Rael Jean Isaac

# LEGAL SERVICES AND THE FARMER

A real scandal of the Reagan years.

As farmers in the United States struggle to stay afloat, billions are poured into programs intended to alleviate their plight. But one government program, ironically bruited as a champion of the poor, proceeds in systematic fashion to drain farmers economically, even driving some out of business. The Legal Services Corporation (LSC), created by Congress in 1974 to aid the poor in civil cases, and funded by Congress to the tune of $305 million for fiscal 1987, is in practice a haven for radical lawyers who see the 320 local programs and twenty-odd "national support centers" (which act as think tanks for the system) as a vehicle for applying social jujitsu. Although the Reagan-appointed national board and the staff of the LSC in Washington, D.C. have tried to curb abuses by the local programs, their efforts have been fruitless. The farmer who employs migrant or seasonal labor has emerged as a special, and peculiarly vulnerable, target.

This is how it typically works. A farmer receives a "demand" letter from his local Legal Services program informing him that the program has been retained by two farmworkers (unnamed). He is told that he is in violation of seven or eight provisions of the Migrant and Seasonal Farm Workers Protection Act and must pay $500 for each violation. Thus, for example, eight violations for two workers will come to $8,000.

The "violations" listed are almost always the same: failure to provide workers with a written disclosure of the terms and conditions of the occupancy of housing provided them, failure to obtain and post a certificate of compliance from the appropriate federal or state agency before the housing was occupied, failure to comply with federal and state safety and health requirements, failure to maintain pay records indicating all the information required by federal law, and so on. Some of these violations are of a technical nature (failure to post a sign) but even when they sound substantive (failure to comply with safety and health requirements) the violation could be nothing more than a torn screen. The farmer has no way of knowing from these general allegations whose rights he is accused of violating in what way.

The letter closes with a "promise" and a "threat." The promise is that the Legal Services office, in the words of the form letter, "has resolved claims such as this through payments of a reasonable small settlement." The threat, as the letter puts it, is "the expense of federal litigation." The letter concludes: "If I do not hear from you within ten (10) days of receipt of this letter, I will assume that you do not desire to attempt to resolve this matter without litigation."

The reaction of Elasta Smith of Newton Grove, North Carolina to the first "demand" letter was typical of many farmers: "I paid it no mind." Two weeks later he received another letter from the local Legal Services grantee, saying it now represented four additional (still unnamed) farmworkers. Robert Griffith, an attorney who has represented a number of farmers who have received such letters from Farmworkers Legal Services of North Carolina, reports that this is its standard modus operandi. Griffith observes: "A lack of response or a request for more information will result in a second letter informing the farmer that more clients have contacted the Legal Services office and the demand has been doubled." (In Smith's case, the second letter quadrupled the amount demanded, to $32,000.)

Smith now took the matter seriously and went to a lawyer. He discovered, like innumerable others, that short of going to federal court he had no way of finding out who was accusing him of what. He had two choices: pay up, for as small a sum as the lawyer could negotiate, or be taken to federal court, in which case, win or lose, he would lose, because his costs would be greater than if he had settled.[1] Elasta Smith was tenacious and this worked to his advantage. He refused the initial offer his attorney negotiated with Legal Services ("It proved to me I wasn't guilty of anything they'd charged me with," Mr. Smith explained to me). But he accepted the second, and wound up out of pocket "only" $4,000. For Smith's marginal truck farming operation, even this "bargain sum" was the last straw. He sold out last year at the age of 68.

Farmers become demoralized because they never know when they will be hit with the next "demand letter," their modern version of the sword of Damocles. Julius Parker, also of Newton Grove, received repeated letters starting in 1982. He says he paid $500, then $800, then $1,000. Finally he got a demand letter for $30,000. Legal Services settled for $500 when Parker threatened to go into bankruptcy, which he was forced in the end to do.

Too much tenacity is fatal. Like Elasta Smith a farmer for over forty years, Ayden Barefoot, also of North Carolina, received a demand letter, in his case for $12,000. Barefoot refused to pay up. Hauled into federal court, he was forced to deal with a mountain of paperwork in the form of interrogatories and depositions. Barefoot says: "They found out everything about

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[1]Attorney James Levinson says lawyers routinely advise farmers to settle because there will be a minimum of $10,000 in costs if the case gets to federal court.

me. If I had all the papers I had to sign it would be at least three-and-a-half feet high." (While Barefoot kept no tally, a farmer in Florida kept one in his own case, and found that 120,000 documents were demanded of him during discovery procedures.) Reluctantly, at the insistence of his wife who could no longer take the pressures of the case, Barefoot settled in the course of the trial. He observes: "I served in World War II. This was more hell than the war and I was wounded twice." (Barefoot reports discovering in the course of the trial that two of the four bringing suit through Legal Services had worked for him, between them, a total of seven hours.) The case cost him close to $20,000, 80 percent of it in the form of legal fees assessed by Legal Services and his own attorney.

Hard-hit though they are, North Carolina farmers are by no means the only victims. The farmers of Michigan, Florida, Delaware, Maryland, Virginia, West Virginia, Maine, California, Arizona, Massachusetts, New York, New Jersey, and Texas have also been targeted. In Hereford, Texas, an agricultural community of 16,000 known as the "salad bowl" of the Texas panhandle, the impact of Legal Services was so devastating that 3,000 residents signed a petition to the Legal Services Corporation headquarters in Washington calling for "an end to the political activism, racism, fear, violence and economic destruction being promoted in our midst with our own tax dollars."

In December 1985 the mayor of Hereford, Wesley Fisher, testified before the national board of the Legal Services Corporation that the people of the town "feel that they are virtually being held hostage by the Texas Rural Legal Aid." Fisher estimated that $4 million and 400 jobs had been lost to the community as a result of Legal Services activities. A former Texas state representative from Pecos testified that in the Presidio-Redford farming area, on the Mexican border, the number of farmers had dropped from twenty-nine to sixteen in the last few years. A major factor was the hundreds of thousands in legal fees in suits brought by Texas Rural Legal Aid. (Ironically, although many Legal Services attorneys see themselves as the champion of Mexicans as against "Anglos," many of the targeted farmers in Texas have been Mexican-Americans.)

If there is one group of farmers that has been singled out by Legal Services, it is those who participate in the H2 program, which Legal Services views as a safety valve for farmers who would otherwise have to pay higher wages to attract domestic workers. The purpose of the H2 program is to bring in temporary foreign workers, chiefly from Jamaica and Mexico, to harvest crops when sufficient domestic workers are not available. Under the program farmers must first try to recruit domestic workers through the Labor Department's national job service system and then receive certification from the department that sufficient domestic workers are not available. Without this certification they cannot bring in H2 workers. Thus, for the grower who must have workers at the harvesting season, losing that certification is tantamount to bankruptcy. As a result of the elaborate regulation surrounding the program, farmers who participate are, in the words of Tom Wilson, an attorney who has represented many H2 farmers, "the clean jeans" of the farming business.

**Although the Reagan-appointed national board and the staff of Legal Services Corporation have tried to curb abuses in the program, their efforts have been fruitless.**

Nonetheless, farmers in this program along the eastern seaboard have been the subject of what one attorney calls "an unparalleled administrative and judicial assault." For example, six orchard-owners in western Maryland found themselves the target of 175 administrative complaints and fifteen federal lawsuits, involving the same people and issues, within a two-year period beginning in 1983. To a large extent the suits were directed at changing the H2 law. One suit accused the growers of failing to provide family housing, even though the Department of Labor had ruled that they need only provide individual housing. (It turned out that of the eleven workers on whose behalf the Maryland Legal Services program brought suit against two orchards, only one was married.) If Legal Services wanted to change the rules, it could petition the Department of Labor to do so. Instead, it brought suit against the farmers to decertify them from the job service system.

In the summer of 1986 Terry Hepburn, one of the six western Maryland growers, was decertified on the grounds that a ladder test he had always given new employees discriminated against domestic workers. The test required a worker to show he could move and climb the 24-foot ladder used in apple harvesting. Hepburn says he viewed the test as a protection for his workers: "I think it's important a guy working knows the guy next to him isn't going to kill him with a ladder." No one claimed the test was administered unfairly, and the Department of Labor had approved the test (its representatives in fact were present to witness its administration to domestic and foreign workers alike in 1984 and 1985). But Legal Services claimed that the fact that domestic workers did not do as well made it discriminatory. Hepburn was decertified as the result of an administrative suit. At the same time, he was being sued on this same ladder test in federal court, with Legal Services demanding damages in the form of all the wages workers who failed the ladder test would have earned had they worked the full season.

Hepburn, whose business cannot sustain hundreds of thousands of dollars in legal fees, is more amazed than angry at what has happened to him. "If someone told me fourteen years ago when I became general manager of this orchard that I'd be in federal court three times in one year, I'd probably laugh. But it's not a joke. It's very disheartening. If I could get out of agriculture at this point, I probably would."

The point of all these cases, what Terry Hepburn calls "legalized terrorism," has nothing to do with housing or ladders or even the welfare of workers. In 1986 Hepburn stopped giving the ladder test to peach harvesters. On August 11, one of the workers fell off a 12-foot ladder and was hospitalized with a serious head injury. And Hepburn has eliminated the small end-of-season bonus he formerly offered workers. (Legal Services sued in federal court on behalf of workers who had *not* completed the season, arguing that they should be entitled to the bonus because they had worked most of the season.) The practical effect of the suit was to reduce worker income. But the purpose of such cases is to destroy the H2 program by making it clear to any farmer who uses it that he will be bankrupted by lawsuits.

Occasionally a Legal Services attorney is frank about this goal. Thus in 1980 Robert Williams, an attorney with Florida Rural Legal Services, gave a newspaper interview in which he announced the H2 program was "incapable of reform," constituted "a form of indentured servitude," and threatened the jobs of American workers. (In fact, to preclude the possibility that foreign workers will drive down the wage of the domestic labor force, employers who use the program must pay a so-called "adverse effect wage rate," which is 30-40 percent higher than prevailing domestic rates, reimburse worker transportation, provide free housing, and subsidize meals.)

The techniques used by Legal Services programs active in farmworker issues range from the dubious to the downright unethical. At hearings before the Legal Services Corporation board in Washington, D.C. early in 1986, attorney Steven Karalekas, who has represented Maryland growers, complained that Legal Services attorneys would accompany one or more workers to an employment service office and specify the grower to which they should be sent, and lo and behold, those workers subsequently sued the targeted farmer. In effect, Karalekas complained, Legal Services lawyers were setting up lawsuits at the employment office before the workers had even been hired. (LSC board member Robert Valois referred to this practice bluntly as "planting workers in growers' camps for purposes of generating complaints and litigations."[2])

In addition Legal Services attorneys use what look suspiciously like "professional plaintiffs." Attorney Tom Wilson notes, for example, that the same names—Cedrick Turner and Wilfred Pierre are particular favorites—pop up in litigation. Sometimes the same plaintiff performs in different jurisdictions and sometimes he moves from farm to farm within the same jurisdiction, filing the same complaint on the same issue against different farmers. Wilson brought suit to have one of Maryland Legal Aid's cases dismissed on the grounds that workers had signed under oath a document they could not read (the documents were in English and the workers spoke only Spanish) and in a couple of cases probably never even saw (only the signature pages had been sent through the mail).

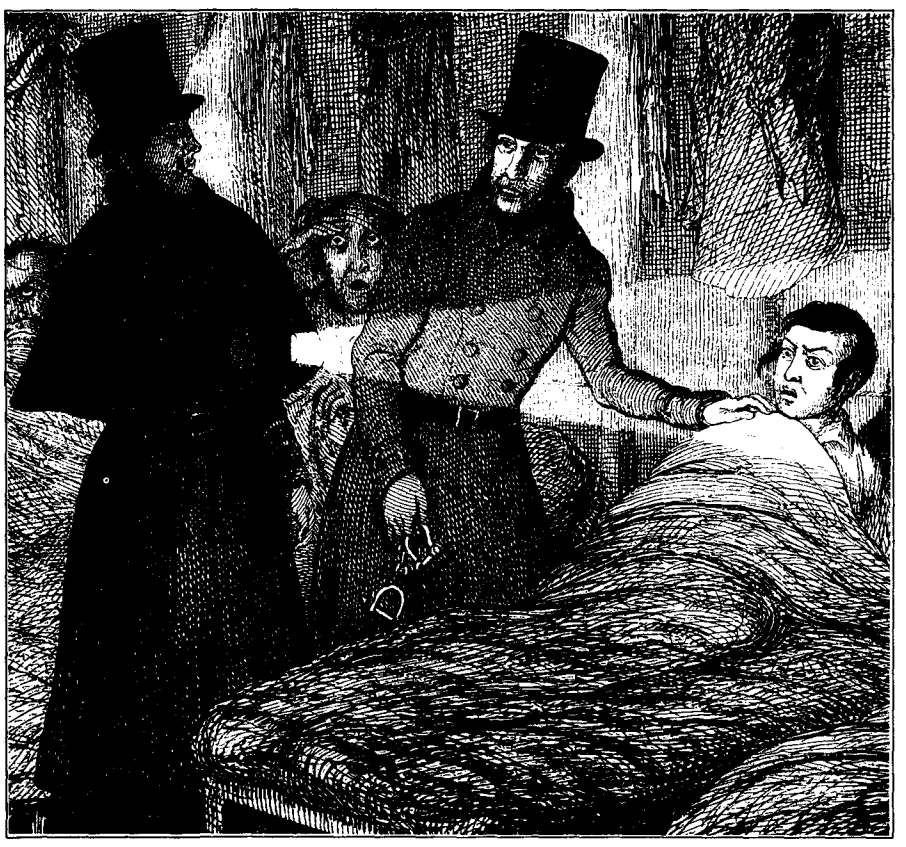
Sometimes Legal Services does away with the pretense of representing any clients at all. Not satisfied with their success in decertifying Hepburn, Legal Services attorneys returned to the attack when Hepburn turned to the Glassboro Service Association in a last ditch effort to obtain Puerto Rican workers to harvest his peach crop. They filed suit even though they were forced to admit they represented no client with a cause of action against Hepburn.

Although the purpose of administrative proceedings was to provide a less costly alternative to litigation, Legal Services attorneys often simultaneously bring actions on the identical issue before a federal court and in adminis-

[2]Transcript of Proceedings, Legal Services Corporation, Washington, D.C., January 31, 1986, p. 163.

trative proceedings before the U.S. Department of Labor. With their customary adeptness in using the system against itself, Legal Services lawyers simply treat administrative agencies and courts as dual forums in which to harass and drain their victims. To inflict further emotional and financial stress, Legal Services has brought suit against farmers under the so-called "RICO" statutes (Racketeer-Influenced and Corrupt Organization Act), designed for use against organized crime. Because of the stigma associated with the word "racketeer," these suits, as the Second Circuit Court of Appeals has pointed out, have become "a good settlement weapon." Beyond the stigma, RICO suits further drive up farmers' costs because under RICO statutes, the farmer can be sued for triple damages.

The farmworker, in other words, is simply a tool in the strategy of the Legal Services game-planner. While the courts may, on occasion, recognize and deplore this practice, they do nothing to discourage it. The case of Sherman and Debra Paulk offers a good example. The Paulks were would-be farmworkers who brought suit against the Virginia Agricultural Growers Association on the grounds that they were prevented from working by the failure of the association's farmers to advance them money to move from Georgia to Virginia. (Farmers do not make such advances because in the past workers have pocketed the money and not shown up. They often pay back travel expenses *after* workers appear and have worked for a time.) According to the Paulks' own testimony, Robert Willis, the attorney for Farmworkers Legal Services, filed suit on the Paulks' behalf three hours *before* they had called to apprise him of the facts of their situation! The association's attorneys argued in court that the Paulks and Willis had "contrived this case." The court found that the elaborate charges, including a supposed "conspiracy" between the Department of Labor and the Virginia growers, were all untrue. Judge Jackson Kiser of the U.S. District Court in Virginia ruled: "I believe and continue to believe that the Paulks were no more than pawns in the hands of the Farmworkers Legal Services of North Carolina."



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This meritless suit cost the targeted farmers $60,000. But when the attorneys for the growers returned to court to sue for attorney fees, which constituted the sole sanction that could be brought to discourage further such suits by Farmworkers Legal Services, the judge refused to grant the claim. He noted that the statute which permits recovery of fees against the Legal Services Corporation stipulates that an action must have been pursued "for the *sole* purpose of harassment" or that the Corporation had "*maliciously* abused legal process." Kiser declared that as a matter of law he could not rule that the claims "were prosecuted totally in bad faith." And while he was "sympathetic to the tremendous cost and burden incurred . . . this unfortunately is the nature of the litigation beast."

The response of Legal Services attorneys to the protests of farmers is one of arrogant indifference. They even deny the right of farmers to question LSC activities. In February 1985 the six Maryland growers referred to earlier, their legal fees having mounted to over $300,000, filed a formal letter of complaint with the board of the Maryland Legal Aid Bureau, and asked for an investigation. In addition to a lengthy letter outlining the questionable practices of the program's attorneys, the attorneys for the growers sent to each board member copies of the letters and complaints filed against them, which mounted to a four-foot stack. The xeroxing bill alone was $6,000. The head of Maryland Legal Aid, after a month's silence, responded with a single sentence saying the board saw no reason to take any action. When Steven Karalekas, one of the growers' attorneys, testified concerning these events to the national Legal Services Corporation board, members were incredulous:

[Board member] Michael Wallace: They gave you no copy of their complaint procedures?

Mr. Karalekas: Nothing.

Mr. Wallace: They gave you no hearing, filed no answer, told you to go jump in a lake.

Mr. Karalekas: In one sentence.

Stuart Cohen of the Maryland Legal Aid Bureau was present at the hearings. Far from making excuses or apologies, he denounced them as a "witch hunt." As for the Bureau's one line rejection of the growers' plea for an investigation, Cohen declared: "Mr. Karalekas told you that their complaint was answered. He did not like the answer, but their complaint was answered." The very right of the growers to complain at all was challenged. Another spokesman for the Bureau decried the "audacity" of the growers in writing to the administrative superiors of the Legal Services attorneys bringing suit.

Legal Services attorneys offer as their major defense their winning record. At the Washington hearings before the national LSC board, an attorney for Pine Tree Legal Assistance in Maine declared that he had gathered information from the various Legal Services programs dealing with farmworker issues and claimed their "batting average" was 94 percent. This, Legal Services attorneys repeatedly state, is the key. Thus during hearings in Texas, David Hall, the director of Texas Rural Legal Aid, declared that the Hereford office had won all but two of its cases and "that winning record, that exemplary winning record," was the cause of the Legal Services controversy. Another Legal Services attorney said that the desperate appeals and complaints heard from the panels speaking for the growers were merely so many testimonials to the splendid job Legal Services attorneys were doing for their clients. Yet another spokesman for Legal Services in Texas dismissed the "bleats of outrage" as coming "from folks in the right-wing wilderness." Actually, the high batting average of Legal Services attorneys is testimony to the financial imperative virtually every farmer targeted by Legal Services experiences, whether before or after the suit has entered federal court, to settle on whatever terms he can get.

One effect of Legal Services litigation has been to accelerate the trend toward agricultural mechanization. Farmers employing seasonal labor are those primarily hit by Legal Services suits, so there is little wonder that the solution, wherever possible, is seen in eliminating the need for such labor. The response of Legal Services is to try to outlaw mechanization. In the process they threaten to damage not only farmers and consumers, but to politicize academic research. The key case here is a seven-year-old suit, which at this writing has still not gone to court, brought by California Rural Legal Assistance, one of the oldest Legal Services programs in the country. The suit is against the University of California at Davis to prevent research on new varieties of fruits and vegetables and on new agricultural machinery. The suit charges that the "mindset" of researchers is oriented toward the needs of large farmers and not those of farmworkers and small farmers. (Although Legal Services purports to represent the interests of small farmers, the Grange, an association primarily of small farmers, has entered the case on the side of the university, asserting that machinery benefits small farmers as well, who rent or share equipment.)

George Marchand, one of the university's attorneys in the case, points out that the attack is not limited to mechanization, for mechanization is defined as including any studies in agricultural biology that conceivably might increase the use of machines. Thus, the suit seeks to halt sixty-nine projects, among them: "Culture and Physiology of Asparagus," "Breeding Cantaloupes and Mixed Melons,"

"Field Research in Pear Decline," and "Grape and Wine Fermentation Studies." "This constitutes the most fundamental challenge to academic freedom you can imagine," Marchand says. If Legal Services wins the case the door is open for any self-styled "public interest group" to go to court and claim that research being conducted by a college or university receiving government funds (virtually all of them) is not "in the public interest" or impinges unfavorably on the interests of some group.

Yet this suit, despite repeated requests by attorneys for the university that it be dismissed, grinds on toward trial. Marchand observes that it has already cost the taxpayers (who of course pay both to bring and to defend the suit) millions of dollars, not to mention the enormous time taken from university researchers and personnel from whom, Marchand notes, "mountains of information" were demanded throughout a discovery period lasting four years.

The case against the University of California, by now known in legal circles as the "ag-mech case," underlines the failure of the U.S. judicial system in the face of the ideological assault by Legal Services attorneys. However, while in the ag-mech case the costs are evenly spread among taxpayers, the individual farmer is left to bear alone the consequences of that failure. The Department of Labor and Congress share much of the blame. Some blame even accrues to the representatives of the farmers themselves, who had a voice in framing the Migrant and Seasonal Farm Worker Protection Act of 1983, whose provisions Legal Services attorneys have exploited to produce the explosion in suits against farmers.

What has made the Migrant and Seasonal Farm Worker Protection Act a lethal weapon in the hands of Legal Services attorneys is its provision that the farmer is a "joint employer" with the crew leader, and that workers can bring action for substantial damages on each violation of the law. This means that the farmer can be held responsible for violations over which he has no control. For example, although the crew leader recruits the workers, the farmer can be held responsible if the crew leader fails to inform them fully of the conditions of work. The farmer typically pays the crew leader for the labor done by his men, but he can be held responsible if the crew leader then improperly fails to pay Social Security taxes for the men or uses vehicles in transportation not meeting government standards. Legal Services typically bypasses the crew leader actually responsible for some violation (or demands only a token sum from him) while demanding huge settlements from the farmer. The reason is not hard to seek—crew leaders generally have scarcely more money than farmworkers, while farmers are adjudged, at least by Legal Services, to have deep pockets.

There is also the problem that Legal Services makes no distinction between serious violations and trivial ones. While the Department of Labor does make such distinctions, Legal Services cheerfully goes for the jugular, whether the issue is a trivial failure to post a sign or a serious wage or safety violation, or a violation for which the worker is in fact responsible. For example, the farmer can be sued for housing violations even though his camp has been inspected and approved by the County Health Department, the U.S. Department of Labor, OSHA, and Wage and Hour inspectors. The farmer has the duty to "maintain" the premises, and attorney James Levinson points out that Legal Services attorneys, armed with cameras, will often visit a housing camp first thing on a Monday morning, when after a weekend of partying, workers may have broken screen doors and liberally sprinkled the premises with beer cans and bottles.

The courts and the administrative systems, which could put a leash on Legal Services, encourage its abuse of legal process. As the Paulk case illustrates, Legal Services can bring outrageous suits without suffering any sanction. That case illustrates another way in which the system permits abuse—forum shopping. The Paulks were in Georgia. The Legal Services office filing suit on their behalf was in North Carolina. The farmers targeted by the suit were in Virginia. And the suit was brought in the U.S. District Court for the District of Columbia, noted for its judges sympathetic to Legal Services complaints against farmers, including most especially Judge Charles Richey. Legal Services typically seeks to bring suit before urban judges and urban juries, unfamiliar with farm conditions.

In addition to his own legal fees, the farmer may find that a court ruling requiring him to pay relatively trivial amounts to workers also entails payment of huge legal fees to Legal Services, despite the fact that Legal Services salaries and expenses are wholly paid for by the government. For example, Richard and Darlene Mattner, who have a produce farm in Eau Claire, Michigan, were sued by Legal Services on behalf of thirty-seven migrant workers for alleged minimum-wage violations. Although a judge well known for his sympathy to migrants could find only $611 in such violations (Legal Services had sued for many thousands), Legal Services then presented its own bill for $37,000.

Attorney Tom Wilson, who says he would rather litigate against a John D. Rockefeller than Legal Services because a Rockefeller's resources are limited at some point, explains part of the success Legal Services has had: "Take a law. You go to court on every single issue, and let me tell you, in this society if you bring enough lawsuits, I don't care how outlandish the allegations, at some point you will find a federal judge who will agree with you. Then you will have established a precedent, and you cite it, cite it, cite it in every other case. And the federal judiciary lets itself be used."

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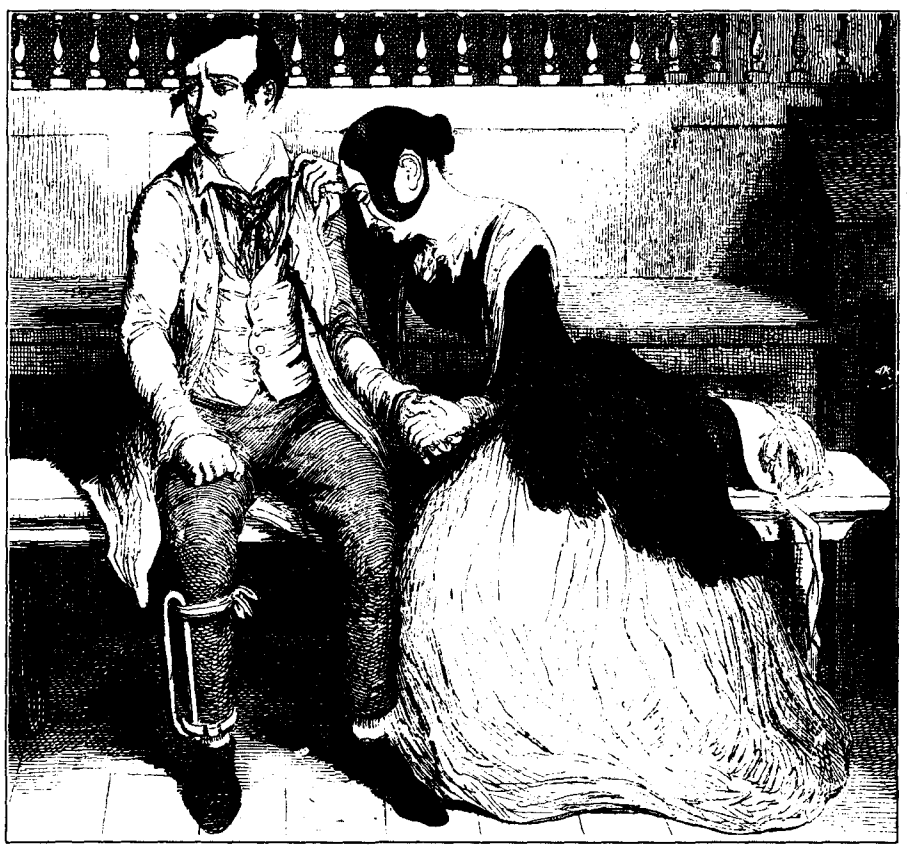
What do the Legal Services attorneys targeting farmers seek to accomplish? In the short term, a major goal is elimination of the H2 program. It apparently does not occur to Legal Services attorneys that without the supplementary labor provided by the H2 program the farmers who use it would simply go out of business, and imports would replace the affected crops.

Unionization is another target. For example, the Mattners experienced their host of complaints in the immediate aftermath of a pickle-pickers' strike on their farm. Their attorney, Richard van Orden, says that in the local migrant Legal Services office there are signs advertising Cesar Chavez's United Farmworkers Union. Texas Rural Legal Assistance has close ties to both the Texas Farmworkers Union (the former chairman of the board of Texas Rural Legal Assistance, Alfredo De Avila, is an organizer for that union) and to its far-left offshoot, the International Union of Industrial and Agricultural Workers. (Jesus Moya, its leader, was a member of the board of the Texas Rural Legal Foundation, the "mirror corporation" set up by Texas Rural Legal Assistance.) At the Texas hearings before the national LSC board the conclusion of a "demand letter" sent by Deborah Smith, an attorney for Texas Rural Legal Aid, was read out: "Without litigation . . . please be aware that my clients would be willing to consider any reasonable counteroffer you may regard, including the acceptance of a lesser amount of monetary damages if accompanied by successful negotiation of a union contract." Needless to say, while farmworkers have a right to join unions, Legal Services attorneys have no right to use their ability to bring suit for violations of the law as a means to coerce farmers to sign union contracts.

More fundamentally, many Legal Services attorneys seek to use the judicial system to overturn our political



and economic institutions. Tom Wilson is scathing: "You have a bunch of political ideologues that are having fun bashing the system. This is sport for them. Indoor sport. Fun." There is a dual component of political zealotry and play, as what are in many cases affluent young men from elite law schools go forth to slay the capitalist dragon. The farmer is simply the most vulnerable of many targets in a broader campaign.

In 1979 the National Lawyers Guild (NLG), an association of far-left attorneys, reported that a survey of its 6,000 members had found that 1,000 of them were employed by Legal Services. (Fully a third worked for government agencies.) In addition the NLG found that many of its attorneys were members of the local boards that set the policy of Legal Services offices. Although the NLG has not reported the results of any more recent surveys, the number has almost certainly grown, both because the NLG's membership has risen substantially and because organizing within Legal Services has been an NLG priority only since 1980, when NLG Vice President Grant Crandall noted that this largest concentration of legal workers in the country had not yet been seriously tapped by the Guild. Since there are 6400 attorneys and paralegals employed by LSC, it is reasonable to estimate that up to 20 percent of them belong to the NLG.

Legal Services programs recruit staff in the NLG's publication, *Guild Notes*. The trials of the farming community of Hereford, Texas are readily understandable in the light of an ad that appeared in *Guild Notes* of March-April 1982: "Texas Rural Legal Aid, Farmworkers Division, is seeking staff attorneys for its Hereford and Weslaco offices. These attorneys will handle aggressive, impact-oriented labor and civil rights litigation for migrant and seasonal farmworkers."

The interests of the NLG extend far beyond farmworkers. It is a member of the International Association of Democratic Lawyers, an international Soviet front organization, and the NLG's annual resolutions attack everything from the American system of justice (which "is used to hound, attack, imprison, and execute the oppressed minorities, workers and political activists") to our military forces (in 1983 the Guild undertook to "educate Guild members and chapters . . . as to the most effective means of supporting resistance within the military"). In 1983, then incoming president Barbara Dudley (formerly a staff attorney with California Rural Legal Assistance) announced that NLG's goals went beyond shelter, jobs, food, and education: its primary goal was "direct control by the people over the resources of this country. . . . We want not just a piece of the pie, but the whole damn pie shop."

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Melinda Bird, then the NLG's incoming Vice President for Economic Rights (and a staff attorney at one of the Legal Service Corporation's "national support centers," the Western Center on Law and Poverty), declared that the Guild would struggle against current policies of "economic genocide" directed against workers and Third World peoples and would "take direction from people's movements and help defend and advance them." She noted that many Guild attorneys were already involved in advancing "economic rights" through their work with Legal Services. Steve Saltzman, an earlier candidate for treasurer of the NLG and an attorney for the Legal Aid Society of Cleveland, declared that the success of their work would depend "on how well we and the people with whom we work understand how to exploit the contradictions in the system."

Not surprisingly, Legal Services spokesmen espouse a philosophy that has striking similarities to that of NLG leaders. At a conference of Legal Services staff, Bari Schwartz of the Food Research and Action Center, one of the national support centers, told those assembled that "what all of us ultimately care about" is "a meaningful redistribution of wealth and income in this country." Similarly Gary Bellow, then with the Legal Services Institute, an offshoot of Greater Boston Legal Services, in a speech prepared for delivery at a Legal Services conference in 1981 said: "Most of us agree that America maintains a deeply stratified class system; changing this system, and its most recent manifestation in Reagan conservatism, is a primary concern of most of us who do Legal Services work. . . ." Bellow called for linking up with the women's movement, anti-racism coalitions, and a wide range of environmental, anti-nuclear, and other groups. A number of such "networking" conferences have indeed been funded by Legal Services with training in lobbying techniques a primary emphasis. (Six such conferences were funded specifically for the purpose of "improving networking and coalition building in support of farmworkers.")

The blame for Legal Services' continuing to function as a haven for radical attorneys in their assault upon the "system" (at the system's expense) lies primarily with Congress, which has staunchly fought off efforts at reform made by the Reagan Administration. Indeed, although the Legal Services Corporation's present board has been trying to curb the worst abuses, Congress has effectively taken the governance of the program out of the board's hands. This it has done through the passage annually of "continuing resolutions" that mandate the continued funding at the same level of every program (with annual increments, depending upon increases in overall funding), no matter what its record of performance. The Legal Services Corporation board, which is supposed to be the policy-setter and monitor for the program, has been reduced to a check-writing machine. The Senate Appropriations subcommittee that oversees the LSC has made the unprecedented demand that every regulation, every change in procedure, be submitted to it for approval.

Since New Hampshire Senator Warren Rudman, the subcommittee chairman, has in practice taken charge, the Legal Services Corporation staff looks upon him as the man who effectively runs the corporation. And under his guidance, the response of the appropriations subcommittee to each major initiative on the part of the corporations board in 1986 has been "No." It was "no" to reducing funds for the national support centers, "no" to reducing funds for migrant programs (even though, according to the Department of Agriculture, migrants have dropped to 115,000 in 1981 [from 422,000 in 1949], 5 percent of all seasonal farmworkers), "no" to closing regional offices whose activities duplicate the national office, "no" to reducing ("consciousness-raising") training grants, "no" to restrictions on lobbying activities in so-called "free time" during trips paid for by federal funds, "no" to new functional accounting procedures that would make it possible to determine how in fact local programs allocate their time and resources (at present it is impossible for the national office to ascertain such basic facts), "no" to purchasing computer hardware to facilitate data-keeping (and thus accountability), "no" to a proposed grant to law school clinics (with matching grants from the schools) as a training opportunity for pro bono services to the poor.

In August 1986, the Senate Appropriations subcommittee once again removed all power of the Legal Services board to regulate the activities of the groups it funds by specifying how all its funds were to be allocated. For example, in June the board voted to eliminate the national and state support centers, which serve as the radical think tanks of the system, as line items in the budget. But the Senate subcommittee has put them back, mandating over $15 million for the national and state support centers. Similarly the board wanted to cut back on the migrant programs that harass farmers, but Rudman's subcommittee has mandated almost $10 million for migrant programs. It is ironic that an author of the Gramm-Rudman bill should be so adamantly opposed to reducing expenditures for Legal Services, with its immense impact on government costs. The annual expense of actually running the Legal Services program is the least of these costs. LSC programs sue government agencies on a host of issues, almost all of them demanding major expenditures.

Because of this assured congressional protection, Legal Services programs reject any criticism or directives from the national board. At LSC national board hearings in Florida in February 1986, board member Michael Wallace boasted that at the earlier hearings in Washington he had given "unmitigated grief" to the representatives of Maryland Legal Aid for failing to respond with more than a sentence to the plea for an investigation by Maryland growers. But the Maryland

Legal Aid Bureau, at this writing, eight months later, has never added to that single sentence. In Florida, on hearing the same story of abuses of the program, the board obtained an agreement from the head of Florida Legal Services to meet with a representative of the Florida Farm Bureau Federation to work on some method for mediation of disputes to reduce the volume of litigation. Dean Saunders of the Florida Farm Bureau told me he followed up with several letters to Florida Legal Services, managing after a number of months to elicit this response from the program's migrant unit: "We will be in touch with you." That was the end of that.

The reasons for congressional refusal to rein in Legal Services have to do in part with fear of media reaction. With the notable exception of the *Wall Street Journal* and *Reader's Digest*, the national media treat every criticism of Legal Services programs as an attack upon the poor. They ignored, for example, hearings held by Senators Orrin Hatch and Jeremiah Denton exposing the enormous (and illegal) grassroots lobbying campaign begun by Legal Services in 1981 in order to influence Congress to maintain the program intact. On the other hand, the media lent itself to a campaign by the so-called Legal Services "generals" (a number of ousted officials in the national office) to shift attention from the probe instituted by the first Reagan-appointed board into abuses of the program to supposed overcharging by board members for their services. A General Accounting Office investigation found the charges without merit, but in the meantime they served their purpose by removing the spotlight from the program to the board.

The organized bar has probably been even more important in stifling reform over the years. Whether because the program appeals to its selfish or generous impulses (or both), the bar has provided a constant drumbeat of reassurance to congressmen, so many of them lawyers themselves, that Legal Services is sound, abuses exaggerated or trivial. In *Legal Services*, their history of LSC, Alan Houseman and John Dooley note that the American Bar Association in 1981 embarked upon an unprecedented effort to lobby Congress and this "was a major factor, if not a deciding factor, in the survival of the Legal Services Corporation and the federally funded Legal Services program." The particularly pronounced enthusiasm of the New Hampshire organized bar for Legal Services may do much to explain Warren Rudman's protectiveness of the program. The executive director of the New Hampshire Bar Association even took the trouble to travel to the LSC board's Texas hearings. She announced that the board might wonder why she was there, but it was on behalf "of some little, very elusive concept that we call justice." She protested that the Legal Services community was "trying to provide truth, justice, dignity" while "their efforts are being thwarted and their energies drained" by the national board. For the board's efforts to institute reforms she had only a plaintive reproach: "We wonder if you really feel good about what you have done. We wonder if you feel good about how you have been received by Congress. We wonder if you feel good about how you have been received by the private bar."

**California Rural Legal Assistance has brought suit against the University of California at Davis to prevent research on new varieties of fruits and vegetables and on new agricultural machinery.**

But even if Congress were to permit the national board to assume its rightful authority over Legal Services programs, and were to pass a reauthorization statute with clearer, more restrictive language (Senator Denton has described the LSC Act as "a law where the loopholes have loopholes"), and even were it to make the program a federal agency (at present, as an "independent" corporation it is accountable to no one), it is questionable whether the program could be brought under control.

With each year, the federal government provides an ever smaller percentage of Legal Services funds. Outside funding has gone from $47.8 million in 1982 to $106 million in 1985. Part of the money comes from state and local governments but increasingly the funding is coming from the IOLTA program, or Interest on Lawyer's Trust Accounts, which gives the short-term interest earned on clients' money while in lawyers' hands to Legal Services. Started in Florida five years ago, the program, now mandatory in seven states, already contributes $40 million a year to Legal Services, and by next year, according to Leeanne Bernstein, a member of the LSC's national board, is expected to reach $100 million. The potential, should it become mandatory in such states as New York, is enormous.

IOLTA funds are subject to no restrictions. LSC programs can use IOLTA funds to practice law within the broad limits laid down by Dooley and Houseman, who define Legal Services as "what creative lawyers bring to court or take before other forums." But even if there were no IOLTA funds, and Congress passed strict restrictions on Legal Services activities, it is questionable whether these would have any impact. Certainly the fate of restrictions passed thus far by Congress gives fair warning that the "creative lawyers" of Legal Services will find ways to deprive them of meaning.[3]

The central problem is the staff attorney system, which gives power and control to the provider, not the consumer, of Legal Services. In this system real clients, with specific problems of immediate concern to them only, obtain services as an adjunct to the core activity of the program, which is public interest law, with the lawyer pursuing his personal view (or in practice the view of the coterie to which he belongs) of the public interest. Essentially the staff system produces client-less lawyering designed to "change the system." Insofar as some client involvement is deemed advisable, LSC programs engage in "consciousness-raising of oppression" through "training" grants for clients and community activists. Such training programs then become the breeding grounds for militant organizations on behalf of whom Legal Services can bring suit or engage in "legislative advocacy." Nor should it be overlooked that the views of Legal Services attorneys concerning the needs of the poor often directly conflict with those needs as poor people define them.[4]

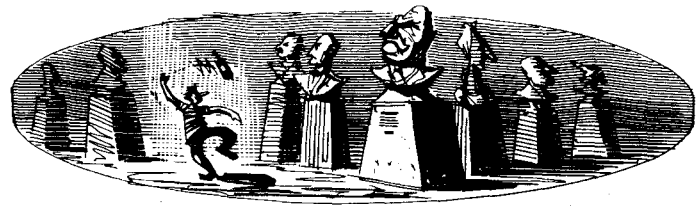
The only way to overcome this central difficulty is to restore control to the client. It is questionable if access to lawyers for civil cases ranks high among the needs of the poor. But if this society sees fit to allocate resources in this way, a voucher system would at least restore to the client control over his case. To meet the problem of unlimited demand generated by a free good, the client could be required to make a modest co-payment. Such a system would have the additional advantage of enabling the client, if he so desired, to select one of the burgeoning mediation programs that are now cutting down unnecessary litigation for the middle class, but are staunchly resisted by Legal Services programs.

Finally, it must be said that the Reagan Administration has been clumsy and half-hearted in its efforts at reform. Hoping to eliminate the program, the Administration failed for a full year to appoint a new board, allowing the Carter-appointed board and its staff appointees to embark on the grassroots lobbying campaign that succeeded in keeping the program intact. The Administration has made no effort to educate the public, leaving the board helpless before the united hostile front of media and Congress. It must stand as a major scandal of the Reagan years that Legal Services has been permitted to continue its abusive course unchecked. □

[3]For example, when Congress ruled that Legal Services programs could not represent illegal aliens, LSC attorneys interpreted this to mean that such representation was forbidden only after the final deportation order had been signed by a judge. When Congress, in an attempt to prevent the National Lawyers Guild from exerting influence on local programs, ruled that all attorneys on local boards had to be members of the bar association with the "majority" of attorneys in the community, the NLG advised its members active in Legal Services matters to join the ABA. And so on.

[4]Legal Services attorneys have been in the forefront of the battle to prevent criminal, disruptive, and non-paying tenants from being removed from housing projects, including projects owned and run by poor people anxious to maintain their property. They have come down on the side of the so-called "deadbeat daddies" when judges have sought to enforce child support payments for mothers without other sources of income. In their endless prison conditions suits, Legal Services attorneys come down on the side of one group of poor—prisoners—at the expense of the much larger proportion of law abiding poor, whose share of services is reduced by the need for massive expenditures on new prisons (or who alternatively experience the brunt of depradations of released prisoners).

# EMINENTOES



## POWERTOWN CUPCAKE

by Andrew Ferguson

A journalist, said Karl Kraus, is someone who, given time, writes worse. The proposition may be extended thus: Every journalist has a novel inside him, and if he's smart he'll keep it there. These sound sentiments come to mind whenever Tom Wicker (let's say) puffs up like a blowfish and exhales one of his long, gassy pot-boilers, sending the prolix pages fluttering earthward as the reading public yawns and wise-ass reviewers snicker. Yet in the face of such discouraging precedent the hacks persevere; borne ceaselessly toward the chimera of best-selling respectability and a big-buck option on a TV mini-series, they take sabbaticals or early retirement, and the novels come tumbling down.

Doubtless the current example of Sally Quinn won't help matters. She too was a well-known journalist, for many years the author of acerbic profiles in the *Washington Post* "Style" section before marrying Ben Bradlee, the editor of the *Post*. In her retirement she too has harkened to the little voice telling her that deep wells of narrative talent could be tapped during a month or two at the keyboard of her IBM PC. And the gargantuan result—a novel called *Regrets Only*[1]—has likewise been parodied and pilloried by the reviewers. But for some reason Sally Quinn and her novel prosper. Two months after its release, *Regrets Only* is number seven on the *New York Times* bestseller list, and her friends at the *Washington Post Book World* have notched it up to number five. Bidding for the paperback rights is feverish. Her agent's phone jingles with calls from the coast. Even now, Sally boasts, Warren Beatty is thumbing through the pages, choosing his part.

But why Sally's novel, and not (let's say) Tom's? Here, for once, the publisher's hype strikes an unwonted note of truth. The promo materials say that *Regrets Only* is "*The* Washington Novel, a biting inside novel of power, sex and politics as it is played in the greatest arena of them all." Leaving aside Henry Adams—as most people do—there is no reason to doubt that this is so. *Regrets Only* is as windy and empty as the city itself, a suitably bloated testament to Washington's current fixed idea: the "old town" really is the most interesting and exciting city in the world, the greatest arena of them all. The testament is delivered, moreover, by the high priestess of the cult dedicated to advancing the proposition. Sally Quinn, former career girl and now middle-aged hostess extraordinaire, is a Washington celebrity of the first water, and if anyone knows Powertown, it is—as Sally might say—her.

In press interviews, Sally has taken to describing *Regrets Only* as a "comedy of manners." The term is a familiar SOS nowadays, usually sent up by panicked first-time novelists who have reread the final galley proofs and suddenly realized that, while busily describing table settings, facial coloring, clothes, hair, and furniture, they have forgotten to include a plot. She has, however, brought in busloads of characters—by my count, twenty-seven in the first thirty pages alone. But they are not so much characters, really, as Names to which she attaches gobs of awkwardly phrased dialogue. As they speak, she shoves the Names to and fro, dragging them in the White House gate to see the President on one page, then hauling the Names back to the newsroom the next, where she makes them speak long and loud about the ethics of journalism. (You can almost *hear* the drone.) To give the illusion of time passing, Sally changes the clothes of the girl Names with great frequency and attention; the boy Names, being boys, are more rumpled—for instance, Sally would never fasten the top shirt button of a boy Name. She takes the Names to dinner parties where she props them up at tables and shovels food into their mouths. In Washington restaurants she serves them delicious meals (some of *Regrets Only* is pure fantasy). At bars she pours Irish whiskey and Chablis down their throats. While there, whether sober or pissed, the Names flap their lips in extended discussions of vague but important issues—this imparts a Washington feel—competing for scoops about White House infighting, appointments to cabinet posts, and dealings with the Russians, who are not friendly toward Washington. Before these gabfests can get burdensome, though, she takes the Names into bedrooms and, leaving the lights on, commands them to copulate, which they do, with inexhaustible virtuosity. Then she makes them argue, and then she makes them copulate again. Sally likes to watch.


These copulation paragraphs—"copgrafs," you might call them—generally comprise short sentences hitched together, without aid of punctuation, to make one very long sentence. They are, so to speak, the overdrive in Sally's two-gear prose transmission. Occasionally, when she makes the Names chew the cud ("His jaw was square and he worked it when he was silent as though he were chewing his thoughts"), she downshifts and loads up on periods: "The dream had left her disoriented and confused. This was a new dream. She had read a couple of dream books. There was a recurrent theme in her dreams." She also spends much of the book idling in neutral:

> This was the real problem between them. Des [a boy Name] never wanted to talk about anything that involved the two of them.
>
> The relationship.
>
> It had taken on a huge meaning in their lives. It had acquired all capital letters.
>
> THE RELATIONSHIP.

And so on, which helps explain why *Regrets Only* is 556 pages long.

None of the novel's most telling Washington touches—the flatulent dialogue or the bogus characters, the exhaustive sartorial details or the unconvincing talk of ethics—will come as a surprise to anyone who has followed Sally's career. Hers is *the* Washington success story, just as *Regrets Only* is *the* Washington novel. When in 1969 Ben Bradlee first con-

[1]Simon and Schuster, $18.95.

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