, the President informed the committee that he would veto the new bill unless he was given the authority to appoint all the directors of the National Legal Services Corporation. When the Senate and House conferences could not agree whether to meet the President's demands, it was decided to drop the Corporation in favor of continuing the legal services program without any change in structure so as not to jeopardize the other OEO provisions of H.R. 12350.

The 93rd Congress saw a new crop of National Legal Services Corporation bills. By this time the need for congressional action had become more urgent as a result of OEO Director Howard Philips' efforts at "dismantling", which left the legal services program without a director and on a 30-day at a time funding arrangement. The new House bills were eventually abandoned in favor of H.R. 7824 which provides for eleven members of the Corporation board of directors, six of whom must be attorneys, to be appointed by the President with the advise and consent of the Senate. The incorporating trusteeship has been abandoned and the transition period is to be supervised by the Secretary of Health, Education and Welfare. In short, all the President's objections have been met. H.R. 7824 passed the House on June 21, 1973. In the meantime, however, the ABA dropped its support of the bill because of certain amendments made on the floor of the House. To understand these amendments we must take up the second basic National Legal Services Corporation argument, the imposition of limitations on Corporation and grantee activities.

The limitations argument is really an attempt on the part of the same politicians who attacked the legal services program under OEO to disable the Corporation from the start so as to prevent it from con-

92. Id. at 24-25, 34.
94. Id. at 14-15.
95. Id. at 2.
continuing to support law reform activity. In other words, the new Corporation which was designed by the ABA to insure independence for the national legal services program, and restructured by the President to insure Executive control over its operations can be further amended by Congress in such a way as to make it inoperable.

The Congressional limitations began with the 1971 administration bills which prohibited the National Legal Services Corporation from representing criminals and engaging in legislative lobbying. The ban on representing criminals was aimed at avoiding the duplication of services provided by federal and local public defender programs. It is considered by legal services people to hinder the establishment of full-services neighborhood law offices and the servicing of clients involved in boycotts, strikes and injunctions. The anti-lobbying restriction confines legal services to the test cases type of judicial legislation which has raised so many problems in the past. However, both of these restrictions are present in some form in the OEO legal services program and do not represent a significant change in the status quo. More controversial is a requirement that appellate work be screened for “efficient use of resources,” seemingly a direct attack on law reform litigation. Another issue is the requirement that no funds be granted to “public interest” law firms. This argument revolves around the definition of a “public interest” firm and an inconsistent provision for funding non-public interest private firms. Opponents of the limitation have argued that the administration is actually going to turn the Corporation into a Judicare program without any provision for law reform activities. The most serious “public interest” controversies have not been concerned with “public interest” litigation, which many legal services proponents disapprove of, anyway, as a waste of legal resources. The greater threat is the effect of the provision on the funding of legal services “back-up centers” or research facilities supplying poverty law materials to OEO funded neighborhood offices.

Another set of controversial limitations was directed at the personal lives and activities of the legal services attorneys. These restrictions are intended to prevent direct action on the part of legal services attorneys.

99. Power to the People, supra note 48, at 1005-06. See Marks, supra note 69, for discussion of “public interest” law firms. This issue was resolved in H.R. REP. No. 93-247, 93rd Cong., 1st Sess. 11 (June 4, 1973); but see 119 CONG. REC. H. 5132 (June 21, 1973).
100. Testimony of Jean Camper Cahn, 1971 OEO Hearings, supra note 40, pt. 5, at 1647-76.
attorneys in boycotts, strikes, demonstrations and illegal activities. It should be noted that in this context, illegal activities is meant to encompass the violation of court injunctions. These restrictions were backed up by requirements that procedures be established by the Corporation for disciplining grantee employees who violate them.\textsuperscript{101} Although this type of restrictions has been repeatedly attacked as a violation of first amendment rights,\textsuperscript{102} a recent decision upholding the Hatch Act (restricting political activities on the part of federal civil service employees)\textsuperscript{103} seems to indicate that they would not automatically be overruled on constitutional grounds.

Numerous other restrictions were proposed by each new National Legal Services Corporation bill until, by the 93rd Congress, the issue had become whether Congress should be allowed to restrict totally the methods of litigation such as appeals, test cases, class actions, group representation, and suits against government agencies with a view to eliminating national legal services' law reform activity. It was at this point that both legal services proponents and the ABA invoked the "integrity of the lawyer-client relationship" as set forth in the \textit{Code of Professional Responsibility}. In the short run the ethics argument proved persuasive. The President believed it.\textsuperscript{104} The House returned H.R. 7824 from committee with only moderate restrictions limited by section 6 (b) (3), which provided that

\begin{quote}
the corporation shall not interfere with any attorney in carrying out his professional responsibility to his client as established in the Canons of Ethics and Code of Professional Responsibility of the American Bar Association . . . \textsuperscript{105}
\end{quote}

However, on the floor of the House the political opponents of national legal services rallied and amended H.R. 7824 to limit drastically (1) the range of problems which the corporation grantees could handle, (2) the types of people who could be represented, (3) the means which grantee attorneys could use, and (4) the structure and longevity of the Corporation itself. First, restrictions were imposed on litigation involving non-therapeutic abortions. Litigation in regard to school desegregation, higher educational desegregation and military amnesty was prohibited. Second, the Corporation was barred from providing legal assistance to "unemployed persons who refuse to seek or accept

\textsuperscript{102} Testimony of Jean Camper Cahn, 1971 OEO Hearings, supra note 40, pt. 5, at 1647-76.
\textsuperscript{104} Providing Legal Services to Americans, supra note 85.
\textsuperscript{105} 119 CONG. REC. H. 5094, col. 2 (June 21, 1973).
employment”, and indigent Watergate defendants. Third, an amendment was made prohibiting the funding of any activities relating to ballot measures such as initiatives or referendums, which excluded the national legal services program under the Corporation from any issues that become political. Further, the anti-lobbying provision was strengthened to prohibit use of corporation funds to

directly or indirectly . . . influence any executive order or similar promulgation of any Federal, State, or local agency, or . . . influence the passage or defeat of legislation by the Congress of the United States, or by any State or local legislative bodies . . .106 except upon formal invitation of the agency or legislative body. Although an exception was made to allow some representation before administrative bodies in individual cases, it is not clear that this amendment would not have the effect of totally prohibiting activities aimed at changing administrative determinations or forcing administrative compliance with constitutional and statutory provisions.107 To put it more directly, this amendment appears to be a sophisticated attempt to incorporate the First Murphy Amendment banning suits against government agencies and officials. Whatever the effect on administrative advocacy, the absolute ban on involvement in political issues and direct and indirect legislative activities is sufficient to put the Corporation in violation of Disciplinary Rule 7-101 (A) (1) and Canon 8 of the Code of Professional Responsibility.108 More importantly, it prohibits the Corporation from representing the poor in their area of greatest legal difficulty—dealing with local, state and federal governments.

Fourth, the ban on funds to “public interest” firms was extended to any law firm which spent 50% of its time in the “public interest”, and funding to back-up research centers was prohibited. Finally, the Corporation is to liquidate automatically on June 30, 1978. If enacted into law in its present form, one wonders if the National Legal Services Corporation will last that long or become so bogged down in interpreting all the restrictions in its enacting statute that it becomes non-functional anyway.

CONCLUSION

After the amended bill passed the House, the President of the ABA issued a statement denouncing it.109 H.R. 7824 is presently

awaiting further action by a Congress preoccupied with difficulties in the Office of the President and the "energy crisis." It appears that between the President's insistence on Executive control and Congress' restrictions on law reform activities, the entire purpose of the National Legal Services Corporation (i.e. to insure the independence of the national legal services program) has been thwarted.

The outlook for national legal services is presently rather bleak. The ABA has turned its attention to the field of prepaid legal services leaving the neighborhood law office supporters to fend for themselves. It is too early to say just how the spiralling demand for legal services is going to be dealt with. The ABA seems to be counting on prepaid legal service insurance and group plans based on current programs for the payment of medical and hospitalization expenses to meet the demand problem with minimal disruption to the legal profession's monopoly and internal structure. In a sense they may come out ahead of the medical profession because of the decision of most law schools to expand enrollments in the face of the increased number of applicants for admission in recent years, rather than to increase competition. Relatively open access to professional education will help to keep the rising demand for lawyers a "delivery of services" problem rather than a lawyer shortage problem.

The "Rights" and "Grievances Explosion" is another matter. Radical lawyers are already gravitating into political and "public interest" arrangements in violation of both the traditional law firm structure and the classic attorney-client relationship. At the same time, they are channeling a vast quantity of political, social, economic and aesthetic problems into the courts. How much litigation the court system can continue to absorb before it too begins to disintegrate remains to be seen. However, if the activities of the radicals do disintegrate or transform the judicial system, no "delivery of services" plan, no matter how effective, is going to reaffirm either the traditional structure of the practicing bar or its monopoly over the administration of law and justice.

110. See 120 Cong. Rec. S909-1012 for the Senate version of H.R. 7824 passed Jan. 31, 1974. As of publication, a common bill has yet to be enacted.
112. Id.