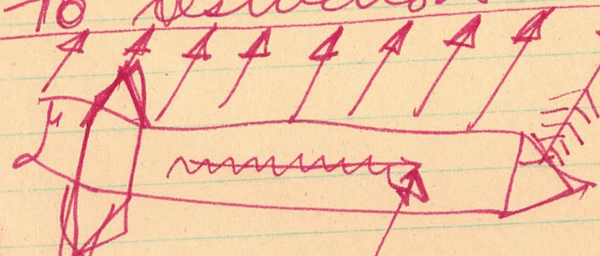
Collection: Barr, William: Files
Folder Title: [Legal Services Corporation]
Box: 10

LSC

House app. tomorrow
made subject to limited
H.R. 3480
no funds may be used contrary
to restrictions



HR 6957
appropriation

Senate will take up shortly.
Senate probably would not accept
omnibus rider.

4 rider
4 rider

Weicher would accept

lobbying — alien
bar board — class action

Weicher controls
in subcommittee
on aging, family, human services

Rule on app. bill protecting
it against pts of order
That there is no authorization
Senate rules will permit
it to consider

LEGAL SERVICES CORPORATION

H.R.3480

5/7/81 Introd.by Rodino (for previous action, see H.R.2506)
Referred to H.Jud.Comm.
5/19/81 Reported to House, amended (H.Rpt.97-97)
6/16/81 Considered by House
6/18/81 House agrees to amendments adopted by Committee of the Whole; passes House, amended, 245-137
6/24/81 Senate Comm. on Labor & Human Resources ordered favorably reported an original bill (S.1533) in lieu

8/10/82 (Still in Sen.Comm. on Labor & Hum.Res.)

H.R.2506 (Identical to H.R.3161)

3/12/81 Introd. by Rodino
March-April, 1981 Hearings held
5/7/81 Clean bill H.R.3480 forwarded by subcomm. to full comm. in lieu
(For further action, see H.R.3480)

H.R.3161 (Identical to H.R.2506) (Not Available)

4/8/81 Introd. by Minish
8/10/81 (Still in H.Jud.Comm., Subcomm. on Courts, Civ.Lib. & Adm.of Just.)

S.1533

6/24/81 Comm. ordered to be reported an original bill in lieu of H.R.3480
7/29/81 Introd. by Weicker
7/29/81 S.Report 97-171; Placed on Sen. Legislative Calendar (Calendar # 238)
8/10/82 (No further action on this bill)

HR 6957 appropriations

Senate bill
maybe H riders
alien
class action
lobbying
bar app'ts

subc. aging, family, human services

Personnel
→ 2 vacancies for Sampson + Worthey
→ Paris?
→ Earl
De Moss

THE WHITE HOUSE

WASHINGTON

10 December 1982

MEMORANDUM FOR ED HARPER

FROM: KENNETH CRIBB, JR.

SUBJECT: Op-Ed on Legal Services

Ed Meese requests that Uhlmann/Barr/Galebach work up an Op-Ed piece on legal services for his signature. The Op-Ed should make the following points:

1. RR believes that the poor should have access to legal services, but there are better ways to deliver such services than through the Legal Services Corporation.

2. The Legal Services Corporation has been subject to major abuses "as professor Gerald M. Caplan has written in the Wall Street Journal . . . ." Use analysis of the attached Caplan piece, but not its conclusion.

3. It is possible for the poor to receive legal services without such abuses:

   a. through programs suggested in Ed Meese's speech to the San Diego Bar Association and to the Delaware Law School (Mitchell Stanley will forward these speeches directly to Uhlmann/Barr/Galebach).

   b. by using Federal monies as seed money which generates legal services to the poor from other sources, rather than for the taxpayer providing all money for all services.

cc: Mitchell F. Stanley

bcc: Bill Barr

Charlie

797

4438

DOCUMENT NO. 090612 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 8/9/82 ACTION/CONCURRENCE/COMMENT DUE BY: 8/12/82

SUBJECT: Legal Services Meeting 3:00 pm Friday - Ed Meese's office

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☐	TURNER	☐	☐
BARR	X	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	PROPERTY REVIEW BOARD	☐	☐
DENEND	☐	☐	OTHER	☐	☐
FAIRBANKS	☐	☐		☐	☐
FERRARA	☐	☐	______	☐	☐
GUNN	☐	☐	______	☐	☐
B. LEONARD	☐	☐	______	☐	☐
MALOLEY	☐	☐	______	☐	☐
MONTOYA	☐	☐	______	☐	☐
SMITH	☐	☐	______	☐	☐
UHLMANN	☐	X	______	☐	☐
ADMINISTRATION	☐	☐	______	☐	☐

Remarks:

Ed Meese has asked that you prepare a briefing memo in preparation for the Legal Services Meeting scheduled for 3:00 pm on Friday. The memo should analyze the pending legislation which is supposed to reform legal services. Could I have this by Noon, Thursday.

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

Please return this tracking sheet with your response.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 12, 1982

FOR: KENNETH CRIBB

FROM: BILL BARR WPB

SUBJECT: Legal Services Corp. Authorization Bill

As you requested, attached is a brief overview of the substantive provisions of the LSC Authorization Bill, which recently passed the House.

My understanding is that the meeting will focus principally on personnel matters and legislative strategy and that you wanted this paper in the event the substantive provisions of the bill were raised. I assume that Duberstein's shop is preparing the necessary material on legislative strategy.

cc: Ed Harper
Roger Porter

BRIEFING PAPER
ON LEGAL SERVICES CORPORATION
AUTHORIZATION LEGISLATION

On June 18, 1982, the House of Representatives, by a vote of 245-137, passed H.R. 3480.

This bill:

(1) provides authorization for appropriations for the legal Services Corporation in the amount of $241 million for FY 1983; and

(2) amends the Legal Services Corporation Act to impose restrictions on LSC activities; to increase sanctions and streamline procedures for enforcement of the Act, and to offer an increased role to the private bar in the delivery of legal services and in the supervision and governance of recipient organizations.

Overview of Bill

Restrictions

- o Limits recipients to persons and organizations which have as their sole purpose furnishing legal services to eligible clients. (Sec. 3)
- o Prohibits strikes by LSC and recipient employees. (Sec. 4(d))
- o Strictly curtails lobbying by LSC and recipient employees. (Sec. 5)
- o Prohibits class actions against Federal, State, or local government. (Sec. 6)
- o Permits award of attorneys' fees against LSC for unfounded lawsuits. (Sec. 7)
- o Requires settlement negotiations before suits may be filed. (Sec. 8)
- o Requires recipients who receive attorneys' fees to turn them over to LSC. (Sec. 10)
- o Bars use of funds for protecting homosexuality. (Sec. 13, 14(a)(b))
- o Prohibits training and dissemination of information on political activism techniques. (Sec. 14)

- Bars use of funds for proceedings relating to <u>abortions</u>. (Sec. 14)

- Strictly limits assistance to aliens. (Sec. 14)

- Prohibits giving of legal advice on <u>desegregation.</u> (Sec. 14)

<u>Oversight and Enforcement</u>

- Requires advisory councils in each state with oversight responsibilties. (Sec. 2)

- Streamlines procedures for cutting-off funding to recipients. (Sec. 4)

- Requires recipients to keep records showing eligibility of every person served and requires LSC to regularly review such records. (Sec. 15)

- Grants GAO audit authority over LSC. (Sec. 17)

- Authorizes LSC and U.S. to bring suits to enforce contracts with recipients and compliance with Act. (Sec. 16)

<u>Private Bar Involvement</u>

- Requires that majority of board of directors of recipient organizations be attorneys appointed by bar associations representing majority of attorneys in areas served. (Sec. 3)

- Encourages use of LSC funds for providing <u>pro bono</u> and less-than-usual fee services by private attorneys. (Sec. 9)

- Requires LSC to fund at least one open panel private bar component in each state. (Sec. 12)

<u>Conclusions</u>

The policies reflected in the bill are generally sound.

From a technical standpoint, some amendments would be desirable to eliminate ambiguities.

However, even if enacted by the Senate as is, H.R. 3480 would not create any significant problems for us.

SECTION-BY-SECTION ANALYSIS

Section 2 -- Oversight by State Advisory Councils

what kind of grants reviewed

subc. amdt.

Mandates the establishment of state advisory councils in every state and would expand their oversight functions. If governor fails to appoint members, LSC Board does so. LSC must ask councils for comments and recommendations before approving grant applications, entering into contracts or initiating projects.

Section 3 -- Qualified Recipients

full com. amdt

Limits eligible recipients of LSC funds to: (1) private attorneys (for the sole purpose of furnishing legal assistance to eligible clients); and (2) nonprofit organizations chartered by the state for the sole purpose of furnishing legal assistance to eligible clients. "sole purpose"

Requires that majority of board of directors of recipient nonprofit organization be attorneys appointed by bar associations which represent a majority of attorneys in the service area.

Eliminates LSC current authority to "make such other grants and contracts as are necessary to carry out the purposes and provisions of this title."

Section 4 -- Enforcement and Sanctions

Existing law essentially creates a presumption that recipient programs are entitled to continued funding and makes it difficult to terminate funding. Section 4 eliminates this presumption and makes it easier to terminate funding.

subc. w/small change on floor

- o Requires LSC to promulgate regulations within 30 days of enactment, providing for (i) immediate suspension of assistance; (ii) suspension or termination of LSC employees; (iii) suspension or termination of recipient employees by recipient; (iv) reduction or termination of assistance for violations of Act.
- o <u>Repeals</u> Section 1011 of Act, thus <u>removing recipient rights</u> to:
  - -- notice and opportunity to show cause why assistance should not be suspended for less than 30 days;
  - -- notice and opportunity for a "timely, full and fair hearing" prior to denial of refunding application;
  - -- request independent hearing examiner.

- Instead of Section 1011 procedures, this section requires only that assistance cannot be suspended or terminated for more than 30 days unless recipient has an "opportunity for a fair hearing".

- Eliminates requirement in existing law that, while refunding application is pending, recipient must receive interim funding "necessary to maintain its current activities". Requires interim funding only to the extent sufficient to allow continuation of representation that has already been initiated.

full Cm (Butler)

<u>Section 4(d)</u> -- <u>Strikes by Employees</u>

Eliminates the right of LSC and recipient employees to strike, even on their own behalf.

<u>Section 5</u> -- <u>Lobbying</u>

Broadens the scope of permissible LSC lobbying, but substantially narrows the scope of recipient lobbying.

Ctee plus floor

Removes bar against LSC lobbying at state and local level, and permits LSC officials to communicate with Congress "through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business".

Prohibits recipients from engaging in any administrative advocacy to influence any federal, state or local agency except "on a particular application, claim, or case" directly involving a client's legal rights.

Prohibits recipients from engaging in any legislative advocacy except in response to official legislative requests on matters "pertaining to the authorization or appropriations of funds or oversight measures directly affecting the operation of the program involved".

<u>Section 6</u> -- <u>Limitation on Class Actions</u>

floor

Prohibits class actions against the Federal government, or any State or local government.

<u>Section 7</u> -- <u>Liability for Attorneys' Fees</u>

subc.

This section authorizes a court, in actions brought either by LSC or by a recipient, to award legal fees against LSC and if it finds that "the action had no reasonable basis in law or fact".

indemnification

Under existing law, attorneys' fees can be awarded against LSC only where action was brought "for the sole purpose of harassment" or where plaintiff "maliciously abused legal process". The amendment sets a much lower standard and should provide a powerful deterrent to ill-considered litigation.

NOTE: There is no specific provision allowing LSC to shift ultimate responsiblity for fees to the recipient program. There is also no express requirement for notifying LSC when attorneys' fees are sought against it.

Section 8 -- Negotiation Requirement

subc.

Requires recipients to attempt negotiated settlements before filing suit, unless circumstances require immediate filing to protect a client's interests.

Section 9 -- Private Bar Involvement

judicare

subc.

Provides that, to the extent feasible, LSC is to make available substantial amounts of funds to provide the opportunity for legal assistance to be rendered to eligible clients by private attorneys. compensation ⊅ reasonable costs + expenses

This is intended to encourage use of full range of delivery methods, including pro bono and less-than-customary fee services.

Section 10 -- Award of Attorneys' Fees

subc.

Requires recipients who receive an award of attorneys' fees to transfer such fees to LSC. except for costs

Section 11 -- Allocation of Funding

floor ~~state~~.

Requires LSC to allocate basic field grants so as to insure that no greater level of access to LSC funded legal assistance is available to any part of the country than is available to all parts of the country, unless minimum access is available in all parts of the country.

Section 12 -- Private Bar Components

greater use of judicare

floor 17

Requires LSC to fund at least one open panel private bar component in each state, unless it can be shown that the private bar refuses or is unable to provide services through such a component.

Section 13 -- Homosexuality

floor 18

Prohibits use of LSC funds "to provide legal assistance to promote, defend, or protect homosexuality" or to promulgate or enforce any LSC rule which would prohibit discrimination in employment on the basis of sexual orientation.

Section 14 -- Additional Restrictions

- o Prohibits use of LSC funds for (1) training for purposes of advocating political activities, labor or anti-labor activities, boycotts, picketing, strikes and demonstrations, and dissemination of information about such activities.

- o Prohibits use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to abortion, unless such abortion is necessary to save the life of the mother.

- o Prohibits recipients from giving legal advice concerning desegregation.

- o Prohibits use of LSC funds "to provide legal assistance for any litigation which seeks to adjudicate the legalization of homosexuality".

- o Prohibits use of LSC funds to provide services to an alien unless the alien is a resident of U.S. and is (i) a permanent resident alien; (ii) spouse, parent, or minor child of U.S. citizen with pending permanent-resident application; or (iii) refugee or asylee.

Section 15 -- Documentation of Eligibility

Requires recipients maintain documentation demonstrating the eligibility of each person provided legal assistance and of any legislative or administrative advocacy undertaken.

Directs LSC to periodically review such documentation.

Requires that representation of any group or entity is to be limited to eligible clients.

Section 16 -- Suits to Enforce Act or Recipient Contracts

Authorizes the Corporation to bring an action in United States District Court to compel specific performance of agreements between the Corporation and any recipient.

Authorizes both the United States and the Corporation to bring an action for a temporary or permanent injunction or other appropriate relief to compel recipient compliance with the LSC Act or any rules, regulations, or guidelines promulgated under the Act.

Section 17 -- Audits

Grants the Comptroller General and the GAO the same authorities with respect to LSC audits as those offices have with respect to audits of "all departments and agencies of the United States, including the authority to settle and adjust the accounts of the Corporation".

9 DEC 1982
WSJ

Should Reagan Kill Legal Services?

By Gerald M. Caplan

A full-page photograph from a recent issue of the Conservative Digest displays empty offices at the Legal Services Corp. The offices are vacant as the result of recent budget cuts. The picture is captioned: "Heart-Warming Photo of the Month (Maybe of the Decade)."

It is hard for an outsider to understand such passion, yet it has followed the legal services program since its inception as part of the old Office of Economic Opportunity in 1965. Supporters and critics of the program have long differed intensely. Today, as before, they sight each other from trenches where no white flag will be raised. All disagreements are matters of principle; compromise is ignoble. It is a holy war.

Proponents of the program had hoped that removing it from the executive branch and reestablishing it as an independent corporation would bring an end to controversy. But the attacks continued after 1975, and in 1980 the program drew its most formidable opponent, the Reagan administration.

Though the administration failed in its initial effort to eliminate the corporation, it did succeed in curbing the appropriations by an impressive 25%—from $321 million to $241 million. In 1982, the administration is once more proposing a zero budget.

And only yesterday the White House withdrew its own nominees to the corporation's board of directors, an apparent public reproach for the nominees' supportive attitude toward the organization.

Reasons to Be Troubled

There is considerable merit in characterizing the battle over the future of the program as the media has—a contest between good and evil. The case for legal services is strong: There *are* poor people, they *do* have legal needs, and to remit them to the volunteer efforts of the bar, private charities or the competition for state funds is to leave them largely unrepresented—especially in that large cluster of cases involving public benefits where their needs are greatest. (Moreover, Legal Services attorneys appear to provide competent representation. They win a great many cases; their clients seem satisfied.)

Where, then, is the problem? Are the abolitionists simply trying to punish the program for its successes? Is this pique masquerading as principle?

There are, in fact, reasons to be troubled by the way legal services to the poor are delivered. At the margin, the program has become politicized. Activist attorneys have embarked on frankly political expeditions. Self-policing has been half-hearted.

The political character of the program is most clearly revealed through its publications. The lead article of a 1982 issue of Youth Law News declares: "Once again, President Reagan's proposed budget declares war on our nation's children. Appar- [...] United States."

In another corporation-funded periodical, the Economic Development and Law Center Report, a Legal Services attorney argues: "We must recognize and strengthen the natural links between working people and the poor. . . . If we have not helped our clients to increase their political and economic resources, we have failed."

And the newsletter of the National Health Law Program advises: "If you have eligible clients who will be affected by [proposed cutbacks] the most effective thing they can do for themselves is to contact as many senators and representatives . . . as possible."

There is no shortage of examples.

It may seem a small step from representing a particular consumer to acting on behalf of a class of consumers, to drumming up grassroots support for pro-consumer legislation (or candidates favoring its enactment)—but it is an impermissible journey. Such forays are not inherently wrong—far from it, the causes may be just—but they constitute partisan political action and should not be tax-supported.

Supporters of the program emphasize that Legal Services is the kind of program that draws fire even when it is performing splendidly. There is an irreducible amount of controversy that goes with lawyering; nobody likes to be sued.

But if program attorneys confined themselves to representing consumers alleging unfair credit practices, or widows claiming pension benefits, or tenants alleging housing code violations, the complaints would sting less. It is because the program has edged past representing individual clients—consumers, tenants, benefit claimants—and beyond class actions, well into the political process, that the Reagan administration is feverish.

However one characterizes lawyering aimed at redistributing wealth and power, it isn't what the Congress or White House had in mind when the program was created. In a real sense, it isn't legal services; it is something else—political action. What is it that lawyers, particularly recent graduates, know about reforming society? Law professors have no special expertise at either defining the just society or fashioning stratagems to achieve it.

Even on simple matters, Legal Services attorneys can go astray unless well supervised. As I was being driven through the rundown section of a small Southern town last summer, my host, a program attorney, pointed out several rooming houses that had been the subject of suit for housing code violations. One of the largest seemed abandoned. "Did you miscalculate the owner's profit margin?" I asked. He nodded. Legal Services attorneys do not always understand that bad housing is better than no housing.

On the broad question of financial eligibility of prospective clients, the corporation published regulations that operated to prevent outside auditing and that fueled the accusation that eligibility requirements were ignored whenever Legal Services attorneys encountered a client whose claim would make a good "test case." The net result of these rules is that a person is eligible if he says he is. If he is willing to lie about his assets and income, that, for all practical purposes, is the end of it. He becomes a client.

"Of course," as the corporation's attorneys blandly asserted, "the competence and integrity of program staff are the major means of insuring the eligibility guidelines . . . are being followed." No doubt, but wouldn't it be better if their "competence and integrity" could on occasion be checked by an outside auditor?

Stringent self-regulation, whether relating to aliens, eligibility, or other matters, has not been the corporation's long suit. It has hesitated to discipline its field programs lest it provide comfort to the enemy. But such forbearance created opponents where none existed and infused routine political opposition with zealotry. A firm restraining hand, rather than a "my boy can do no wrong" posture, would have produced less controversial (and more likable) progeny.

There is still another reason why Legal Services attorneys have more than their share of enemies, but this one has more to do with the way justice is administered than how the attorneys practice law. In a system characterized by costly, prolonged legal proceedings, the process is the punishment. Even an innocent defendant suffers. He may pay his attorney, he must endure the stresses of litigation, and he must do so over an extended period. A valid defense does not protect him from these hardships. It does not protect him from Legal Services attorneys who have learned to abuse the system in about the same way attorneys for the middle-class and wealthy do. They commit no special offense; they are just acting like lawyers.

Fodder for Democracy

Their litigation style does point up shortcomings in our civil justice system, some of which cry for correction. One should not praise Legal Services attorneys for this—it was not their intent to speed reform—but neither should one kill the messenger. Complaints about the lawyer are ultimately complaints about the law and its administration.

More could be said about the excesses of the Legal Services program, but it would not change the overall calculus. After all its derelictions are counted and weighed, what remains is a program that at its core is admirable: It helps the poor. And it does so in a particular way, through appeals to governmental officials, judges and lawmakers, that is in the most fundamental sense of the term, conservative.

For all their self-proclaimed radicalism, Legal Services attorneys accept the system. They really believe that a day in court is worth having, that the poor can get a fair shake in the legislature, that our laws will not invariably be bent to favor the strong. This is not the stuff of revolution; it is fodder for democracy.

The fact is that over the years, the Legal Services program has moderated the impulses of those who are intolerant or ignorant of democratic processes or who see violence as a means of getting their way. By its nature it binds the poor to strategies of ordered change. It integrates them into the body politic. It provides a taste of democracy.

Perhaps this should be enough to guarantee the continuation of the corporation.

Mr. Caplan, a professor of law at George Washington University, was acting president of the Legal Services Corp. earlier this year.

Room 215
22 copies

THE WHITE HOUSE

Office of the Press Secretary

April 29, 1983

For Immediate Release

The President today announced his intention to nominate Robert Brendon Keating to be Ambassador to the Democratic Republic of Madagascar and to the Federal and Islamic Republic of the Comoros. He would succeed Fernando E. Rondon.

Since 1982, Mr. Keating has served as a consultant to the Office of the General Counsel at the Department of the Navy. He was a consultant, International Security Affairs, Office of the Secretary of Defense in 1981-82; Vice President, Pure Water Systems, Inc., in 1979-81; a self-employed consultant in 1973-79; Director General of the Bureau of Roads, Ministry of Public Works of the Government of Zaire in Kinshasa in 1970-73; Senior Adviser for Transport and Infrastructure Projects at the Inter-American Development Bank in 1967-69; and Director of the Chile-California Program of Technical Cooperation in 1964-67.

He was also Chairman of the United States State Department Committee on Transport Technology for Developing Countries in 1961-62, and was a Member of the United States Delegation to the Law of the Sea Conference in 1981 (Geneva) and 1982 (New York City).

Mr. Keating served in the United States Navy in 1946-56 as Lieutenant. He graduated from the United States Naval Academy (B.S., 1946) and George Washington University (M.E.A., 1961). He is married, has one daughter, and resides in Washington, D.C. He was born May 7, 1924, in Medford, Massachusetts.

# # #