

**The Response of Legal Aid Communities
To Dynamic Political and Policy Environments**

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Abstract

JEFFREY A. SUMMERLIN-LONG: The Response of Legal Aid Communities to Dynamic Political and Policy Environments
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The large-scale intervention of the federal government in the market for legal services has had a long-lasting impact on the ability of the poor to access the justice system. After briefly reaching “minimum access” goals in the late 1970s, the legal services community experienced two rounds of retrenchment at the federal level in the 1980s and 1990s. While full retrenchment did not occur, each attack reduced the role of the federal government by cutting funding and gradually removing tools needed to engage in substantive law reform efforts. In response to these attacks, legal services communities across the country sought new sources of funding and altered their organizational structures in an effort to maintain service levels. This dissertation examines these responses and their effects on service levels through a detailed case study of the legal services community in North Carolina.

I answer three primary questions: 1) what accounts for the only partial successes of the retrenchment efforts?; 2) how did the legal services community respond to the federal institutional changes?; and 3) how did the combination of the retrenchment and community-level responses affect the level and types of services provided? Adopting a historical institutionalist approach, I first argue that the process of de-legitimation of legal services was incomplete at the federal level because of a series of unintended consequences and a misunderstanding of the public good nature of the law. I then argue that the organizational

response in North Carolina was constrained by varying levels of commitment to mission and top-down pushes to consolidate the community. North Carolina's biggest success occurred in the realm of law reform activities as it stood by that mission and transformed itself into a networked form of organization. Finally, I argue that the success in terms of overall service delivery in North Carolina has been mixed. Internal conflicts within the community over consolidation resulted in long term reductions in service levels only partially offset by new funding sources. Furthermore, while levels of individual services have returned to 1995 levels, the distribution of those services has become increasingly skewed toward urban areas because of centralization.

Dedication

This dissertation is dedicated to my wife, Shelley, who not only put up with the long hours and completely inequitable distribution of home and child care duties it required to finish, but who inspired me to become involved in social justice in the first place.

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List of Abbreviations

ABA – American Bar Association

BoG – Board of Governors

CAP – Community Action Program

CCLS – Central Carolina Legal Services (Greensboro)

CIU – Centralized Intake Unit

CRLA – California Rural Legal Assistance

CSA – Community Services Administration

CSBG – Community Services Block Grant Program

ECCLS – East Central Community Legal Services

HEW – Department of Health, Education, and Welfare

Inc. Fund – NAACP Legal Defense and Educational Fund, Inc.

IOLTA – Interest on Lawyers' Trust Accounts Program

LSSP – Legal Services of the Southern Piedmont (Charlotte)

OEO – Office of Economic Opportunity

LANC – Legal Aid of North Carolina

LASNWNC – Legal Aid Society of Northwest North Carolina (Winston-Salem)

LSC – Legal Services Corporation

LSNC – Legal Services of North Carolina, Inc.

LSP – Legal Services Program

MFP – Mortgage Foreclosure Project

MOU – Memorandum of Understanding

MYP – Mobilization for Youth Program

NAACP – National Association for the Advancement of Colored People

NCBA – North Carolina Bar Association

NCLAP – North Central Legal Assistance Program (Durham)

OLS – Office of Legal Services

PAI – Private Attorney Involvement

WNCLS – Western North Carolina Legal Services (Sylva)

Introduction

There is no constitutional right to a government-provided attorney in a noncriminal case in the United States. Although individuals have the right to represent themselves, the increasing complexity of the modern legal system in the United States makes the adage that “the man who represents himself has a fool for a client” more apt every day. Attorneys are expensive, however, and a large segment of society cannot afford to hire one, even for very basic needs. Civil *legal aid* societies emerged in the United States during the last half of the 19th century partly to fill this gap. Although other instruments to expand access have developed, the salaried legal aid attorney operating within a dedicated legal services organization continues today to be the dominant form of providing access to the legal system to marginalized groups in the United States. A series of political attacks on government funding of legal aid societies in the 1980s and 1990s, however, threatened their ability to survive. Their responses to these changing political and policy environments, then, have largely dictated the level of access to justice that the poor have in the United States today.

Representation before the law in the United States means more than having an attorney in a single case. Courts within the American system are much more than simple dispute resolution centers; they also have an important policy-making function. Lawyers often function not merely as representatives in a trial court, but as advocates for their clients’ long-term interests through appellate litigation, lobbying, and administrative rule making. As formal legal aid societies developed in the changing institutional landscape of the early and mid-20th century, they began to incorporate these *substantive law reform* activities into their repertoire, and when legal aid societies began receiving federal funding under President

Johnson's War on Poverty, they explicitly undertook both traditional service and law reform activities.

The federal infusion of money and support greatly increased the ability of the legal aid field to engage the legal system on behalf of its clients. This brought about two significant, and contradictory, changes in the legal status of the poor. First, a string of Supreme Court cases established a line of precedent specifically benefiting the poor and elevating them to a more equal status before the law (see, e.g., *King v. Smith*, 392 U.S. 309 [1968]; *Goldberg v. Kelly*, 397 U.S. 254 [1969]; *Shapiro v. Thompson*, 394 U.S. 618 [1969]; *Rosando v. Wyman*, 397 U.S. 397 [1970]; and *Department of Agriculture v. Moreno*, 413 U.S. 528 [1973]). Second, the ability of the poor to effect these decisions ignited a firestorm of opposition, largely from business interests and conservative politicians. The response was a series of retrenchment efforts, first by the Reagan Administration in the early 1980s, and then again in the mid-1990s under the newly elected, Republican-led Congress. In each instance, the stated goal was to remove the federal government from funding civil legal services. Neither Reagan nor Congress succeeded in fully withdrawing from federally funded legal services, but each drastically reduced funding for legal aid and imposed a series of restrictions on the types of activities in which recipients of federal money could engage.

Legal aid "communities," defined here as all organizational participants in the delivery of legal services to the poor in a given state, responded to these retrenchment efforts by diversifying their funding sources and altering their organizational structure in an effort to maintain a "respectable" or "adequate" level of service provision. Network ties and coordination between legal aid organizations within the community were strengthened at the same time that new ties were made to key sources of political legitimacy and material

resources. Private attorneys became increasingly committed to government subsidization of legal aid organizations, and became key players themselves within the broader legal aid communities. State agencies and legislatures, local bar associations, and private foundations began to constitute a greater share of the funding base for legal services, resulting in legal aid communities being more bound by state and local considerations. The legal services movement returned to its roots as a community-based operation, but altered by the intervention of the federal government.

The creation and evolution of the institutions that make up the legal services environment have unquestionably affected the ability of the poor to access the legal system. The question, however, is how exactly they have done so. Are the poor in a better or worse position today because of the involvement and then retreat of the federal government? How exactly has the evolution of legal aid policy in the United States affected their ability to access the system? This dissertation seeks to partially answer these questions by studying in detail the process of institutional change and its result on legal services provision in North Carolina. By doing so, I seek to fill an important gap in the existing literature and to provide the first in-depth analysis of the real world effects of federal policy changes on access to justice for the poor.

The amount of social science literature on legal aid has fluctuated widely over the course of the last 40 years, largely in line with its relevance on the political scene. Government-funded legal aid was an integral part of the War on Poverty, and legal aid received significant attention from well-known scholars (see, e.g., Carlin, 1964; Stumpf, 1968; Pious, 1971, 1972; Galanter, 1974, 1975; Sarat, 1976; Handler, 1978; Katz, 1978; Bellow, 1980; Abel, 1984). The primary debate at the time reflected a tension that still exists

in legal aid policy today: Should the limited resources available to expand access to justice be dedicated to individualized service or to law reform? With an apparent political victory for those opposed to government-funded group representation in 1995, the literature lost a great deal of its vibrancy and relevance on the broader academic agenda. However, the last 10 years have seen a resurgence, spawning an entry in the *American Sociological Review*'s *Annual Review of Sociology* in 2007 (Sandefur, 2007) and several law review issues dedicated to discussions of the future of legal aid.

Recent social science scholarship on legal aid tends to focus on two issues. The first concerns identifying and evaluating the merits and deficiencies of different methods of individual service delivery. The primary alternatives are formal staffed organizations specializing in poverty law, subsidization of private attorneys to represent poor individuals (“judicare”), and efforts to encourage competent self-representation (see, e.g., Sandefur, 2007; Thelsen, 2002; Johnson, 2009; Cummings, 2004; Rhode, 2004). The United States is unique in the world in its historical emphasis on the staff model and its targeting of legal aid toward the poor (Moorhead, 1998). The United States is also unique in its fostering of *pro se* or self-representation (Engler, 2010). However, little consensus exists on the question of the most effective model as it appears to depend largely on local conditions that vary greatly, and few communities pursue a single model.

The second focus seeks to identify the level of *legal needs* of the poor to provide an empirical basis for evaluating existing and alternative policy proposals to expand access to justice. The last comprehensive attempts to identify these needs in the United States were in 1977 (Curran) and 1981 (Miller & Sarat). Each found that roughly 80% of the civil legal needs of the poor were unmet. The American Bar Association sponsored a nationwide survey

in 1994 that came to the same conclusion; and a series of state level studies over the past decade, generally performed by legal aid organizations themselves, have reiterated the existence of an 80% gap (see, e.g., Washington State Supreme Court, 2003; Massachusetts Legal Assistance Corporation, 2003; Georgia Committee on Civil Justice, 2009; Wisconsin Access to Justice Study Committee, 2007). These studies, however, share a major flaw: although the determination of demand for legal services is helpful in identifying a gap, it reveals nothing about the actual benefits of legal representation (Engler, 2010; Eisenberg, 2010). This flaw is unquestionably an important unresolved question, but research adequate to measure the benefits of legal representation is both difficult and costly.

A more accessible, but equally important gap in the literature is the study of “real-world” community structures that have developed in response to changing policy and political institutions, and the effects that these responses have on service provision. Given the retrenchment of the federal government from the provision of legal services over this time period, how have legal aid communities been able to keep the gap at the same level? Rates of poverty have not dropped. In fact, the total number of people in poverty has increased. How, then, have legal aid communities responded to retrenchment in such a way as to maintain their levels of service? It is not because of the use of any single model of legal aid provision. No state currently employs a pure model of salaried organizations, *judicare*, or self-representation; rather, each state operates under a unique hybrid of approaches and structures that reflect the particular economic, social, and political environments in which they operate. Existing studies of individual service delivery models offer little in terms of evaluating the impact of the existing hybrid models. Furthermore, the precise mechanisms of the institutional and organizational changes that led to these hybrid approaches have not been

addressed in the literature. This dissertation seeks to fill this gap by examining in detail these mechanisms in one state: North Carolina.

Moorhead and Pleasance (2003), two leading scholars on legal aid, have characterized the future research agenda thus:

In the next years, the main role of theoretical reasoning will be to elucidate the ideologies of state funding for legal services, to challenge and develop them, and to expose their contradictions. The main role of empirical research will be to assess realities against defined ideologies. (p. 10)

This dissertation will contribute to this research agenda by examining the empirical reality of legal aid provision in North Carolina over the last three decades and how it has reflected the changing theoretical dominance of different rationales for government intervention. It traces the organizational development of the legal services community in North Carolina as it responded to changing federal policies within the constraints provided by state and organizational level politics. Much of the scholarly literature on legal aid and public policy has focused on the direct, negative effects of reductions in federal funding and increased restrictions on recipients' activities. Although fewer legal aid organizations exist today than 30 years ago, and federally funded legal aid organizations appear to now perform substantially less law reform work than in the past, it is not clear that the overall level of service provision, when viewed from the state level, has in fact changed drastically. This dissertation, therefore, analyzes the combined effects of federal policy changes and state level organizational restructuring on the service levels provided by the broad legal services community.

My approach to the analysis lies firmly within the broad theoretical frameworks provided by the fields of historical institutionalism, organizational behavior, and collective action. Organizations seek to achieve a common objective through collective action within

the confines of institutional rules and the environment these rules create. North (1990) helpfully analogizes institutions to the “rules of the game” and organizations to the “players”. Indeed, the entire policy process itself may be analogized to the playing of a game. The interaction of the rules with the players creates winners and losers in terms of the policies adopted and their effects on the public. In order to understand who wins and who loses, it is necessary to engage in analysis at all three levels: rules, players, and outcomes.

Each level, however, has a feedback effect on the others. For example, organizations are not passive recipients of rules; rather they are active agents of institutional change (North, 1990). Therefore, understanding the broad impacts of the evolution of legal aid policy requires an examination of the rules, the players, and the feedback effects they have on each other. The disciplines of political science and economics inform the work of most institutional theorists. Sociology is the dominant base for most organizational theorists. The result is a frustrating set of overlapping but separate theoretical approaches; yet this set of approaches is more useful combined than divided into its separate parts. This is precisely what the historical institutionalist perspective seeks to provide.

The rest of the dissertation is organized as follows: Chapter 1 outlines the major debates about the need for government-subsidized access to attorneys in the United States, the competing goals of legal aid policy, and the resultant changes in institutional form dictated by power shifts at the federal level. It describes the origins of federally funded legal services in the United States, its early development out of the broader antipoverty movement of the 1960s, and a series of retrenchment efforts in the 1980s and 1990s that dramatically altered the institutional environment in which legal services organizations operate today. Chapter 2 details the organizational responses to these retrenchment efforts at the state and

local level, using the legal services community in North Carolina as a case study. Chapter 3 analyzes the effects of these responses on the service delivery in North Carolina with a specific focus on the effects of the organizational response on the ability of the community to engage in law reform activity.

The general conclusion of the study is that misunderstandings of the basic structure of legal services provision in the United States caused retrenchment advocates to institute a series of policies that both hurt legal aid and resulted in a series of unintended consequences that mitigated that harm. Efforts to reprivatize the provision of legal aid resulted in increased support for federally funded legal services in the private bar; efforts to remove the federal government from the funding of law reform activities resulted in an organizational split under which such activities not only continued but increased over time; and efforts to consolidate federally funded organizations to achieve greater efficiency resulted in greater splintering of the legal services community that in turn reduced the efficiency of the overall community. I argue that each one of these efforts has thus far benefitted the legal services community in North Carolina because of its innovative organizational responses to each change. Agency, then, played a key role in creating these unintended consequences. However, recent proposals to further reduce federal funding as well as burgeoning state level budget crises threaten to roll back these positive developments. How the legal services community responds to these threats will determine how well it is able to continue its mission to provide access to justice for the poor.

Chapter 1: Changing the Rules of the Game

"If you bring me cases into this court, we are going to treat you fair and square here. But if you bring a cause into my courtroom, I'm going to crucify you. Now raise your right hand and take the oath."

--Judge "Pooh" Bailey to a legal services attorney in Raleigh, NC

The history of access to justice policy in the United States largely reflects the answers given by those in power to three fundamental questions: 1) should the government intervene in the legal market? 2) what are the goals of such intervention? and 3) what is the best way to achieve those goals? This chapter begins with the threshold question of whether there is a justification for government intervention in the legal market. Though policy-makers at various points in time have disagreed on whether the federal government should intervene in the legal market, the effect of these ideological disagreements has largely been indirect, operating on a subterranean level beneath the visible answers to questions two and three. My analysis, therefore, focuses on the political evolution of the answers to those questions and the resulting institutional efforts of providing (or limiting) access to justice for the poor.

Justifications for Government Intervention in the Legal Market

The phrase access to justice means the reasonable availability of the theoretical tools a person needs to solve a legally defined problem. In the access to justice concept, a person who is negatively affected by a law could lobby the legislature to change the law, or he could

challenge it in court. Someone who is negatively affected by the actions of another person could ask that person to stop the activity, or he could petition a court to make the person stop. However, several practical barriers exist to accomplishing these legal actions. For example, most people will not or cannot directly represent themselves in court or lobby the legislature. They might lack the time, the persuasive skills, or the social contacts necessary to reach the relevant decision makers. We cannot give people the time or ability they need, so we attempt to connect them with other people who have both these skills and the necessary access to decision makers. The primary mechanism of granting this access in the United States is the purchase of representation in a private market system. We purchase the services of attorneys and lobbyists. Alternative solutions exist. We could simplify the law and legal procedures to ensure that no special skill is required to be adequately represented before the law, or we could assign primary investigatory duties to independent parties, as much of Europe does with its judges.

However, that has not been the American decision, the “American way of justice” (Kagan, 2001, p. 3). The American legal system is passive, reactive, and dominated by the parties involved. It is also more flexible and open to novel claims than most systems in the world. The result is a legal system rife with perceived policy opportunity for those who can access it.

The institutional structure of the legal system in the United States has been described as one of adversarial legalism (Kagan, 2001). Adversarial legalism is a style of law “that features legally framed, complex, party-driven adversarial contestation in the policy and judicial processes” (Epp, 2003, p. 745). The basis of this uniquely American style of law lies at the intersection of a rising demand for total justice (Friedman, 1985) and a fragmented

institutional structure that prohibits the government from meeting those demands through central administration (Epp, 2002).

The adversarial and complex nature of the system makes access to justice in the United States largely synonymous with access to an attorney. However, the nature of the legal profession creates market externalities in the distribution of legal services such that demand cannot equal supply, especially at a price affordable to all. Methods of “rationing justice” (Shepard, 2007) are omnipresent in the American system because the resources simply do not exist to allow unfettered access. Judicial doctrines of standing, ripeness, and mootness, as well as explicit statutes of limitations, are prime examples of limiting access to the courts. However, these barriers are universal in nature, not based on inefficiencies or inequities in the market for lawyers.

The foundation of the legal aid literature lies within theoretical justifications for government intervention in the market for attorneys for the poor. Historically likened to cartels and craft guilds (Friedman, 1985), the organized legal profession has effectively monopolized the market; it has successfully established self-regulation, erected substantial barriers to entry into the profession, limited advertising, and won legal restrictions on the unauthorized practice of law by non-attorneys (Tamanaha, 2006). It has acted as a nonmarket externality on the provision of legal services, artificially lowering the supply of legal services and increasing the prices of such services. Some of the reasons for such a structure are valid. Dingwall and Fenn (1987) argued that professional markets “are a form of structures inequality necessary to maintaining trust or confidence in the workings of the market under the conditions of a complex modern society” (p. 51). The legitimacy of the legal system is vital to the validity of a government operating under the rule of law, and the maintenance of

professional standards and restrictions on entry to the market may boost that legitimacy (Tamanaha, 2006). Thus, legal aid “could be seen as a subsidy to redress the complexity and inaccessibility of law created by the profession itself” (Moorhead, 1998, p. 377).

Although private mediation and arbitration markets have risen dramatically in the United States over the past decades, the vast majority of legal disputes flow through a government-provided judicial system. Governments establish and operate courts as an expression of their monopoly control over force. Courts in the American system have two basic functions: conflict resolution and the creation of rules. These two functions are intimately bound, yet separated by a vast chasm. The structure of the court system itself reflects this chasm. Most cases begin and end at the trial court level; thus, the courts are the hubs of conflict resolution. A series of appellate courts provide the primary means of rule formation because their decisions are technically binding on all courts under their jurisdiction.

Landes and Posner (1979) analyzed the potential for efficiency gains in the privatization of judicial functions. Specifically, they asked whether adjudication could be classified as a private good—“one whose optimal level will be generated in a free market” (Landes & Posner, 1979, p. 235). Although they acknowledged the presence of a then-nascent market for private arbitration, Landes and Posner concluded that adjudication could not be classified overall as a private good because arbitration provides only half of the necessary functions of the law, namely conflict resolution. “Precedent has ‘public good’ aspects that may result in underproduction in a private market” (Landes & Posner, 1979, p. 41).

This public good aspect of the law combines with the practical need for representation in a complex and adversarial system to require the intervention of the government in providing access to those who cannot afford it. Access, however, comes in two forms that coincide with the two aspects of the law described by Landes and Posner. Access to conflict resolution may be provided procedurally simply by opening up the courthouse to all comers. Access to rule formation, however, requires the provision of the means to fully participate in the substantive development of policy. The history of legal aid policy in the United States is dominated a largely ideological debate over which form of access the government should provide. The institutions of access to justice at any given point in time have reflected the distribution of power in the relevant policy-making bodies. The remainder of this chapter analyzes the evolution of these institutions.

Changing Goals and Evolving Institutions

Explaining institutional design and change is a difficult endeavor. The dominant approach in political science over the last 50 years has been that of functionalism. Emanating largely from the rational choice assumptions of self-interested actors who made conscious decisions to advance their interests, functionalism holds that institutions are instrumental reflections of those decisions (Williamson, 1998; Shepsle, 1986). Institutions look the way they do because it is the best way to achieve their designer's goals.

Historically there have been two primary and competing goals of legal aid policy in the United States. The first goal is simply to provide the poor with a key to the courthouse doors. Its focus is on procedural access and is unconcerned with substantive outcomes. The simple rule allowing parties to represent themselves is perhaps the clearest example of a

procedural policy. The second goal focuses explicitly on changing the substantive conditions of the poor through the law. It is grounded in the idea that adequate representation before the law requires more than simply a chance to be heard; it requires every party's interests to actually be taken into account in the formation of public policy. "The issue [of legal aid] is deeply substantive and normative. A solution to the 'problem' depends on how the problem is defined and what policy goals one wishes to reach." (Friedman, 2010, p. 15).

Under the functionalist approach, then, adherence to one or the other of the access goals should be reflected in the institutional design of legal aid policy at any given point in time. A cursory review of the history of legal aid policy, however, casts doubt on the utility of the functionalist approach. Retrenchment efforts first by the Reagan Administration and then later by Congress in the 1990s failed to completely remove the federal government from the funding of legal services despite a clear desire to do so. Furthermore, while both efforts resulted in partial reforms in accord with their broad retrenchment goals, neither President Reagan nor Congress succeeded in their particular goals of privatizing legal services for the poor and eliminating the involvement of the government in substantive law reform activity. The basic question asked in this chapter, then, is why did they fail? Specifically, *I seek to understand the mechanisms of institutional change that prevented full retrenchment while simultaneously allowing partial success on goals not specifically sought by the designers?*

My hypothesis is that retrenchment proponents failed to withdraw the federal government from direct financing of civil legal aid for several reasons. First, it is incredibly difficult to change institutions dramatically in a short time period in the absence of some triggering event. Second, the goals of the reformers were simply disconnected from the political realities of legal aid provision, several of which were unintentionally created by the

reformers themselves. Third, the reformers discounted the agency aspect of legal services provision. Legal aid organizations were able to respond to federal policy change in ways that fundamentally altered the politics of aid provision. Finally, history matters. Legal aid reformers in the 1990s sought to duplicate retrenchment efforts from earlier time periods and in other fields without accounting for the unique institutional environment that was in large part created by earlier efforts at retrenchment. Each argument I make has its roots in the criticisms of the functionalist approach developed by historical institutionalist theorists, so I now turn to those criticisms.

The major problem with the functionalist approach is that, by starting with existing institutions and working backwards, it ignores questions of institutional emergence and change (Pierson, 2000). Additionally, a robust sociological literature has shown that actors do not always act instrumentally to maximize efficiency; rather they base their decisions on the cultural norms of appropriateness (Meyer & Rowan, 1977; Powell & DiMaggio, 1991; Hall & Taylor, 1996). Others have shown that political actors tend to base their decisions on a relatively short time frame, making long-term institutional consequences too far removed to be susceptible to a functionalist approach (Pierson, 2000). Efforts to lengthen these time horizons, to make “credible commitments” (North & Weingast, 1989) to certain policy goals, are more difficult for political actors than for economic actors. Furthermore, “[i]nstitutions may not be functional because designers make mistakes” (Pierson, 2000: 483). According to Sunstein (1994), “[i]t is a familiar point that government regulation that is amply justified may go terribly wrong in practice” (p. 1390).

The timing and structure of these commitments influences their long-term legitimacy. According to Elster, Offe, and Preuss (1998), “[a]t founding moments, when crucial new

rules are put in place, one often cannot count on the operation of well-institutionalized contexts to frame and structure the actions of political decision-makers” (as cited by Pierson, 2000, pp. 482-483). Furthermore, certain institutional designs that empower specific groups of political actors, such as bankers in central banks, might work to lengthen the time horizon of the relevant political actors (Persson & Tabellini, 1994, as cited in Pierson, 2000).

The historical institutionalist approach seeks to incorporate these problems with functionalism into a broader theory of institutional development through empirical analysis of real-world examples. Historical institutionalism flows from two basic assumptions: (a) all politics is a struggle over scarce resources, and (b) the polity must be viewed as a broad system of interacting parts, not the parts themselves (Hall & Taylor, 1996). Institutions are broadly defined as “rules of the game” (North, 1990) and include both formal legal rules and informal cultural rules or norms. The fundamental story told by historical institutionalists is that institutions matter in explaining real-world political outcomes (Steinmo & Watts, 1995).

Time plays a crucial role in this approach (Pierson, 2004). Political events occur at specific times and within specific contexts. Prior decisions and experiences affect the choice sets from which political actors make later decisions (Steinmo & Watts, 1995). Decisions made at critical junctures (rare times when decisions could go any direction) place especially heavy constraints on future decisions (Steinmo & Watts, 1995). Adherents to the approach typically do not view history as a chain of independent events. “Taking history seriously ultimately means that the scholar is skeptical of the very notion of variable independence” (Steinmo & Watts, 1995, p. 166). Political decisions are both “path dependent” and wrought with “unintended consequences” (Pierson, 2004). Although most people would not dispute the idea that political changes result in policy changes, the historical institutionalist would

also argue that “new policies create new politics” (Schattschneider, 1960, as cited in Pierson, 1993, p. 595).

Pierson (2000) identified two primary sources of unintended consequences: overload and growing interaction effects. Policymakers face growing demands on their time and resources, resulting in decisions based on insufficient information or the need to delegate decision-making authority. This overload is compounded by the externalities that are generated by decisions made in an increasingly complex social system. Additionally, humans are simply unable to assess accurately the full impact of their decisions. As Levitt and March (1988) pointed out, humans are terrible statisticians, completely “insensitive to sample size” (p. 323). The analysis of the evolution of legal aid organizations in North Carolina suggests at least two other sources of unintended consequences—misunderstanding and bias. The Reagan Administration’s misunderstanding of the public good nature of legal services and the interests of the legal profession in providing that good, resulted in a stronger resource base for organizational, legal services providers instead of a gradual privatization of their activities. President Reagan’s rigidly held ideological beliefs about the superiority of the private market exacerbated this misunderstanding.

Furthermore, examining the unintended consequences of institutional change cannot be done in isolation. Many of the consequences that seem unintended are often brought about by the actions of the players themselves. Players are endowed with agency, so predicting unintended consequences requires an understanding of how players respond to institutional change. In the context of legal aid, the relevant players are the organizations that make up the legal aid community. As such, theories of organizational agency and decision-making may provide some help in analyzing the institutional changes and their effects on the outcome of

the game. This will be addressed directly in Chapter 3.

Evolution of Legal Aid at the National Level

From the earliest colonial days until the mid-19th century, with one short exception, no governmental policy on legal aid existed in the United States. The poor relied on the charity or, to the more optimistic eye, the professional obligations of individual attorneys to take their case at a reduced rate or free of charge. Privately organized attempts to provide civil legal services to the poor first arose in 1876, when the German Society of New York founded the first formal organization established specifically to provide legal services to the poor. However, a book truly galvanized private legal aid in the early 20th century. Reginald Heber Smith's *Justice and the Poor* (1919) outlined a vision of legal services that served as the dominant model of legal aid until the 1960s. Smith's ideas were blunt and broad, pleading that America's democracy itself was at stake:

[d]ifferences in the ability of classes to use the machinery of law, if permitted to remain, lead inevitably to disparity between the rights of classes. . . . And when the law recognizes and enforces a distinction between classes, revolution ensues or democracy is at an end. (Smith, 1919, p. 12)

Smith's model is referred to commonly as the "aid" or "legal aid" approach to providing access to the law, and it is the model under which federally funded legal aid organizations largely operate today. It focuses on helping individuals resolve discrete problems through existing law and reflects the limited goal of granting procedural access for the poor. Law reform, legislative advocacy, and participation in broader community organizing activities have no place within the aid model. The daily work of the legal aid attorney consists of helping individual clients resolve particular legal problems in the most efficient way possible and rarely includes some form of litigation (Houseman & Perle, 2007).

At the time of Smith's publication in 1919, 40 legal aid organizations existed in 37 cities in the United States (Smith, 1919). These early legal aid societies were community- or neighborhood-based, and the local bar tended to have a large role in their formation and funding. Legal aid "served an important public relations function for the organized bar" (Handler, Hollingsworth, & Erlanger, 1978, p. 20). The growing recognition of this public relations purpose prompted additional development. By 1947, roughly 70 legal aid societies operated in the United States (Handler et al., 1978) and, by 1963, 249 societies functioned. Data show that funding for all legal aid societies in the country totaled about \$4 million in 1964, an average of approximately \$16,500 per office. More than half of the funding came from the local community and about 17% of the funding came from the private bar and individual attorneys (Voorhees, 1970).

Despite the growth of legal aid offices, the social and political changes of the 1960s and 1970s provided a challenge to the aid model itself. The problems of the poor were viewed no longer as a simple lack of income, but rather emanating from a broken social system. As one scholar noted, "[o]ne is poor not because he has no money, but because, possibly owing to lack of money, he lacks also access to the social instrumentalities that make humanly significant action possible" (Haworth, 1968, p. 39). Reflecting this new conception of poverty, the early 1960s brought a change in the approach taken by legal aid lawyers. This new concept of legal services was intended to be a "radical departure from a legal aid approach" (Brescia et al., 1997, p. 834). No longer willing to separate themselves from their clients, they aimed to become "poverty lawyers," not lawyers who just happened to represent poor people. As one of the architects of the new model described it, the legal services lawyer was not

merely a technician whose function was to help the . . . system conform to what the elected representatives of the majority had decreed it should be. [The lawyer's] mission was to utilize the legal process to help change the very nature of the . . . system and, thereby, to change the ground rules of American Society. (Sparer, 1971, p. 84)

According to Houseman (2001), the new approach had four defining characteristics:

(a) legal services organizations were to be responsible for the interests of all poor people, not merely the individuals who walked into their offices; (b) clients, as individuals and communities, were to have a significant amount of control over the delivery of services; (c) organizations were to help community members to identify legal problems through education and outreach; and (d) organizations were to deploy the full range of legal and advocacy tools available to private attorneys. Thus, the focus was on the betterment of the poor as a community, not merely as isolated individuals:

In its reform goals, Legal Services represented a sharp break from the Legal Aid precedent; in the resources used in its reform strategies, Legal Services was diffusely integrated into a social-movement milieu. . . . The location of Legal Services in a broad movement for social change was reflected in the structure of programs; in the perspectives brought in by staff; and in early controversies over aggressive advocacy. (Katz, 1982, pp. 65–66)

Beyond the changing conception of poverty, changes in theoretical approaches to the law itself influenced the development of the new model. The Realist Movement broke from the post-Civil War view of the law as a self-contained science by openly declaring the important policymaking role of judicial decisions (Fisher, Horwitz, & Reed, 1993). Realists differed to a great degree on the details of their new approach to legal thought and reasoning; however, they largely agreed on three aspects of the appropriate substance and practice of law: (a) strict adherence to black letter law should be shunned in favor of “working rules” that would allow judges more flexibility in adapting the law to the particular circumstances of a given case, (b) existing legal rules must be disaggregated so that conscious policy

choices based on empirical knowledge might follow, and (c) such policy decisions must be particular in that they are set in a specific set of socioeconomic circumstances (Fisher, Horwitz, & Reed, 1993). The implication of this new approach to legal aid is clear: simple procedural access is not sufficient to secure favorable policy choices.

Although initiated during the period between the two world wars, realism has had a long-lasting effect on American legal thought. For the architects of the new model, many of whom attended law school during the heyday of realist teaching, it provided the foundation for their view of the courts as an instrument of social and policy change. Realism also affected the jurisprudence of the judges, who would decide the cases brought by legal services lawyers in the coming years, as well as the lawyers themselves.

Institutionalization of the Federal Legal Aid Role: The OEO Years

The experimental enthusiasm that accompanied the 1960's War on Poverty, along with fortunate connections between legal service lawyers and the government,¹ led to the creation of the Legal Services Program (LSP) within the Office of Economic Opportunity (OEO). The new program represented a departure from the Smith model of legal aid. Instead of limiting lawyers to representing individual cases, the new program took up the charge of Edward Sparer and others who believed that only institutional change could truly alleviate poverty. Thus, the legal services movement began as an integral part of the antipoverty movement.

¹ Jean and Edgar Cahn, "parents" of the community involvement model of legal services in which members of the poor community participated in the governance of the legal aid office, happened to be friends with Sergeant Shriver, the first director of the Office of Economic Opportunity (OEO) and brother-in-law to Robert F. Kennedy and John F. Kennedy (see Cantrell, 1990).

The model promoted by the OEO was distinctly not that of the “poor person’s lawyer,” but that of a political movement. Funding recipients designed their own delivery systems, but the LSP provided substantial guidance on fundamental questions such as prioritization of resources. Judicare programs, under which private attorneys are paid to take cases without fee, were funded only in a few, small, rural areas. The preferred system involved professionally staffed, private, nonprofit organizations that specialized in poverty law. The “structural roots” of the OEO legal services program came from the Ford Foundation’s Grey Areas programs, the President’s Committee on Juvenile Delinquency, and, most importantly, Mobilization for Youth (MFY) in New York City (Handler et al., 1978). Each of these models provided valuable insights for OEO’s designers, but also contained an important limitation in that they were all urban-based models in which impersonal relationships were the staple, not the exception.

The LSP also created support centers, generally affiliated with law schools, to serve as hubs of the law reform wing of the program. These centers used test cases in the vein of the National Association of Colored People’s (NAACP) Legal Defense and Educational Fund, Inc. (Inc. Fund) to seek large-scale social change (Melnick, 1994). The OEO program founders believed firmly that “under the conditions of modern government, litigation may be the sole practicable avenue open to a minority to petition for redress of grievances” (*NAACP v. Button*, 371 U.S. 415, 430 [1963]). They also focused resources on research and lobbying efforts to create new rights and protections for the poor through legislation and administrative rule making. In 1967, the average amount of time legal services attorneys reported as spent on law reform was 25%. By 1972, that number grew to 31.2% (Handler et al., 1978). However, according to at least one historian of the movement, these efforts were

minuscule when compared to the everyday practice of law in which most legal services attorneys engaged (Quigley, 1998).

The infusion of funding into the legal services population resulted in a tremendous boom in the number of legal aid organizations. Between January 1, 1966, and June 30, 1967, OEO funded 300 legal services organizations, creating over 800 new law offices and hiring almost 2000 new lawyers. Thus, it took only 18 months for federally funded legal services to create a network about the size of the U.S. Department of Justice (Johnson, 1978). Overall federal funding went from \$27 million in 1967 to \$71.5 million in 1972, at which level it held steady until 1976 (Handler et al., 1978). The distribution of these offices was not uniform nationwide. Urban areas with existing legal aid societies benefited the most from OEO funding. Rural areas tended to have local bar associations opposed to the OEO's perceived social agenda, as did many urban areas in the South (Shepard, 2007). The primary source of this opposition came from the new legal services approach adopted by OEO. Bar associations that might have supported granting procedural access as a means of doing their professional duty were not supportive of the policies of the OEO movement.

An important source of internal tension in the early movement concerned the locus of control over funding decisions, program priorities, and personnel policies. This tension between centralization and independence of local programs continues today to be one of the fundamental arguments about best practices for legal services organizations. Many of the founders of the legal services movement were staunch advocates of community control over legal services programs, wanting the broader community of social service providers to have some level of control over the activities of LSP lawyers (Cahn & Cahn, 1964). Specifically, they wanted organizational boards of directors to be composed mostly of such community

leaders and not attorneys. The problem stemmed from what they saw as the insider tactics of lawyers and the risks of professionalization of the movement that would serve to dissemble the movement from the very community it was supposed to serve (McCarthy & Zald, 1973).

However, leaders of the professional bar were concerned with maintaining professional independence for LSP lawyers and criticized any structure under which lawyers' decisions were controlled by non-lawyers (Houseman & Perle, 2007). For example, during the operation of the Grey Areas Program in New Haven, Connecticut, a dispute arose between the staff attorneys and the executive director (who was not an attorney) over whether or not the program should sue local governments (Cahn & Cahn, 1964). The conflict provided fodder for the private bar's concern about professional independence while also illustrating the dangers of placing legal services within broader community groups. Furthermore, the bar and community services advocates disagreed on whether new or existing organizations should receive priority in the initial funding. Since the majority of existing legal aid societies originated within the private bar, the national level bar association feared that locally controlled funding decisions would favor new, community-based organizations. The two sides compromised on both issues. At least 50% of the members of boards of directors had to be attorneys appointed by bar associations and funding decisions were made on a regional level to both new and existing organizations. The final structure reflected recognition by the program's designers that many programs would not exist without the support of the local bar; in return for providing attorney control, the ABA passed a formal resolution supporting the OEO program.

The LSP's position outside of the OEO's Community Action Program (CAP) constituted a defeat to advocates of community-based legal services and served as a 'critical

juncture' in the development of institutionalized legal services (Pierson, 2000). The decision to grant local bar associations the authority to appoint half of an organization's board of directors instilled in private attorneys a belief that a veto power existed in local bar associations over the potentially controversial reform activities of LSP programs. However, the political support gained from encouraging this belief enabled the OEO to leverage larger amounts of funding both from the government and from private attorneys while engaging in those reform activities.

The law reform approach of the OEO brought about two significant and contradictory changes in the legal status of the poor. First, a string of Supreme Court cases established a line of precedent, specifically benefiting the poor and elevating them to a more equal status before the law. Before 1966, the U.S. Supreme Court issued very few decisions in poverty cases. One popular textbook cites only six such cases, and there is no evidence that legal aid attorneys participated in any of these cases (Lawrence, 1990; Quigley, 1998). However, between 1966 and 1974, LSP lawyers appealed 164 cases to the U.S. Supreme Court (Lawrence, 1990). Of these 164 cases, the Supreme Court accepted 119 cases and issued plenary decisions on 80 of them, constituting 7% of the combined written opinions during that time (Lawrence, 1990).

For the first five to six years, legal services enjoyed tremendous success in expanding the rights of the poor through the Supreme Court (see, e.g., *King v. Smith*, 392 U.S. 309 [1968]; *Goldberg v. Kelly*, 397 U.S. 254 [1969]; *Shapiro v. Thompson*, 394 U.S. 618 [1969]; *Rosando v. Wyman*, 397 U.S. 397 [1970]; and *Department of Agriculture v. Moreno*, 413 U.S. 528 [1973]). For example, *Goldberg* required states to give welfare recipients a hearing before their benefits were terminated, and *Shapiro* prohibited states from making new

residents wait for a certain period before receiving federally funded benefits such as welfare and food stamps. Although these decisions constituted clear victories for the law reform movement, that victory was short-lived and would have repercussion in later years. A series of cases in the early 1970s, under the same Supreme Court that decided the earlier cases, halted the movement's progress by denying a series of substantive rights to poor people. These included a right to a minimum level of welfare (*Dandridge v. Williams*, 397 U.S. 471 [1970]), a right to equal funding for schools (*San Antonio v. Rodriguez*, 411 U.S. 1 [1973]), and the right to be free from warrantless searches by welfare caseworkers (*Wyman v. James*, 400 U.S. 309 [1971]). The response from movement attorneys was to switch from a focus on the creation of new constitutional rights to seeking change through statutory interpretation (Melnick, 1994) and to protecting the rights they had been able to secure.

The second result of the law reform success of OEO legal services was a vehement political backlash against the program from conservative politicians and business interests. The most famous instance of this comes from California, where California Rural Legal Assistance (CRLA) enjoyed incredible success on behalf of the poor. During the 1960s, CRLA forced the state to increase the minimum wage of farm workers; blocked the use of low-wage, "bracero" labor from Mexico; and expanded the state's food stamp and school lunch programs (Quigley, 1998, p. 249). Most importantly, however, CRLA won a class action lawsuit in 1967 on behalf of indigent people who had been denied health coverage under the state Medicaid program, which resulted in the state having to restore over \$200 million to the program. In refunding the money, Governor Ronald Reagan defaulted on his campaign pledge to balance the budget, which in turn generated in the future president a strong antipathy for legal services to the poor (Quigley, 1998, p. 249). Thus, despite the

short-term win for legal services, the policies of the OEO in encouraging and funding law reform activities changed the politics of legal aid provision for decades to come.

The political maneuvering began almost immediately. An early compromise in the OEO structure gave the governors of each state the ability to veto its funding to legal services offices, subject to an override by the director of the OEO. The OEO director in 1967, though, was an appointee of Democratic President Lyndon Johnson, so Governor Reagan did not immediately seek to veto CRLA funding. Instead, he enrolled the help of Senator George Murphy in 1969 to introduce a bill to eliminate the ability of the OEO director to veto governors' vetoes. The bill failed. When Richard Nixon became President in 1969 and appointed Donald Rumsfeld as new the OEO director, Governor Reagan immediately vetoed CRLA's funding. However, in a decision that would foreshadow the results of his efforts to eliminate federally funded legal services during his presidency, Reagan appears to have misunderstood the political weight of the legal services movement. Although Rumsfeld and Nixon had very different ideas about the proper role of the federal government in funding legal services than the prior administration, they were not opposed to them ideologically. Instead of simply sustaining Reagan's veto, Rumsfeld ordered the creation of a special commission to investigate Reagan's allegations against CRLA. When the commission found the allegations to be unfounded, Governor Reagan agreed to withdraw the veto (Houseman & Perle, 2003).

Governor Reagan was not the only governor to veto LSP funding: governors from Florida, Connecticut, Arizona, Missouri, and North Carolina had all done likewise before Reagan. Interestingly, the veto in North Carolina occurred on a grant to a statewide legal services program sponsored by the North Carolina Bar Association. Although the OEO

overrode all of these vetoes, they clearly demonstrate the influence of partisan politics on what advocates of legal services believed to be a fundamental right. The vetoes themselves show the importance of institutional structure in terms of protecting legal services from such political dynamics. When viewed in terms of the locus of control, the OEO's authority to override a governor's veto of funding clearly placed overall control of funding at the federal level. This was a positive institutional structure for legal services only so long as OEO itself supported their activities. The appointment of an avowed opponent of federally funded legal services as acting director of the OEO in 1973 illustrated this weakness. Howard Phillips, who had stated publicly that "[l]egal services is rotten and will be destroyed" (Houseman & Perle, 2007, p. 17), attempted to remove law reform as an allowable goal of programs and to eradicate national support centers. The attempt failed only because four senators brought a lawsuit that forced Phillips' resignation because his nomination had never been submitted to the Senate for confirmation (*Williams v. Phillips*, 482 F.2d 669 [U.S. App. D.C. 1973]). Indeed, such conflict between the Congress and the President would typify the politics of legal aid policy for the next forty years.

The political attacks from the right engendered a fear from the left that the newly elected Nixon Administration would abandon federally funded legal services. The threat of losing federal funding heightened tension among liberal advocates about the appropriate place of legal reform activity within the broader antipoverty movement. If professionally staffed, law reform-focused legal services programs fell victim to the iron law of oligarchy, in which the interests of the leaders gradually subsume the articulated goals of the organization (See Michels, 1958; Lipset et al., 1977), the danger to the antipoverty movement would be great. Advocates of protest models of social movements further saw the

political antagonization inherent in law reform activity as posing an unwise level of risk in terms of securing government funding, especially given its uncertain rewards (Piven & Cloward, 1977; Wexler, 1970; Abel, 1985). Others added that the courts could never provide true reform and that focusing scarce resources on litigation-based models was a strategic mistake (Horowitz, 1977; Rosenberg, 2008). The result was concern over the current structure of the OEO program and a desire to fortify it against political attacks.

The origins and development of OEO legal services is crucial to understanding the evolution of legal aid in later years. The functionalist approach to examining and understanding political institutions often neglects the precise circumstances in which institutionalization took place (Pierson, 2000). The structure of the LSP provided a successful foundation for early law reform activity. However, as political conditions changed the structure itself posed a threat to the continued existence of federal funding because of its feedback effects on those political conditions. Although it is clear that new politics creates new policies, the lesson of the OEO's LSP is that "new policies create new politics" (Schattschneider, 1960, as cited in Pierson, 1993, p. 595).

"De-politicizing" Legal Services: The Legal Services Corporation

As the Nixon Administration began dismantling the OEO in 1969, it transferred many of its more popular programs into other departments. Head Start, for example, was transferred from the OEO to the Department of Health, Education, and Welfare (HEW) in 1969. However, the unique mission and activities of the LSP posed a problem to such a simple transfer. The LSP could not go into HEW or the Department of Justice because legal services attorneys sued both agencies frequently. In fact, one of the central roles of the legal

services program was to act as a check against government abrogation or infringement on the rights of the poor. Several different proposals emerged during the early 1970s to create an independent corporation to house federal legal services. President Nixon himself offered two versions, including the one finally accepted. According to Nixon, a federally funded legal services organization must have three characteristics: (a) it must be structured and financed in a way that assures independence from political dynamics; (b) its lawyers must have freedom to represent the interest of their clients “within the Canons of Ethics and high standards of the legal profession;” (Nixon, 1973, p. 2) and (c) it must become a permanent part of the American system of justice (Nixon, 1973).

Congress established the Legal Services Corporation (LSC) on July 25, 1974, a mere two weeks before Nixon’s resignation (Public Law 93-355 [42 U.S.C. §2996 *et seq*]). In accordance with congressional intention to keep legal services “free from the influence of or use by it of political pressures” (42 U.S.C. §2996(5)), the primary difference between the LSC and the OEO program it replaced was the organizational structure itself. The LSC is a private, nonmembership, nonprofit corporation governed by an 11-person board of directors, a majority of whom must be attorneys. The board is nominated by the President of the United States and is confirmed by the Senate. No more than six members can be from a single political party. The primary functions of the LSC are to distribute the funds appropriated by Congress and to supervise the recipients to assure compliance with congressional rules and restrictions. Its status as a corporation exempts the LSC from most federal administrative laws and allows Congress to reauthorize it for a period of several years at a time, theoretically exempting it from the annual politics of appropriations battles. This basic

structure has remained intact from 1975 to today, and has alternately benefited LSC as an institution and threatened its very existence.

In terms of priorities and the role of law reform, the LSC Authorization Act did not change much. It neither eliminated the law reform model nor fully endorsed its use. The LSC Act allowed legal services advocates to employ the full range of legal tools available to a client of a private attorney, including lobbying and class actions. However, the Act did introduce new restrictions on the types of cases LSC recipients could pursue. For example, LSC grantees could not use federal money to take cases involving nontherapeutic abortions, school desegregation, or selective service, or to take fee-generating cases. LSC recipients could use other sources of funding to engage in such activities, so it was not a complete prohibition. However, the political ability to enact such restrictions would serve as a model for future retrenchment efforts.

One of the LSC's first acts was to sponsor a study of the legal needs of the poor in America. The study found that over 40% of the nation's poor lived in areas without a legal services program (Houseman & Perle, 2003). Funding targets under the OEO had been left to the discretion of state directors, with the result that most services were located in distressed urban areas where a majority of the poor lived and where legal aid offices already existed when the OEO was created. The LSC then initiated what it called a *minimum access* plan that called for a level of funding sufficient to provide at least two attorneys for every 10,000 poor people regardless of where they lived. The LSC encouraged local offices to become regional in scope, expanding their coverage into adjacent rural areas. However, for the LSC to achieve its minimum access goal, it needed significantly more resources. Starting with a program

budget of \$71.5 million in 1975, Congress increased LSC funding every year until it received \$321.3 million in 1981, equal to its minimum access requirements.

The LSC was reauthorized in 1977 for three years without controversy. The general belief was that federally funded legal services had weathered the storm and emerged stronger than ever. As Handler et al. wrote (1978),

[t]he organization of Legal Services at the national level, with its strong bar association support, indicates that the program will be most likely to continue in the future; it seems to have won its battle for survival; and barring a dramatic change in political climate, it is unlikely that future elected politicians will try to kill or seriously damage the program.

(p. 38)

Unfortunately for legal services, Handler's prediction proved overly optimistic; a dramatic change in the political climate occurred less than three years later. The election of former Governor Ronald Reagan to the Presidency in 1980 meant that 1981 was the first and only time that the LSC achieved its minimum access funding, and the LSC authorization of 1977 turned out to be the last time it was reauthorized. Far from seeking reauthorization, President Reagan asked Congress to completely de-fund LSC in every budget he submitted to Congress except fiscal year 1989. However, Congress continued to fund the LSC by waiving reauthorization and attaching the LSC budget to omnibus appropriations bills. This procedural trick helped ensure the survival of the LSC, but it also left federally funded legal services open to attack on a yearly basis. The "new politics" of legal services policy had begun.

Presidential Retrenchment of Legal Aid, 1981-1989

President Reagan, like Margaret Thatcher in Great Britain, entered office with the express goal of reducing the role of the federal government in the provision and funding of social services (Pierson, 1994). His intentions, however, faced a substantial political obstacle because of the expansion and entrenchment of federally provided services over the previous 20 years. Such “retrenchment” efforts constitute a distinctive political process in which reformers operate within an institutional environment hostile to their purposes (Pierson, 1994). The creation of new rights and benefits in one period leads to the creation of new constituencies with vested interests that will fight efforts to harm those interests in later periods. People are more likely to fight to keep something they already have than to fight to gain something new (Kahneman & Tversky, 1979), making the mobilization of these constituencies easier. Therefore, in terms of political mobilization, the incentives lie largely with the group standing to lose from retrenchment efforts. This is especially true for social welfare programs that provide concentrated and direct benefits to a relatively small group while their costs are diffused throughout society (Pierson, 1994).

Cutbacks in federally funded legal services constituted an important, although often overlooked, component of President Reagan’s retrenchment efforts. For example, Reagan extended efforts were begun under the Carter Administration to reduce federal disability benefits beyond administrative cost-cutting measures to large-scale denial and termination of benefits (Chambers, 1985). During President Reagan’s first three years in office, approximately 500,000 people lost their benefits, based on an expanded statutory interpretation of their being “able to work” (Patterson, 1994). Simultaneous efforts to reduce the ability of LSC lawyers to challenge these decisions were part of the overall plan to reduce

benefits (Patterson 1994), but the incomplete retrenchment efforts fed back into the disability system. In 1982, more than two-thirds of the denial or termination of disability benefits cases appealed to an administrative law judge were reversed (Chambers, 1985). By December of 1982, roughly 95 class action suits challenging the wholesale denial of disability benefits were pending before the federal courts (Chambers, 1985). The numbers of denials reversed by the federal courts eventually led Reagan to seek a change in the ideological makeup of the federal courts (Patterson, 1994).

Therefore, President Reagan's overall goal of welfare state retrenchment depended largely on preventing legal challenges to his policy decisions and LSC-funded attorneys posed the biggest obstacle. It is important to note that the lawyers in the disability cases were not explicitly pursuing law reform; they were protecting existing rights against new statutory interpretations through enforcement litigation. Procedural access to the courts allowed them to challenge the government's withdrawal of existing benefits. Thus, the objection of the Reagan Administration to their activities demonstrated the interplay between procedural access and substantive policy considerations. The procedural access of the poor through legal services lawyers frustrated the substantive policy desires of the Reagan Administration. This form of substantive opposition to the existence of federally funded legal services, or at least its public revelation, began a new chapter in the politics of legal services under the broader umbrella of Reagan's "new conservatism" (Thompson, 2007).

Analyzing social policy change requires an analysis of "both the goals and incentives of the central political actors and how the institutional rules of the game and the distribution of political resources structure their choices" (Pierson, 1994, p. 13). Reagan faced three primary challenges to his legal services retrenchment efforts. First, the nature of legal

services and the broad sets of groups with vested interests in its survival posed a basic problem in terms of the mobilization of opposition groups within a pluralistic democracy. Private lawyers, judges, general community welfare groups, and special population interest groups amongst others all benefited from the existence of a strong federal program. Second, the placement of the LSC outside of the Executive Branch as a private corporation limited Reagan's direct political control over its functions. Third, the structure of the Executive Branch in the United States does not lend itself well to substantive policy changes to social programs. Changing the ideological makeup of the courts might be an effective solution, but it is a long-term tool and explicit use of this strategy poses short-term political dangers to politicians who are publicly sworn to oppose activist courts. Retrenchment efforts in social programs typically work through executive and legislative cooperation and compromise; thus, Reagan's welfare retrenchment efforts were unique (Chambers, 1985).

Through his power to present a budget each year to Congress, President Reagan first sought to abolish completely the LSC. However, Congress controls the budget process and the numbers simply were not there so that this could happen. The Republican Party gained control of the Senate in 1980 at the same time that Reagan was elected, but its majority was not even close to filibuster-proof (53–47 senators). It also was the first time since 1954 that the Republicans had controlled either house of Congress and they were likely unsteady on their feet. The Democrats maintained control over the House of Representatives. Although generalizations in politics can be dangerous, it is safe to generalize to a certain extent in saying that Republicans generally opposed federally funded legal services and Democrats generally supported it. However, important variation exists within each camp. For example, “Gypsy Moth” Republicans of the Northeast (Conley, 2001) tended to support the legal aid

model of individual services, while opposing law reform efforts funded by the government. Southern “Boll Weevil” Democrats (Halpert, 1990) typically felt the same way. However, without an examination of the ideological makeup of the Congress in 1980, it is sufficient to say that Reagan did not have the votes to abolish the LSC, but concern over the activities of LSC attorneys existed in sufficient quantity to invite some kind of change. This resulted in compromise and the incremental erosion of the scope of federally funded legal services.

Blocked at his efforts at full retrenchment of legal aid in Congress, President Reagan adopted a two-pronged approach that had been put forth by LSC opponents in the late 1970s: (a) slash funding, and (b) restrict the activities in which LSC-funded lawyers could engage. The 1982 fiscal year budget cut LSC funding by 25% from the previous year, dropping from \$321 million to \$241 million. The result was that the number of LSC-funded attorneys fell from 6,559 to 4,766 nationwide between 1980 and 1983 (Houseman & Perle, 2003). The LSC also eliminated the Research Institute and downsized its Office of Program Support, both of which had been central to its law reform activities in previous years (Houseman & Perle, 2003). Despite administration efforts to cut funding further in later years, the LSC’s budget climbed to around \$300 million by 1985 and remained fairly level for the rest of Reagan’s tenure.

The second prong of the attack focused on restricting the activities supported by federal funding. Two of the most controversial activities, legislative advocacy and the representation of undocumented immigrants, had already been limited to a certain extent before Reagan arrived. However, the Carter-appointed LSC Board narrowly interpreted the restrictions, resulting in their practical obsolescence (Quigley, 1998). Therefore, President Reagan sought to strengthen the restrictions through a change in board leadership as well as

the imposition of several new prohibitions. Over the next few years, Reagan successfully pushed through Congress further limitations on legislative advocacy, involvement in redistricting cases, the ability to collect lawyers' fees through fee-shifting statutes, and the representation of certain groups of lawful immigrants. Each of these restrictions prohibited legal services attorneys from representing certain segments of the poor population in certain types of cases, and they did not encounter significant opposition. As Pierson (1994) notes, "where retrenchment is widely anticipated, targeting cutbacks on particular subgroups within a beneficiary population will minimize the size of the potential opposition to proposed reforms" (Pierson, 1994, p. 23).

This extra-legislative assault on legal services tells an important story about social welfare retrenchment because of its unique locus. Reagan submitted his first lists of LSC Board nominations in December of 1981 and January of 1982. The vast majority of those nominated openly opposed federally funded legal services (McKay, 2000). The Senate, although controlled at the time by Republicans, refused to play along and did not confirm any Reagan LSC appointees until late 1985 because of their efforts to undermine legal services from within LSC. However, during the interim, President Reagan used recess appointments to put the people he wanted into position. High levels of public support for Reagan and his lack of a filibuster-proof Senate made the actions seem politically justifiable to achieve his policy goals (Corley, 2006). The move angered LSC supporters in the Senate and made further congressional compromise less likely. Indeed, one of the more vocal Republican backers of federally funded legal services, Warren Rudman of New Hampshire, responded to Reagan's appointment of ideological opponents to the LSC board this way: "I do not trust the

board of the Legal Services Corporation farther than I can throw the Capitol” (Houseman & Perle, 2007, p. 33).

Some of the most prominent of these interim appointees immediately embarked on a mission to sabotage the LSC from the inside, and they continued this mission after being confirmed by the Senate. For example, there is evidence that the LSC secretary proposed further cutting of the LSC budget by another 25% between 1982 and 1984. She also tried to implement internal programs to limit the activities of LSC-funded attorneys and mailed direct solicitations to a number of conservative organizations asking them to support those restrictions (McKay, 2000). In 1987, LSC Chairman Clark Durant III gave a speech to the American Bar Association’s Board of Governors specifically calling for the abolition of the LSC and provision of legal services to poor Americans by non-lawyers (Durant, 1987). According to Durant, the biggest obstacle to access to justice for poor Americans was the organized bar, whose rules on unauthorized practice turned the profession into a monopoly (Durant, 1987). In 1988, the LSC Board hired two private attorneys to draft a memo outlining why the LSC was unconstitutional, and then paid them \$100 an hour to lobby to defund the LSC, in direct violation of the very law that opponents of LSC had put in place to prohibit legislative activities (Cooper & Carvin, 1994).

In fact, Congress repeatedly stepped in to stop the LSC Board from unilaterally implementing changes in the rules. During this time a group of senators and congressmen, led by Warren Rudman (R-NH), Edward Kennedy (D-MA), Robert Kastenmeier (D-WI), and Barney Frank (D-MA), among others, enacted appropriation riders that prohibited the LSC from implementing changes related to representation of migrant workers. They also specifically prohibited the LSC from implementing a competitive bidding process for

funding and a required timekeeping system for all lawyers, from issuing 12-month limited grants, and from implementing internal prohibitions on lobbying, fee-generating cases, and the use of non-LSC funds (Houseman & Perle, 2007).

Both the ability and the willingness of Congress to perform substantial oversight over the LSC Board provided the key source of protection from opponents of federally funded legal services at this time. There are three primary reasons that Congress was so inclined: (a) Democrats controlled the House of Representatives and its oversight structure; (b) there was bipartisan support for the provision of individual representation services, and (c) the political influence of the professional bar (Cantrell, 2003). The second might seem strange, given the ideological divide cited above, but moderate Republicans, especially in the 1980s, supported federally funded legal aid, if not legal services. While they have never been particularly comfortable with some of the law reform efforts of early legal services offices, many Republicans believe the concept of procedural access to justice to be quite important to the rule of law. Indeed, competing beliefs in procedural versus substantive justice, legal aid versus law reform has been the dividing line between Republicans and Democrats and therefore has served as the area in which compromise has occurred.

The literature uniformly cites the efforts of one man, Republican Senator Warren Rudman of New Hampshire, as the rock against which the ship of President Reagan broke in the 1980s (Houseman & Perle, 2003). With the Republicans in control of the Senate, the presence of a powerful Republican supporter was crucial. Rudman served on the Senate Appropriations Committee and the LSC continued operations solely because of yearly appropriations; therefore, his placement was critical to his ability to protect the LSC. Then, in 1986, the Democrats regained control over the Senate, foreclosing Reagan's formal channels

to achieve his goal of full retrenchment. This development in turn led to the increase in covert actions by the hostile LSC Board in later years.

The organized bar also played a very significant role in preserving the LSC. First, the American Bar Association effectively rallied support among its state chapters and individual members to protect federally funded legal services. Second, the actions of the Reagan Administration in trying to erode the LSC's powers led to an increase in the bar's support for the program. In 1981, the LSC Board enacted a rule that mandated the use of roughly 10% of LSC funding for the support of private attorney involvement (PAI) programs. Although originally conceived under the Carter Administration as a way to reconnect the private bar with the daily work of legal services organizations, the idea of increased PAI requirements merged neatly with President Reagan's purposes of privatizing social welfare provision and decreasing the amount of resources available to LSC staff attorneys to engage in impact litigation. At one point, several members of the hostile LSC board proposed increasing the PAI mandate to 25%. However, in 1984, Congress required each recipient to use at least one-eighth (12.5%) of its LSC money to fund private attorney's *pro bono* efforts. In a way that the American Bar Association had never succeeded in doing through its Code of Professional Conduct, the Reagan Administration effectively institutionalized the provision of pro bono services. Importantly, it did so through the mechanism of federally funded legal services offices.

The effect of the PAI requirements was not what President Reagan or LSC opponents intended. In terms of efficiency, pro bono work simply cannot live up to the staff attorney model, as LSC reported in its Delivery System Study conducted from 1976 to 1980. However, the effective and efficient delivery of legal services was not Reagan's goal. As the

LSC Board’s proposals to increase PAI requirements to even higher levels shows, the goal was to remove resources from staff attorneys engaged in work the administration found substantively disagreeable. However, the actual effect of the PAI requirements was exactly what President Carter, Hillary Rodham, and other LSC board members in the late 1970s anticipated—increased “private attorney *involvement*” in the daily delivery of legal services to the poor:

The new requirements helped those private attorneys who participated as board members or PAI attorneys to appreciate the difficulties of serving poor clients with severely limited resources, enable them to view legal services attorneys as respected peers within the legal community, and strengthened the role of the organized bar as a champion of federally funded legal services. (Houseman & Perle, 2007)

Although the Reagan Administration was not able to abolish LSC completely, it did succeed in drastically limiting its resources by forcing a compromise in Congress. As a result, legal aid organizations began actively to seek out other sources of funding. The improved relationship with the private bar was the key to their ability to find such funding. The first Interest on Lawyers’ Trust Accounts (IOLTA) Program began in Florida in 1981 and quickly spread around the country. Previously, private attorneys deposited money held for a client for a short amount of time, such as in real estate transactions, in noninterest-bearing accounts. The IOLTA programs required attorneys to deposit these funds in special interest-bearing accounts; then they used the aggregated interest to fund various programs related to the courts, with civil legal assistance programs for the poor getting most of the money in most states. Today, every state has an IOLTA program and its constitutionality has been upheld by the Supreme Court (*Brown v. Legal Foundation of Washington*, 538 U.S. 216 [2003]).

Each state has unique rules for its IOLTA programs, and the mechanics of the programs have changed over time. For example, some state IOLTA programs can only fund

LSC-funded legal services entities, while other states can fund non-LSC-funded entities. Some states require all attorneys to participate in IOLTA, while other states maintain some form of a voluntary structure. Despite the resulting disparities in IOLTA funding, IOLTA programs have become the second or third largest contributor to legal services for the poor in most states. For example, North Carolina's IOLTA program awarded around \$3.3 million in IOLTA funds in 2006, with \$2.5 million of this money going to various legal services offices throughout the state. Legal Aid of North Carolina, the umbrella group for federal funding purposes, received almost \$1.5 million.

The other major new sources of funding are state and local governments. President Reagan's devolution of other social welfare responsibility trickled down into the realm of legal services because of the funding cuts to LSC. State legislatures across the country began to contribute funding to their state offices. However, even more than IOLTA, this funding is widely unequal across the states. Data from the LSC show that between 1996 and 2007, average non-LSC funding for LSC recipients ranged from \$42.87 per poor person in New Jersey to \$0.10 per poor person in Connecticut. State appropriations varied even more dramatically. New Hampshire, Delaware, Wyoming, Connecticut, Vermont, and Alabama have never provided direct state appropriations to LSC-funded organizations. On the other extreme, the State of New York provided over \$31 million in 2008 and 2009. The levels of funding do not break down easily into North and South, East and West. North Carolina provided more than \$6 million in 2008, and Tennessee, Kentucky, Virginia, Missouri, and other Southern states have stepped up state funding as well. Accounting for the disparities in state level funding and the effects that this funding has on the service level will be discussed more in chapter 3; however, the lesson at present is that the loss of federal funding in 1982

was offset to differing degrees around the country by funding from other sources. The improved relationship between the private bar and legal services was a driving force in securing these funds.

Three key lessons remain from President Reagan's retrenchment efforts in the realm of legal services. First, the institutional structure of the LSC as an independent corporation provided an insurmountable obstacle for executive-led retrenchment in the face of congressional opposition. Second, the unintended consequences of short-term, ideologically based policy decisions provided long-term support for the very program Reagan sought to abolish. Finally, the relationship between the private bar and legal services organizations is essential to their survival.

Though the federally funded legal services program survived the Reagan Administration's attempt to abolish it, the legal services community understood from Reagan's limited successes that it was in fact vulnerable to concerted political attack. It prepared for other attacks by diversifying its funding base and shoring up its relationship with the private bar. These preparations served the community well when the next attempt to retrench federally funded legal services arose after the 1994 congressional elections in which a wave of "new conservatives" gained majorities in both the House and Senate. The different institutional players this time around led to a deeper retrenchment, though LSC once again survived full elimination. The following section on congressional retrenchment briefly describes this process and the difference between it and the retrenchment efforts of Ronald Reagan. Chapters 2, 3, and 4 will analyze in detail how specific aspects of the mid-1990s congressional retrenchment efforts affected the organizational structure and service levels of the legal aid community in North Carolina.

Congressional Retrenchment: 1995-1996

The administration of George H.W. Bush brought a slight upswing in funding for the LSC, and the arrival of President Clinton in 1992, along with a Democrat controlled Congress, promised significant changes in the future. By mid-1994, things appeared headed in that direction. Congress set the 1995 LSC budget at \$400 million, the largest increase since the early years of its history, and Congress was preparing to reauthorize the corporation for the first time since 1977. In addition, the Senate had confirmed all of President Clinton's nominees to the LSC Board and the new Board supported a stronger, more active LSC (Houseman & Perle, 2003).

This air of hopefulness within the legal aid community was shattered by the election of the 104th Congress in 1994, which made federally funded legal services a priority in their attempts to streamline government. Like the Reagan Administration, the new Republican Congress was vehemently opposed to the LSC's law reform efforts, which it viewed as promoting a liberal agenda. Again, the critics failed in their attempt to abolish the LSC, but their failure resulted in another compromise that maintained the LSC as an organization and limited what grantees could do with the funds. The main difference this time was the vast amount of restrictions that Congress succeeded in placing on legal services as the price of its continued existence. Indeed, by the end of 1996, the legal aid model had seemingly replaced the legal services model for LSC-funded organizations (Quigley, 1998).

The attempt to eliminate the LSC during the 1990s occurred in a very different political climate than the Reagan retrenchment efforts. A Democrat occupied the White House and Republicans controlled both houses in the Congress for the first time in 40 years. Therefore the attacks this time came from Congress, while the Executive Branch attempted to

hold them off or mitigate their effects. During its first year in power, the 104th Congress introduced the Legal Aid Grant Act of 1995, which sought to abolish the LSC and replace it with a system of block grants made to state administrative bodies that would in turn fund local “judicare” programs. Although Congress did not pass the Legal Aid Grant Act, its introduction and debate provide the best evidence of congressional intent for the restrictions eventually passed in similar form as riders to an appropriations bill.

Under the Legal Aid Grant Act (1995), funding for the LSC would have dropped by one-third in FY 1996 and two-thirds in FY 1997, and be completely eliminated after that. A later amendment extended funding through 1999. The idea was that the phase out of federal funding would allow providers a transition period during which they could look for alternative forms of funding. Thus, “[t]he Committee’s intent is to scale down the federal commitment to legal services in order to prepare the State to assume responsibility for providing legal aid in cooperation with the Bar and the private sector” (House Report 255, 1995, p. 8). Ironically, the model for the Legal Aid Grant Act was the evolution of the OEO’s Community Action Program. After the OEO became the Community Services Administration (CSA), Congress replaced the CSA with the Community Services Block Grant (CSBG) Program in 1981. Proponents cited two main advantages to the model of the block grant: (a) decision-making authority rests on the state level where there is a better understanding of the needs of the community; and (b) the block grant fosters a “better working relationship” among providers and the private bar (House Report 255, 1995, p. 9).

The new block grants would have been accompanied by a series of restrictions on the types of cases and activities recipients could engage in. The intent of the sponsors is clear from the bill’s title—they sought to eliminate the legal services model and replace it with a

legal aid model of individual representation, the responsibility for which would fall to the states. The most draconian of these restrictions was a prohibition on challenging the constitutionality of any law. Conservative opponents of federally funded legal services learned from the string of Supreme Court cases starring *Goldberg* and *Shapiro* that access to the courts for the poor could have a dramatic effect on their ability to legislate their ideological aims. This restriction, although eventually stripped from the appropriation rides, signaled the transparency with which the new conservatives attacked legal services.

Frustration and anger with the reform activities of LSC grantees took center stage in the hearing process on the Legal Aid Grant Act (1995). There were three days of hearings on the Legal Aid Act in May and June of 1995. The second day focused almost entirely on the testimony of opponents of the LSC. Of the 15 expert witnesses called by the Committee on the Judiciary, only one professed any kind of support for the LSC—John McKay. McKay, a Republican supporter of the legal aid model, would play a major role in the organizational development of legal aid in the late 1990s and early 2000s as chairman of the LSC Board under Clinton. The other witnesses heard by the committee constituted an all-star team of LSC opponents, several of whom came from North Carolina. One of particular note was Stan Eury of the North Carolina Grower's Association. Eury and Farmworkers Legal Services of North Carolina have a long history of antagonism. His testimony represented a set of "horror stories" that reform activities had on distinct sets of interests groups, usually business or government. Other witnesses included the former OEO acting director, Howard Phillips (then chairman of the Conservative Caucus); the National Legal and Policy Center director, Kenneth Boehm; and three separate directors of urban housing authorities.

The contradictions between the Committee's stated intent and its actions were striking. Their principal stated goal was to increase the percentage of the poor who were being represented by federally funded programs, but they did so by eliminating entire classes of the previously eligible population from representation and reducing funding to the remaining population. The Committee noted:

It is generally acknowledged that LSC programs provide assistance to less than 20 percent of the poor in this country. That figure becomes even more stressing when it is coupled with the fact that LSC money and manpower is liberally expended helping illegal aliens, prisoners, and those who public housing authorities and tenant associations have sought to evict for illegal drug activities. (House Report 255, 1995, p. 9)

Second, the sponsors touted local control as being the best way to respond to local needs while enacting a strict list of priorities in which recipients might engage:

The purpose in specifying qualified causes of action is to prioritize a provider's use of limited time and resources. Class actions and constitutional challenges are explicitly excluded . . . due to the fact that the complexity of those actions necessarily consume inordinate time and resources of legal services lawyers to the detriment of unserved eligible clients. (House Report 255, 1995, p. 21)

All of the witnesses, continued the committee, "overwhelmingly implored" it to make such restrictions (House Report 255, 1995, p. 21). The dissenting Senators on the committee issued a concise repudiation: "By adopting an approach that identifies what is permissible and excludes everything else, HR 2277 substitutes the judgment of Congress about what is important for that of the local communities where the needs are felt and confronted every day" (House Report 255, 1995, p. 66).

The introduction and debates surrounding the Legal Aid Grant Act (1995) illustrate the new politics of legal services created by the successes of the OEO program and the emergence of a new conservatism. The horror stories described by Congress in 1996 are essentially the same stories used by the Reagan Administration in the 1980s, and the same

stories that the most recent House Republicans are now rehashing. The basic lesson is that federally funded legal services are bad because they achieve policy results with which their opponents disagree. The link to the broader debate over judicial activism versus judicial restraint is clear. Judges can only decide cases brought before them. Lawyers, then, play a large role in setting the policy agenda for courts. The best way to prevent the poor from gaining access to the policy agenda is to eliminate their access to attorneys. Although it sounds quite cynical, the language and actions of the 104th Congress leave little doubt as to its intentions—the new brand of conservatism does not provide for even procedural access.

In the end, the Legal Aid Grant Act (1995) passed the House of Representatives, but never made it out of committee in the Senate. The reasons were complex, but essentially boiled down to the inability of Congress to pass a stand-alone reauthorization bill for the LSC or to create a replacement for it. All of the changes made to the LSC by the 104th Congress were instead placed in an appropriations bill once again. However, 1995 happened to be a particularly bad year for appropriations, resulting in two separate shut downs of the federal government as President Clinton vetoed the appropriations bills passed by Congress. Thus, as part of the larger budget package, the opponents of the LSC accepted less than full retrenchment of federally funded legal services and the continuation of the basic structure of the LSC. However, they succeeded in drastically cutting funding to the LSC and implementing a new, comprehensive set of restrictions on the use of that money. LSC, in other words, ended up on the losing end of the policy priorities of Clinton and Congressional Democrats.

The LSC lost over 32% of its budget, dropping from \$400 million in 1995 to \$278 million in 1996. Although the funding cuts were severe, it was the series of restrictions that

Congress passed that resulted in the “demise of law reform” for LSC recipients (Quigley, 1998, p. 241). In all, Congress placed restrictions on 19 substantive activities of grantees.

The most important are the following eight restrictions:

- Prohibited involvement in class action lawsuits, including filing amicus briefs.
- Prohibited representation of undocumented and temporary immigrants.
- Forbid LSC-funded attorneys from receiving attorneys’ fees under fee-shifting statutes aimed at increasing access to justice.
- Forbid participation in administrative rule-making procedures.
- Forbid challenging the constitutionality of a state or federal welfare statute.²
- Prohibited the solicitation of clients.
- Increased the scope of prohibited activities associated with lobbying.
- Forbid the use of funding from *any source* for activities restricted by Congress. (Public Law 104-134, 110 Stat. 1321, emphasis added)

Each of these restrictions had significant impacts on particular organizations within the legal services community. However, the single most important restriction is the last restriction listed above—no LSC recipient could use funding from any source to engage in restricted activities. This so-called “poison pill” restriction would have the most profound impact on the structure of legal services at the state level. This will be addressed in detail in Chapter 2.

Congress also imposed a series of new administrative requirements on organizations receiving LSC funds. Attorneys and paralegals had to keep contemporaneous time records on all cases and matters, kept in tenths of an hour. Each organization’s board of directors had to establish a set list of priorities outside of which attorneys could not operate except with express permission. Congress also established a competitive grant process by which organizations had to vie for funding, something Congress explicitly rejected during the 1980s. All of these minor adjustments added up for local offices. Downsizing occurred across the country and significant time was lost in training staff in the new requirements. Congress had

² In *Velázquez v. Legal Services Corp.* (531 U.S. 533 [2001]), the Supreme Court found that this provision violated the First Amendment and it was severed from the legislation.

failed in its “frontal assault,” much as Reagan did. However, because Congress was leading the attacks in the 1990s, it was able to pass these restrictions and significantly hamper the daily work of legal service attorneys and their offices.

The attack on the LSC by the 104th Congress did not stop with the passage of the new restrictions in 1995. The new administrative requirements included, among other things, frequent audits of cases handled by LSC attorneys by the Inspector General’s office. Unsurprisingly, these audits turned up evidence that federally funded offices were not keeping up with all of their new duties. This resulted in dozens of hearings, condemnations from the floors of Congress, and an increased lobbying effort by private, conservative organizations that sought to abolish the LSC. An especially interesting round of criticisms erupted when it emerged that several federally funded organizations had decided to stop receiving federal funds after 1996 so as not to be subject to the restrictions imposed by Congress. Most of these were simply spin-offs of LSC-funded offices, although they were required to be physically and legally separate. Kenneth Boehm, the director of the Legal Services Accountability Project of the National Legal and Policy Center—and probably the nation’s leading private critic of federally funded legal services—testified to Congress that the North Carolina Justice Center, which used to be a part of Legal Services of North Carolina before splitting off in 1996, unlawfully rented space from Legal Aid of North Carolina in Raleigh (Boehm, 2002).

Nevertheless, the LSC survived again and for largely the same reasons as in the 1980s: Republican support in the Senate and the efforts of the organized bar. The Republican champion of legal services in the 1990s was Pete Domenici of New Mexico, who offered and defended an alternative to the Legal Aid Grant Act (1995) that eventually became law.

Domenici was a senator during the Reagan administration attack on LSC, so he witnessed Rudman's efforts to defend it. In fact, Domenici used several of the same tactics. He proposed reduced funding and increasing restrictions on LSC activities as a way to cut down on the "abuses" opponents cited and yet ensure that the involvement of the federal government continue in such an important arena.

The bar also played a large role this time, although several other prominent groups joined it. Indeed, the primary difference between the political debate during the 1980s and 1990s was the sheer number of actors on both sides of the stage. Pro-LSC groups included the Center for Law and Social Policy, the Brennan Center for Justice at New York University, and the National Legal Aid and Defenders Association. Some of the most prominent opponents were also new players. Perhaps the most visible was the Legal Services Accountability Project of the National Legal and Policy Center, a project whose stated mission is to document legal services abuses. Other opponents included several governmental agencies, both state and federal, and a variety of business interests tired of being sued by legal services. Thus, the actors mirrored the parties to a typical court action in a poverty case. The organizations involved in the provision of legal services went up against interest groups representing the people who were most often sued. This reflected the newly explicit substantive policy concerns with the provision of legal services and illustrated the vital importance of the lobbying efforts of the organized bar.

Conclusion

Pierson (1994) found that social policy retrenchment efforts vary widely both within and across policy areas. Even within the same program, he argued, some retrenchment efforts were more successful than others (Pierson, 1994). The reason for the differences lies in the intersection of “three contextual factors: organized interests, institutions, and program designs” (Pierson, 1994, p. 164). It is clear that full retrenchment from federally-funded legal aid was not a realistic goal of reformers. The presence of significant organized interests opposed to such retrenchment, the durable institutional form of the LSC, and program decisions such as the PAI requirements combined to create a thoroughly inhospitable retrenchment environment.

However, it is also clear that law reform suffered much more than individual representation during the retrenchment process, and that Congress was more successful than President Reagan at reducing government involvement in direct reform activities. There are several reasons for this. First, the power of the organized bar presented a significant obstacle to both retrenchment efforts, but it was a bigger obstacle to President Reagan because of the design of the LSC. Though nominally under executive control, the LSC sat at the crossroads of a significant separation of powers divide, and the unwillingness of Congress to defer to Reagan resulted in minimal retrenchment. In the 1990s, however, it was Congress itself seeking to withdraw the federal government from the provision of legal services. While the organized bar and other groups posed substantial resistance, the relative authority of Congress over LSC, when compared to the executive’s authority, allowed it to be more successful.

Second, while it is both difficult and costly to use individual cases to effect policy change in the courts, the political dangers involved in denying purely procedural access are high. Congress succeeded only in retreating from law reform activities because the institutional legitimacy of procedural access remained strong across partisan lines in the Senate. The “new conservatives” of the Contract with America did not control the Senate like they did the House, as indicated by the presence of a strong Republican advocate in Pete Domenici. Reform activities, however, provide much higher risks for both sides and therefore provided a feasible grounds for compromise. For opponents of federally funded legal services, the risk of suffering substantive policy defeat is greater through lobbying, class actions, and other reform activities than it is for individual service, and the cost of restricting those activities is relatively low. For supporters of federally funded legal services, the political backlash of the Reagan Administration and the 104th Congress showed quite concretely the high risks of insisting on reform-focused activities. For advocates already wary of the professionalization of the antipoverty movement, the risks are simply too high to justify the expenditure of resources protecting those activities. The risk-reward calculus for legal aid, then, as opposed to legal services, resulted in the continuation of a popular social services program. “While the apolitical nature of service to groups and individuals is debatable, the potential for aggregate impact from strategically targeted service to similarly situated clients seems to be understood as an appropriate dimension of access” (Charn, 2009, p. 1026).

A third factor that allowed for retrenchment in law reform activities is not clear from the political history described above—the agency of the legal services providers themselves. Legal services communities across the country responded to the federal retrenchment in a

variety of ways. Some chose to accept the limitations on law reform activities; others, however, did not. The next chapter describes how the community in one of these latter states—North Carolina—responded to the federal changes and maintained a vibrant reform agenda even after the large-scale withdrawal of the federal government in the 1990s.

Chapter 2: One Community's Response—Literature, Questions, and Methods

The dominant organizational concern in legal aid is the question of control. Generally, this concern is divided along three axes: funding and its concomitant restrictions, the prioritization of limited resources, and personnel decisions. Control over each of these axes provides a substantial measure of power over the types and levels of services provided by legal aid organizations and, in turn, their effectiveness as an antipoverty tool. Without material resources, legal aid cannot exist. If those resources are inadequate, if they support only certain legal strategies, or if they limit the classes of people eligible to be served, full representation is not possible. If full access is impossible, the manner in which these limited resources are allocated determines the types of service provided and to whom they are provided. In turn, the availability of resources and decisions about their allocation construct the incentive structure for potential legal services lawyers and staff. The ability to hire and fire staff based on the level of match between the incentive structure and the supply it creates seals the organizational design by perpetuating the model desired by those with control.

The primary debate in legal aid delivery models is whether these three axes should be controlled at the local level or the central level. A second question is whether lawyers or clients should maintain this control. A third question is whether the overall legal profession (mostly the private bar) or legal services attorneys are the appropriate players in that debate. The organizational structure of legal aid at any point in time reflects the interplay of the answers to these questions of control. The structure institutionalizes the decisions and

compromises that the parties involved make, and each structure provides a new starting point for future discussions. Old ideas and arguments do not disappear; they are simply dormant in the minds of those who lost earlier battles. They resurface every time the players move to reconfigure the structure. However, they are in a less powerful position each time they do not carry the day because institutions are path-dependent; deviating from the path becomes more difficult over time.

The entry of the federal government into the realm of potential players in legal services provision arose out of economic concerns about market failures in the delivery of legal services in general. The inherent nature of the law as a public good required some form of collective action to assure its delivery to those who are unable to afford to buy it on the private market. The presence of a growing antipoverty movement and the federal government's push for its role in the overall provision of social services has made its involvement in legal services seem natural. However, the federal government's entry on the legal aid scene forever changed the institutional landscape of legal services provision. The government's infusion of large amounts of funding into legal services meant that a new, generally dominant player had entered the struggle for control of legal services.

As federal-level policy towards legal aid changed over time, so did the institutional structures of the game and the organizations that played. Nonfederal sources of funding and political battles at the state, local, and legal aid community levels added additional dimensions to the structure. Feedback between the organizational players and political institutions further changed the structure of provision and the politics that determined that structure. Legal aid organizations responded to this evolving institutional environment by adapting to or resisting its changes. Their response at various times had a major impact on

the levels and types of services they provided to the poor.

The legal aid community in North Carolina has undergone a series of organizational changes over the past 30 years. Starting largely as a group of independent organizations in the 1960s, the federally funded community transformed first into a confederated structure akin to the University of North Carolina system and then into a fully centralized structure more comparable to a hub and spoke system of organization with substantial oversight of the major activities of the local offices. Furthermore, starting in 1995 the overall statewide community split into two subpopulations—one that received federal money and one that did not. To comply with new regulations, they created a wall between the two subgroups, but the wall was quite porous. Systems of centralized oversight, even of the non-federally funded organizations, have developed over time and levels of cooperation are generally high.

The community today consists of 24 federally funded and jurisdictionally separate local offices, as well as six statewide and two regional offices specializing in certain substantive areas, all under centralized management. There are also two independent, *non-federally funded* local offices and five independent, *non-federally funded* statewide organizations. Several state and local bar association programs, law school clinics, a statewide Equal Access to Justice Commission, and various public and private funding groups round out the community. Thus, the overall picture is one of a state that appears to have successfully adapted to a changing institutional environment. However, the process of getting there was neither easy nor smooth, and its analysis over time provides important insights into the effects of institutional and organizational change on service provision.

The remainder of this chapter outlines the specific research questions asked in light of the existing literatures on organizational behavior and service provision in the legal services

context. In general terms, I ask first how one community actually responded organizationally to the federal retrenchment under its unique institutional environment, and second, how the combination of retrenchment and these organizational responses affected the levels and types of service the community provided. Each literature, question, and methodology used will be addressed separately.

Examining Organizational Response

Brescia et al. (1997) describe two factors affecting organizational development and structure in legal aid organizations. The first is the external environment in which they operate, such as the level and sources of funding, the number of organizations competing for resources in the environment, and the legal and contractual rules by which they are bound. The second is the internal environment created by the method of service delivery chosen (Brescia et al., 1997). I believe that the two, however, are not completely distinct. The external environment largely dictates the types of service delivery possible, while internal decisions to adopt a particular delivery model may also affect the amount of resources available. The reason for this, I argue, is that legal aid communities are mission-oriented groups that require non-material resources such as legitimacy in order to obtain the material resources necessary for actual operation and growth.

Nevertheless, organizations undoubtedly are embedded in an institutional environment that affects decision-making processes in important ways (Granovetter, 1985). The complex relational structure of political systems makes them more amenable to an analysis based in an “embedded logic of exchange” rather than the economic logic of markets (Uzzi, 1996, p. 675). Drawing on the network form of organization proposed by Powell

(1990), Uzzi (1996) suggested that an “embedded logic of exchange promotes economic performance through interfirm resource pooling, cooperation, and coordinated adaptation, but that also can derail performance by sealing off firms in the network from new information or opportunities that exist outside the network” (p. 675).

Exchange relationships between organizations develop primarily for two reasons: specialization and scarcity (Cook, 1977). Operating within a resource-scarce environment requires that those resources be employed in as efficient a manner as possible. This often requires specialization to develop, accompanied by trade between the specialized organizations. Organizations embedded within an overly isolated network face structural holes (Burt, 1995) between themselves and other actors who are necessary for long-term success. An ability to maintain weak ties between themselves and such actors increases their ability to exchange crucial resources (Granovetter, 1973) Thus, to survive and perform efficiently, organizations must neither become isolated nor enter a network that is too far removed from organizational members.

The Resource Dependence Model of organizational behavior begins with the assumptions that resources are scarce and that organizations cannot self-produce all of the resources necessary for survival (Aldrich, 1976). Although these assumptions mirror those of historical institutionalism, the focus in organizational theory is on organizational response to changing resource environments. A reduction in resources available to a population will lead to a reduction in population size through organizational deaths (Pfeffer & Salancik, 1978). Therefore, organizations must compete for these limited resources to survive. However, in the process organizations become dependent on the relationships and structures that allow them access to resources (Pfeffer & Salancik 1978). Organizations must make a tradeoff

between autonomy and survival (Aldrich & Ruef 2006).

The ability to secure the material resources necessary for survival often depends on the ability to secure other types of resources. According to DiMaggio and Powell (1983), “Organizations compete not just for resources and customers, but for political power and institutional legitimacy, for social as well as economic fitness” (p. 150). The Density Dependence Theory argues that the number of organizations within a population is directly associated with the level of legitimacy of that population (Hannan & Carroll, 1992; Hannan & Freeman, 1989; Meyer & Rowan, 1977). Minkoff (1994) looked at the cross-effects of density dependence within a population to explain how “the expansion of one set of organizations (such as service provision or protest) promotes or constrains the expansion of other types of action (such as advocacy)” (p. 944). When one type of organization has more legitimacy, it comes to dominate the institutional landscape, and other organizations pursuing the less favored activities cease to exist (Minkoff, 1994).

In their study of day care facilities, Baum and Oliver (1992) used the concept of relational density, which they defined as the “number of formal relationships between the members of a population and key institutions in the environment” (p. 540). They claimed that higher levels of institutional linkages are associated with higher rates of legitimacy and lower failure rates (Baum & Oliver, 1992). In fact, higher levels of institutional embeddedness (as opposed to detachment) result in opposite rates of failure. According to Baum and Oliver (1992), organizations that are institutionally embedded have an inverted U-shaped rate of failure, while detached organizations display a normal U-shaped rate of failure. Thus, reasoned Baum and Oliver, organizations can garner legitimacy from their relationships with environmental actors such that they increase their chances of survival.

The major problem facing legal aid communities after the retrenchment efforts of 1982 and 1995 was one of developing the necessary ties to their sources of institutional legitimacy. The collective action problems faced by legal aid are not based on inducing individuals to join the cause (Wilson, 1956). Instead, the primary collective problem is how to organize the organizations so as to assure maintenance and effectiveness across broader jurisdictional territories than that covered by individual offices. The mission-oriented, but professionalized nature of legal aid organizations presents a unique incentives problem. Problems of free-riding are especially present in the context of the provision of costly reform activities (Wilson, 1956). Organizations faced with an uncertain and limited resource base have an incentive to let someone else change the law. Furthermore, differences in goals amongst both the leaders and the staff members of the individual organizations make coordination difficult (Shepard, 2007).

The dominant view of organizational theory historically held that organizations, once formed, submit to an *iron law of oligarchy* in which the interests of leaders gradually subsume the articulated goals of the organization and those of the people the organization represents (Michels, 1958; Lipset et al., 1977). However, research that is more recent has shown that this “law” is not necessarily universal in its application. Many organizations are able to maintain their collective set of goals that were established at their formation (Knoke, 1990; Jenkins, 1977; Minkoff, 1998; Zald & Ash, 1965), despite problems that might yet arise internally over the proper strategy to achieve those goals.

As non-profit, mission-oriented firms, legal aid organizations seek different “economic” outcomes than typically examined firms. Instead of seeking to maximize profit, they aim to maximize the level of services they can provide in a scarce resource environment.

To accomplish this, they must first establish and maintain legitimacy in the eyes of key resource bases. Legitimacy is a broad phenomenon and has been variously found in shared societal values (Parsons, 1960; Pfeffer & Salancik, 1978), cognitive belief systems (Meyer & Rowan, 1977), and institutional rules flowing from proper authorities (Weber, 1964). Suchman (1995, p. 574) provided the following definition: “Legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definition” (as cited in Ruef & Scott, 1998, p. 878). Legitimacy is a long-term consideration. As mentioned earlier, long-term consequences do not translate well into the short-term incentive structure of most politicians (Pierson, 2000). Thus, the expansion or contraction of legitimacy for a given population of organizations is especially susceptible to poor institutional design and unintended consequences.

This legitimacy is composed of two strands, each representing half of the historic bifurcation between individual representation and law reform (or advocacy) models of legal aid provision. Political and social actors spanning the political spectrum maintain belief structures either conferring or withholding legitimacy from each of these strands. For example, far-right Republicans tend to withhold legitimacy from both strands, while more moderate Republicans tend to grant legitimacy to service provision while withholding it from advocacy activities. Some moderate Democrats also exhibit this dichotomy, but most Democrats grant legitimacy to both strands. Some on the far left, however, fear the professionalization of the anti-poverty movement inherent in large-scale federal support for legal aid and may withhold legitimacy from either or both. While these generalizations are

helpful, identifying where various actors stand often requires a deeper understanding of their positions within the broader social and political environment.

There are three crucial sources of institutional legitimacy necessary to the survival and effectiveness of legal aid populations. While the three overlap to a significant degree, it is useful to separate them for analytical purposes. The first lies within the realm of the macro-level political process, the second within the professional community of lawyers, and the third within the broader community of social service and anti-poverty organizations. These sources, however, often have competing interests, resulting in the impossibility of maximizing legitimacy in the eyes of any one at the expense of another. For example, acquiring the political support necessary for continuation of the federal program in the face of retrenchment efforts required coalitions between actors across these three arenas who granted different types of legitimacy depending on the service type. Legal aid communities must walk a fine line between these sources and must be able to adjust their trajectory to changing political, social, and economic conditions. Time and space play crucial roles in determining the effectiveness of any given form of network structure.

The formation of relationships between organizations and sources of legitimacy might be explained by the concept of institutional isomorphism (DiMaggio & Powell, 1983). Following the leads of Kanter (1972) and Aldrich (1979), DiMaggio and Powell (1983) emphasized the importance of institutional isomorphism and historical context in situations of increased government regulation and intervention. For analytic purposes, DiMaggio and Powell identified three types of institutional isomorphism: coercive, mimetic, and normative. Coercive isomorphism is generally the result of government regulation; therefore, it concerns political influence and political legitimacy. Mimetic isomorphism occurs when organizations

copy the successful structures of other organizations, without regard to whether the adoption of the structure will actually help or hurt them. DiMaggio and Powell believed that normative isomorphism is generally the result of professionalization.

Applying institutional theory to nonprofits, Barman (2002) argued that nonprofits that hold monopoly power over their constituents would conform to changing external rules and government regulations, while those in competitive situations will focus on differentiation from similar nonprofits in an attempt to collect scarce resources. Legal services organizations straddle the line between monopoly power over their constituents and competition due to the unique set of institutions in which they operate. As those institutions have changed over time, so has the organizational response. Furthermore, the degree of competition within the legal services community has covaried with the levels of individual and organizational commitment to a broad collective purpose.

One weakness in the institutional literature has been that many researchers tend to focus on explaining “legitimation processes, organizational conformity and enduring organizational change” at the expense of seeking an understanding of the reverse processes (Oliver, 1988, p. 564). According to Oliver, deinstitutionalization is “the process by which the legitimacy of an established or institutionalized organizational practice erodes or discontinues” over time (p. 564). Oliver further suggested that understanding the causes of deinstitutionalization would help explain when “institutional pressures are least likely to exert an enduring influence on organizations” (p. 564). Deinstitutionalization also helps predict when pressures for conformity fail to produce their intended effect. Oliver identified five pressures that act to preserve or dissolve specific organizational practices: political, functional, social, entropy, and inertial. Oliver believed that complete “rejection” occurs

because of “direct assault on the validity of a long-standing tradition or established activity” (p. 567).

The questions I seek to answer in in terms of organizational responses are the following: *how did the legal services community respond organizationally to the retrenchment efforts at the federal level? How well does the existing theory predict these responses? What can a detailed analysis of the community’s response add to our understanding of organizational behavior in mission-oriented groups?* My hypothesis is that the PAI requirements imposed in the 1980s allowed the community to establish and strengthen its ties with the private bar, providing key political and professional legitimacy to the community. This expanding legitimacy resulted in a broader resource base for the community. The 1995 federal prohibition on using non-LSC funding to perform prohibited activities forced an organizational split in the aid community that allowed some organizations to continue law reform activity directly while maintaining indirect network ties to federal subsidization. The de-institutionalization of law reform at the federal level was in essence offset by its growing legitimacy from non-federal sources of funding. While the drastic cuts in federal funding led to increased reliance on state and local-level funding sources, this has the side effect of forcing tighter connections to other community organizations. All of these policies resulted in a network structure of organization more robust to future changes in policy or resources.

Methods and Data

I examine the responses of the legal aid community to federal retrenchment efforts through a detailed, single-case study of North Carolina. My unit of analysis is the entire

statewide network of legal aid organizations, broadly defined to include any organization that plays a direct role in the provision of legal services for the poor. It is particularly important to analyze not merely the actions of a few organizations within the context of their broader network, but also to think in terms of the network itself as the organization or community (Contractor, Wasserman, & Faust, 2006).

Yin (2003) argued that case studies are appropriate for both descriptive and explanatory purposes. Historical or experimental approaches would also be appropriate (Yin, 2003), and I employ historical methods through archival research and interviews with key players. Explaining mechanisms of institutional and organizational change requires a high level of richness and nuance in the data examined. Capturing the changes in the structure and the levels of service over time is difficult through quantitative measures alone. This requires a qualitative approach to complement and enrich the available quantitative measures. Case studies are particularly useful tools for assimilating quantitative and qualitative measures.

Following the theoretical lines discussed above, a case study of North Carolina will describe the process by which the institutions (rules), organizations (players), and feedback between the two affected the evolution of legal services provision in North Carolina and the levels and types of services provided (outcomes). Changes in each of these three aspects of the process affected the distribution of control over the key aspects of the community: funding, case priorities and strategies, and personnel decisions. Interwoven among all of these processes and community aspects are debates about local versus centralized control and attorney control versus community control that have dominated not only the legal services movement, but also the broader antipoverty movement from which it emerged. It is a complicated history and one from which it is difficult to draw concrete causal relationships.

History itself is a major player, and one from which much of the irrationality of decision-making springs. Variable independence therefore is almost completely lacking. It is for these reasons that the case study approach of this project is the best method of elucidating what has transpired.

North Carolina was chosen as the case for this study for two primary reasons. First, the legal services community in North Carolina has experienced changes typical of other statewide communities across the country. Describing the process through which the community consolidated its LSC-funded programs and created a separate, but integrated non-LSC funded community illuminates the feedback effects of politics and policy within a particular institutional environment, providing the basis for comparative studies in the future. Furthermore, testing the effects of these organizational responses on service levels in North Carolina provides an important foundation from which other communities can learn. Second, as a former legal services attorney in North Carolina, I have access to the data and key figures in the community necessary to conduct an in-depth study.

The changes in legal aid policy and the context in which they took place come from both primary and secondary documents. Changes in the actual policy are documented through the appropriate laws, regulations, program guidance letters, and court decisions. The political, economic, and social context within which these changes occurred is aggregated from secondary sources as well, while interviews with key players in the legal aid community help explain their impact.

Data on the structure of the legal aid community and the levels of service provided come from several quantitative and qualitative sources. Triangulation of data is important in case studies to assure measurement validity (Yin, 1999). The primary sources of quantitative

data are the legal aid offices in North Carolina and the Legal Services Corporation in Washington, D.C. Data on non-LSC funded organizations also come from other funding sources in the state. Some of the data go back as far as the early 1980s, but the majority of the data is post-1996. The focus of this study is on the effects of federal institutional changes beginning in 1995; therefore, the data from 1996 forward are sufficient for most of the purposes of this research.

Qualitative information was obtained through in-depth interviews with ten key actors in the legal aid system in North Carolina. I did not employ a standard survey instrument because the purpose of the interviews was not to obtain standardized data, but to paint a richer picture of the transformation of legal aid over time. Interviewees were selected based on their position within the legal aid community, their length of time in legal services (in North Carolina or elsewhere), and their particular role within the community. Table 1 lists the names and attributes of each interviewee. The interviewees had experience in both LSC-funded and non-LSC funded organizations in North Carolina and in other states. Most of the interviewees had served as the director of a legal aid program at one time and one interviewee is the long-standing director of the state's IOLTA program, one of the key sources of non-LSC funding. The time span covered by the experience of the interviewees in North Carolina runs from 1974 to the present. All but one of the interviewees continues to work within the legal services community in the state.

A principal problem in designing case studies lies in the ability to establish measurement validity through correct operationalization of the variables to be studied (Adcock & Collier, 2001). The essential idea is to ensure that a variable actually measures what it is supposed to measure (Bollen, 1989). Subjectivity in the data collection process and

in the data themselves can weaken the validity of the study. Yin (2003) suggests two steps to overcoming problems with subjectivity: 1) Selecting specific types of changes to be studied; and 2) Demonstrating that the measures used to capture change are appropriate.

Variables were selected to test my hypothesis that federal institutional change resulted in a more robust network in the legal aid community, which in turn allowed for diversified funding sources and the maintenance of legitimacy in the eyes of key players. Table 2 summarizes the operationalization of organizational variables. The institutional changes will be established by using primary documents. Federally funded organizations in North Carolina are placed within the national context through data from the Legal Services Corporation. These data provide the amount and sources of funding for every LSC recipient in the country, as well as the numbers of cases closed by each recipient. The cases closed are broken down both by substantive area (e.g., housing, consumer, or family) and the level of service provided (e.g., extensive service, advice and counsel, litigation, or settlement). Variations in both funding and service levels can be ascertained from this data.

The evolution of the legal services network in North Carolina is described by using data collected from all legal aid organizations in the state, as well as from the primary sources of nonfederal funding. These sources provide quantitative data on organizational births, deaths, and substantive areas of coverage. I will use information gathered through interviews to deduce the motivations and intentions of the decision-makers in the process. The presence and strength of ties between the key players within the community also emerge largely from these interviews, but are strengthened by a limited amount of quantitative measures. These include the construction of an impact litigation network and its evolution over time through a dataset of all reported cases in the North Carolina Court of Appeals and

the North Carolina Supreme Court in which any member of the legal services community in North Carolina participates.

I operationalize the level of legitimacy of legal aid organizations over time as changes in the sources and levels of funding, as well as the various restrictions that funding sources place on the use of their money. Parsons (1960) argued that organizations are legitimated when their activities are aligned with broader societal goals. In situations of limited resources, the relative allocation of those resources to certain organizations or activities over others indicates their relative level of legitimacy (Ruef and Scott, 1998). Decreasing levels of funding represent decreasing legitimacy from that funding source, while increasing levels represent the opposite. Similarly, increases in the number and types of funding sources indicate increasing legitimacy in the broader community. Restrictions on the use of funds may indicate increasing legitimacy for those activities not restricted while clearly indicating decreased legitimacy for those that are restricted. For example, Congressional restrictions on the use of federal funding to engage in lobbying demonstrate both the decreasing legitimacy of reform activities in the eyes of Congress while simultaneously increasing the legitimacy of individual service activities because of the change in prioritization in allocating the funding.

Effects on Service Provision

In 1994, just before the election of the 104th Congress, the ABA performed an in-depth study of the civil legal needs of low- and moderate- income Americans. The major findings from the study included the following:

- Approximately one half of low- and moderate- income Americans face at least one situation per year that could be handled by the civil legal system;
- Almost 75% of people in such a situation actually utilize the system, but most do not hire an attorney to help them;

- The principal reasons low-income Americans do not turn toward the legal system is a perception that it will not help and that it costs too much;
- People who do go through the system tend to be more satisfied with the result than those who do not; and
- The vast majority of the people who used a lawyer rated the lawyer high on attentiveness and honesty (ABA, 1994).

In short, low- and moderate- income Americans face yearly situations where they have a need to access the legal system, yet the vast majority of them do not use the system due to fears about cost and utility. Those who do use the system, though, are more satisfied than those who do not.

If the poor face roughly the same number of legal problems in key areas of daily life as the non-poor, and if access to the system results in general satisfaction, the next question is whether the poor are equally able to resolve their problems through the legal system.

Evidence clearly shows that they are not. Miller and Sarat (1981) found that approximately 80% of the legal needs of the poor are not met. The ABA study in 1994 concluded the same, as did a string of state-level studies over the past decade (See, e.g., Washington State Supreme Court, 2003; Massachusetts Legal Assistance Corporation, 2003; Georgia Committee on Civil Justice, 2009; Wisconsin Access to Justice Study Committee, 2007). In 2005, the Legal Services Corporation (LSC) conducted a multi-level study that likewise concluded the level of unmet needs to be 80% (LSC 2005). The LSC study included all civil legal assistance, not just federally funded programs. The study also found that, even for the limited number of people who approach legal services offices, one client is turned away for every client that is served (LSC 2005).

The clear purpose behind the retrenchment efforts of the Reagan Administration and the 104th Congress was to remove the federal government from the provision of civil legal services to the poor and thereby remove a substantial obstacle to their substantive policy

goals in the area of social welfare retrenchment. Failing in their broad goal, they settled for drastically limiting federal funding to legal services and restricting the use of those funds to the point where overt law reform activity was impossible. Despite these efforts, the legal services community apparently has been able to consistently meet 20% of the legal needs of a growing poverty population over the past thirty years. The obvious question is: how did they manage this? A large part of the explanation for this lies in the development of a more diversified funding base and expanding organizational legitimacy, but an equally important part lies within the organizational responses of the community itself to a changing resource environment.

The legal services community in North Carolina responded to these federal changes by diversifying its funding base, centralizing LSC-funded operations, splitting the community into restricted and unrestricted groups, and establishing formal mechanisms of intracommunity cooperation and coordination within a networked form of organizational structure. As mission-driven nonprofit service providers, the purpose behind the organizational responses was to increase the community's ability to provide legal services to the poor of North Carolina. This chapter seeks to understand the effects of these organizational responses on the levels and types of services provided by the overall legal services community in North Carolina.

The primary debate within legal services provision is the proper balance between individual service and law reform. As part of the broader antipoverty movement, many legal services advocates worry that the increased professionalization of movement organizations through an emphasis on law reform diminishes the overall effectiveness of those organizations (McCarthy & Zald, 1977; Piven & Cloward, 1979). Furthermore, research on

the impact of legal mobilization on social movements demonstrates clearly that it is only effective insofar as the movement can secure implementation of policy gains on the ground (McCann, 1994; Andrews, 2001). In many ways, individual service reflects the implementation efforts at the ground level. Law reform might create new rights, but someone must enforce those rights. Effective service delivery, therefore, requires both activities. The heart of the organizational debate is how to balance the legal aid structure in terms of the creation and enforcement of new rights, bearing in mind that the balance will inherently shift over time between the perceived need for one or the other.

The question I seek to answer in terms of service is the following: *how have the federal retrenchment of legal services and the community's response to those efforts affected the provision of both individual service and law reform activities in North Carolina.* In framing the question in this manner, I am explicitly avoiding the debate about which is the better strategy in terms of achieving the broader movement goal of reducing poverty. Instead, I focus on the limited goal of maximizing service delivery under the real-world constraints of the community.

My hypothesis is that the community's ability to engage in law reform was diminished in the short run because of federal retrenchment, but the response of the community allowed it to develop the infrastructure necessary to continue advocacy work in the long run (Andrews, 2001). The need to maintain legitimacy through continued individual representation required that scarce resources initially be put towards those efforts. As new funding sources emerged, the capacity to perform advocacy work returned. The ability of the statewide legal aid community to overcome its collective action problem was the key determinant of its ability to continue to engage in law reform activity. Commitment to a

shared goal amongst organizational leaders and a willingness to put statewide interests above those of individual organizations was necessary for success in coordination. The development of both strong and weak ties to the private bar and to other legal aid organizations within the community maximized access to resources, while maintaining relationships with other social service organizations within the community allowed for implementation of policy gains achieved through advocacy work.

Methods and Data

Understanding the community-level impact of the organizational changes experienced in North Carolina first requires an examination of the broad changes at the national and state levels. How many clients did the community serve? How did the community prioritize its limited resources in terms of focusing on individual service versus law reform activity? How were services distributed throughout the state and how does this distribution fit with the needs of particular communities? The answers to these questions bring about more questions that must be answered at the individual organization or even county level. How did centralization of LSC-funded activities affect the service levels of individual offices? How did the community split affect service levels in the areas in which unrestricted offices emerged? What role did the private bar play in both the provision of services and the development of new funding?

The data used to answer these questions come from a variety of sources. At the national level, data provided by the Legal Services Corporation (LSC) through a Freedom of Information Act request provided information on service levels and funding for all fifty states and the District of Columbia. Service level data are available from 1990 to today; funding

data, however, are available only from 1996 to today. The principal source for data on LSC-funded organizations in North Carolina is Legal Aid of North Carolina (LANC), which maintains data on cases closed by all LSC-funded offices. I use data from LANC as opposed to LSC because the LSC figures prior to 1996 include data from organizations outside the scope of this study.³ The LANC data are reliable from 1993 to today. This period is sufficient because it provides data before and after both the federal level policy changes and the organizational responses in North Carolina. LANC also provides the primary data for the previously independent LSC-funded organizations, but those data are supplemented by data from the organizations themselves and through yearly IOLTA reports. Data from Pisgah Legal Services, Legal Services of the Southern Piedmont, and the NC Justice Center come largely from the organizations themselves as well. Separate datasets were created for the various levels of analysis: the statewide community, the field office level, and the county level. Table 3.1 summarizes the operationalization and sources of data utilized in this chapter.

Use of the terms “statewide community” or “entire community” connotes the inclusion of data on both LSC and non-LSC funded organizations within the state. Where the analysis involves only the LSC-funded organizations, the restriction is specifically noted. The term “field office” means a general legal services office that provides a broad range of services to a geographically defined population. In historical terms, field offices are most akin to the neighborhood or community legal services offices originally envisioned in the OEO legal services program. Analyses of field offices, then, do not include data on statewide

³ The LSC data, for example, include cases from Prisoners Legal Services and Carolina Legal Assistance, neither of which is included in this study.

offices that provide issue- or population-specific services, such as the Farmworker Unit of LANC.

I use four separate dependent variables to test the effect of the primary organizational responses on the levels of service provided: the total number of cases closed, the percentage of those cases closed under an “extensive service” or “brief service” designation, the cost per case closed; and the number of per poor people per case closed. The variable for total extensive service cases is the aggregation of four separate closing codes utilized by all legal services offices in the state: “F” (negotiated settlement without litigation), “G” (negotiated settlement with litigation), “H” (administrative agency decision), and “I” (court action). Collectively, these are sometimes referred to as “FGHIs”. The variable for brief service is an aggregation of two closing codes: “A” (Advice and Counsel) and “B” (Brief Service). I also employ a ratio of brief service to extensive service cases as an indicator of the relative priorities of the community over time. The primary independent variables come from the organizational structure of the community over time, such as the level of consolidation, the amount and sources of funding, the geographic location of the service, and the substantive area of the cases closed.

The majority of analysis reports basic descriptive statistics and correlations between key variables. Where helpful, regression is utilized to clarify relationships but not for causal inference purposes. Establishing statistical causality generally is not possible through the existing data because of the lack of a counterfactual to the North Carolina case. However, the breadth of information obtained through the use of a historical case study method allows for some causal speculation that can later be tested through future comparison cases.

Going Forward

The remaining two chapters of this dissertation examine each of the two questions outlined above. Though separated for analytic purposes, the interplay between the organizational responses and service levels is also a key factor in the evolution of both. As such, these feedback effects will sometimes receive analysis in one or the other of the chapters, but should not be read as so confined. The overall story is one of evolving organizational form structured around the maximization of service levels according to differing priorities over time. So while it may be necessary to separate the response from the service levels, as it is sometimes necessary to separate out the narrative of differing characters operating simultaneously, the story itself is a singular one.

Tables

Table 2.1: List of Interviewees

Name	Position
Bill Rowe	General counsel and former executive director, NC Justice Center
Rob Schofield	NC Justice Center; NC Policy Watch
Greg Malhoit	Formerly executive director of NC Justice Center, NC Legal Services Resource Center, and East Central Community Legal Services (Raleigh, NC)
George Hausen	Executive director, Legal Aid of North Carolina
Kenneth Schorr	Executive director, Legal Services of the Southern Piedmont
James Barrett	Executive director, Pisgah Legal Services
Evelyn Pursley	Executive director, NC IOLTA
Deborah Weissman	Past executive director, Legal Aid of North Carolina
Carlene McNulty	Staff attorney, NC Justice Center; former deputy director, North State Legal Services (Hillsborough, NC)
Celia Pistolis	Assistant director, Advocacy and Compliance, LANC

Table 2.2: Measurements of Organizational Change

Organizations	Measures	Sources
Members of community	Number of LSC-funded organizations; Number of non-LSC funded organizations; organizational births and deaths	LSC and Individual office records
Organizational characteristics	Substantive area focus; jurisdictional coverage; restrictions on activities due to funding sources; number and type of employees	Individual office records
Private attorney involvement	Number of referrals to private attorneys; boards of directors; co-counseling of cases; time committed to bar projects	Individual office records
Coordination	Task force participation; statewide planning initiatives; annual conferences; informal planning	Interviews; meeting minutes and attendance records
Funding sources	Type of source; restrictions on use of money	Individual office records

Table 2.3: Measurements of Service Levels

Service Levels	Source of Data
Individual Representation	
Cases closed by aid organizations: (a) level of service; (b) substantive area; and (c) referral to private attorneys	LSC and individual office records
Cases closed by private attorneys: (a) level of service and (b) substantive area	LSC and individual office records
Law Reform and Advocacy	
Appellate litigation: (a) direct representation; (b) cocounseling; and (c) amicus briefs	Reported cases and office records
Settlements and negotiation	Interviews and office records

Chapter 3: The Players: Organizational Responses in North Carolina

Analyzing the impact of federal-level policy changes on legal aid provision in North Carolina cannot be separated from the political battles occurring at the state and local levels because of their feedback effects. As one long-time player in the state phrased it:

There are two ways to tell the story. You can try to say in 1996 the changes in the LSC, the restrictions, the cuts in money, how did that affect legal services, and just try to assume out the other things going on in legal services or you can understand some of the road legal services was going down, the other forces on it, the other changes it was undergoing and try to see those changes in a mix of other changes. And I think it's really hard to try to do it without the context (Kenneth Schorr, personal interview, March 30, 2011).

This chapter explicitly follows the second way to tell the story. As such, it starts with a brief history of the creation and early evolution of legal services provision in North Carolina.

Origins and Early Evolution of Legal Aid in North Carolina

In North Carolina, as in many states, the first legal aid organizations began as offshoots of local bar associations. The issue of control was settled in their creation. Funding, prioritization of resources, and personnel decisions all came from the local board of directors appointed by the sponsoring bar association. Such initiatives reflected both a desire by the local bar to involve itself in access to justice issues and a wish to remain in control. For example, the institutionalization of legal services at the federal level was already in motion when the Forsyth County Legal Aid Society opened its doors in 1962, so it is possible that its

creation was in part an attempt to forestall the law reform focus advocated at the national level.

Prior to the federal institutionalization of legal services in OEO in 1965, only Winston-Salem had an operating legal aid office in North Carolina. The Office of Legal Services (OLS) within OEO embarked on a rapid and ambitious recruitment process in urban areas that had an existing CAP. The pressure of the American Bar Association at the national level resulted in the OEO's compromise on the key issue of control over legal services agencies. Under the enacting legislation, OEO-funded legal services programs could not operate within local CAP agencies because 60% of the members of their board of directors had to be attorneys—and 50% of them had to be appointed by state or local bar associations. Therefore, the LSP lobbied these bar associations to agree to the establishment of an OEO program within their jurisdiction. In North Carolina, the bar associations in Charlotte, Winston-Salem, Durham, and Greensboro agreed; the bar in Raleigh did not. Newly created offices in Charlotte and Greensboro, as well as the existing Winston-Salem office, began receiving OEO funds in 1967. A newly established Durham office received funds starting the following year. Finally, in 1974, a new OEO-funded office opened in Sylva, in the far west of the state. Overall funding for the six legal services offices in 1974 was \$566,800, approximately 50% of which came from OEO. Other federal grants constituted another 29% of the total funding and the rest came from community foundations such as United Way, local bar associations, and county governments.

As mentioned above, Wake County Legal Aid did not receive OEO funding because the Raleigh bar disliked the reform activities that OEO favored. The development of what would become East Central Community Legal Services (ECCLS) in 1975 provides a glimpse

into the social and political conditions faced by legal services attorneys in the state at the time. As Greg Malhoit, its then executive director explained, “[t]here was a deep division over OEO, and a deeper division over the admission of black lawyers into the Wake County Bar Association. The prospect of OEO legal services got caught up in that environment” (Personal interview, April 12, 2011). Indeed, the Wake County Bar Association voted to admit African American attorneys only in 1972. Furthermore, when ECCLS began bringing cases in neighboring Johnston County, they brought in the first woman attorney to ever practice before its bar (Greg Malhoit, personal interview, April 12, 2011). Wariness towards the OEO and its reform activities extended deeply into the judiciary as well. Judge “Poo” Bailey administered Malhoit’s swearing in ceremony in Wake County. Apparently known for bringing his “six-gun” onto the bench with him, Judge Bailey offered the following advice to the young attorney:

Mr. Malhoit, if you bring me cases into this court, we are going to treat you fair and square here. But if you bring a cause into my courtroom, I’m going to crucify you. Now raise your right hand and take the oath. (Greg Malhoit, personal interview, April 12, 2011)

By the time of the incorporation of the Legal Services Corporation in 1975 as the federal institutional replacement for OEO, North Carolina had six legal services offices operating mostly in urban areas. The LSC’s first mission was to eliminate the patchwork structure of most legal services communities that resulted in disparate coverage between urban and rural areas. The stated goal was for LSC to provide two attorneys for every 10,000 poor people, regardless of where they lived. To accomplish this, LSC encouraged existing urban programs to expand their coverage areas into surrounding rural areas, as well as to create new offices located within those rural areas. The immediate result was the renaming of offices in North Carolina from the “legal aid society of [sponsoring county bar association]”

to the geographical population it served. For example, the Mecklenburg County Legal Aid Society became Legal Services of the Southern Piedmont (LSSP–Charlotte). Other new names include: the Legal Aid Society of Northwest North Carolina (LASNWNC–Winston-Salem); Central Carolina Legal Services (CCLS–Greensboro); the North Central Legal Assistance Program (NCLAP–Durham); Western North Carolina Legal Services (WNCLS–Sylva); and East Central Community Legal Services (ECCLS–Raleigh).

The new “politically neutral” structural form of the LSC, as well as some initial restrictions placed on the political activities of its funding recipients, encouraged bar associations that were hostile to the OEO to reconsider their support for legal services. The North Carolina Bar Association⁴ sponsored a “blue ribbon” Special Committee on the Study of Indigent Legal Services Delivery (Special Committee) in 1974 to draw up a comprehensive statewide plan for the delivery of legal services in North Carolina. The special committee was made up entirely of non-legal services attorneys in the state, although there was an advisory technical committee staffed in part by the executive directors of the Charlotte, Winston-Salem, and Durham programs. However, control over the outcome of the study was firmly in the hands of the private bar.

The Special Committee met over a period of two years, gathering an impressive amount of information on the existing programs and the poverty population in North Carolina. It also studied service delivery systems that were in effect in other states, although the data were gathered in a very limited fashion. The Special Committee focused almost entirely on two potential models for North Carolina: the highly centralized model in effect in

⁴ The structure of the state bar in North Carolina is somewhat odd. Two statewide associations divide the slate of normal functions between them: the first is mandatory for lawyers who practice in the state and focuses on licensure requirements and lawyer discipline (the NC State Bar); the second is voluntary and focuses on political activities, social events, and other secondary functions (the North Carolina Bar Association).

Georgia (outside of Atlanta) versus a loose confederation model of local programs with centralized support functions operating in Florida. The Special Committee eventually adopted a hybrid model of these two extremes, seeking in essence the best of both worlds. The hope of the new *confederation* model was that it would retain the important aspects of local control and identity while streamlining administrative costs and support functions.

A central, statewide office controlled broad policies over case priorities, standards of eligibility, and training and support functions, while separately incorporated local offices with their own boards of directors retained control over the hiring (and firing) of their directors and staff, the types of cases to be handled (unless contrary to statewide policies), the location of offices, and the actual method of service delivery. Local offices submitted annual budgets and lists of priorities to the central office, which in turn advised and gave technical assistance to the local offices. However, the central office could not mandate specific priorities.

The most important feature of the new system was that the new centralized entity, Legal Services of North Carolina, Inc. (LSNC), was incorporated as a nonprofit *membership* organization, the members of which were the Board of Governors (BoG) of the North Carolina Bar Association (NCBA). The real effect of this structure was to place ultimate control over the corporation in the hands of the bar association. LSNC was to be the distributor of all LSC and state-level funds received, giving the BoG a high level of control over field offices. The result was that the three oldest and largest legal aid offices in the state—Charlotte, Winston-Salem, and Durham—pulled out of the new confederation and applied for their own LSC funding. This structure would turn out to profoundly affect the future development of the legal services delivery system in North Carolina.

LSC made initial attempts to kill the proposed confederation plan because of concern that LSNC was in essence a subsidiary of the NCBA and therefore subject to an improper level of control by the private bar. Furthermore, the confederated structure resulted in unclear lines of authority—even discounting the independent programs, “you have 16 people who think they’re Executive Director” (Kenneth Schorr, personal interview, April 30, 2011). The LSC regional director in Atlanta, Bucky Askew, traveled to Washington, D.C., to persuade the LSC to let it go. The key consideration was that the state bar association not only endorsed the plan, it actually drew it up. Askew, a long-time player in legal services in the South, argued that it would be very difficult if not impossible to maintain any kind of effective legal services program in the South without substantial bar support. Any risk of subversion of LSC goals was outweighed by the desirability of having some level of services in the state. LSC eventually relented and LSNC received its funding. Nevertheless, the oddly confederated structure and the existence of the independents would continue to dominate discussion about statewide structure for the next 30 years.

In practice, the NCBA’s control over LSNC had both positive and negative effects on service delivery in North Carolina. The overarching concern among legal services attorneys was the risk that the Board of Governors would “pull in the reins” at some pivotal moment (Greg Malhoit, personal interview, April 12, 2011). However, this only happened one time. The first director of LSNC, Denison Ray, was a controversial and sometimes divisive figure within the legal aid community. Though serving as executive director, Ray neither agreed with the structure of LSNC nor the changing priorities of LSC. His previous organization, NCLAP in Durham, was one of the three programs that chose not to join the confederation and Ray was an outspoken advocate of reform-focused activity. Why Ray accepted the job is

unclear, but his presence did serve as a mediating effect on national and state level pressures to tamper down reform activity. “In the end, this is what got him” (Greg Malhoit, personal interview, April 12, 2011).

Although the BoG provided the sole members of the LSNC Corporation, it did not have the power to fire the executive director itself. That power lay with LSNC’s Board of Directors. Nevertheless, Ray was eventually pushed out in favor of 35-year-old Richard Taylor, who had been serving as project director for North State Legal Services in Hillsborough for the last seven years. Both the reason for the push-out and the influence of the BoG were made clear in a statement from the President of the NCBA after Ray’s resignation:

“The past executive director we ultimately got to resign . . . was not directing the services in the manner we wanted,” said Charles L. Fulton, president of the N.C. Bar Association. “He was involved in political issues a lot of us thought were inappropriate- lobbying work, class actions of a dubious nature.” (Leland, 1994)

Despite this clear exercise of bar authority over the leadership of the statewide entity, field offices still felt relatively autonomous in their daily operations (Greg Malhoit, personal interview, April 12, 2011). Although service data for this time period is unavailable, East Central Community Legal Services executive director Greg Malhoit describes the vast majority of work as involving individual cases under existing legal protections, such as problems with unscrupulous landlords, abusive spouses, or basic consumer issues (Greg Malhoit, personal interview, April 12, 2011). When it came to working toward a broader impact, local boards were more of a problem than the state level LSNC board. The federal requirement that the majority of local boards be appointed by local bar associations often resulted in the appointment of legal services critics. Malhoit remembers that at least one board member questioned every class action they initiated (Greg Malhoit, personal interview,

April 12, 2011). These board members were unabashedly put there “to keep an eye on this thing and keep it under control” (Greg Malhoit, personal interview, April 12, 2011). At one point, members of the board asked him simply to prohibit class action work in the establishment of priorities. Luckily, other members of the board were supportive. The American Bar Association had published an ethics opinion that barred local boards from making decisions in individual cases, and “we used that a lot” (Greg Malhoit, personal interview, April 12, 2011).

The largest positive impact of having a large degree of control in the hands of the NCBA arose from its corresponding responsibility to assure high level of services in the state. When the Reagan Administration imposed PAI requirements on LSC recipients, LSNC was in a uniquely good position to implement them because of the existing ties between the private bar and legal aid. “Legal services enjoyed a favorable reputation, certainly among the bar leadership, and that would be the advantage of having the Board of Governors being members of the organization because in a sense it belonged to them” (Greg Malhoit, personal interview, 4/12/2011). Overall, the PAI requirements unquestionably had a positive effect on legal services in the state (Greg Malhoit, personal interview, April 12, 2011). Furthermore, there was a trickledown effect from the PAI mandate to more voluntary pro bono work:

Once you were able to organize and were told you had to organize the private bar, then every president of the NCBA would make legal services to the poor a priority. They talked about mandatory pro bono and stirred up a big debate. When that was put out there, the voluntary programs really got helped. (Greg Malhoit, personal interview, April 12, 2011)

The direct NCBA support and involvement allowed LSNC to create nine additional offices throughout the state between 1976 and 1981 in accord with the LSC-guided push to reach the minimum access goals of two attorneys per 10,000 poor people. From 1981 to

1998, then, LSNC was a confederation of 12 separately incorporated and geographically defined legal services organizations in the state. LSNC also included three separately incorporated, statewide, service entities focused on single issues (e.g., prisoners' rights, disability law, and immigration). As a unit, LSNC provided services to 83 of North Carolina's 100 counties. The three "independents" covered the remaining 17 counties.

Dissatisfaction with the central office, however, appeared as early as 1981. A small group of field office attorneys put in a bid to wrest control over the line item funding for a state support center that the central office of LSNC had been running since its inception. Despite Denison Ray's outspoken support for reform efforts, the field offices did not feel as though the central office was responsive to their needs and desires for support on reform activities (Rob Schofield, personal interview, 4/6/2011). In fact, two of the attorneys who applied for the funding came from Ray's prior organization in Durham. "People were just disillusioned with his leadership" (Greg Malhoit, personal interview, April 12, 2011).

The timing of the move to wrest control over support functions from the central offices also reflects a recent reform failure in the state. In 1981, the U.S. Supreme Court ruled in *Lassiter v. Department of Social Services* that there is no constitutional right to counsel in civil cases, establishing a presumption against such a right except in limited circumstances. *Lassiter* halted the "Civil Gideon" movement nationwide, and the case was brought by a legal aid organization in North Carolina. Specifically it was brought by NCLAP, Denison Ray's organization. According to Greg Malhoit, who joined the litigation at the Supreme Court level, a single attorney who felt committed to representing the client in front of him regardless of the broader impact initiated the case and filed for *certiorari* with the Supreme Court (Personal interview, April 12, 2011). The case, however, presented a

factual nightmare for those seeking to achieve a fundamental goal of the legal services movement. The plaintiff was a mother seeking to prevent the termination of her parental rights after she had been convicted of murder, meaning that any potential emotional response to the case would weaken the power of the argument for basic access. If some measure of centralized oversight had been present before the case was appealed to the Supreme Court, it is likely that it would have been stopped before doing significant damage to the legal services movement.

In the end, the non-LSNC group won the funding and created the North Carolina Legal Services Resource Center (Resource Center). The development of the Resource Center outside the administrative central office of LSNC is crucial to understanding its role in the legal services community over time. Organizationally, the Resource Center was a separately incorporated, nonprofit organization that operated outside the direct control of LSNC's central leadership. Nevertheless, both the mission and the daily activities of the Resource Center paralleled those of the legal services community. Its stated mission was to provide support to the field offices in the form of training, substantive updates on changes in the law, and general consulting. The Resource Center was also the primary unit of legal services in North Carolina that was responsible for lobbying at the state level, at both the legislative and administrative levels, and for impact litigation. The executive directors of the four LSC-funded entities in North Carolina served on its independent board of directors, and they used it as an extension of the work being done at the line level. In short, it was the hub of the law reform branch of legal services in North Carolina, and the "macro" to the field offices' "micro" approach (Bill Rowe, personal interview, March 14, 2011).

Staff attorneys of the Resource Center were responsible for heading up statewide task forces on substantive law issues. These task forces were the primary mechanisms of cross-organizational dependence within the legal services community. Run by an informal steering committee of experienced field attorneys in each substantive area, the task force meetings were held at least three times a year for all legal aid attorneys in the state so that practitioners could get together, share experiences, and brainstorm about ways to represent better the clients. According to Rob Schofield, who came to the Resource Center in 1992 in part to head up the consumer and family law task forces, “[o]ur lives very much revolved around the calendar of the task forces. The people who constituted the steering committee were the closest thing I had to someone I had to report to” (Rob Schofield, personal interview, April 6, 2011).

Having learned from the experience in *Lassiter*, the task forces also acted as partial gatekeepers for impact litigation around the state. Individual field offices in North Carolina varied widely in their emphasis on law reform activities. Some executive directors both encouraged such activity and provided mentoring to young attorneys in the process of “seeing the big picture” (Carlene McNulty, personal interview, April 4, 2011). Although attorneys at the Resource Center had no legal check on the individual decisions of field attorneys, they essentially operated as a “moral” or “strategic” check (Rob Schofield, personal interview, April 6, 2011). Field office attorneys are generalists by design and, although they have the greatest amount of daily interaction with the client community, they might not be aware of larger patterns or opportunities to change a bad law. On the other hand, they might want to change a law, but simply not have the right case or be the right

person to pursue it, or some other avenue might achieve the same result. The task forces provided a formal organizational mechanism through which to run broad strategy.

The confederation model of the legal services community in North Carolina, and the presence of three independent programs, existed relatively peacefully during the federal policy changes in the early 1980s. The LSC budget cuts and other activities by the Reagan administration nevertheless had significant long-term impacts on the legal aid community in North Carolina. First, the community developed new non-LSC sources of funding. In 1989, LSNC obtained a \$1 million dollar grant through the newly enacted Access to Civil Justice Act in North Carolina. Some of the advantages brought by the new money, however, were mitigated by the manner in which the funding flowed. ACJA money did not go directly to LSNC. It went instead to the North Carolina State Bar, the mandatory bar association in North Carolina that is completely separate from the NCBA, who then had large levels of discretion over the distribution of the money. In 1989, all of the money went to LSNC “for provision of direct services by and support of the geographically based programs based upon the eligible client population in each program’s geographic coverage area” (Article 37A, N.C.G.S. §7A-474.1 et seq.). LSNC in turn was given the power to determine the precise formula for distributing the money to its field programs and the three independent offices. The role of LSNC in distributing state funds later became one of the areas of contention that threw the community into a prolonged restructuring debate in the mid-1990s.

In addition to the ACJA funding, the North Carolina Supreme Court established the state’s IOLTA program in 1984. As a purely “opt-in” voluntary program, IOLTA distributed roughly \$200,000 in its first year of operation. However, by 1988, IOLTA awarded over \$1 million in grants. The dramatic rise in IOLTA revenue arose precisely because of the

increased level of involvement and understanding of the private bar. Although it is impossible to draw concrete causal relationships in this case, the PAI requirements imposed at the federal level played a large role in the commitment of the private bar to contribute to legal services, and participation in IOLTA provided a relatively easy way for private attorneys to contribute.

Second, offices throughout the state laid off employees and reduced their levels of services. They did not, however, change their overall approach in terms of law reform versus individual representation activities (Greg Malhoit, personal interview, April 12, 2011). The commitment to the services model was not affected by the federal changes at this time.

Third, and probably most importantly, the reactions of the community to these first two changes revealed tensions within the community that had existed since the creation of LSNC in 1976. This tension would come to the surface in the community's response to the congressional retrenchment efforts of 1996, the subject of the remainder of this chapter.

The Structure on the Eve of Retrenchment

When the reconfiguration debate resurfaced in North Carolina in 1995, it did so within the contexts of the particular history of legal services delivery in the state. Participants in the process were the inheritors of that history, and it fundamentally constrained the choices available for changing the structure (Rose, 1990). The dramatic retrenchment efforts at the federal level fundamentally altered the broad institutional landscape within which the community could operate. At the state level, long-simmering disagreements were resurfacing over the proper locus of control regarding funding, service priorities, and personnel. The combination of the federal and state-level tensions threatened the ability of the community to

successfully overcome a growing collective action problem.

The legal services community in North Carolina in 1994 consisted primarily of four separately managed entities, all funded directly by the Legal Services Corporation.⁵ LSNC was the largest provider, operating 15 geographically defined field offices in 83 of the 100 counties in the state under a confederated organizational structure. Three partially independent programs that were based in urban centers provided services in the remaining 17 counties: Legal Services of the Southern Piedmont (LSSP) in Charlotte; North Central Legal Assistance Program (NCLAP) in Durham; and the Legal Aid Society of Northwest North Carolina (LASNWNC) in Winston-Salem.

Memoranda of Understanding (MOUs) defined the relationship between LSNC and its member programs, and these were renegotiated (or at least re-signed) every year. In general, the MOUs were quite vague and sometimes inaccurate, which resulted in a significant amount of uncertainty in the relationship between the field offices and LSNC. Many field office personnel considered the MOU a “contract of adhesion”, that is, a “take it or leave it” offer that they simply could not afford to refuse (Kenneth Schorr, personal interview, March 30, 2011). This perception resulted in a fair amount of animosity towards the central office.

Four statewide programs also existed as separately incorporated members of LSNC: Carolina Legal Assistance (serving developmentally disabled and mentally ill individuals), North Carolina Prisoners Legal Services (serving the inmate population on civil issues), the Resource Center (statewide support for legal services organizations), and the North Carolina

⁵ Few non-LSC funded organizations provided limited legal services in the state in 1994. For example, the Land Loss Prevention Project was affiliated with the law school at North Carolina Central University and represented poor, mostly African American farmers who were at risk of losing their family farms. However, the role of these providers was limited; therefore, they were omitted from this study.

Client and Community Development Center (serving the poor through community and economic development activities). Each of these organizations was a separate corporation with its own board of directors. They received LSC funding directly through LSC's population-based formula, but their levels of state and local funding differed dramatically according to a panoply of political and practical considerations. North Carolina Prisoners Legal Services, for example, received a substantially larger amount of funding through the state than the other organizations while the Resource Center began receiving private foundation grants for the establishment of specific projects such as the Budget and Tax Center and the Education and Law Project.

The Resource Center was in a unique position within the community because of its history and structure. As described above, the statewide support center for legal services in North Carolina was originally housed within and operated directly by the central office. However, in 1982, a group of disaffected field attorneys applied for and received the LSC set-aside funding for the support center; they then moved it outside of the central office. The executive director of each of the four LSC-funded programs had a seat on the board of directors of the Resource Center, providing a much stronger voice for the legal services community in its governance than was the case for any other organization within the community. As the designated state support center for legal services in the state, the Resource Center served as the hub of the law reform efforts in the state. It led the substantive law task forces that were the primary means of interorganizational coordination on impact litigation; the center members also were the primary lobbyists on substantive issues before the General Assembly and administrative agencies.

The existence of the independent programs was a major source of internal political

tension in the statewide community. As the oldest legal aid programs in the state, the independents had a much longer institutional history coming in to the 1995 reconfiguration debates. Each of them participated in the formation of the LSNC confederation in 1976. However, “[f]or reasons lost in history,” the independent programs pulled out of the LSNC confederation before its official creation (Kenneth Schorr, personal interview, March 30, 2011). Management of the independent programs remained local, but efficiency concerns led to some shared operational capacity with LSNC. For example, the independents typically participated in the insurance pools of LSNC and engaged in joint bulk purchasing for office supplies and services such as telephones. However, unlike member programs, the independents had no MOU that documented their relationship with LSNC. This generated a high level of uncertainty in their relationship that was exacerbated by the emergence of new statewide sources of funding in the mid- to late-1980s.

The board of directors of LSNC controlled broad policy issues related to funding, case priorities, and personnel for its member corporations. However, it did not have the authority to dictate specific actions within any of these three crucial areas of control, including the power to fire field-level staff. Its greatest power lay in the realm of funding. One of the driving forces of the Confederation Model was a desire to maintain significant local control while preserving a centralized structure that could redistribute funds from urban to rural areas to satisfy LSC’s minimum access goal of two attorneys per 10,000 poor people statewide. Offices in Boone and Sylva, for example, simply could not have existed without the broader pooling of resources allowed by the existence of a centralized entity with control over funds.

To accomplish this, LSNC served as the distributor of LSC funding for its members

programs. It also acted as the distributor for IOLTA funding and state appropriations under the Access to Civil Justice Act (37A N.C.G.S. § 7A-474.1 *et seq*) for both its member organizations and the independent programs. Both IOLTA and the North Carolina State Bar, which administered the money through the ACJA at the time, clearly envisioned funding the independent programs. However, it did not provide LSNC with specific formulae for the distribution; thus, LSNC and its board of directors set the levels provided to each organization. This caused anxiety in the independent programs because of the level of control it placed with LSNC over their operations. The problem worsened with the development of the Access to Justice Campaign, an effort to raise money through donations from the private bar. All of the independent programs were located in urban centers and had both higher numbers of attorneys and higher participation rates in the Access to Justice Campaign than the majority of legal services in the state. However, they did not receive a share of the funding equal to their contributions; rather, they saw LSNC redistribute their contributions to other legal services in other areas of the state.

Two primary mechanisms of interorganizational coordination existed within the community in 1994, one at the leadership level and another at the staff (or line level). The first mechanism was the Project Director Group, which was composed of the executive directors of LSNC, members of each of the three independent legal services, members of the statewide specialty programs, and members of each of the 12 LSNC member offices. Although the Project Director Group was initially designed to coordinate statewide management issues, it had no formal authority over policy decisions.

The second mechanism was the substantive area Task Forces. The Task Forces consisted of three or four meetings each year that were overseen by substantive area experts

during which attorneys discussed strategic and legal problems pertaining to their particular caseloads. The Task Forces also served as informal gatekeepers for impact litigation. Other interaction between the field offices occurred within the informal relationships among their staff and directors. Some field offices operated rather independently and were isolated from other offices; other field offices had stronger ties to other field offices or to the central office. Annual statewide conferences provided some measure of interaction for personnel, but most matters of daily operation were largely separate from each other. For example, spending on technology infrastructure was within the purview of local spending priorities, but some offices neglected the development of this important mechanism of intrapopulation ties. The result was a technology infrastructure that was not particularly well suited to the coordination of activities.

Thus, at the time of the next round of federal policy changes in 1995, the legal services community in North Carolina operated under a complex structure that was the result of earlier political compromises. The multiple layers of administrative control, the confusing and ill-defined relationship between LSNC and the independent programs, and the placement of LSNC under the control of the private bar association made the structure vulnerable to attack. The system was a “patchwork” (Kenneth Schorr, personal interview, March 30, 2011) and its seams were not tight. The congressional elections of 1994 and the subsequent changes to the institutional structure of legal services nationwide began the ripping the process along the seams of the patchwork. The state-level political struggles that had lain dormant for the past 20 years resurfaced to finish the job of dismembering the legal services community in North Carolina.

Summary of the Federal Institutional Changes

After Congress failed to eliminate the LSC and to replace it with a time-limited and decreasing set of block grants in 1995, it enacted a compromise bill that drastically reduced LSC funding and imposed significant restrictions on the types of activities in which recipients of that funding could engage. The overall intent of the law was to kill the law reform efforts of federally funded legal services organizations, and many commentators believe that they succeeded (Quigley, 1998).

First, Congress reduced overall LSC funding from \$400 million in fiscal year 1995 to \$278 million in 1996, or 30.5%. LSC funding has not yet recovered from this cut. Adjusted for inflation (in 2010 dollars), LSC funding in 1995 was \$572,325,459; however, 15 years later, in 2010, funding was only \$420,000,000. The intention behind the funding cuts was two-fold: first, a reduction in resources would reduce the levels of services provided; second, reducing resources would force legal services organizations to re-evaluate how they spent their limited resources. The hope was that all of the funding would be used for individual service cases, that is, for enforcing existing rights instead of pursuing new rights. The latter use was tied closely to other legislative goals of the 104th Congress as well as the restrictions it imposed on the use of LSC funding.

Congress imposed a total of 19 restrictions on the uses of LSC funding for fiscal year 1996; these same restrictions, with minor exceptions, have appeared in each appropriations bill since then. The most relevant restrictions to the organizational responses are the following six prohibitions:

- Prohibited involvement in class action lawsuits, including the filing of *amicus curiae* briefs in such lawsuits.
- Prohibited the representation of undocumented and temporary immigrants, including migrant workers lawfully present on an H-2B Visa.

- Forbid participation in administrative rule-making procedures.
- Increased the scope of prohibited activities associated with lobbying, essentially banning all legislative and administrative lobbying.
- Prohibited representation of incarcerated individuals.
- Prohibited the use of any funds to engage in restricted activities.
(Section 504, Omnibus Consolidated Rescissions and Appropriations Act of 1996, Legal Services Corporation, Pub. L. 104—134, 110 Stat. 1321)

The LSC itself was under Democrat control in 1995, and although President Clinton signed into law the appropriations bill containing the funding cuts and restrictions, the LSC board sought to alleviate the effects of the changes through its delegated powers. In February of 1995, LSC announced a new State Planning Initiative in which it actively encouraged funding recipients to change their focus from “what’s best for the clients in my service area” to “what’s best for clients throughout the state” (LSC, 2001). The local control mantra that had developed in the early 1980s was replaced by statewide planning initiatives. Programs were encouraged to develop and submit detailed plans outlining the efforts to be made in seven areas: (a) expanding client access and efficiency in service delivery, (b) using technology to expand access, (c) providing self-help materials and preventive legal education, (d) coordinating program activities and training throughout the state, (e) increasing collaboration with the private bar, (f) securing other sources of funding, and (g) “designing a system configuration that enhances client services, reduces barriers and operates efficiently and effectively” (LSC, 2001, p. 2). In essence, the LSC sought to force state-level communities into a collective action problem that would be defined at the state level instead of the individual office level. However, only “a handful of states answered LSC’s call to action” by 2001 (LSC, 2001, p. 2).

In August of 1995, LSC issued a program letter outlining the basic tenets of its statewide planning initiative. The LSC did not provide formal guidance for statewide

planning efforts until a series of additional program letters in 1998 and 2001. The appointment of John McKay as the LSC president in 1997 heightened the interest of the LSC in statewide structures, especially in consolidated or unified structures. McKay had a background in government and in private practice in Seattle and served as the Washington state chairman of the Equal Justice Coalition. His experience as a board member in the State of Washington constructed his beliefs about the best organizational structure for legal aid provision; that structure was unquestionably one of complete consolidation. Program Letter 98-1 described the “the advisability of consolidation of programs” (Tull, 1998, p. 2). It also required every state to submit a formalized plan, describing how it either had addressed or planned to address each of the seven areas of planning effort.

LSC’s power over local offices resided in its control over the single largest source of funding for the legal services community. Although Congress required LSC to fund programs in every state, the programs applied for their funding based on geographic *coverage areas* defined by LSC. This provided LSC with the ability to redefine a coverage area to force certain organizational structures within the states. LSC’s stated preference for consolidated, statewide entities acted as a form of coercive isomorphism on state planning committees. In fact, the level of pressure exerted by the LSC prompted several programs to challenge the legality of the LSC’s actions and, more specifically, the level of influence applied by McKay. Although none of these programs won their lawsuits, McKay’s departure in 2002, combined with the antagonism that the consolidation pressures provoked led to a change in approach. The LSC’s new model was a “comprehensive, integrated, and client-centered state justice community” that included both LSC and non-LSC funded organizations (see Youells, LSC Program Letter 2000-7, 2000, p. 4). The key change was from a push for a

consolidated community to an integrated community. This allowed for a greater degree of flexibility for states to adapt their structures to state and local level institutional environments.

To summarize, the legal services community faced three significant changes in the federal environment: funding cuts, restrictions on activities, and a push towards statewide consolidation. Each event affected the organizational structure of legal services in North Carolina over the following 15 years. The effects of each event were compounded by state and local changes, as well as the feedback that occurred because of all of these factors. The following sections will describe the current organizational structure in North Carolina and the degree to which the federal and state changes in the institutional environment affected this structure.

Organizational Responses in North Carolina

North Carolina's "reconfiguration" of legal services started in February of 1995. It lasted more than 7 years and culminated on July 1, 2002, with the creation of LANC, a single LSC-funded corporation providing services to all 100 counties in North Carolina through 24 field offices. LANC is not a membership corporation and the field offices are not separately incorporated. A single, 25-member statewide board of directors is responsible for the governance of LANC and its field offices. LANC looks and operates, in many ways, like a large law firm with branch offices all over the state. The Farmworker Legal Services unit still operates under the LANC umbrella, though it is now limited to representing H-2A workers and prohibited from engaging in class actions. Finally, in 2007, LANC opened a Centralized Intake Unit that is responsible for intake for all LANC programs.

Two independent, neighborhood-style legal services offices operate in Asheville and Charlotte. A third similar office operated in Winston-Salem from 2002 to 2007, at which point it merged with LANC. The independent office in Durham merged with LANC in 2002, as it was unable to secure outside sources of funding to remain on its own. Three statewide service and advocacy organizations also operate independently of LANC. The Justice Center serves partly as a state support center for LANC and the independent offices, partly as a straightforward antipoverty advocacy group, and partly as the primary group representing undocumented immigrants in individual cases. Prisoners Legal Services and Carolina Legal Assistance (now called Disability Rights of North Carolina) also split from the LSC-funded community in 1996 and continue to operate quite successfully under alternative sources of funding.

The move to a fully consolidated LSC-funded community came somewhat incrementally. In 1999, LSNC merged all of its separate corporations into a single statewide entity. The three independents remained independent and continued to receive LSC funding. The agreement in principal for at least part of these entities to merge with the single LSC-funded entity was reached in 2000, but it took another two years for full implementation to occur. An important change in structure was the removal of LSNC as the official distributor of IOLTA funding for every program in the state. IOLTA itself decided whom to fund and at what levels. This structure in part allowed one of the LSNC offices to split away from the newly consolidated structure to become completely independent. At the end of 1998, Pisgah Legal Services in Asheville became the first generalized legal services office in the state to operate entirely outside LSC funding and restrictions. Their success at building a funding base, which will be described in more detail below, inspired two of the independent LSC-

funded programs (Charlotte and Winston-Salem) to retain a portion of their activities in a separate structure after the 2002 consolidation so that they could continue to engage in restricted activities.

By all accounts, the period between 1995 and 2002 was a time of acrimony, self-interested behavior, and general strife within the community. One long time attorney and leader refers to these seven years as the Dark Ages (Celia Pistolis, personal interview, March 18, 2011). Another says less apocalyptically that

[i]t was just very unpleasant. For someone who had been around a long time, it was the most disturbing thing I had ever seen done. It just seemed kind of silly that we couldn't figure out another way to do this than an internal debate that took time and energy away from representing clients" (Greg Malhoit, personal interview, April 12, 2011).

However, most people within the community also contend that they are stronger today because of going through the process. They achieved impressive efficiency gains through consolidation; however, more importantly, they are actually able to provide a broader array of services today than they could in 1994. The process through which the community emerged from the darkness is the subject of the rest of this chapter.

Explaining the Organizational Response

The legal services community in North Carolina experienced the federal level policy changes within the context of its particular history. Each of the three major changes—funding cuts, restrictions on activities, and the push for a statewide focus for delivery systems—played out within this context. This section analyzes the responses to each of the three changes and describes how the existing institutional context within North Carolina affected those responses.

Funding Cuts and New Sources of Legitimacy

Every major legal services organization in North Carolina in 1994 received a majority of their funding from the LSC, which in turn received an annual, but nonrecurring, appropriation from Congress. Although the creators of the LSC sought to insulate federally funded legal services from political changes, the failure of Congress to reauthorize the LSC since 1976 resulted in its subjection to annual appropriation debates. Furthermore, the LSC itself was a source of rules and guidance for its recipients. This subjected the entire community in North Carolina to congressional changes in the levels of funding and changes in the rules concerning how they could use that funding, whether from Congress or the LSC.

Congress cut one-third of the total LSC budget from 1995 to 1996. As a result, legal services programs nationally closed 300 offices and laid off more than 900 attorneys. In North Carolina, the four recipients of LSC funding experienced different levels of reductions depending on their geographic coverage area. LSNC, by far the largest recipient, lost \$2.29 million or 30.6% of its LSC funding, and Charlotte similarly lost almost 30%. However, the Durham and Winston-Salem offices lost 40.4% and 45% respectively. Although every office experienced layoffs, not a single legal services office closed in North Carolina without being replaced by a new one. In the jargon of the community, they “downsized in place” and “re-birthed” organizations engaged in activities forbidden by Congress through a creative distribution of existing and new funds. The ability of the community to absorb such a drastic cut in funding and not experience a reduction in population density suggests the presence of a powerful mitigating force, or combination of forces, operating in the state. It also suggests the weakness of a purely material resource approach to understanding organizational survival in the nonprofit world.

However, a large part of the mitigating force was the presence and growth of non-LSC funding for these organizations over the next five years. In 1996, the first year under the funding cuts, the four LSC-funded organizations combined received almost 38% of their funding from sources other than the LSC. This percentage climbed to 45% in 1997, 51% in 1998, 52% in 1999, and then peaked at 55% in 2000. The adoption of IOLTA in 1984 and the receipt of state appropriations through the Access to Justice Act beginning in 1989 provided the bulk of this funding. As IOLTA brought more attorneys into the program, which at that time was voluntary, more and more funds were available for distribution. In 1986, the second year of its existence, IOLTA provided a total of \$615,000 to the legal services community in North Carolina. In 1996, this amount increased to about \$1.4 million and, by 2009, the total IOLTA funding peaked at just over \$3 million.

The ability for IOLTA to increase its funding over time is due largely to increases in the levels of participation of private attorneys in the program. In 1994, IOLTA changed from an opt-in to an opt-out format. This simple change resulted in an immediate spike in participation (Cliffords, 2009). By 1997, roughly 57% of attorneys in the state participated in the program, a percentage that is relatively high when compared to other states. By 2007, that number had increased to 75%. IOLTA staff dedicated a large portion of its time to recruiting attorneys to participate (Evelyn Pursley, personal interview, March 28, 2011). It was bolstered by a 2003 U.S. Supreme Court decision that upheld the constitutionality of IOLTA programs (*Brown v. Washington Legal Foundation*, 538 U.S. 216 [2003]), but the development of ties between the private bar and legal services organizations also played a key role. In 2008, the North Carolina Supreme Court, which had created the IOLTA program, ordered a switch from a voluntary to a mandatory IOLTA program. This resulted in

the creation of more than 3000 new accounts in a single year, and a 16% increase in IOLTA revenue from 2007 to 2008 to reach a total of \$5 million.

Four important institutional developments in the IOLTA program have secured its role as a major player in the legal services community. First, IOLTA's by-laws do not prohibit it from funding non-LSC organizations, as is the case in some other states. When the legal services community began to split into LSC and non-LSC components in 1996, IOLTA was able to provide funding to offset their loss of LSC funds. Second, the IOLTA trustees (similar to a board of directors) established a reserve fund at the end of 1995. Annual IOLTA revenue comes from funds held by private attorneys in specially designed interest-bearing accounts. Its dependence on interest rates and the levels of funds being held by private attorneys make IOLTA revenue extremely dependent on the state of the overall economy. The presence of a reserve fund allowed IOLTA to put money away in good years to sustain funding in bad ones. The 2008 switch to a mandatory program and the huge increases in revenue in 2009 came right at the downturn of the U.S. economy and interest rates hovering near zero. Although the reserve fund is now severely diminished, this switch allowed IOLTA to maintain nearly level amounts of funding during the last two years. Third, the NCBA transferred its authority over the distribution of state appropriations to legal services organizations to IOLTA at the end of 1994. This brought significantly more money within the more favorable institutional structure of IOLTA for distribution. Finally, IOLTA began to take a larger role in structural planning efforts in the state, using its leverage as a major funding source to budge the community into a more coherent structure. This aspect of IOLTA's development will be discussed in more detail below.

Although IOLTA and state appropriations did not fully offset the losses in LSC

funding, local sources also stepped up during this time to help fill the gap. Major contributors included the United Way, several Reynolds foundations, contributions by individual attorneys and bar associations, and county governments. In fact, when adjusted for inflation, overall funding for the statewide legal services community was higher in 2000 than it had been in 1994. Although LSC funding remained relatively constant until 2009, overall funding for the legal services community continued to rise after 1996. In 1996, non-LSC sources accounted for approximately 38% of total funding for all LSC-funded organizations; by 2007, such sources comprised over 62% of total funding. When funding for the organizations that received no LSC money is included, these numbers go up. For example, the Justice Center received a \$2 million general operating grant in 2002 from the Z. Smith Reynolds Foundation, a figure that is equal to more than 10% of the total funding for all the generalized, neighborhood style offices in the state. In short, overall funding has increased for legal services in North Carolina despite the LSC funding cuts.

Despite the presence of material resources LSC losses at the overall state level, the new funds came at a cost. First, organizations were required to expend resources to gain new resources, diverting funding away from direct service and into administration. This aspect will be further explored in chapter 3. Second, the increasing importance of local funding highlighted the disparities between individual office fundraising abilities. In general, local programs have been relatively successful in obtaining local money based on three factors: the commitment of the program's personnel to fundraising, the program's urban or rural location, and the commitment of the local private bar to the program. Pisgah Legal Services historically has been successful because all of these characteristics are in its favor; however, rural offices, particularly in the eastern part of North Carolina, were not so lucky. Some

project directors were willing to take themselves “off-line” to raise money; others were not. Some had experience in fundraising; most did not. Likewise, the presence and willingness of a large local bar in urban areas allowed for a much greater degree of fundraising for some offices. The result was highly unequal levels of local funding across the state. Perceived inequities in this unequal distribution contributed substantially to the political battles over structure over the next five years.

The LSC sought to alleviate problems with geographic location through the adoption of its “minimum access goal” in the late 1970s that assured the presence of two attorneys per 10,000 poor people statewide. Redistribution of LSC funding by LSNC helped accomplish this for its member corporations. However, the large cuts in LSC funding posed a problem to LSNC’s ability to maintain successfully all of its offices under the minimum access plan because it no longer had such a large pool to redistribute to its rural offices. LSNC’s ability to set funding formulae for the most substantial non-LSC funding in the state presented the possibility of using those funds to equalize levels of access across the state, but this evoked fear among the independents that their share of IOLTA, ACJA, and Access to Justice funding would decrease to prop up LSNC offices. Thus, the issue of state versus local control over funding became a source of heightened discord within the community in the mid-1990s.

NCBA and LSNC anger over the last-minute withdrawal of the independent programs from the confederation in 1976 had not diminished over time. These were the largest and strongest programs in the state, from both a resource and an effectiveness point of view. As independent organizations without the ability to pool resources across large sections of the state, the independent programs had a much greater incentive to seek non-LSC sources of funding. LSSP and LASNNC were especially successful in this regard. Their historically

strong ties with their local bar associations, as well as their presence in urban centers, gave them stronger organizational legitimacy from which to draw funding. Therefore, when the funding cuts took effect in 1996, the independents were generally in a stronger financial position than LSNC itself (Kenneth Schorr, personal interview, March 30, 2011). LSSP, for example, had diversified its funding in the late 1980s through the pursuit of several private foundation grants. When the funding cuts came down in 1996, LSSP faced a reduction in one-third of its funding sources compared to the almost two-thirds of funds subject to the reduction in most field offices of LSNC (Kenneth Schorr, personal interview, March 30, 2011).

The single most successful local fundraising efforts have occurred at Pisgah Legal Services in Asheville. In 1996, LSC funds made up more than 34% of Pisgah Legal Services' total program revenue. As the reconfiguration process played out in North Carolina and it appeared that Pisgah Legal Services might try to break free of the LSC-funded entity, they began to step up fundraising in other areas. In 1997, Pisgah Legal Services received \$102,814 from United Way, a 53% increase from the prior year. Similarly, Pisgah Legal Services' private foundation funding increased nearly 70%. Overall, Pisgah Legal Services went from a total of \$738,000 in program funding in 1996 to more than \$2.6 million in 2010. Adjusted for inflation, this represents a net increase of more \$1.6 million, roughly a 160% increase. The single LSC-funded entity in the state also experienced a net gain in revenues, but not nearly as large. Furthermore, between 2006 and 2009, Pisgah Legal Services engaged in a capital campaign to buy and renovate its current office space on Charlotte Street in downtown Asheville. With a base consisting primarily of local attorneys and members of the business community, Pisgah Legal Services raised over \$4.3 million dollars.

One of the potentially negative effects of reliance on local and even state-level money, however, is its tendency towards uncertainty and inconsistency. This has not been the case for Pisgah Legal Services, however. While total levels of program revenue have either been fairly consistent or experienced sudden growth since 1997, Pisgah Legal Services has not experienced any one year of drastic revenue loss. Adjusting the data for inflation (to 2010 dollars), there have only been three years between 1997 and 2010 that Pisgah Legal Services experienced a decline in funding, and the largest such occurrence was only 7.1% in 2000. On the other hand, Pisgah Legal Services received a boost of 23.7% in 1999, its first year without LSC funding, and a 21.6% increase in 2010. The core source of this new funding was private foundations. Total funding from private foundations increased by 154.7% between 1998 and 1999, from a little more than \$186,000 to almost \$475,000 in 2010 dollars.

The willingness of IOLTA to continue to fund Pisgah Legal Services after its withdrawal from LSNC was vital to its ability to separate. IOLTA Director Evelyn Pursley recalls a significant amount of pressure not to fund Pisgah Legal Services from LSNC and LSC because of their desire for a single statewide entity. The president of the LSC, John McKay, apparently called Pursley to express his displeasure after IOLTA's decision. However, Pursley believed that McKay's experience in Washington, a state with a long history of full consolidation simply did not translate well to North Carolina, and she knew that Pisgah Legal Services had the support of the local bar because the western part of the state had much higher IOLTA participation rates. She also believed Pisgah Legal Services to be one of the strongest programs in the state. In fact, one of the consultants funded by IOLTA during the reconfiguration debate told her that Pisgah Legal Services was one of the top two legal services programs in the entire country (Evelyn Pursley, personal interview,

March 28, 2011).

The ability of the legal services community to bring in material resources from non-LSC sources allowed it to maintain its existing number of organizations. However, this process took time; thus, services during the period immediately following the funding cuts dropped significantly. Nevertheless, the key lesson is that the reduction in federal funding forced the community to seek other sources of funding, which they did. From a purely material resource point of view, the LSC cuts did little to affect directly the organizational structure of the community.

However, the funding cuts did have significant indirect effects on the structure. The reduction in LSC funds intensified concerns about the prioritization of resources in local offices and overall system efficiency. LSNC and its board of directors had little control over prioritization at the local level. According to LSNC Executive Director Deborah Weissman, the perception was that several programs had “fallen into the quagmire of advice and counsel as the dominant service delivery” (Deborah Weissman, personal interview, April 21, 2011). These inconsistent levels of services among the field offices led to a desire for more central control over the evaluation and potential termination of local executive directors. The BoG’s success in pushing out Denison Ray emboldened them to seek a restructuring that provided them with greater control over personnel in the field offices.

We had a director or two in the state that got under the saddle of some bar leaders, who did some things in representing individual clients that didn’t represent good judgment. The leadership wanted to deal with that person and Dick [Taylor—ED of LSNC] took the position that the structure made it impossible to get rid of them. So the leadership said “let’s change the structure.” (Greg Malhoit, personal interview, April 12, 2011).

Furthermore, the confederation model contained 20 separate corporations, each with its own administrative costs, and no one disputed the economic inefficiency of the structure.

Debate arose because of differences in opinion over the relative importance of efficiency as a goal. Those seeking consolidation trumpeted the efficiency gains it would necessarily entail; those opposing it countered that efficiency concerns should not drive the structure.

We should not design the most efficient accounting system, and then let that determine what structure should be adopted. Rather, we should determine the most effective structure for serving clients and then design the most efficient accounting system to support that structure. (Schorr, 1996, p. 3).

In conclusion, the direct impact of the federal funding cuts in 1995 on the organizational structure of the legal services community in North Carolina was minimal. The community diversified its funding base and brought in more revenue by 2010 than it had in 1994. An important question is whether the community would have acquired the large amounts of non-LSC sources of funding that developed during this period without the LSC cuts. Unfortunately, there is no way to test for this because there is no counter-factual. Every state experienced similar levels of federal cuts. Within the state, even the development of Pisgah Legal Services cannot provide a full counter because there was only a three-year period in which it continued to receive LSC funding while also building up its local sources and the evidence suggests that Pisgah Legal Services ratcheted up its local fundraising in anticipation of breaking away from the centralized structure. However, the funding cuts did serve as the impetus behind the resurfacing of long-standing political battles in the state over centralized versus local control. The imposition of the State Planning Initiative increased the urgency of these battles such that the state planning process would largely consume next five years. I will discuss the details of these battles and their impact on the structure of legal services in North Carolina after discussing the effects of the restrictions on community structure.

Restrictions and a Community Split

The congressionally imposed restrictions had a much more profound impact on the structure of legal services in North Carolina than the funding decrease. Although the funding cuts exacerbated existing political tensions within the community and led to a protracted and unnecessarily acrimonious planning process, the restrictions served as a source of collective purpose for the community. The apparent selfishness of the general reconfiguration debate did not extend to those organizations that simply could not operate under the new restrictions. Although the intention behind the restrictions was to undercut legal services by blocking the use of key tools on behalf of an unpopular clientele, the irony is that, in the end, the restrictions served a beneficial purpose, probably the most important unintended consequence of the federal changes.

The restriction with the single largest impact on organizational structure in North Carolina was the so-called “poison pill” restriction. This prohibited any LSC recipient from using funds obtained from any source from engaging in activities prohibited by Congress in the 1996 appropriations bill. The increasing percentage of legal services funding that came from state and local governments, bar associations, and private foundations could not be used to engage in class actions, to lobby, to represent undocumented immigrants, or to facilitate grassroots organizing. The bottom line was that if you chose to be a legal services lawyer funded by the LSC, you would be a “second class” lawyer at best (Celia Pistolis, personal interview, March 18, 2011).

Despite intense disagreement on the best way to structure LSC-funded activities, broad agreement emerged on the desirability of ensuring the continuation of unrestricted activities. The inability of anyone in the community to engage in reform or group work

would render the entire community second-class. That is, a commitment to the need to maintain law reform and group representation of the poor still united the legal services community. Moreover, from a practical point of view, many attorneys had ongoing class actions that the new restrictions prohibited them from continuing after a period 60 days. If no one existed to take over these cases, they would simply have done all of their work for nothing. Therefore, the continued existence of the reform-oriented members of the community was vital to the common goals of the community.

Four organizations operating in the state in 1995 stood to lose all of their LSC funding, as well as their ability to fulfill their historical role in the community, because of the poison pill restriction: the Resource Center (lobbying and class actions), Carolina Legal Assistance (class actions), Prisoners Legal Services (representing prisoners), and the Client and Community Development Center (grassroots organizing). To protect their survival, the legal services community split itself into two groups: restricted and unrestricted. Restricted groups continued to receive LSC funding to engage in individual service work; unrestricted groups stopped receiving LSC money so that they could continue to engage in restricted activities. This response is mirrored in the decisions of legal aid populations across the country to split into subpopulations based on the receipt of federal money. However, the separation between the subpopulations was ceremonial in nature (Meyer & Rowan, 1977). Connections and coordination between the two groups remained strong even in the immediate aftermath of the split. In fact, one staunch opponent of federally funded legal services routinely cites North Carolina as one of the most egregious examples of flouting the poison pill restriction because the Justice Center rents space from LANC in the same building as LANC's Raleigh office (Boehm, 2002).

As the hub of the law reform efforts in North Carolina, the Resource Center provides a good example of the efforts of the community to preserve its access to impact litigation, lobbying, and policy research. The prior decision to make the Resource Center a separate corporation with its own board of directors was essential to the community support it received. The board of directors of the Resource Center was composed of the leadership of legal services field offices, clients, and other antipoverty advocates, not the private bar. As one of the Resource Center's attorneys at the time stated, "[e]veryone had a stake. Outside interests might not understand it, but [our board] got the big picture" (Bill Rowe, personal interview, March 14, 2011). The commitment of the community to maintaining its services turned the problem of how to sustain the Resource Center into largely a procedural one. "That's when smart people like Greg [Malhoit], John Vail, and Ken Schorr came up with this idea of effecting a swap of IOLTA money to keep us going" (Rob Schofield, personal interview, April 6, 2011). The basic idea was that field offices would essentially take what had been the Resource Center's share of LSC money in exchange for a reduction in their IOLTA funding that then would go to the Resource Center.

Although the community agreed on the need for the Resource Center's continuation, the swap was not easily accomplished from a political point of view. Project directors had to agree to shift some of their precious resources away from direct service provision and into the realm of law reform. According to Malhoit, it would not have occurred without the leadership of Ken Schorr, the executive director of Legal Services of the Southern Piedmont in Charlotte. "It was Ken who laid out the initial plan and other people became invested along the way" (Greg Malhoit, personal interview, April 12, 2011). The practical matter of continuing pending class actions also helped cement agreement from project directors.

Attorneys have an ethical obligation to represent their clients until the resolution of their cases. Abandoning clients, even in response to a federal mandate to do so, was unfathomable. Therefore, transferring these cases to a member of the legal services community was an important assurance that their clients would continue to get quality representation. From a financial point of view, the transfer of these class actions posed the additional problem of what to do with the attorney fees that might be awarded upon prevailing in the suits. Again, IOLTA provided the answer. IOLTA issued a loan to the Justice Center to take these cases using future awards of attorney fees as collateral. In the end, the swap of IOLTA funds, combined with attorney fees and a continuing grant from the Z. Smith Reynolds Foundation, provided the Resource Center with the funds necessary to survive.

An additional factor in the Resource Center's transformation was the fate of other state level entities that faced losing their funding because of the restrictions in 1996. One of these was the Client and Community Development Center. A holdover from the more community-based model of the OEO, the LSC regulations still required one-third of the board members of legal services offices to be composed of representatives from the pool of eligible clients in the given geographic jurisdiction of the office. A necessary consequence of this requirement is that client board members need training to represent their communities effectively. This training would also allow them to go back into their communities to be resources for others. In North Carolina, the initial entity that received LSC funding for this purpose was the Clients Council. However, it was a flawed model because it did not take the extra step toward community development; thus, it was replaced by the Client and Community Development Center, directed by Andrew Foster. The Client and Community Development Center served as a home base for several related organizations, such as the Fair

Housing Center, and focused its activities on grassroots organizing in poor communities. However, the 1995 restrictions prohibited the use of LSC money (or any other money) for organizing activities. Thus, like the Resource Center, the Client and Community Development Center risked organizational death. The answer was simply to merge the two groups.

The new Justice Center was created on July 1, 1996, with Foster and Malhoit as codirectors. The merger between the two groups was rather “uneasy” because of the immense demands made of the Center by legal services (Rob Schofield, personal interview, April 6, 2011). Planning for the organization envisioned more of a state support center for legal services than a group focused on community organizing, and its limited resources were put to the former purpose. The Justice Center took on the responsibility of coordinating impact litigation throughout the state. Its attorneys were available to co-counsel cases run by LSC-funded organizations, providing both a new level of expertise in the field and the competitive advantage of being able to claim attorney fees. They also conducted in depth, Continuing Legal Education courses in broad areas of poverty law. This served both as a conduit to the community and a resource in attracting pro bono attorneys. They developed the *North Carolina Poverty Law Monitor*, a quarterly report sent to almost 4000 lawyers and paralegals across the state, that summarizes recent developments in the area of poverty law. Thus, the Justice Center’s initial functions reflected its importance to the newer legal services movement more than to the broader antipoverty movement. Nevertheless, the staff of the Justice Center yet felt a connection to the antipoverty movement from which legal services had emerged.

The lessons of the emergence of the Justice Center are the power of maintaining a

collective goal and the unintended consequences of policy change. First, the poison pill restriction did not prohibit law reform or group representation of the poor. The commitment of the legal services community to providing the restricted services to their constituents combined with a forced organizational split to result in an improved structure. Without the force from Congress, it is unlikely that such a split would have occurred. According to one Justice Center advocate, “[w]e would not have done that had we not been forced to” (Carlene McNulty, personal interview, April 8, 2011).

These unintended benefits still required two things: money and information flow. Replacing the lost LSC funds was difficult and required a significant amount of time. Malhoit remembers his role during the first five years as executive director of the Justice Center as that of a full-time fundraiser, not an advocate. It was not until 2002, when the Z. Smith Reynolds awarded the Justice Center a \$2 million yearly general operating grant that the organizations stopped worrying about issuing the next round of paychecks (Rob Schofield, personal interview, April 6, 2011). Today, the Justice Center does not have a full-time development staff because it apparently feels comfortable enough with its resources.

Information flow provided a different kind of challenge. The organizational split between those doing restricted work and those doing unrestricted work essentially created a legal aid community and a separate legal services community. The key to success was maintaining ties between the two communities. In the past, the direct placement of the Resource Center within LSNC provided clear lines of communication between field office attorneys and the impact litigation gatekeepers. Additionally, before the 1996 restrictions, field programs could institute class actions or other reform litigation on their own accord. With the removal of this ability to a separate entity, the lines of communication were less

direct. The leader of the Poverty Law Litigation project within the Justice Center, herself a successful appellate litigator with North State Legal Services in the past, admits that maintaining those lines of communication are the key to her ability to engage in meaningful and relevant work.

We have to rely on the legal aid folks on the ground more to keep us informed of those issues. I'm one step removed from that and that makes it hard for me to do an effective job. Without the collaboration and communication with legal aid lawyers it would be much harder to do. (Carlene McNulty, personal interview, April 8, 2011).

Historically, the primary means of interorganizational communication on impact litigation issues has been the substantive area task forces. The only controversial issue regarding the creation and role of the Justice Center within the legal services community surrounded the operation of these task forces. The Resource Center ran the task forces as part of its state support functions for LSNC and the independent programs. Although the Resource Center was a separate corporation, it did not receive LSC funds directly. It received a set percentage of the LSC funding to each of the four LSC recipients for this purpose. This funding relationship is what allowed the Resource Center to view the field offices as one of its natural constituencies, and the task forces were the primary mechanism tying individual service work to more impact-based litigation and advocacy. The concern was that removing that tie would result in a disconnection between the policy activities of the Justice Center and the legal needs of the poor community to which it had fewer direct connections.

Deborah Weissman, who replaced Richard Taylor as LSNC executive director around the end of 1995, argued strongly that the task forces should remain within LSNC. She believed that the field level attorneys who were performing the daily service work should engage in the intellectual and theoretical foundation to the work they were doing, and having a strong tie to the big picture of impact work was the best way to own their work (Deborah

Weissman, personal interview, April 21, 2011). “No matter how much we want to think of all work as godly and wonderful, there’s a certain level of intellectual drive that comes from the task forces. Why would you want to give that up institutionally?” (Deborah Weissman, personal interview, April 21, 2011). Essentially her argument was that removing the task forces from LSNC control would create a two-tiered set of lawyers.

When Weissman left LSNC in 1998, she thought she had won the argument over the task forces; in fact, she might have. However, the other side won too because the result was a compromise. Although attorneys at the Justice Center ran the meetings, they were essentially accountable to the field attorneys who attended them and steered their agendas. The Justice Center acted as a referee in the task force meetings, jumping in to provide substantive help or to suggest strategic considerations emanating from the big picture world of advocacy. They did not have any kind of legal authority to stop an LSC-funded office from taking a particular appeal; rather they acted as a compass, pointing people in what they felt was the right direction and hoping to convince them to follow along. The active involvement of the Justice Center in the task forces had a significant impact on the services it provided. However, sometime around 2007, the task forces ceased to exist formally and they were replaced by a series of technologies that sought to serve the same purpose for less cost.

The restrictions had an impact on the structure of the geographically defined field offices as well. Legal services organizations, especially federally funded organizations, are normally embedded in an institutional environment of noncompetition. Their geographically defined jurisdictions reduce competition for resources when those resources emerge from their local environments. Nevertheless, funding from broader levels, such as the state or national governments, can introduce an element of competition, such as when Don Saunders

and others competed against LSNC to obtain LSC funding for the state support center in North Carolina. In 2002, when LANC emerged as the single LSC-funded entity in the state, two offices (Charlotte and Winston-Salem) chose to split themselves into restricted and unrestricted components. This split introduced concerns about competition between the two groups.

As a practical matter, it was crucial that the split organizations limit the amount of duplication in their work that would engender competition. They could not eliminate duplication. As the executive director of LSSP pointed out,

[t]he restrictions are the collection of all the most politically unpopular stuff there is to do. If you are going to say we will only exist if the only things we can do are the ones that are affirmatively restricted, you make it practically impossible to exist. We have to have some mixed package of more and less palatable work so that we can attract enough broad support and funding to do the unpopular work” (Kenneth Schorr, personal interview, March 30, 2011).

Despite their attempts to limit duplication, some members within the community disliked the overlapping jurisdiction approach and questioned why unrestricted programs would engage in activities that restricted programs could do. However, in the end, the common sense of purpose within the community about the importance of engaging in restricted work won out and cooperation ensued.

When LSSP split into two organizations in 2002, the offices maintained an extremely high level of coordination and communication. First, they shared a building in Charlotte and saw each other every day. Thus, informal communication was easy. More importantly, the leadership actively encouraged ties between the two formally separate organizations. The executive director of LSSP described the atmosphere:

We did a very elaborate thing of saying that we are going to be two corporations but we’re still one team. We had a series of joint staff meetings and we played games. . . . We did this “Partners in Justice” thing where everyone got a mug and jacket

embroidered with that slogan. (Ken Schorr, personal interview, March 30, 2011)

The numbers bear out the levels of cooperation. As described in Table 3, in 2005, the LANC-Charlotte office closed 14% (151) of its cases in the substantive area of consumer issues while LSSP closed 0% of its cases in consumer issues. Similarly, 65.9% of LSSP's cases were in the health field while only 7.3% of LANC-Charlotte's cases dealt with health issues. These disproportionate figures did not occur by accident.

The Winston-Salem offices took a slightly different approach to their split than LSSP. The LASNNC, one of the three original independents, stopped receiving LSC funding and used a series of foundation grants to pursue several specialized projects. However, the results were the same as in Charlotte. Coordination and cooperation between the two entities reduced competition for funding and assured the minimal necessary amount of duplication. Table 3 provides details on the relative caseloads of LASNNC and LANC-Winston-Salem. In 2005, LASNNC committed a full 68.1% of its resources for family law cases, while the LANC-Winston-Salem office closed only one family case. Alternatively, LANC-Winston-Salem closed 40.3% of its cases in the housing category, while LASNNC closed merely 13.4% of its cases as housing. The latter statistic shows how the duplication was minimized, not eliminated. Housing issues were a much more politically palatable venue with which LASNNC could ensure funding.

When Pisgah Legal Services broke away from LSC funding in 1998, the LSC required LSNC to open an office in Asheville to satisfy its 100-county model. Despite lingering antagonism between Pisgah Legal Services and LSNC, this branch eventually settled into a mode of specialization that complemented Pisgah Legal Services and reduced any competition for resources. Nevertheless, the historical differences between Pisgah Legal

Services and the offices in Charlotte and Winston-Salem are important in understanding the differing evolutions of the overlapping programs. Pisgah Legal Services did not split itself in response to the restrictions. It chose to withdraw from LSC funding because it did not want to lose its corporate autonomy (Jim Barrett, personal interview, April 4, 2011). Therefore, its services were not constructed around the restrictions as were the services in Charlotte and Winston-Salem; thus, no natural mechanism divided the service load. I will discuss in chapter 3 how the structure of services in Pisgah Legal Services affected its ability to provide services when compared to Charlotte and Winston-Salem. However, at this point in the history, it is important to understand that the restrictions themselves were not the reason for Pisgah Legal Services' withdrawal from LSNC.

The ability of the Charlotte and Winston-Salem offices to split into two entities and yet maintain a high level of coordination is indicative of a common sense of purpose among the split entities. Indeed, a primary lesson from the experience of the 1995 restrictions is that statewide collective action is possible in the face of federal attacks on the community's ability to provide the range of services they feel are necessary to adequately represent their clients. The emergence of the Justice Center in 1996 and its central role within the community provide the first example of this. Yet Charlotte and Winston-Salem did not engage in their split until 2002 at the culmination of the statewide reconfiguration debate. This historical fact serves an important differentiating role between their success and that of the Justice Center. This historical fact also requires an in-depth analysis of how they came to that point and what factors, beyond the federal restrictions, played a role in their decision to become independent. The section on LSC's state planning initiative and internal state politics provides the required analysis.

The State Planning Initiative, Internal Politics, and Consolidation

The LSNC Board of Directors met in February of 1995, one month after the newly elected members of Congress took their oath of office and before the LSC's announcement of its Statewide Planning Initiative. They announced a new, long-term planning process to be concluded no later than May of 1996, LSNC's 20th anniversary. A steering committee for the planning process developed a mission statement in July 1995 to assure that task forces established by LSNC and NCBA would make their recommendations in time for the LSNC to make a decision before the 20th anniversary celebration (Michaels, 1995). The push for such a hurried completion is odd for two reasons. First, it was already apparent that Congress was going to take action regarding legal services. The elimination of the Legal Services Corporation was an explicit goal of the "Contract with America," a set of policy actions released by the Republican Party in 1994 that the party promised to take to a majority in Congress if it were elected. Restructuring the statewide system for legal services in a time of such future institutional uncertainty simply did not make sense. Second, the mission statement indicated that finishing the process of restructuring before the 20th Anniversary was more important to its drafters than the actual restructuring. This odd timing spurred suspicion among many legal services advocates who were opposed to the centralized operations that LSNC's board had already decided to consolidate.

The LSNC Steering Committee's first publication did little to dispel these suspicions. Although stating, "[a]ny model which emerges would have to continue to have 'central elements' and 'local elements'," it is clear from its language that the board was preparing to fight for consolidation (Friedman, 1995, p. 3). The steering committee warned that the process should

be perceived as one in which all stakeholders had a hand in shaping, as opposed to a result which is “crammed down from above.” A “turf protecting, business as usual, we can downsize in place and be fine” attitude is insufficient. (Friedman, 1995, p. 4)

These statements were a direct challenge to local program directors who had been arguing the side of consolidation for years and showed quite clearly the level of tension existing within the community. In fact, foreshadowing events to come, the steering committee also warned that “[i]t is risky to underestimate the suspicion of ‘big, bad Raleigh’ out in the ‘hinterlands’” (Friedman, 1995, p. 3).

When the LSC issued its Statewide Planning Initiative program letter in August of 1995, the reconfiguration debate was already in full swing in North Carolina. The central debate revolved around the apparent desire of LSNC, the BoG of the NCBA, and the LSC to consolidate fully LSC-funded programs into a single corporate entity with increased central powers over local offices. The primary argument was one of efficiency, using the impending federal funding cuts as a justification for the need to make better use of its soon to be reduced resources. The other side of the debate was essentially a push to maintain autonomy in the local offices. Although many project directors in LSNC member offices backed them up, the push for autonomy manifested itself primarily in the form of the independent offices that refused any form of forced consolidation. The problem was that neither side liked the status quo Confederation Model despite the tension it generated. As an LSNC executive director succinctly phrases it, “The confederation was such a strained structural setup that it made for tension. Either there should have been consolidation or not. Either force the family or allow them to choose to do it” (Deborah Weissman, personal interview, April 21, 2011).

By the end of 1995, it was clear that no agreement would be reached on restructuring without both more time and outside help. In response to the LSC directive requiring

statewide planning efforts and consideration of consolidated statewide programs, the NCBA used IOLTA funding to sponsor an independent report from an outside consultant. The consultant group, Altman Weil Pensa (AWP), specialized in the merger of large law firms, something not unnoticed by opponents of its eventual recommendations. However, the principal consultant on the report was a former legal services attorney in Michigan. Although no action was taken on AWP's eventual report, its recommendations and observations are perhaps the best indication of the situation in North Carolina between 1996 and 2000, when the agreement in principle to consolidate into a single organization would be reached.

The AWP consultants considered three basic models for North Carolina: (a) a completely centralized single corporation with local offices headed by managing attorneys, (b) complete abolition of LSNC and independence of field programs, or (c) three regional offices instead of one centralized office. They rejected them all. "[T]he biggest problem is that North Carolina has operated for 20 years with its present system, and . . . we cannot approach the organizational structure with a clean slate" (Altman Weil Pensa, 1996, p. 14). The consultants rejected the single corporation model largely because they believed it would lead to the demise of many local programs whose local support would be vital to their existence. They rejected the Complete Independence Model because they believed that it would lead to the demise of rural offices that could not sustain themselves, and this would go against the 100-County Model. They reject the regional program because they believed "it would contain all the problems perceived with the present system, but times three" (Altman Weil Pensa, 1996, p. 14).

Thus, in structural terms, the AWP report recommended that North Carolina make no changes to the existing structure. The inertia posed by the existing confederation structure

simply seemed too great to be overcome at that point in time. However, it did recommend changes in the relationships among the programs, especially between the central office and the field programs. “[W]hat seems to us to have been largely missing to date have been collaborative, supportive relationships between the Executive Director and the project directors, among the field programs themselves, and between the local programs and the Central Office” (Altman Weil Pensa, 1996, p. 18). The executive director of LSNC at the time, Deborah Weissman, completely agreed. Weissman came to LSNC as deputy director in 1994 from a position heading a family law, impact litigation unit for Bay Area Legal Services in Florida. Her experience in highly decentralized Florida, which in fact served as the ideal decentralized form considered by the Blue Ribbon Special Committee in North Carolina in 1976, was positive (Deborah Weissman, personal interview, April 21, 2011). Independent offices willingly collaborated, creating the feeling of a community, even in the absence of a formal, structural community. Therefore, when she learned that North Carolina had a prefabricated community structure, she “came in thinking that this was an organization that really had the structural capacity to really work well in terms of good lawyering. That was not the case” (Deborah Weissman, personal interview, April 21, 2011).

AWP also recommended that none of the independent programs be forced to join LSNC, though they “should be strongly encouraged to do so” (Altman Weil Pensa, 1996, iv). The independents considered this a win because it was clear that any consolidated form that allowed them to remain independent would be significantly weaker than a form that included them. Proponents of consolidation worried that allowing the independents to remain outside would encourage others to follow suit, further weakening the state level structure. “I think the board and LSC definitely wanted [the independents]. The thinking was why could they

exempt themselves, and if we let them will other programs try to do the same” (Deborah Weissman, personal interview, April 21, 2011).

The recommendations to make no structural changes appeared to be based more on a recognition of the political reality of the times than on any belief that the current confederated structure worked well. “The Central Office concept of LSNC itself may have been doomed from the beginning, in terms of its acceptance by the field programs” (Altman Weil Pensa, 1996, p. 11). The report documents a lack of recognition of the value of the central office’s role in the overall design. They blame in part the removal of the Resource Center and other statewide entities from the central office. Without a direct role in service provision or even service coordination, the central office became the “tax man” in the eyes of the field offices. The central office took in funds, kept its share to perform its less visible administrative duties, and then shared the rest with the service providers. This was especially true for locally raised money from groups like the United Way. The local office receives the money, but then must send it to Raleigh to deposit it in a bank.

One of the major problems that AWP pointed out was in the field of technology. The field offices maintained separate systems and had uneven use of its technological capabilities. They recommended a 5-year initiative to modernize the technological capabilities of legal services providers in the state and to integrate them into a single, shared database. However, even this seemingly neutral recommendation met with resistance from the field programs whose leadership was wary of LSNC maintaining custody of their data. Jim Barrett of Pisgah Legal Services in Asheville was one of the most outspoken opponents of consolidation. He said that he and other opponents, mostly in the western part of the state, began calling the new computer system the “Tower of Power,” a reference to their belief that

the consolidation movement was essentially a power grab by LSNC. The lesson is that any move to put more authority in the central office in Raleigh was met with severe resistance by several long-time project directors in the state.

More importantly than its structural recommendations, the AWP report offers a window into the state of mind of the community. The investigation immediately came up against deep divides within North Carolina and the palpable antagonism among community leadership.

During our information-gathering and review of documents, we were struck by the level of acrimony displayed and the inflexible positions that some people took during the course of planning. . . . We are familiar with legal services programs in other states where there is total independence of one program from another, but where there have been higher degrees of cooperation and dedication to common goals than appears to have been the case in North Carolina with its confederation of programs (Altman Weil Pensa, 1996, p. 10).

The consultants likely saw the legal services community in North Carolina at its worst time, but its observations are important to understanding the lack of structural change immediately following the federal institutional changes in 1995 and 1996. The community was locked into an internal political struggle for control over the provision of legal services between a faction advocating central control and a faction advocating local control. The confederation structure itself had been a compromise between these two camps; however, in the end, neither one liked it and its inherent inefficiencies made it vulnerable to challenge. The consultants themselves noted, “[w]e think that some of the ill will was actually the result of some unintended consequences of the organizational design of LSNC (Altman Weil Pensa, 1996, p. 11).

As Weismann points out, the structure itself created the tension engulfing the community, but the people refused to change the structure because they could not get over

the tension. “In our case people were too far gone, too distrustful of one another” (Deborah Weissman, personal interview, April 21, 2011). Neither side was willing to compromise because they did not trust the intentions behind the other side’s proposals. Weismann claimed that opponents of consolidation were concerned with the “structure rather than the client” (Deborah Weissman, personal interview, April 21, 2011). Kenneth Schorr claimed, “The planning process completely collapsed over LSNC’s persistence on centralizing power” (Schorr, 1999, p. 4). The result was the Dark Ages of legal services provision in North Carolina because the inability to settle on a statewide plan resulted in additional pressures from the LSC.

Nevertheless, the formal mechanisms of statewide planning continued. Under the LSC Program Letter 98-1, each state was required to have a statewide planning entity and that entity was required to file a plan with the LSC outlining its progress towards a consolidated community. In this vein, the North Carolina Commission on the Delivery of Civil Legal Services (Commission) delivered its final report on June 18, 1998, to the BoG of the NCBA. The Commission’s composition, like the Special Committee of 1976, was the subject of some controversy among the various stakeholders. Although the various working coalitions that made reports to the Commission were composed of legal services representatives, not a single representative from a legal services program was on the Commission. However, the presidents of two prominent business associations were on the Commission: the North Carolina Citizens for Business and Industry, and the North Carolina Association of Financial Institutions. The Commission’s claim that the report it offered was the result of a “North Carolina planning process, conducted by North Carolinians for the benefit of North Carolinians,” (Commission, 1998, p. iii) while technically true, seemed

somewhat hollow by the absence of the actual organizations performing the work it attempted to structure. In fact, in its acknowledgements of the various groups on whom the Commission relied in making its recommendations, the North Carolina legal services community is conspicuous by its absence.

The result of the 1998 Commission Report was the merger into a single corporation the LSC-funded field offices already within LSNC. The independent programs in Charlotte, Durham, and Winston-Salem remained outside LSNC and continued to receive LSC funding directly. Each of the boards of directors of these programs opposed the “involuntary merger proposal,” and the Mecklenburg County (Charlotte) Bar Association passed a formal resolution “strongly opposing any forced merger of Legal Services of the Southern Piedmont into LSNC” (Fillette, 2001, p. 1). In response, the Commission simultaneously created a new oversight and implementation committee to evaluate the effectiveness of the new model. If that evaluation showed significant improvement in service delivery and the achievement of several enumerated goals, the independent programs should then be forced to join. By the beginning of 2001, this evaluation had not been completed.

The LSC was not impressed with the changes. On December 3, 1998, the LSC responded to the North Carolina planning report describing the changes that had resulted from the Commission report. The letter from LSC stated,

This plan suffers from major deficiencies and does not reflect any positive movement towards a comprehensive, integrated delivery system. This report gives no indication that you are examining the delivery system from a statewide perspective. Often times, the goals in a particular area include activities to strengthen local efforts. While this is appropriate, the “vision,” which emerges from this document, is a purely local vision or continuation of the status quo. This is unacceptable (Schneider, 1998, p. 1).

The LSC continued in the letter to fault North Carolina for its failure to articulate clearly a common set of goals and values for the legal services community. If the strengthening of

local efforts is an unacceptable goal, the meaning behind the LSC's statement is that consolidation is the only acceptable structure. By dismissing "local vision" as a proper goal, the LSC unconsciously rejected the idea of a networked form of organization as an acceptable alternative to consolidation (Powell, 1991).

The LSC also faulted the planning committee for its inclusion of only one non-LSC funded entity. This displeasure was somewhat hypocritical. Although it was an LSC recipient, LSSP filed a complaint with the LSC about its exclusion from the process. The LSC (1998) dismissed the complaint with the following statement:

LSSP has not convinced the Corporation that they were denied a voice in the Commission's deliberations. From the Corporation's perspective, LSSP and the other LSC providers were given the opportunity to make their case for the status quo and failed. Consequently, the Corporation will continue to give the Commission's recommendation on the configuration of LSC funded programs in North Carolina great weight. (Schneider, 1998, p. 3).

The LSC did praise the community for maintaining the task force system after the loss of its LSC-funded state support center in 1995. However, the planning report submitted to the LSC apparently contained some concerns about maintaining them in the Justice Center instead of LSNC, reflecting the arguments of LSNC Executive Director Deborah Weismann described above. For its part, the LSC viewed the debate as an obstacle to meaningful state planning and offered to provide an answer. "If the LSC funded programs have concerns about collaborating with entities which perform services, which are restricted under LSC funding, the programs should seek guidance from LSC as opposed to letting these issues fester" (Schneider, 1998, p. 4). Whether LSC agreed with Weissman is unclear, but the impression made by the statement is that the LSC should be the final word on configuration questions.

Legal services programs across the country began to consolidate their operations in the mid- to late-1990s in response to LSC's clear desire for fewer recipients and the

economic benefits that such a structure would confer. Between 1995 and 2001, 29 states reduced the number of their LSC recipients, with percentages of reductions ranging from 6.7% in New Jersey to 80% in Colorado, the District of Columbia, and Indiana. Between 2001 and 2007, another 10 states consolidated operations to different extents. Of the 12 states that did not reduce the number of their LSC grantees, nine states already had a single recipient and the other three states had two recipients.

When the LSC made its 1998 grant determinations, it decided to shorten the length of the grants to programs that were not making adequate progress in their statewide planning (Tull, 1998). The normal grant cycle is for three years. In 1998, the LSC shortened the funding of one state to one year and the funding of four states to two years. The state that received only one year of funding was North Carolina. New York, New Jersey, Pennsylvania, and Virginia⁶ received two years of funding. The LSC explained its decision:

The decision to award grants for a shorter period was made for two reasons: (1) to encourage recipients in these states to develop further their plans for a comprehensive, integrated statewide delivery system; and, (2) concern that the number of LSC-funded programs in these states may not constitute the most economical and effective configuration for delivering legal services to the low-income community (Tull, 1998, p. 2).

Although the phrase is a “comprehensive, integrated statewide delivery system,” recipients understood its meaning as “consolidated.” At the time of the grant awards, Virginia had 14 LSC recipients, New Jersey had 15 recipients, Pennsylvania had 20 recipients, and New York had 23 recipients. Why North Carolina, which only had four LSC recipients, was the target of the most punitive grant award was not clear, but its status as the only legal services structure

⁶ An LSC-Funded group in southwestern Virginia filed suit against LSC in 2000 for its refusal to fund the office for the traditional 3 years. The district court found that the LSC had acted within its authority; the 4th Circuit threw out the suit, saying that the organization did not have standing to sue the LSC because it was not the intended beneficiary of the LSC Act. See *O'Donnell and Client Centered Legal Services of Southwest Virginia v. Idleman, LSC, and McKay*, 12 Fed. Appx. 180; 2001 U.S. App. LEXIS 14208 (4th Cir. 2001).

in the country with a confederated structure was likely to blame. “We were basically the low-hanging fruit” because of the patchwork LSNC structure, said LANC Executive Director George Hausen (personal interview, March 3, 2011).

The response to the LSC’s statements from opponents to consolidation in North Carolina was not positive. However, to a certain extent, they saw the writing on the wall. The creation of a new planning entity at the end of 1998, this time composed of actual legal services providers, was the first step towards the light for the community. IOLTA suggested the creation of the North Carolina Legal Services Planning Council (Planning Council) “to try to move beyond the dysfunctional personalities that were working in through that planning process so that they could work together” (Evelyn Pursley, personal interview, March 28, 2011). Using its position as a major funding source, especially for the non-LSC funded entities in the state, IOLTA gently threatened the community. “I said I would like for everybody to start sitting around a table and start talking to each other, and they did, mostly. Having me in the room I think helps make them play nice” (Evelyn Pursley, personal interview, March 28, 2011). Thus, it required the intervention of a friendly, but upset funder to get the community back on track. The Planning Council immediately became the official entity responsible for the formal planning functions required by the LSC.

The most important aspect of the Planning Council was its composition. The membership included the executive directors of LSNC, the three independents, Pisgah Legal Services, and all of the non-LSC funded organizations. It also included the chair of the chair of the Project Directors Group of the field offices, a representative from the NCBA staff, the director of the Farmworker Unit of LSNC, and a member of the Client Council. The difference in composition between the Planning Council and all of the special commissions

empanelled over the years was stark. Although the special commissions all but excluded representatives from the legal services community, the Planning Council was composed almost exclusively of members of the community. This was the pivotal decision in the upcoming turnaround to the community's attempts to solve its collective action problem.

The Planning Council hired its own consultants to evaluate all of the existing structures in the state and to recommend a new model that would maximize delivery of legal services to all indigent clients in North Carolina. The consultants this time were former officers of the LSC, not specialists in the merger of large law firms, and the results of their study were strikingly different from prior evaluations. First, they found that the attempts to structure LSNC to capture the "best of both worlds" of local and centralized control in fact managed only to encompass the worst of both worlds. Second, the consultants argued that the forced merger of the independents into the current structure would be a mistake. They recommended two alternative models: (a) a single statewide program with a three-tiered, regionalized management system, or (b) the creation of three independent regional programs.

Members of the Planning Council could not reach a consensus on either of these models. To study other models, they decided to form two groups composed of the field directors of the programs in the East and the West with directors of borderline programs able to choose which group they joined. Naturally, the result was a proposal for a new Two-Program Model based on the natural geographic and cultural divides between East and West. This model had strong support among the offices in the western part of the state. They argued that the key benefit would be the elimination of the resource-draining disputes between Pisgah Legal Services in Asheville and LSNC. It would also remove the two offices (Boone and Sylva) that historically received a higher per capita funding rate from LSNC than other

programs because of minimum access goals. However, the Eastern group seemed to have operated under the assumption that a single statewide entity would eventually emerge. They proposed simply to merge several of their offices into regional programs that would preserve some autonomy under that single model. Nevertheless, the Planning Council voted on December 13, 2000, to approve the Two-Program Model plan suggested by the Western group. The vote was not unanimous—six voted in favor of the Two-Program Model, two members were absent, three abstained, and two voted in favor of the Single-Entity Model.

The creation of the Two-Program Model never occurred. Under the competitive bidding process established in the 1995 federal law, the LSC had the authority to determine the geographic scope of the coverage areas programs could apply to cover. It was North Carolina's turn to receive a new determination of these service areas in 2001, for bidding for 2002 funding. The LSC's formally announced desire for a single, integrated state justice community, as well as informal conversations between the leadership of the LSC, LSNC, and the independent programs indicated that the LSC would define the entire state as a single coverage area. According to the director of the Charlotte office, "LSC basically told us they weren't going to give us a grant" (Kenneth Schorr, personal interview, March 30, 2011). The director of the Winston-Salem office similarly opined:

State planning has come down to this: It appears that John MacKay (LSC President), and perhaps some of his advisors, believe firmly that each state should be bid as a single service area. . . . Accordingly, it seems to me that it will be a waste of time to pursue the two program model (House, 2001, p. 1).

LSNC's Executive Director, Melissa Pershing, proposed a single program model on January 17, 2001. However, Pershing's proposal was not for LSNC to be that single program. The local control provisions to which the LSNC to force the merger of its field programs in 1999 posed a significant obstacle to its full control. Additionally, LSNC as an entity carried

with it a history of internal rancor and resentment from the field offices. Although the creation of a new entity could not wipe the slate entirely clean, the hope was that over time a new entity with a new name could develop a new history more favorable to the goals of providing legal services to the poor. “In some ways, [Pershing] killed her own entity in order to have a formulation that would work” (Kenneth Schorr, personal interview, March 30, 2011).

In the face of the political reality of the situation, and with hope that the new entity might be different, the Planning Council voted 11 to 1 to ask each of the boards of directors of the four LSC-funded programs to adopt a resolution supporting Pershing’s model. LSNCR immediately adopted its resolution on January 19. The three independents took a little while longer. The Durham program adopted its resolution on January 30 and the Winston-Salem office on February 5, after its Executive Director, Kay House, expressed her opinions in the memo cited above. The board of directors of LSSP (Charlotte) met on February 6, 2001, the day before the deadline contained in the Planning Council’s resolution. Its resolution stated its preference for the Two-Program Model, but also agreed to the Single-Program Model if the LSC in fact announced only a single service area. On February 7, 2001, the Planning Council voted 11 to 0 (with Jim Barrett of Pisgah Legal Services abstaining) to endorse the creation of a new, single statewide program to apply for LSC funding for 2002.

The incorporation of LANC occurred on July 1, 2002. LANC is a nonmembership nonprofit corporation comprised of a central administrative office, 24 field offices geographically dispersed across the state, six statewide projects with substantive area specializations, and two regional projects. LANC serves all 100 counties of North Carolina through its field offices and its statewide projects. Prior to the full operation of LANC, the

Planning Council named a transition board of directors that met 14 times between April of 2001 and June of 2002. The frequency of these meetings alone indicates a much higher level of engagement in the process than any of the previous reconfigurations structures indicates. The transition board of directors had 16 members, four who were appointed by each of the four LSC recipients, and Pender McElroy, a private attorney in Charlotte with a history of ties to LSSP and a former president of the Mecklenburg County Bar Association, chaired the board. In contrast to the prior planning commissions, the transition board operated in a transparent fashion and consciously kept line-level employees apprised of any pertinent developments. In fact, the board created a Web site to which it posted the minutes of its meetings and any other important documentation it wished to disseminate.

The Planning Council, which shared several members with the new Transition Board, outlined key components of the new structure. Many of these components resemble the initial goals of OEO legal services. First, the system must be accountable to clients and remain committed to client-centered activities, including community economic development (Planning Council, 2001). Second, the new LSC entity should recognize that it is one of many providers of legal services in the state and that collaborative work is necessary to provide the full range of services to clients. Third, the creation and maintenance of non-LSC funded entities is crucial to providing full services to the entire community, including special populations such as farmworkers, Native Americans, and the disabled. Finally, the new entity should participate in future Planning Council activities.

The eventual structure of LANC reflected all of these values. As described above, two of the formerly independent programs split themselves in half to provide restricted services. NCLAP in Durham elected not to split itself. Its presence in the Triangle area, close

to the Justice Center, and its historic difficulty raising local funds essentially mandated that decision. The Administrative Office of LANC in Raleigh had five positions. A minimalist operation, it provided administrative services and coordination with other legal services providers in the state. The effect of these changes will be seen in more depth in the following chapter.

LANC's board of directors has 24 members, of whom 15 must be attorneys and nine must be from the client community, including representatives from community organizations that represent eligible clients. The NCBA retains a significant role on the board in its ability to appoint five members, though this is far removed from the 50% it appointed under LSNC's by-laws. The North Carolina State Bar Association, the home of IOLTA, appoints in 2011 a member to the board, as do six different "affinity bars" across the state. These include organizations such as the North Carolina Association of Women Attorneys and the North Carolina Association of Black Lawyers. Finally, the judicial districts in Greensboro, Durham, and Charlotte appoint one member each. In addition to the voting members, the LANC board contains three nonvoting directors: the president elect of the NCBA, a person selected by the IOLTA Board of Trustees, and a member of the Judicial Conference (i.e., a judge). The breadth of the board is important because it recognizes the important role the different branches of the legal profession play in the provision of legal services.

The immediate result of the consolidation was a streamlining of administrative operations and an increase in legal staffing. LANC Executive Director George Hausen says he fired about 30 administrators throughout the consolidation process, with the result that LANC went from 79 to 100 lawyers almost overnight because of the cost saving (personal interview, March 3, 2011). He also completely removed field offices from any duties to raise

funds locally. Though he recognized the potential trade-offs between local ties and resources, he believed that the benefits of the local connections simply did not outweigh the costs to service provision. Hausen further asked project directors, now called “managing attorneys,” to eliminate their own caseloads. “Their job should be to mentor and guide” the young attorneys (George Hausen, personal interview, March 3, 2011). Although several of the managing attorneys were “warriors in their hearts and souls,” Hausen (Personal interview, March 3, 2011) believed this approach to be superior because it instilled a sense of mission in the younger attorneys.

One of the advantages of the consolidated program was its ability to take a “soft boundary” approach to its services (George Hausen, personal interview, March 3, 2011). LANC was essentially a large law firm with the ability to move its attorneys to areas of greatest needs. LANC created, in conjunction with other members of the community, a series of substantive area projects such as the Mortgage Foreclosure Project (MFP). If a potential client were to enter an office where none of the staff had experience in foreclosure cases, they could call attorneys with the MFP for assistance. This allowed field office “generalists” to take cases that with which they normally would not feel comfortable; thereby, it increased the overall level of community ability to represent a broad array of clients. It also allowed LANC to engage in more impact litigation, as will be further discussed in chapter 3.

Three major organizational changes have occurred since 2002. First, after the formal incorporation of LANC, the Planning Council changed its name to the Equal Justice Alliance and expanded its membership. Its role was still as the primary mechanism of statewide legal services planning, but its expansion brought in additional members of the community, including Disability Rights of North Carolina (formerly Carolina Legal Assistance), the Land

Loss Prevention Project, North Carolina Prisoners Legal Services, the Justice Center, Pisgah Legal Services, NCBA, and IOLTA. In short, the Equal Justice Alliance included representatives from all of the legal services providers in the states, which was the first time this had been true for the major statewide coordinator.

Second, in November of 2005, then-Chief Justice Beverly Lake of the North Carolina Supreme Court ordered the establishment of the North Carolina Equal Access to Justice Commission, making North Carolina the 19th state to create such an institution. The EAJC was a 25-member group consisting of the leadership of the judiciary, the private bar, legal services providers, the legislature, and the philanthropy community. IOLTA funded the creation of a full-time director of the EAJC in about 2008 and it had become an active voice in the push for greater resources for the legal services community. However, it gained a formal role in the actual delivery of legal services in the state.

Third, LANC created the Centralized Intake Unit (CIU) in 2007 to address inefficiencies in the screening of potential clients. The CIU employed full-time, licensed attorneys to screen calls on a statewide line. The idea behind the CIU was to free up attorney time in the field offices to focus on substantive work (George Hausen, personal interview, March 3, 2011). Although its main effects were in the realm of service provision (to be discussed in chapter 3), the creation of the CIU was an organizational outcome of the consolidation movement. From a structural point of view, the CIU greatly increased efficiency. Nevertheless, questions emerged regarding its indirect effect on the ability of field office attorneys to see the “big picture” of their clients’ lives. One of the benefits of allowing attorneys to perform the full range of services, from intake to appellate litigation, was their ability to make connections between the multiple clients they screen and represent. These

connections were often the source of impact litigation or other group-level advocacy. By removing intake from field offices LANC risked missing important patterns in the calls. Although this was not something that I could test directly, its importance as an institutional constraint must be recognized.

Cooperation and Coordination in a Networked Structure

The organizational structure of the legal services community in North Carolina in 2010 is markedly different from the structure in 1995. The move to a single, LSC-funded entity and the split into separate restricted and unrestricted programs fundamentally altered the collective action problem faced by the community. Instead of individual organizations seeking to maximize the provision of legal services to their immediate constituency through a mix of individual service and law reform activity, the new structure required cooperation across organizations to achieve the same result. Thus, the methods of interorganizational cooperation and coordination were crucial to its success. Furthermore, the increasing importance of the involvement of the private bar in providing legal services created an additional layer of complexity to the network.

Historically, the legal services community coordinated its litigation activities through the substantive law task forces. The elimination of state support funding and the restrictions imposed by Congress in 1996 resulted in the creation of the Justice Center and the placement of support functions, including responsibility for the task forces, within this new entity. Although the Justice Center had no formal authority over the decisions of LSNC offices to pursue particular cases, the task forces themselves acted as a strategic check on the entire community. It worked incredibly well.

In 2002, I was an attorney with the New Bern office of LANC (although when I started it was still Pamlico Sound Legal Services). My specialization area was unemployment compensation. I handled a case of a woman who had been forced to relocate from Greensboro to Williamston (North Carolina) to care for her sick mother. Therefore, she lost her job as a nurse. She was denied unemployment benefits because she had voluntarily left her job. The decision was technically correct under the law as it stood at the time. However, I believed that a good argument could be made that the law had unconstitutionally distinguished this client from other groups who would be eligible for benefits in her situation. Specifically, it seemed unjust that a spouse could receive unemployment benefits when he had to leave his job to follow his wife to another location, but someone who was caring for a sick relative, a much more involuntary situation, was ineligible for benefits. Therefore, I brought the case to the next Task Force meeting. I was told under no circumstances was I to appeal the case because legal aid had written the law in the first place and knew that there was a sympathetic legislature and ESC Commissioner.⁷ By this time, my client had obtained a new job and did not need the benefits as much as she wanted to change what she saw as an unjust law. Therefore, I gave the case to the Justice Center to lobby for a legislative change, which was approved in less than six months.

The Task Forces stopped official operation sometime around 2006 or 2007. Nobody in the community seems to remember the exact time. Technological advancements such as discussion lists and wikis gradually subsumed the role previously occupied by the Task Forces. Instead of having meetings in person three or four times a year, attorneys now pose their questions on the discussion list and immediately receive feedback. Although the new system is unquestionably more efficient, many older advocates believe that the loss of the

⁷ The ESC Commissioner at the time was Harry Payne, who now works for the NC Justice Center.

Task Forces resulted in a reduction in the sense of community and teamwork they had fostered for so long. “The technology provides great tools, but meeting together and talking about it and getting inspired by other people, that doesn’t come across on the listserve” (Carlene McNulty, personal interview, April 8, 2011). Furthermore, both the discussion lists and the wikis are run through LANC’s Intranet, requiring a LANC username and password. A cursory examination of the housing and employment wikis reveals that non-LANC attorneys and advocates are participating, but it is unclear at what level. Jim Barrett, typically one of the most up-to-date directors in the state, had never even heard of them when I interviewed him earlier this year.

The potential problems with the demise of the Task Forces are three-fold. First, a sense of community is vital to maintaining the shared common goal required to achieve collective action. Second, attorneys and advocates within the system must make an extra effort to maintain ties with others in the community. If nothing else, the Task Force meetings forced the community together several times a year. Third, getting the “big picture” requires advocates at the Justice Center and elsewhere to rely on the line-level attorneys of LANC and other offices to keep them abreast of important trends and developments. Carlene McNulty, the head of the litigation unit at the Justice Center, describes the dilemma:

We have to rely on the legal aid folks on the ground more to keep us informed of those issues. I am one step removed from that and that makes it hard for me to do an effective job. Without the collaboration and communication with legal aid lawyers it would be much harder to do (Carlene McNulty, personal interview, April 8, 2011).

The other crucial area of cooperation lies between direct legal services providers and the private bar. Private attorneys contribute in four ways to legal services provision for the poor: (a) direct representation of the poor on a pro bono or reduced fee basis, (b) service on the boards of directors of legal services organization, (c) direct monetary contributions, and

(d) political support. I argue that the single most important source of legitimacy for legal aid organizations is that held by the private bar.

Without the support of private lawyers and their immense political and economic resources, legal aid organizations could not survive. Legal aid started as an offshoot of the professional obligations of the private bar. As a largely self-governed monopoly over the provision of legal representation, the bar felt responsibility to account for the market failures associated with the large segment of society shut out of its services by price. Federally funded legal services started with support from the private bar, especially its organizational leadership. Although the bar demanded certain limitations on the structure of legal services, its support was essential. In North Carolina, the four oldest legal services offices started as projects within their local bar associations. East Central Community Legal Services began in Raleigh (as the Wake County Legal Aid Society) as a non-OEO funded organization because of opposition from the local bar to the reform focus of OEO, but its creation nonetheless reflects a commitment from the bar to the provision of procedural access for the poor.

Once institutionalized at the federal level, the large-scale retrenchment efforts of the Reagan Administration and the 104th Congress might have succeeded without the powerful lobby of the ABA. I believe that what ensures the legitimacy for legal aid in the eyes of the private bar are the institutional structures in place that mandate participation by the private bar in the governing affairs of legal aid organizations and that require legal aid organizations to spend a set percentage of the LSC funding on referring cases to private, pro bono attorneys. The network that has grown from these requirements has provided the foundation for a more diversified funding base for legal services organizations and for the ability to maintain reform-related litigation as a central component of service provision.

On the national level, data are available on the numbers of cases closed by private attorneys using PAI funding since 1984. Figure 1 summarizes the number of cases closed by private attorneys through PAI programs nationally. The data show a marked increase in PAI cases beginning around 1987 and increasing through 1993, when private attorneys closed more than 250,000 cases, roughly 16% of the total closed by LSC-funded organizations. However, the numbers dropped dramatically from 1998 through 2002, when only 114,632 cases were closed through PAI, or 12% of the total cases closed, and have remained there ever since.

Several possible explanations exist for the decrease. First, as the economy went into and out of bad times, private attorneys had less opportunity to engage in pro bono work. Second, the types of cases handled through PAI programs, and the amount of time spent on each one changed. Instead of closing the cases under “advice and counsel” or “brief service,” more and more PAI cases were closed under “extensive service” closing codes. Data from the ABA back this up. In 1998, grantees nationwide reported 45,000 hours of work on such cases. In 2000, that number grew to 100,000, a jump of over 200% in two years.

Federal regulations also require that program Boards of Directors contain at least 60% attorney members nominated by the local bar. As such, attorneys have been involved in the daily operations of legal aid organizations. With the consolidation of many state programs, such as North Carolina’s, the number of boards of directors has decreased, but PAI has not. In North Carolina, local offices still have Advisory Councils of between 9 and 18 people. Organizational rules dictate that 60% of these people be local attorneys. Thus, it seems that legal aid organizations recognize the importance of legitimacy in the eyes of the private bar, and that they retain organizational structures designed to maintain or increase that legitimacy.

Legal aid organizations collaborate with private law firms on big cases for many reasons. Perhaps most importantly, legal aid offices do not have the resources to litigate a large case. Private firms do have such resources. With the growing number of statutes allowing victors in court to collect attorney fees from the other side, law firms are more willing to participate in these cases. Additionally, law firms began to realize the noneconomic benefits of associating with legal aid organizations. First, commitment to professional obligations provided good public relations for firms at a time when the public was increasingly skeptical of lawyers. Second, handling these cases provided low-risk training for their younger associates.

One of the problems with the restrictions placed on LSC-funded organizations in 1996 is that they could no longer participate in any way in class actions. This meant that such cases would typically have to go through at least three stages before arriving at their destination. First, LSC-funded organizations would in-take the case and realize its potential as a class action. They would then send the case to an aid office (not funded by the LSC) that legally can handle the case. Finally, that office would collaborate with a private firm to litigate the case. Without strong networks between these organizations, the result of the prohibitions in 1996 would be the loss of the ability of poor people to have full access to the legal system.

Carlene McNulty, head of the impact litigation unit at the Justice Center, says that the decision to co-counsel cases with the private bar was a conscious one. “I think that it is a good model and it has been very valuable” (Personal communication, April 8, 2011). She is not sure whether the Justice Center employs co-counsel more now than before 1995, or even whether it does, because of the restrictions. It’s “more that the nature of my job has changed

and we made a conscious effort to involve the private bar in impact litigation” (Carlene McNulty, personal interview, April 8, 2011). However, one effect of the restrictions was the creation of a program at the ABA that encouraged large law firms to help legal aid programs with litigation. Usually PAI programs within legal aid offices only support individual cases. Private attorneys tend to specialize in litigation or transactional work, and tend to lack substantive knowledge of laws relevant to poverty. Transactional experience is useful for some individual cases, but such attorneys still require a tremendous investment of resources for training in the substantive areas required. Litigation experience, on the other hand, is more easily transferable. “We have substantive law expertise, but they have litigation experience and resources” (Carlene McNulty, personal interview, April 8, 2011).

To summarize, the developments in the organizational structure of the legal services community in North Carolina required a higher degree of cooperation and coordination among the relevant players. As a network form of organization, the flow of information along that network is crucial to its survival and success. The major mechanism of interorganizational coordination disappeared with the replacement of the task forces with a series of technological supplements. At the same time, coordination and cooperation with the private bar has increased over time. The result is more of a public-private partnership in the delivery of legal services than has ever existed before in the United States.

Conclusions

The period between 1994 and 1999 was in many respects the Dark Ages of legal services provision in North Carolina. Community leaders became focused on personal or organizational goals that ran counter to the overarching pursuit of providing quality legal

services for the poor. Part of this came from the built-up resentment at losing the last reconfiguration battle; part came from the human tendency to latch on to cherished ideals even in the face of conflicting evidence. However, if the times were dark, the changes that occurred during them provided an important new structure that has sustained the legal aid community's ability to provide the full range of services to its clients.

The key organizational developments in the legal services community as a result of the federal institutional changes and the internal state politics of the community are the following: (a) the creation of a single LSC-funded entity that serves all 100 counties of the state under the restrictions imposed by Congress; (b) the organizational split between LSC and non-LSC funded organizations in the state, with the key non-LSC funded organizations being the Justice Center, Pisgah Legal Services, and Legal Services of the Southern Piedmont; (c) the maintenance of important sources of interorganizational cooperation and coordination, as well as the development of ties with the private bar and other organizational actors within the legal services environment; and (d) the eventual development of an inclusive, statewide planning structure.

Each of these responses finds support in existing theories of organizational behavior, but the complexity of the response requires many theoretical viewpoints to understand them. Clearly a dependence on material resources drove the consolidation and centralization movements in North Carolina as the primary concern was one of efficiency. Moreover, the actions of the community in seeking out and securing additional sources of funding illustrate the types of behavior predicted by resource dependency theory. However, the first step was to secure legitimacy in the eyes of key players in the community, especially for continued law reform efforts. The efforts to completely de-legitimize law reform activity at the federal

level failed because of the legitimacy provided by other members of the community, particularly the private bar. Without this legitimacy, the community could not have found the material resources. The community-level commitment to the goal of providing law reform services allowed it to overcome its collective action problem through joint efforts to secure this legitimacy and funding.

In contrast, the forced, top-down centralization of federally-funded organizations reflected a version of the iron law of oligarchy within the legal services community. If commitment to law reform glued the community together in tough times, centralization threatened to tear it apart because of the disconnect between the leadership and the field offices. Were it not for the shared sense of mission at the root level, it is possible that the legal aid community in North Carolina could have folded its reform activities, as happened in some states.

From an organizational perspective, the most innovative response of the community was the split into federally- and non-federally-funded subgroups. The community as a whole essentially created a division of labor between law reform and individual service activities. It could do so for two reasons: 1) the increased legitimacy of legal services at the state and local level; and 2) the creation and maintenance of interorganizational ties in a networked form of community structure. It appears that this structure may be more robust to future changes in the political and resource environments, but we will not know until it is challenged once again, as, in fact, is happening right now as a result of the overall deterioration of the economy.

The next question is how these organizational developments affected the delivery of services in North Carolina. It could be that the new structure is more robust but decidedly

less effective. That is the subject of the following chapter.

Tables and Figures

Table 3.1: Comparison of Cases Closed Between Split Charlotte Offices

2005	LSSP		LANC-Charlotte	
	Cases	% of Total	Cases	% of Total
Consumer	0	0.0%	151	14.0%
Education	0	0.0%	2	0.2%
Employment	25	2.1%	26	2.4%
Family	84	7.0%	299	27.8%
Health	795	65.9%	78	7.3%
Housing	141	11.7%	182	16.9%
Income maintenance	0	0.0%	83	7.7%
Individual rights	72	6.0%	0	0.0%
Miscellaneous	38	3.2%	254	23.6%

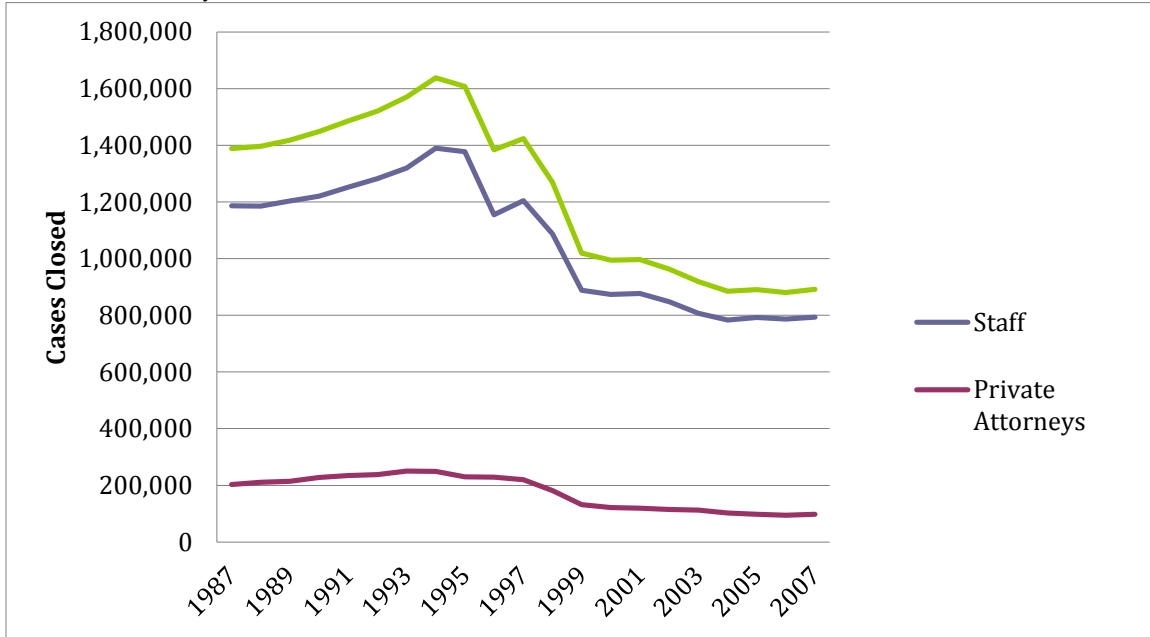
Note. *N* for LSSP = 1206; *N* for LANC = 1075.

Table 3.2: Comparison of Cases Closed Between Split Winston-Salem Offices

Type of Case	2004				2005			
	LASNWNC		LANC-Winston-Salem		LASNWNC		LANC-Winston-Salem	
Consumer	38	3.6%	143	14.0%	40	5.5%	171	19.4%
Education	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Employment	13	1.2%	75	7.3%	7	1.0%	63	7.2%
Family	705	65.9%	1	0.1%	492	68.1%	1	0.1%
Juvenile	2	0.2%	0	0.0%	0	0.0%	0	0.0%
Health	8	0.7%	50	4.9%	0	0.0%	52	5.9%
Housing	188	17.6%	429	42.0%	97	13.4%	355	40.3%
Income maintenance	29	2.7%	318	31.1%	7	1.0%	239	27.1%
Individual rights	10	0.9%	0	0.0%	15	2.1%	0	0.0%
Miscellaneous	77	7.2%	5	0.5%	64	8.9%	0	0.0%

Note. *N* for LASNWNC 2004 = 1070; *N* for LANC-Winston-Salem 2004 = 1021; *N* for LASNWNC 2005 = 722; *N* for LANC-Winston-Salem 2005 = 881.

Figure 3.1: Numbers of Cases Closed by LSC-Funded Organizations Nationally, By Staff and Private Attorneys: 1987-2007



Chapter 4: Outcomes: Service Levels in North Carolina

The major federal policy changes in the mid- and late-1990s had a profound impact on the structure of legal services communities across the country. The dramatic decrease in LSC funding resulted in a push by LSC for consolidation of its grantees in an effort to maximize the use of limited resources. The restrictions imposed on the use of those limited funds led LSC to encourage states to develop statewide justice communities of restricted and unrestricted organizations, linked together through formal means of cooperation and coordination. While almost all states both consolidated LSC-funded activities and developed a separate unrestricted community, they did so through a variety of mechanisms and to different extents. The particular responses in North Carolina took place within this broader context, and were affected by what other states were doing. This section briefly describes and places North Carolina within this context.

North Carolina in the National Context

There are three key components to the national context: 1) changing levels and sources of funding; 2) LSC's push for consolidated state level structures; and 3) the effects of both of these service levels and types. LSC funding for civil legal services fell by 30% in 1996, dropping from \$415 million to \$283 million. These cuts resulted in 12.9% of program staff leaving and 12.7% of local offices shutting down (Houseman 1998). While nominal levels of LSC funding remained around the \$300 million mark through 2008, real funding

declined from roughly \$400 million in 1996 to \$340 million in 2008 (in 2010 dollars⁸). Despite these declines, overall funding for LSC recipients increased over the same time period from \$686 million in 1996 to \$866 million in 2008. The simple reason is the rapid growth of non-LSC sources of funding. Non-LSC sources provided 41.6% of all funding nationwide⁹ in 1996, averaging 33.9% across the states. The vast majority of non-LSC funding in 1996 came from state and local government sources and Interest on Lawyer Trust Accounts (IOLTA) programs. The percentage of non-LSC funding then rose steadily over the next 13 years. By 1999, non-LSC sources provided more funding than LSC, and by 2008, 60.8% of all funds to LSC recipients came from other sources. This overall growth in non-LSC funds, however, hides large disparities in funding levels between the states, as well as inconsistent levels of funding within states over time.

Data from LSC show that non-LSC funding to LSC recipients is highly unequal across state lines and that this inequality is not based upon demographic features. North Carolina historically has fared better than most states in terms of overall levels of non-LSC funding. Between 1996 and 2008, the standard deviation of non-LSC funding is greater than its mean in every year. During three of those years, at least one state reported zero non-LSC funding to LSC recipients, while the highest minimum amount was \$36,695 in Vermont in 1997. The lowest maximum amount, meanwhile, was almost \$39 million in New York in 1996. Figure 4.1 shows the national mean and median non-LSC funding for each year, as well as the amount provided in North Carolina.

⁸ Unless otherwise noted, all dollar figures are adjusted for inflation and represent real 2010 values.

⁹ All references to LSC-funded organizations and funding in this section refer to the 50 states and the District of Columbia. Data on Puerto Rico, Guam, Micronesia, American Samoa, and the Virgin Islands are excluded from this analysis.

Overall funding levels, however, do not tell the whole picture. North Carolina provides a greater than average level of funding, but its growing poverty population spreads that money more thinly than in other states. California, New York, New Jersey, and Ohio have been consistently the most generous states for legal services funding, but they also contain some of the largest poverty populations in the country. When the size of the poverty population is taken into account, New Jersey remains one of the top providers of non-LSC funding, but the others are supplanted by Hawaii, Minnesota, Alaska, and Maryland. Between 1996 and 2008, the average non-LSC expenditure per poor person in the United States was \$12.33, but the range of that spending went from \$0 to \$62 per poor person. In 2008, Pennsylvania LSC recipients spent \$19.92 per poor person in non-LSC money while Alabama recipients spent \$1.51. North Carolina provided \$9.88 in non-LSC funding per poor person in 2008, below the national average of \$13.94. Figure 4.2 shows national levels of non-LSC funding per poor person compared to North Carolina between 1996 and 2008.

There are many reasons for the disparities in non-LSC funding between the states, many of which are reflected at the local level between local field offices. IOLTA programs, for example, operate under different institutional forms and under different organizational rules. Some only fund legal services offices funded by LSC; others may fund any legal services organization. The differences in these rules make analysis of the total levels of funding for legal services communities, especially in those states where IOLTA supports non-LSC funded offices, extremely difficult. LSC data on Vermont, for example, show a grand total of \$120,649 of IOLTA funding distributed between 1996 and 2008. Yet the Vermont IOLTA program is providing \$876,000 in 2011 to a single legal services organization (Vermont Bar Foundation, 2011). Since Vermont Legal Aid, Inc. does not

receive LSC funding, however, LSC does not maintain data on its funding or services. North Carolina has an especially flexible IOLTA program and it distributes its funding to a wide variety of both LSC and non-LSC funded organizations throughout the state. This feature of North Carolina makes it a good case for more detailed study than the LSC data only will allow. Figures 4.3 and 4.4 place the levels of North Carolina's state and local financing, as well as IOLTA funding for legal services, within the national context.

The growth of alternate sources of funding allowed a large segment of the national legal services community to continue operating and even expand after the federal funding cuts of 1996. Those cuts, however, had a large impact on the community and its ability to provide a high level of services. In 1995, LSC-funded legal services offices across the country closed an average of 33,656 cases. In 1998, however, recipients closed an average of only 23,642 cases, and in 1999, they closed an average of 18,885. From 2000 to 2008, services continued to drop before leveling out around an average of 16,000 cases per state per year. Figure 4.5 shows changes in total cases closed in the national and North Carolina communities. In 2008, then, LSC recipients closed less than half the number of cases they closed on average in 1995, the year before the funding cuts and restrictions were put in place. This precipitous decline occurred, moreover, while overall funding from the legal services community climbed from \$686 million in 1996 to \$866 million in 2008.

The apparent oddity is partially explained when examined in terms of the cost per case closed. Each case closed in 1996 cost an average of \$542; in 2008, the cost jumped to \$1,050, almost double the amount in 1996. If each case cost twice as much, it is logical that recipients would close half as many given an equal amount of resources, but the legal services community as a whole had more resources in 2008 than in 1996. The difference can

be accounted for in a number of ways. First, the averages again hide wide disparities in the cost per case closed between, and even within, the states. In 1996, the range of costs across the 50 states went from \$126 to \$2,835 per case; in 2008, the range was from \$263 to \$2,735. Table 4.1 provides summary statistics on the cost per case over time.

Second, variations in organizational structure may have an impact on costs. The consolidation movement of the mid- and late- 1990s at LSC sought to increase the efficiency of legal services organizations. The LSC data allow a partial testing of how well consolidation actually worked. State-level legal services communities around the country consolidated to varying degrees and at different times between 1996 and 2008. Some states, like North Carolina, ended the period with a single LSC recipient. Other states, such as Virginia, Pennsylvania, and California, maintained a multi-recipient model.

Using a variable denoting the number of LSC recipients in each state and each year from 1996 to 2008, I can test the effects of consolidation on the cost per case, the best measure of efficiency. Though the data do not allow causal inference, a simple correlation test concludes that there is not a significant relationship between the number of organizations and the cost per case closed at the state level (Pearson correlation coefficient = -0.0271, tested up to the 25% level). A basic fixed effects regression of the number of organizations on the cost per case closed indicates a significant and negative relationship between the two (coefficient of -56.8, t statistic of 0.000). The interpretation of this result is that decreasing the number of organizations in a state by one is associated with an increase in the cost per case of roughly \$57. If that result stood up to further testing, it would indicate that more organizations actually decrease the cost of each case, exactly counter to the argument of

consolidation proponents. However, the unique situation of each state and the presence of numerous confounding elements do not allow for such testing at this time.

The data do in fact provide indications as to other potential explanatory factors for the increase in cost per case. First, as legal services organizations rely more heavily on non-LSC funds, they must expend resources to obtain those funds. Both the absolute value and percentage of non-LSC funds in a state are positively correlated with costs. Second, the percentage of cases closed as extensive service is positively and significantly correlated with the cost per case, while the percentage of cases closed as brief service is negatively and significantly correlated with cost. This aligns with the basic idea that pursuit of court cases costs more than simple advice or brief service. Since 1999, North Carolina has closed a higher than average number of cases in the extensive services categories, partially explaining its below average provision of non-LSC funding per poor person. Figures 4.6 and 4.7 show how North Carolina compares nationally on brief versus extensive service cases.

Finally, geography and other factors may drive costs higher. Alaska, for example, has one of the highest costs per case closed in the country. It has maintained a single LSC recipient since 1996, but that recipient has to cover a lot of ground to provide services in such a large state. On the other side of the spectrum, Maine, Vermont, and Connecticut maintain some of the lowest cost per case figures over time. Though they also maintain a single LSC recipient, the geographic coverage area is much smaller than Alaska, Nevada, or Utah. Indeed, the proportion of cases closed in a given state that are in rural compared to urban areas may increase costs. It is simply more expensive to provide services in rural areas. In states like North Carolina that have significant numbers of both rural and urban areas, the costs within the state may vary as well.

The Case of North Carolina

The major limitations of the national level data are that they cover only LSC-funded organizations and they obscure the local factors that contribute to varying levels of funding, costs, and service provision. The organizational splits that have occurred since the imposition of the reform-oriented restrictions on LSC recipients require a broader examination of the statewide community than reliance on only the national level data can provide. An analysis of all legal services providers in North Carolina allows me to test for the effects of both the federal policy changes and the organizational responses to those changes on service provision at a much deeper level. Service levels in the state context, for example, can be balanced against the need to expend resources to gain non-LSC funding. Furthermore, the existence of non-LSC funded organizations allows me to test for the effects both of the administrative requirements imposed on LSC recipients by Congress and of the emerging network form of organization in the legal services community.

The Effects of Consolidation and Centralization

One of the central historical debates surrounding the legal services model is whether central or local control is “better” for serving clients. The changes in the structure of the community as a result of these debates allows for testing of the effects of centralization of the LSC-funded organizations as well as the effectiveness of those organizations that remained outside of the central structure. In particular, the existence of a non-LSC funded office in Asheville not organized around the federally imposed restrictions allows for examination of a purely local office, although one with rather unique characteristics.

Consolidation is essentially a forced solution to a collective action problem. By structurally merging multiple entities into a single organization, the hope is to create stronger incentives for collaboration and cooperation amongst those entities, while simultaneously increasing efficiency through shared cost structures. When the North Carolina community was considering the precise form of their various consolidation models, these were the arguments made for the highest level of centralization. Political factors, however, dictated the emergence of three different schemes over the years, each with a different level of centralization on the key issues of money and control.

Examining how service levels have changed after each of these changes provides an understanding of the effectiveness of each one. This section will focus on the effects of consolidation and centralization on four aspects of service levels in North Carolina: 1) the overall number of cases closed; 2) the cost of service provision; 3) the relative prioritization of extensive versus brief service; and 4) the distribution of services between urban and rural counties.

Overall Service Provision: Figure 4.8 shows the total number of cases closed by the entire North Carolina legal services community between 1993 and 2009, both LSC and non-LSC funded, according to the substantive area of the case. Looking at the broad picture, overall service levels dropped in 1996 after the Congressional funding cuts and restrictions became effective. There is a temporary spike in 1998, likely due to offices closing as many of their old cases as possible before the consolidation in 1999, and then service levels decline gradually until 2005. By 2009, the overall levels of service almost equal those of 1995, but the general picture is one of gradual decline and then a quick recovery beginning in 2005. Upon cursory inspection, the effect of centralization in the LSC-funded community is

unclear. The first stage of centralization occurred in 1999 and complete consolidation occurred in 2002, but there is no clear change in the total numbers of cases closed before and after those years. Furthermore, other organizational changes that occurred simultaneously with consolidation, most notably the creation of unrestricted organizations, likely affected the impact of consolidation in a meaningful way.

The most profound impact of the 2002 centralization did not emerge until 2006 when LANC created a Centralized Intake Unit (CIU) in Raleigh. Prior to CIU, field level attorneys conducted intake over the telephone according to guidelines determined locally. Some offices allowed paralegals or other support staff to conduct intake; some had attorneys perform intake on certain days of the week; and others had a relatively free-flowing policy. CIU is staffed by attorneys whose sole function is to screen new callers and funnel cases that require more detailed assistance to local offices, provided those cases fall within statewide priorities. The goals behind CIU were two-fold: maintaining a centralized intake unit would assure consistency in case priorities, and relieving field attorneys from intake duty would free them to engage in more direct service provision. The effects of CIU on overall service provision were immediate. The legal services community closed 23,152 cases in 2006. When CIU became fully operational in 2007, that number jumped to 27,627. CIU itself closed 4749 cases that year, roughly 300 greater than the difference between the total services provided in the two years.

A large portion of the field level staff opposed CIU at the time of its creation (George Hausen, personal interview, March 3, 2011). The major concern was that removing attorneys from intake would cause a disconnect between staff and the client community, which would in turn prevent staff from identifying patterns in client problems that would enable broader

reform activity. Due to its recent creation, it is difficult to tell whether their fears have borne out. Hausen, however, says CIU is now integral to field level staff and that if he tried to get rid of CIU at this point, it would be “over his dried, desiccated body” (George Hausen, personal interview, March 3, 2011).

With the exception of the contributions of CIU, evidence of a large impact of centralization on the total level of statewide services is scant. It is simply not possible to determine its effects without a comparison case. However, discrete aspects of service provision that vary within the state help provide some suggestions as to the impact of consolidation and centralization.

Changing Costs of Providing Service: The primary argument in favor of centralization is one of efficiency, of allowing more limited resources to be devoted to direct service provision instead of administration. The best available measure of cost-effectiveness in service delivery is the cost per case closed by the legal services community. Using state level data, the cost per case closed is highly and significantly negatively correlated with the total number of cases closed (Pearson correlation coefficient of -0.797, significant at the 5% level). Reducing the cost per case closed, then, should be a primary goal in increasing efficiency. In 1993, the average cost per case closed in North Carolina (in 2010 dollars) was \$608.91. The cost rose gradually over the next five years to \$772.92 in 1998. After the first round of consolidation, which occurred at the end of 1998, the cost per case actually increased. Starting at \$911.61 in 1999, the average cost rose throughout the early phases of the complete centralization in 2002 to reach \$1,105.71 per case in 2005. After 2005, however, the costs began to decline, dropping to \$892.60 in 2009. The question is how much of the changes in the costs per case are attributable to centralization.

Without the ability to test this confidently through regression, it is helpful to discuss other potential explanatory factors as a means of tracing out the possible effects of centralization. At the national level, it appeared that the percentage of cases closed under extensive service categories had a negative effect on the overall numbers of cases closed and cost per case. Data from the state level, which includes both restricted and unrestricted organizations, suggest that the same is true for North Carolina. Table 4.2 below provides Pearson correlation coefficients for the primary variables of interest. The data show a significant, negative correlation between the percentage of extensive service cases and the overall number of cases closed. They also show a large and significant correlation between the number of extensive service cases and the cost per case closed. As the percentage of extensive service cases rises, then, the overall number of cases closed tends to fall and the cost per case rises. The percentage of extensive service cases in North Carolina has risen relatively consistently since 1993, when it was at 11%, to 2006, when it rose to 23.3%. This rise in extensive service cases likely caused a portion of the rise in case costs.

The community also has experienced a rise in levels of brief service cases, however, which may counteract the effects of increasing percentages of extensive service cases to some extent. In order to control for this, I created a ratio of brief service to extensive service cases. The ratio is a better reflection of the relative priority given to each type of service by the community. As the ratio increases, the community is putting more resources into brief service compared to extensive service. The correlation between the “priority ratio” and the number of total cases closed is significant and positive. As more brief service cases are closed when compared to extensive service cases, the community as a whole tends to close higher numbers of cases. The correlation between the ratio and cost per case, however, is

significant, negative, and very strong (correlation coefficient of -0.928). This means that as more cases are closed under brief as opposed to extended service, thereby increasing the value of the ratio, the costs per case should drop. This supports the above conclusion that as the community puts more relative resources into extensive service cases, demonstrated by a decreasing value of the ratio, the cost per case rises significantly.

The second potential factor in the cost per case increase is the rise in importance of non-LSC sources of funding. Obtaining such funding requires the expenditure of resources, thereby diverting them from case service and increasing the cost per case closed. Indeed, there are strong negative correlations between the percentage of total funding that comes from non-LSC sources and both the total number of cases closed and the cost per case. The entire community obtained 29.1% of its funding from non-LSC sources in 1993. The LSC funding cuts caused this percentage to jump to 37.7% in 1996. As the community diversified its funding base and created unrestricted organizations completely reliant on non-LSC funding, the importance of outside funding increased to the point of constituting 62.2% of overall funding in 2008. This large increase in non-LSC funding certainly contributes to the rising cost per case in the state.

The efficiency analysis showed that the community consolidation and eventual centralization are associated with rising costs per case closed in North Carolina, but that those rising costs are likely attributable to other factors. What is unclear, however, is if the costs would have risen even more in the absence of centralization. I do not have a comparison case to test North Carolina against as a statewide community, but this is an important question. In order to try to provide some insight, I use the case of Pisgah Legal

Services, an unrestricted organization in North Carolina as a comparison case for the centralized LSC community.

Data from Pisgah reveal significant differences between its costs and those of the broader legal services community. Table 4.3 shows the comparisons for 1996 through 2009. When Pisgah broke away from LSNC in 1999, it spent \$500 per case compared to \$912 per case by the rest of the community. As the cost rose in the state as a whole, it also rose for Pisgah, climbing to \$595 in 2003 and peaking at \$713 in 2005, the same year costs peaked for the entire state. In percentage terms, though, the costs for Pisgah rose twice as much as those for the state during this time, 43% compared to 21.2%. Figure 4.9 summarizes the cost per case trend over time for Pisgah.

The reasons for the rise in cost for Pisgah are likely the same as for the rest of the community. Starting in 1999, Pisgah received all of its funding from non-LSC sources. By 2009, Pisgah employed three full-time staff dedicated to fundraising, imposing a significant cost but freeing attorneys up to focus on casework. LANC, on the other hand, never received more than 62% of its funding from non-LSC sources and employs no full time fundraising staff. Furthermore, Pisgah has closed a higher percentage of its cases in extended service categories than the rest of the community since 2005. It makes sense, then, that Pisgah's cost per case would rise higher than the rest of the state. However, the fact that Pisgah and the overall statewide community started at such different cost points in 2009 is intriguing. It perhaps indicates that the jump in costs at the state level between 1996 and 1999, which was likely due to the protracted reconfiguration debate, has resulted in a prolonged inflation of costs. Nevertheless, the data from Pisgah seem to indicate that the centralization of the LSC-funded community may have resulted in some efficiency gains in terms of cost per case.

Case Priorities: Brief versus Extended Service: The amount of resources in the legal services community may have an impact on the types of service provided. More people can be directly served through brief service than through extended service given equal amounts of resources. Whether this occurs, however, is a question of priorities for the community. Some people may feel pressure to close higher numbers of cases, leading to increased brief service closures in periods of resource decline; others may not change their relative priorities given a resource drop. The decision whether to increase levels of extended service in times of resource scarcity is a question of one's risk/reward preferences. A single "good" case may result in policy change, thereby indirectly affecting many people, but it is risky to devote substantial resources to finding that case, particularly since LSC recipients were prohibited from soliciting clients after the restrictions in 1996.

I measure the relative priorities of the legal services community by constructing a ratio of the cases closed in the A and B categories (brief service) to the cases closed in the F, G, H, and I categories (extended service). Using a ratio provides a clearer indication of the relative commitment of resources than simply comparing the percentages themselves. Figure 4.10 gives the trend over the entire time period. At the state level, the community as a whole temporarily increased its use of brief service over extended service after the 1996 funding cuts and restrictions. The ratio of service types rose from 4.7 in 1995 to 4.9 in 1996 and 5.3 in 1997. However, the ratio then abruptly dropped to 4.6 in 1998 and continued to drop until reaching a low of 3.06 in 2005. The ratio rose slightly starting in 2006, but this is largely attributable to the creation of the CIU and the corresponding rise in brief service cases.

The evidence suggests, then, that something caused a shift in priorities from brief service to extended service cases prior to 1998, and this shift continued through the

consolidation and centralization process. Consolidation did not occur until the beginning of 1999, and the data do not provide any indication as to another cause. Former LSNC Executive Director Deborah Weissman says that she began to conduct site visits some time in 1996 or 1997 because of concern that some offices “had fallen into the quagmire of advice and counsel as the dominant model of service delivery” (personal interview, April 21, 2011), but that does not fully explain the change either. Levels of brief service were rising during this time as well. Extended service simply was rising faster. In any event, it seems unlikely that the 1999 consolidation was the cause and there was no significant change around 2002, so centralization also likely had little direct effect on the type of service provided at the state level.

As previously mentioned, however, the biggest change to service levels after centralization occurred as a result of the creation of the Centralized Intake Unit (CIU). Between 2006 and 2009, CIU closed an average of just over 4400 cases per year. Of the 17,639 cases closed by CIU over this time period, exactly six were closed in a category other than A or B, and only two were closed in an extended service category (G—negotiated settlement with litigation). Despite the existence of CIU, local offices still closed a majority of their cases in the brief services categories. Between 2007 and 2009, field offices closed an average of 66.3% of their cases as brief service.

The important question, however, is whether the resources saved by removing intake from field offices resulted in a corresponding increase in extended service cases. The evidence suggests that it did not. By removing statewide entities from the data, trends in case closures for field offices, the primary mechanism of service in the state, may be better analyzed. Field offices across the state, both restricted and unrestricted, had been increasing

their levels of FGHIs fairly consistently between 1993 and 2005, with a slight dip in 1996 and 1997 due to the funding cuts. From 2005 to 2008, however, the percentage of extended service cases stalled around 27.5%, and even dropped to 25.3% in 2009. The priority ratio likewise bottomed out at 2.39 in 2007 before increasing slightly over the next two years. As such, it does not appear that the creation of CIU led to field offices closing an increased proportion of extensive service cases.

One major change brought by consolidation, however, was a decrease in the variation between field offices in the ratio of brief service to extended service cases. In 1996 and 1997, the average ratio for field offices was 6.5 with a standard deviation of 4.3 and 3.1 in each respective year. In 1999, the first year under consolidation, the average was 4.6 with a standard deviation of 2.0. In 2001, the standard deviation dropped further to 1.77, and it remained there until 2007 at which point it increased to 2.5, suggesting that field offices responded differently to the creation of the CIU in that year. The lesson, though, is that consolidation of authority over case priority decisions did in fact lead to greater homogeneity in the field offices in terms of the relative priority given to extended over brief service.

The level of extended service cases in the community is important because it is a good indicator of the potential for law reform. Cases that are settled formally or that are litigated either through the courts or an administrative agency are the only ones with a chance to result in a change in the law, and it only takes one case to do so. The test case litigation model developed by the NAACP Legal Foundation and imitated by OEO in the creation of its legal services program does not require the ability to conduct class actions. The key to the model is finding the right client to challenge the right law. The Congressional restriction on solicitation of clients, then, was a big blow to the law reform model, but it did not prevent the

selective acceptance of clients based on their potential for broad-based impact. Looking at the sheer numbers, the LSC community in North Carolina closed 5,226 extended services cases in 2009 compared to 6,832 in 1995. The growth in absolute numbers has provided, if nothing else, 1,606 more chances to find the “good” case.

Distribution of Services between Urban and Rural Areas: Advocates for local control over legal services funding and priorities often emphasize the potential disparities in geographic service that could result from centralized operation. The “minimum access” plan of the late 1970s and the LSC consolidation movement of the late 1990s and early 2000s both sought to reduce this variation, but through different methods. Centralized control models replaced the local control mantra of the 1980s in the late 1990s. Indeed, from an organizational perspective, LSC forced LSNC to open a new office in Asheville when Pisgah Legal Services broke away in 1999 largely because of its goal of maintaining a presence in all counties. Data from North Carolina offer some evidence on the effectiveness of these models.

Service levels historically have varied widely across the state, largely due to the presence of an office in the county of interest and its urban or rural nature. Overall, between 1993 and 2009, the legal services community in North Carolina closed an average of 259 cases per county per year, or one case per 62 poor people. On the county level, however, this number ranged from one case per 6 poor people to one case per 562 poor people. Figure 4.11 provides a box plot of the variation within the state in the number of poor people served by each case closed. Of particular note is that variation decreased immediately following the first consolidation in 1999, but then increased after full centralization in 2002. This provides support for the idea that centralization widens geographic disparities.

Within each county, the levels of service have fluctuated roughly in line with funding levels, but some counties have fared better than others. Higher numbers of poor in a county are significantly correlated with higher numbers of cases closed, but so is the median income of a county. Since higher levels of median income are associated with higher numbers of poor people in a county, this indicates that more of the poor in wealthier, urban or suburban counties are being served than those in rural counties. In fact, legal services offices have closed an average of 760 cases per year in those counties classified as urban compared to 171 cases in rural counties in this same time period. This translates into one case per 63 people in rural counties and one case per 54 poor people in urban counties. Structurally, the presence or absence of a legal services office in a given county plays a large role in the amount of service it receives. Of the fifteen counties classified as urban in North Carolina, ten contain an LSC funded legal services office, and all of the unrestricted offices reside in three of those ten urban counties.

The basic pattern of higher levels of service in urban areas has continued throughout the years. Figure 4.12 summarizes the relationship between service in rural and urban areas between 1993 and 2009. The distance between the two lines is a measure of disparity between rural and urban service levels. There was a brief time period in which the number of poor people per case closed by the legal services community was lower in rural than urban areas, from roughly 2000 to 2004. This corresponds to the initial consolidation period in which local offices merged their corporate identities with LSNC but did not give up their names or their Boards of Directors. LANC was created in mid-2002, at which point field offices came under fully centralized control. The data suggest that the urban/rural divide grew immediately following that organizational change.

While the data do not allow for causal claims, the evidence seems to indicate mixed results for consolidation and centralization on service levels in North Carolina. The creation of CIU had a positive impact on the overall number of cases closed but has not increased the proportion of resources committed to extended service representation. Centralization may have had a dampening effect on the rising costs of providing service in North Carolina, but whatever efficiency gains achieved have been overwhelmed by the costs associated with obtaining non-LSC funding and setting priorities in favor of extended service. The trends in extended service versus brief service appear unconnected to the community structure and more likely the result of leadership changes in the state. Finally, centralization appears to have worsened the disparities between service provision in rural and urban counties in North Carolina. With LANC preparing to close its offices in Boone and Smithfield, these disparities will only grow.

Community Split

The most drastic and innovative response to the federal policy changes of the mid-1990s was the split of the legal services community into “restricted” and “unrestricted” components. The primary impetus behind the split was to maintain the ability of the community to provide those services expressly prohibited by Congress in 1996: primarily lobbying, class actions, the representation of undocumented immigrants, and community organizing. The continued existence of LSC funding and the greater scale of the LSC community allowed it to focus on individualized casework while the unrestricted organizations could focus their more limited resources on reform activities.

The theory of the new structure is compelling: unrestricted organizations can change the law; restricted organizations can enforce it. But the split is not so clean and even. First, it is difficult for unrestricted organizations to obtain funding by doing only the “unpopular stuff” (Kenneth Schorr, personal interview, March 30, 2011). Second, a split structure threatens to create a two-tiered set of lawyers where “unrestricted” attorneys have all the opportunities to engage in the more prestigious appellate litigation and other reform work (Personal Interview, Deborah Weissman, April 21, 2011). Third, success under such a system requires a high level of coordination and cooperation between the two groups.

The NC Justice Center is a particular success story in terms of its development and contribution to the overall legal services community as an unrestricted entity. Beginning with a staff of five people in 1995, the Justice Center had grown to 55 staff and a budget of \$5.15 million in 2009. At its inception, the Justice Center developed a mission that emanated directly from the restrictions imposed by Congress and its place within the legal services community. The mission was to attack poverty through four primary means: 1) litigation; 2) legislative and administrative advocacy; 3) community education and organizing; and 4) research and analysis. The mission, in other words, was to fill in the gaps left by the restrictions on the LSC-funded community.

The *Hyatt* case¹⁰ is perhaps the best example of the need to fill the gaps left by the restrictions. Originally filed in 1983 by LSSP (at that time an LSC recipient) and the private firm of Robinson, Bradshaw, & Hinton, *Hyatt* was still ongoing at the time of the class action restriction in 1996. Though the process was far from smooth, LSSP transferred control over

¹⁰ The original name and citation in the 4th Circuit was *Hyatt v. Heckler*, 807 F. 2d 376 (4th Cir 1986). The suit challenged the Social Security Administration's practice of "nonacquiescing", or ignoring the precedent decisions of the United States Court of Appeals for the Fourth Circuit, when adjudicating claims of individuals receiving or applying for disability benefits.

Hyatt to the Justice Center upon its creation. By 1998, more than 78,000 people had requested relief through *Hyatt* and a merits decision had been issued by the Social Security Administration in 25,000 cases. To put that number in perspective, LSC-funded organizations in North Carolina closed a total of 26,376 cases in 1998. Indeed, it is because of cases like *Hyatt* that many legal services advocates believe that a focus on impact litigation has a larger overall effect than individual representation. Yet *Hyatt* has required a tremendous amount of time and resources to pursue. The Justice Center has maintained a staff member since its creation whose primary job is to monitor the *Hyatt* case. The case has been to the 4th Circuit Court of Appeals eight times and has had multiple hearings in federal district court each time there was an appeal. This level of intensity is difficult for LSC-funded organizations to justify because of the time it takes away from individualized service, but the importance of the work is just as great and the impact perhaps even greater than that of the more politically popular individual work.

The services provided by the Justice Center in its early years largely mirrored those of the LSC community. A large portion of its activities was in the consumer, housing, and health areas. Two major differences, however, existed from the start. First, the Justice Center never focused its limited resources on family law issues. Second, the Justice Center developed an Immigrants Legal Assistance Project (ILAP) that provided individual representation to undocumented immigrants and certain classes of farmworkers that LSC recipients could not represent. In its first full year of operation, the Justice Center closed 228 immigration-related cases and that number has remained relatively constant or risen slightly over the years depending on the number of staff attorneys in the project. In 2004, for example, ILAP closed 363 cases.

In 2003, the Justice Center co-counseled several consumer law cases with LANC attorneys. The arrangement allowed LANC attorneys to gain expertise in the substantive area of consumer law while maintaining the ability to use the threat of attorneys' fees in negotiations. This type of coordination and cooperation would not have been possible without the organizational split because LANC attorneys by themselves could not seek attorneys' fees. Also in 2003, the Justice Center co-counseled another case with LANC attorneys that fought against an exclusionary zoning ordinance in the town of Tarboro. The case, *Barry et al. v. Town of Tarboro*, was eventually settled with the town agreeing to change the ordinance to remove several barriers to the inclusion of affordable housing development. The import of the *Tarboro* case is the type of coordination involved. Attorneys from both LANC and the Justice Center performed more than 50 depositions in the course of forcing the negotiated settlement, a settlement made possible by the organizational structure of the legal services community. LANC's emerging soft boundaries approach allowed it to move attorneys into position to perform these depositions, while the Justice Center's unrestricted nature allowed it to provide substantive support and to claim attorneys' fees.

The model of *Tarboro* is one that LANC seeks to replicate, either through the Justice Center or through private attorneys (George Hausen, personal interview, March 3, 2011). The primary obstacle to the use of private attorneys, however, is one of "issue conflicts", where a firm may be unable to represent a person because existing corporate clients have the potential to be on the other side (Bill Rowe, personal interview, March 14, 2011). The potential for issue conflicts, then, makes the existence of an organization like the Justice Center crucial to the ability of the LSC-funded community to effectively represent its clients.

Besides its work in the field of impact litigation, the Justice Center's role within the community has been as the primary policy advocate for the poor in North Carolina. Its successes in this realm have been numerous but difficult to quantify. By way of example, the Justice Center has been instrumental in the complete dismantling (until recently) of the payday lending industry in North Carolina both through litigation and lobbying. It has also succeeded in creating one of the most progressive unemployment insurance policies in the country. When the federal government first extended unemployment insurance during the current recession, it required states to update its claims processes before receiving the federal money for the extension. In large part due to the historical advocacy of the Justice Center, North Carolina did not have to do anything to get the money (Bill Rowe, personal interview, March 14, 2011).

However, the historically tight link between the Justice Center and the LSC-funded legal services community has weakened somewhat in the last five years. Though the Justice Center still lies at the heart of impact litigation and direct advocacy for the poor in North Carolina, it no longer serves the "support" role it initially had. Part of the reason is that the Justice Center has drawn fewer of its employees from the legal services community than it did in the past (Bill Rowe, personal interview, March 14, 2011). Another part is that the Justice Center has moved into other realms of activity, most notably media relations and policy research (Rob Schofield, personal interview, April 6, 2011). Finally, the Justice Center has ceased all direct legal services related work such as chairing task forces and planning statewide conferences. It is too early to gauge the impact of this changing relationship on service provision in North Carolina, but it is a potentially concerning development.

The success of the Justice Center, and to a lesser extent, of Pisgah Legal Services in Asheville, led to further organizational splits at the time of full centralization in 2002. Both Legal Services of the Southern Piedmont (LSSP) and the Legal Aid Society of Northwest North Carolina (LASNNC) broke off parts of their operations into separate unrestricted entities in 2002. The Planning Council and individual organizational leaders in both entities recognized the need for more unrestricted services in the state, and both were in a good position to survive without LSC funding because of supportive local bar associations and access to significant non-LSC resources. LASNNC, however, eventually folded back into the LANC structure in 2007 because it could not sustain itself. For this reason, I will limit this analysis to LSSP.

The reduction in staff and resources that came with splitting itself in half resulted in an immediate drop in the overall number of cases closed by LSSP in the early years. By 2008, however, LSSP had reestablished both its staffing levels and funding with the result that it closed 1,604 cases in 2008 and 2,345 in 2009. When added to the service provided by LANC's new offices in LSSP's service areas, overall service levels increased dramatically as a result of the split. In 2001, LSSP closed a total of 1,867 cases. In 2003, it closed 2,432 cases, roughly equal to the amount closed by the independent organization in 2001 plus the 535 cases closed by the new unrestricted organization in 2003. The level of service has continued to increase over time, with the combined LANC and LSSP offices in the relevant service areas closing 3,644 cases in 2008 and 4,843 cases in 2009. When compared to an average of approximately 2,700 cases between 1993 and 1995, the split structure has enabled the legal services community to close 80% more cases in 2009 than prior to the funding cuts.

Furthermore, the balance of services has improved as well. Like the Justice Center, the new LSSP was structured specifically around the restrictions, and its service types reflected this structure. LSSP closes a greater proportion of its cases under the extensive service categories than its counterpart LANC offices, and it does so within different substantive areas. As Table 4.4 demonstrates, the majority of cases closed by LSSP in 2005 were in the health area, while the largest proportion of cases closed by LANC was in the family area. What these numbers hide, however, is the percentage of cases closed by LSSP in which the clients themselves are “restricted”, especially undocumented immigrants. Though LSSP does not as a policy matter inquire as to the immigration status of its clients unless necessary for disposition of their case, LSSP’s executive director estimates that 22.7% (294) of their cases (1294) in 2007 involved undocumented immigrants (LSSP IOLTA Report, 2007). For example, the LANC offices in the Charlotte area do not provide family law services to Spanish-speaking clientele, so almost all of LSSP’s family cases serve such clients. This fact shows how the structure of the new organization complements that of LANC, and it also shows the level of cooperation and coordination between the two entities.

LSSP also engages in a significant amount of direct reform activity, particularly in the health field. In 2008, for example, LSSP filed a class action against the NC Department of Health and Human Services regarding its practices related to termination notices for children receiving Medicaid based on mental illness and developmental disabilities. That same year, LSSP also successfully lobbied NCDHHS to alter a number of policies related to food stamps, Medicaid, and Work First programs. According to LSSP’s Executive Director, DHHS passes no new regulations without first consulting longtime LSSP advocate Douglas Sea (Kenneth Schorr, personal interview, March 30, 2011). Without the organizational split

at LSSP, the legal services community would not be able to benefit from such access to important policy matters in the state.

An unintended consequence of the consolidation movement in North Carolina was the loss of Pisgah Legal Services from the new statewide entity. Two aspects of the development of Pisgah Legal Services deserve particular attention. The first involves the level of services it provides in terms of both individual representation and law reform work. As an “unrestricted” entity, Pisgah maintains the legal ability to engage in class actions, lobbying, and the representation of undocumented immigrants. However, Pisgah did not leave LSNC in order to pursue these activities like LSSP and LASNWNC would eventually do with their organizational splits. Pisgah left in 1999 after operating under the restrictions for three years, and it left precisely because of the consolidation of the LSNC member corporations into a single entity in that year.

Pisgah’s growth began long before it struck out on its own. In fact, it was the only office in the state to increase its cases closed numbers after the 1996 funding cuts and restrictions came down. As Figures 4.13 and 4.14 show, neither the substantive area nor level of representation changed much immediately after Pisgah Legal Services left LSNC. The overall number of cases closed dropped slightly between 1999 and 2005, but remained above the levels closed prior to 1999. It continued its historical strength in housing, family, and consumer cases, while its level of extended service representation (FGHIs) remained approximately 15% of its total cases. When the cases closed by LANC’s new Asheville office are added to Pisgah’s totals, the results are impressive. After closing 1745 cases in 1995, the year before the funding cuts, the combined Asheville offices closed 2207 cases in

1997, 2942 in 1999, and 3226 in 2001. By 2009, the combined total reached 4245 cases, more than twice the number closed in 1995.

Two things started to change in 2003, the year after LANC's creation and the complete consolidating of LSC-funded programs. First, Pisgah began a new project representing undocumented immigrants within its service area. Though it did not split from LSNC in order to perform restricted activity, the Planning Council and Pisgah's Executive Director recognized the need for such activity, and there was not another entity in the western part of the state that could handle immigration cases (Jim Barrett, personal interview, April 4, 2011). Second, Pisgah began closing a greater percentage of its cases under the FGHI, or extended service, categories, indicating the potential for an increase in litigation-related law reform activity.

The two developments are not entirely distinct. The cases from the new immigration project account for a large portion of the growth in "individual rights" cases closed by Pisgah beginning in 2003. The nature of immigration cases also accounts for a portion of the increase in extended service cases closed by Pisgah during the last seven years. Almost all immigration cases are closed under the "H" category because the purpose of working on them is to receive an administrative agency decision on the immigration status of their client. In 2002, Pisgah closed 146 cases under "H"; in 2007, that number grew to 436. However, the growth in immigration cases does not completely account for the growth in extended service cases. While Pisgah achieved more administrative agency decisions, neither the "F" nor the "G" categories, both of which deal with negotiated settlements, changed significantly. Cases closed under the "I" category (court decisions) therefore account for the rest of the change. Pisgah took 393 cases to court in 2007 and 390 in 2008, 11% and 10.5% of its total cases in

each year. This is a significant increase from the levels prior to 2003, both in absolute and relative terms. In 2002, Pisgah had 87 cases in court, constituting just 3.4% of its total cases. The growth in absolute numbers provides greater opportunities for law reform through litigation; the growth in percentages shows a higher relative priority for litigation.

Beyond the direct approach of reform through growth in litigation, Pisgah takes a somewhat different approach to law reform than many legal services organizations in the state. Pisgah operates as a truly community-based group, choosing to work with local agencies, politicians, and community groups. “This is not the hostile legal aid program; this is the legal aid program that solves difficult social problems” (Jim Barrett, personal interview, April 4, 2011). Since its departure from LSC funding, Pisgah has helped create at least 15 nonprofits in its area that provide either direct services or community education and empowerment programs to the poor. When the Buncombe County Health Department began restricting eligibility for the mentally ill, Pisgah did not sue them. Instead, they helped create a community health clinic that could provide the services with less money, negating the need for the Health Department to navigate all the red tape of the Medicaid system (Jim Barrett, personal interview, April 4, 2011). The result of this approach, according to Pisgah’s executive director, is a higher level of community support for Pisgah that is reflected in their enormous success fundraising locally.

The second important aspect regarding Pisgah Legal Services is its place within the larger legal services community. Its withdrawal from LSC funding left LSNC in an odd position. Pisgah was a strong organization with a record of high levels of service in Asheville and its surrounding counties. LSC, however, was committed to the 100-County model of coverage in North Carolina and therefore required LSNC to establish an office in Asheville

after Pisgah's departure. Tensions between Pisgah and LSNC were high and cooperation between the two organizations was low (Jim Barrett, personal interview, April 4, 2011). Over time, tensions have abated and LANC continues to maintain an office in Asheville, though with limited services. As Pisgah has grown, the real need for an LSC-funded office in the area is minimal. Current LANC Executive Director George Hausen says, "LSC requires me to have an office there, so we have an office there. It's mostly related to our Senior Law Project these days" (personal interview, March 3, 2011). An important question, then, is the extent to which Pisgah has remained an involved member of the community.

Pisgah's Executive Director has a seat on the Planning Council (now called the Equal Justice Alliance) and is very active in statewide coordination activities (Evelyn Pursley, personal interview, March 28, 2011). Between 2003 and 2010, Pisgah participated in eight cases in the North Carolina appellate courts. On three of the eight, Pisgah served as counsel without participation by other groups. Pisgah filed *amicus curiae* briefs in the five other cases. Some of these cases were counseled by LANC and the Justice Center, others by private attorneys. In all of the cases, other legal services organizations and community groups also filed *amicus* briefs or signed on to common briefs with Pisgah. In short, Pisgah has remained an important player in the broader legal services community despite its rejection of the forced consolidation in 1999.

Network Form of Organization: Coordination and Cooperation in Law Reform

The impact of changing levels of coordination on law reform activity can be seen through analyzing patterns in co-counseling with members of the private bar and other public interest organizations in the appellate courts. I created a database consisting of every case in

the North Carolina Supreme Court and the North Carolina Court of Appeals in which a member of the legal services community participated, either as counsel or through the submission of *amicus curiae* briefs. These data have been coded and mapped through basic network analysis. Tracing the changing size and structure of the network provides a useful illustration of how the organizational responses to the federal policy changes have affected impact litigation in the community over time. Furthermore, organizational position within the network shows the key components of the structure, the hubs through which connections develop, and how that has changed over time.

Prior to 1990, the LSC-funded community in North Carolina had a long history of successful law reform activities. In 1977, for example, Legal Services of the Southern Piedmont won a series of cases expanding the right of tenants under state law (See *Usher v. Waters*, 438 F. Supp. 1215 [W.D.N.C. 1977] [holding that a rent appeal bond and a rule barring indigent tenants from access to jury trials violated the 14th Amendment]; *Love v. Pressley*, 239 S.E.2d 574 [N.C. App. 1977] [finding that state common law prohibited self-help evictions and constituted unfair and deceptive trade practices justifying treble damages]). LSSP also helped rewrite state law to create an implied warrant of habitability for residential tenants and that provided statutory defenses to retaliatory evictions (N.C.G.G. § 42-38 *et seq*). In 1980, East Central Community Legal Services in Raleigh litigated a case before the state Supreme Court that found a constitutional right to court-appointed counsel for parents accused of contempt in child support proceedings (*Jolly v. Wright*, 265 S.E.2d 135 [N.C. 1980]).

Between 1990 and 1995, legal services attorneys in North Carolina participated in a total of 81 cases in the North Carolina Court of Appeals and the North Carolina Supreme

Court, averaging 13.5 per year. Figure 4.15 describes the trends in appellate court litigation between 1990 and 2010. In 1996 and 1997, the community participated in eight cases both years. Between 1998 and 2001, however, the community participated in 16 cases total. For three of those four years, legal services attorneys brought no cases in the NC Supreme Court. Because of the lag time involved in appellate cases, this indicates that the restrictions enacted in 1995 and the chaos that characterized the early organizational response in North Carolina likely caused this dramatic downturn in potentially reform-based litigation. In 2002, two years after the creation of the Planning Council, the community participated in 16 cases, half of which were staffed by LSC-funded attorneys.

Raw numbers of cases in the appellate context are helpful in analyzing trends over time, but they also conceal a great deal of information. Political considerations, the facts of particular cases, and numerous other factors go into decisions about whether to file appeals. Nevertheless, the dramatic dip in appellate litigation in the second half of the 1990s is significant. Furthermore, evidence of other forms of law reform activity suggests that lobbying and administrative advocacy also suffered during this time. A history of achievements of the legal services community in North Carolina lists no major victories in these arenas (Pistolis & Rowe, 2008).

Furthermore, engagement in law reform activities has varied greatly between the various legal services organizations in North Carolina over time. Between 1990 and 1995, eight of the twelve LSNC field offices litigated at least one suit in the NC Court of Appeals or NC Supreme Court. Of those eight offices, four offices participated in three or fewer cases while the other four participated in five to sixteen cases. Central Carolina Legal Services in Greensboro participated in 16 cases, the most by any organization in the state. For the

independent programs, LSSP and LASNNC participated in 11 and 12 cases respectively, while NCLAP (Durham) participated in only one. Between 1996 and 2002, seven of the 12 field offices participated in appellate litigation and the numbers were equally skewed. However, the overall number of cases, as reported in Figure 4.8, dropped significantly during this time period. The total level of cases brought to the appellate courts began to rise again in 2002 and has been rising ever since, with normal fluctuations.

More important than absolute figures, the structure of the appellate network has changed dramatically over time. Figure 4.17 shows the basic network structure for three key time periods: 1) 1990 through 1995 (prior to funding cuts and restrictions); 2) 1996 through 2002 (prior to complete centralization); and 3) 2003 through 2010 (centralized LSC-funded entity and existence of unrestricted organizations. The key insight from these pictures is that each successive stage reveals a larger network with higher levels of participation by multiple parties in single cases, especially in the NC Supreme Court. Figure 4.16 provides summary data on the number of ties in the overall network for each year between 1990 and 2010.

Before 2000, not a single legal services organization filed an *amicus curiae* brief in the North Carolina Court of Appeals. The relatively recent relaxation of rules governing the filing of *amicus* briefs provides a partial explanation for this. Most of the reason, however, appears to be simply a matter of strategy, prioritization of resources, and organizational independence before this time. The first time an LSC-funded organization filed an *amicus* brief was in 2003 when the farmworker division of LANC filed a brief in a case primarily concerned with attorneys' fees (*Palmer v. Jackson's Farming Company*). All of the briefs filed between 2000 and 2002 came from either the NC Justice Center or a private law firm representing nonprofit advocacy groups.

The difference in network position of LANC and the NC Justice Center over time is striking. Figures 4.18 through 4.20 provide detailed pictures on the networks over time. Between 2003 and 2010, LANC directly represented clients in 29 cases; the Justice Center served as counsel in four cases. From a degree centrality point of view, LANC dominates—it has a total of 40 connections to the Justice Center’s 23. However, the Justice Center participated in an additional 19 cases through the filing of *amicus curiae* briefs. In doing so, it has a more crucial location in the network because it operates as a connector to other organizations.

It is difficult to compare the relative centrality of LSC-funded organizations to the Justice Center over time because prior to 2002, LSC-funded organizations maintained separate identities. However, looking at the network pictures indicates a similar pattern over time. While LSC-funded organizations participate as counsel in more cases, the Justice Center (or Resource Center depending on the time) has a greater level of connections to other organizations. However, LANC appears to be taking a more central position within the network in recent years.

The network pictures also demonstrate that more private law firms are participating in legal services’ cases in recent years, both as co-counsel and through *amicus* briefs, as are associations of private attorneys such as the NC Academy of Trial Lawyers (now called Advocates for Justice). This reflects the growing movement within the organized bar to specifically assist in the provision of legal services for the poor, as well as the legitimacy of legal services in the eyes of the private bar and the community at large.

Conclusions

Teasing out the precise effects of the retrenchment efforts and the organizational responses in North Carolina is difficult. The data analyzed here suggest that overall service provision dropped significantly after the retrenchment of 1995. While a certain amount of that was certainly due to the reductions in funds and the increased administrative costs of reorganizing to combat the restrictions, a sizeable portion was also likely due to the intense acrimony within the community itself. As the level of acrimony subsided and new sources of funding were secured, service levels began to increase. Again, some of this is likely due to the centralization of LSC-funded organizations, but it seems equally likely that it was the act of the community coming together that had the largest impact. However, an unquestionable effect of the centralization itself has been a widening disparity in service levels between rural and urban areas. The approach of maximizing service levels across the entire state has led to a natural focus on urban areas where the costs of service are lower.

Changes in community-level prioritization of individual service and law reform activities have not resulted from retrenchment, however. The split of the community into subgroups and a conscious division of labor has left the overall ability of the community to engage in law reform intact. Furthermore, increased ties to the private bar and its resources have buoyed the community in the realm of law reform. It is too early to know, however, if the increased transaction costs associated with this new network form of structure, especially the growing disconnect between the major reform players and the on-the-ground legal aid attorneys, will have a significant impact. This will have to be the subject of future research.

Tables and Figures

Table 4.1: Cost Per Case Closed by LSC-Recipients, National Level (2010 dollars: 1996-2008)

Year	Mean	Median	Stand. Dev.	Minimum	Maximum
1996	\$541.64	\$428.99	\$481.98	\$126.09	\$2,835.93
1997	\$463.76	\$417.24	\$228.06	\$128.83	\$1,186.26
1998	\$558.79	\$530.09	\$238.38	\$156.50	\$1,317.02
1999	\$759.62	\$719.95	\$322.28	\$158.42	\$1,539.92
2000	\$812.99	\$754.93	\$330.42	\$156.86	\$2,007.49
2001	\$1,005.83	\$834.73	\$988.54	\$154.10	\$7,313.62
2002	\$869.32	\$828.96	\$352.79	\$193.21	\$1,761.22
2003	\$898.08	\$898.06	\$383.24	\$205.55	\$2,085.25
2004	\$922.99	\$919.35	\$404.94	\$198.72	\$2,408.56
2005	\$940.18	\$911.32	\$414.51	\$212.60	\$2,298.73
2006	\$990.43	\$959.30	\$437.26	\$216.36	\$2,552.69
2007	\$1,015.91	\$971.11	\$467.28	\$239.55	\$2,390.38
2008	\$1,049.84	\$1,025.50	\$499.76	\$263.88	\$2,735.23

Table 4.2: Pearson Correlation Coefficients for Variables Related to Costs

Cost per Case	Cost per Case2	Total Cases Closed
Total Cases Closed	-0.7967*	.
Brief Service Cases	-0.0936	0.6402*
Ext. Service Cases	0.7214*	-0.201
% Brief Service	0.9312*	-0.6468*
% Ext. Service	0.9428*	-0.6313*
Priority Ratio	-0.9282*	0.6056*
Cost per Case	.	-0.7967*
* indicates significance at the 0.05 level		

Table 4.3: Comparison of Cost Per Case: Statewide Community vs. Pisgah Legal Services

Year	Cost Per Case (2010\$)		Percent Ext. Service		Percent Non-LSC Funding	
	State Level	Pisgah	State Level	Pisgah	State Level	Pisgah
1996	\$640.55	\$565.05	11.9%	14.9%	37.7%	65.7%
1997	\$723.21	\$514.79	11.1%	13.2%	45.2%	69.1%
1998	\$772.92	\$462.58	13.6%	15.3%	50.8%	74.3%
1999	\$911.61	\$499.82	16.2%	14.5%	55.0%	100.0%
2000	\$963.00	\$472.15	17.9%	13.0%	57.5%	100.0%
2001	\$977.68	\$489.40	19.1%	15.1%	53.8%	100.0%
2002	\$1,018.65	\$543.52	21.3%	17.0%	53.3%	100.0%
2003	\$1,019.65	\$595.75	22.5%	19.9%	53.7%	100.0%
2004	\$969.14	\$662.21	21.3%	20.7%	52.9%	100.0%
2005	\$1,105.71	\$713.26	23.4%	26.1%	59.4%	100.0%
2006	\$1,057.94	\$664.98	23.3%	27.3%	61.3%	100.0%
2007	\$969.49	\$672.54	20.9%	29.1%	62.2%	100.0%
2008	\$992.78	\$630.40	21.2%	26.5%	62.2%	100.0%
2009	\$892.60	\$547.70	21.2%	24.4%	59.0%	100.0%

Table 4.4: Comparison of Cases Closed Between Split Charlotte Offices

2005	LSSP		LANC-Charlotte	
	Cases	% of Total	Cases	% of Total
Consumer	0	0.0%	151	14.0%
Education	0	0.0%	2	0.2%
Employment	25	2.1%	26	2.4%
Family	84	7.0%	299	27.8%
Health	795	65.9%	78	7.3%
Housing	141	11.7%	182	16.9%
Income maintenance	0	0.0%	83	7.7%
Individual rights	72	6.0%	0	0.0%
Miscellaneous	38	3.2%	254	23.6%

Note. N for LSSP = 1206; N for LANC = 1075.

Figure 4.1: Non-LSC Funding Amounts for LSC Recipients: 1996-2008

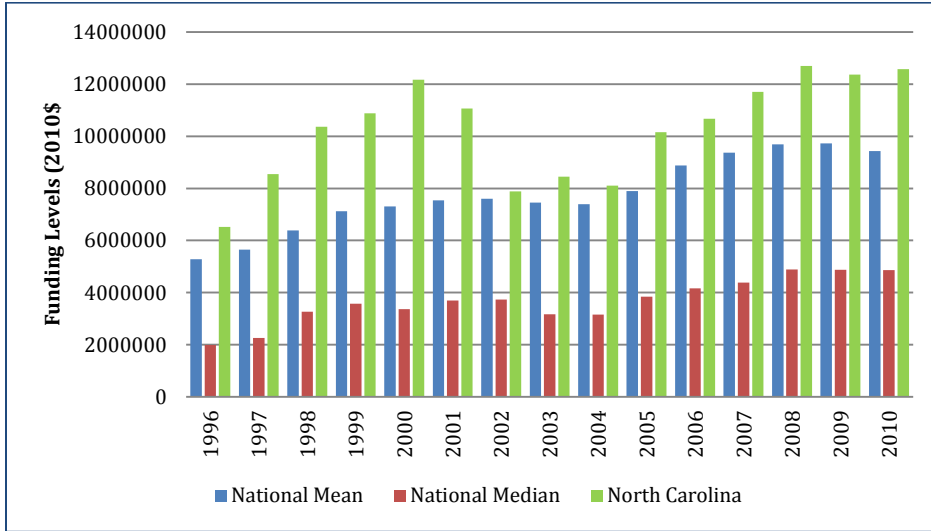


Figure 4.2: Non-LSC Spending Per Poor Person by LSC Recipients: 1996-2008

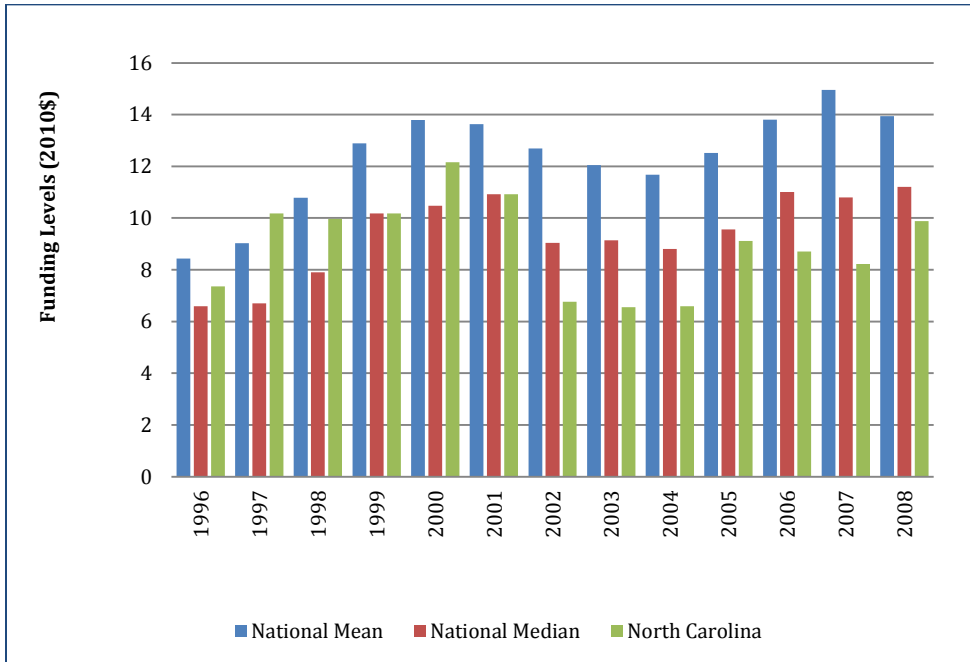


Figure 4.3: State and Local Funding Amounts: Nation vs. North Carolina: 1996-2010

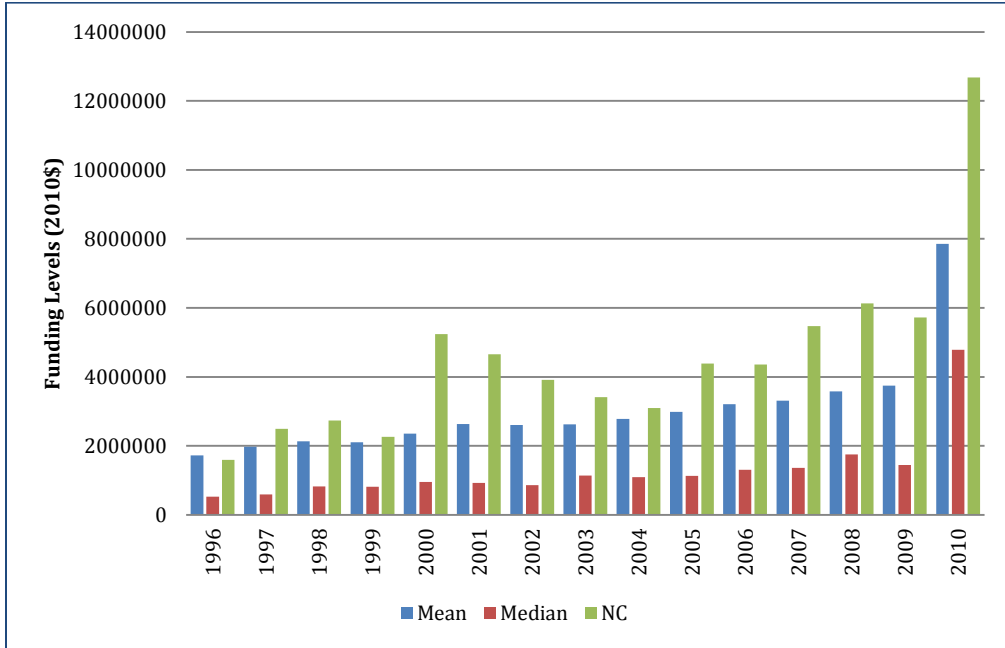


Figure 4.4: IOLTA Funding—National vs. North Carolina: 1996-2010

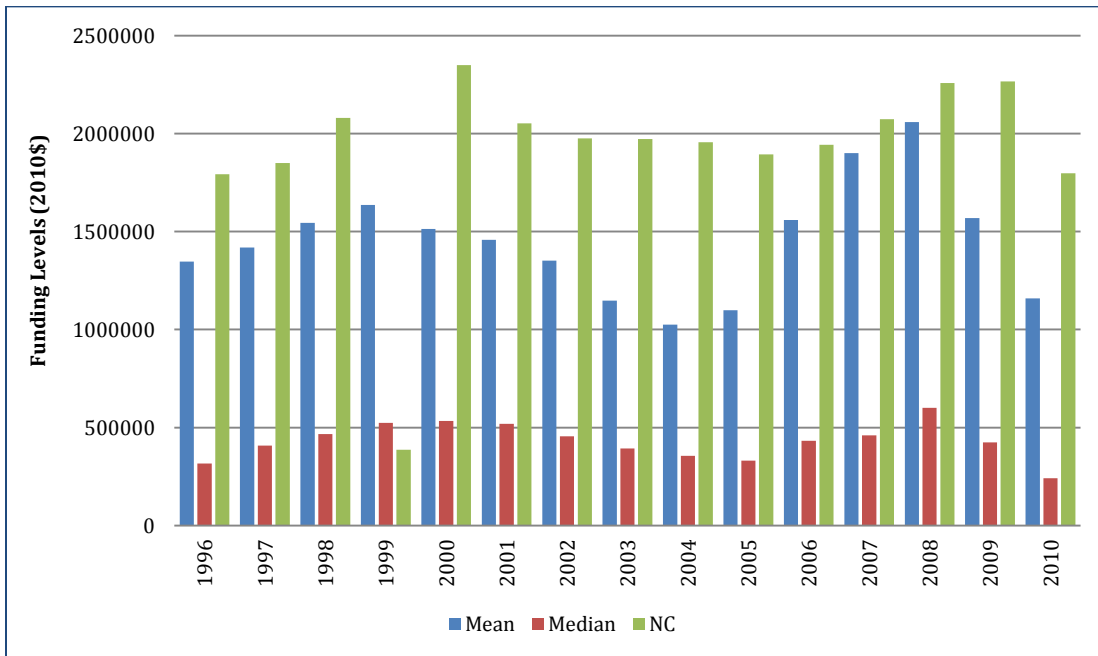


Figure 4.5: North Carolina vs. National Cases Closed by LSC-Recipients: 1990-2008

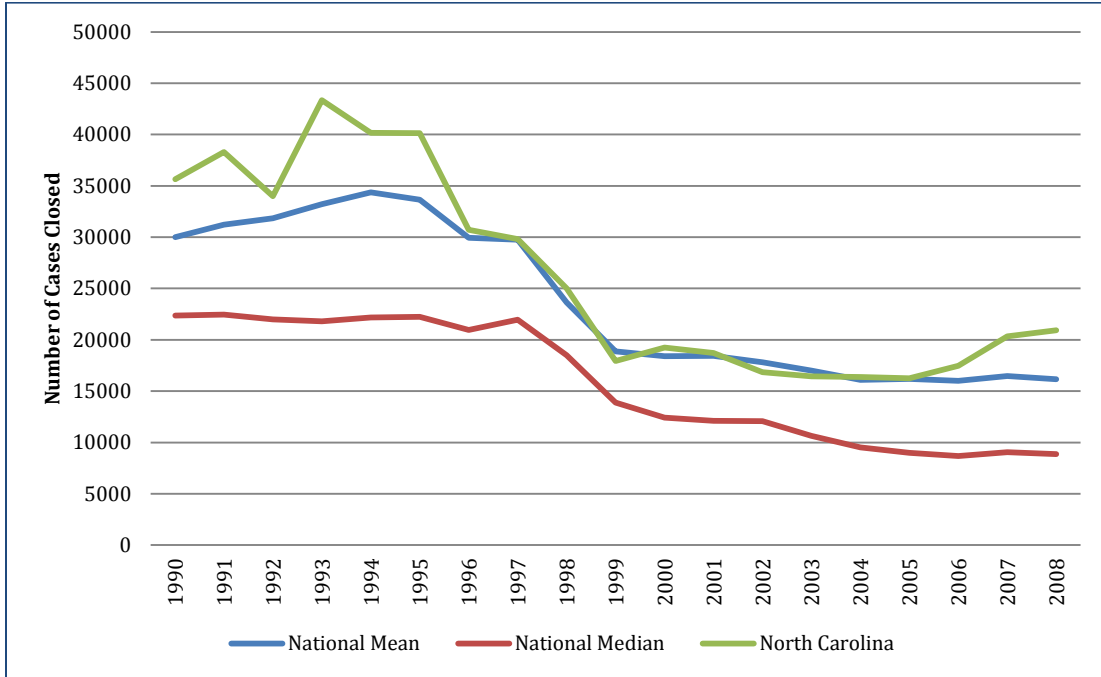


Figure 4.6: Percentage of Cases Closed as Extensive Service: Nation vs. North Carolina: 1990-2008

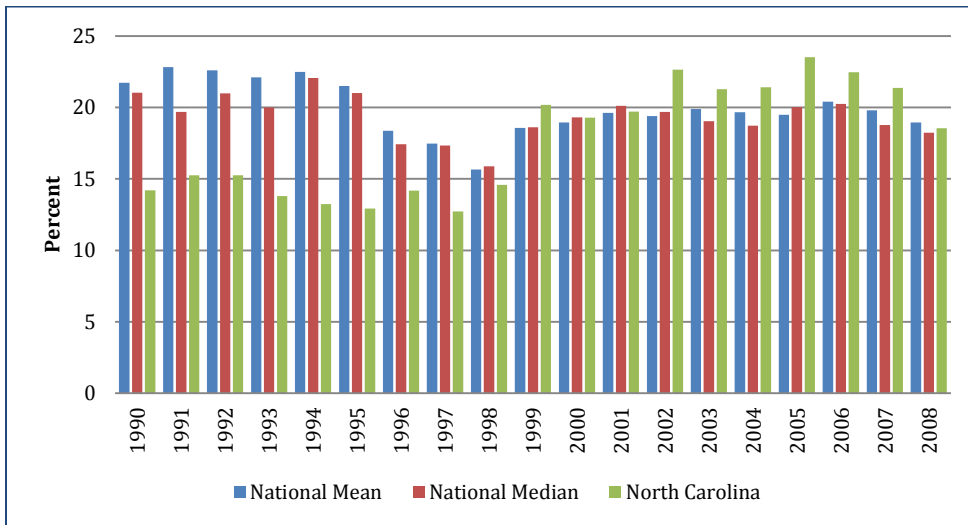


Figure 4.7: Percentage of Cases Closed as Brief Service: Nation vs. North Carolina: 1990-2008

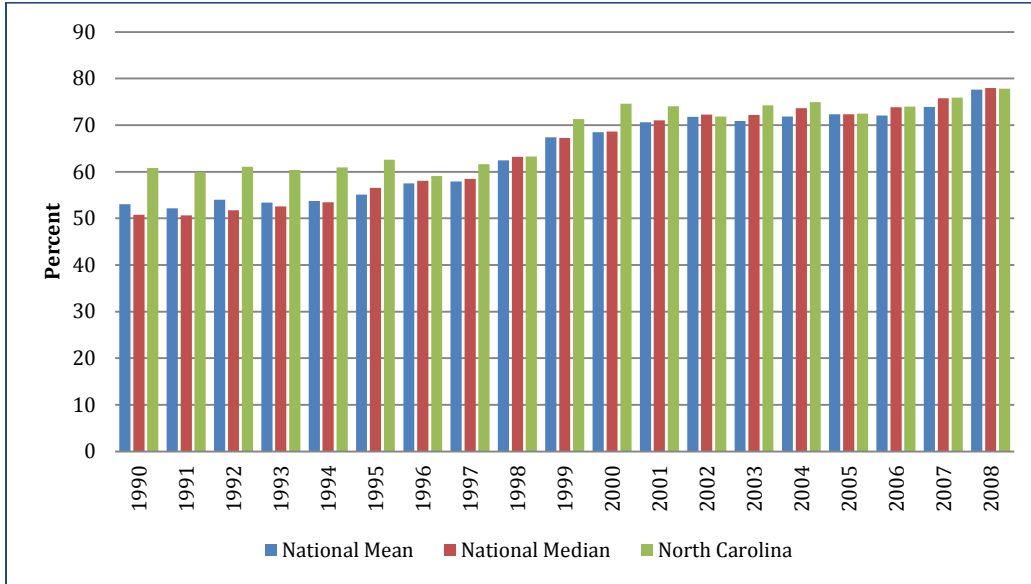


Figure 4.8: Total NC Cases Closed by Area: 1993-2009

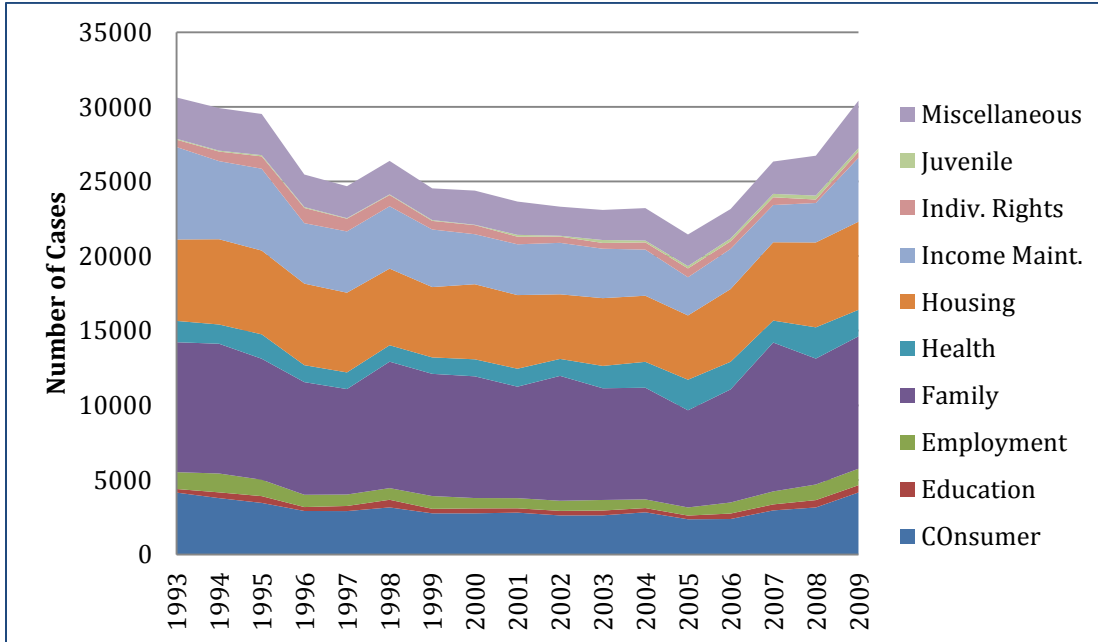


Figure 4.9: Pisgah Legal Services: Cost Per Case Closed 1996-2010

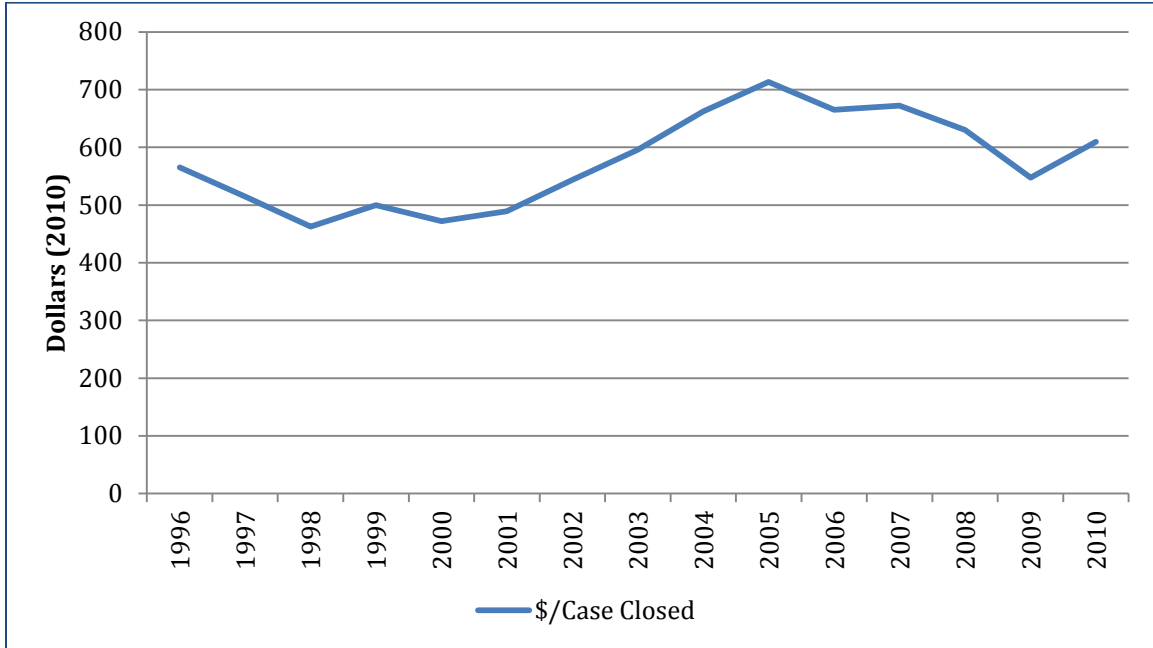


Figure 4.10: Brief vs. Extended Service in North Carolina: Entire Community: 1993-2009

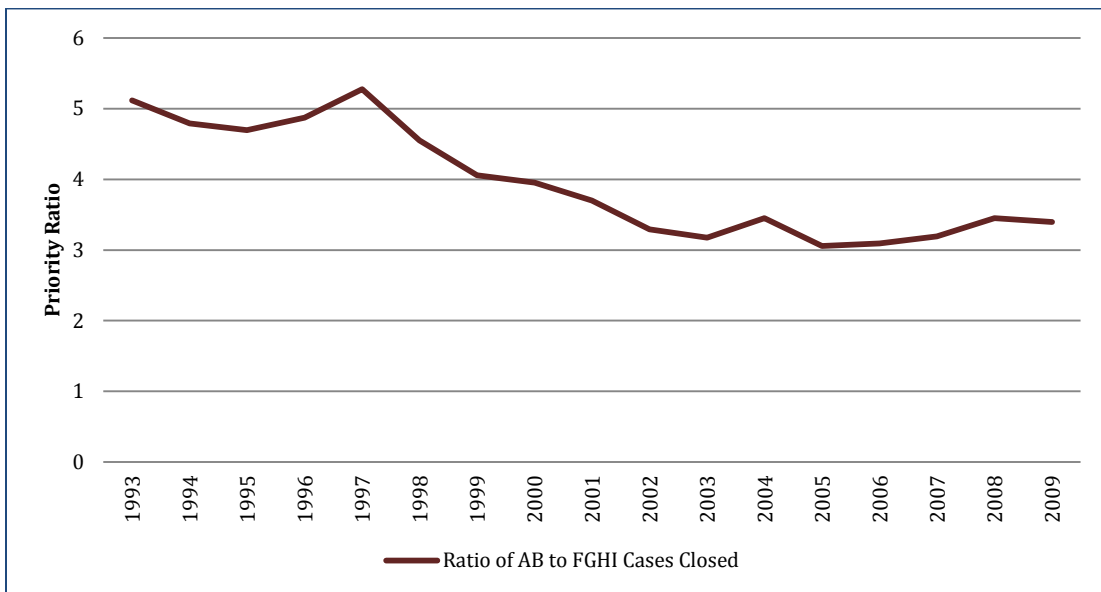


Figure 4.11: State Level Variation in Service Provision Over Time: 1993-2009

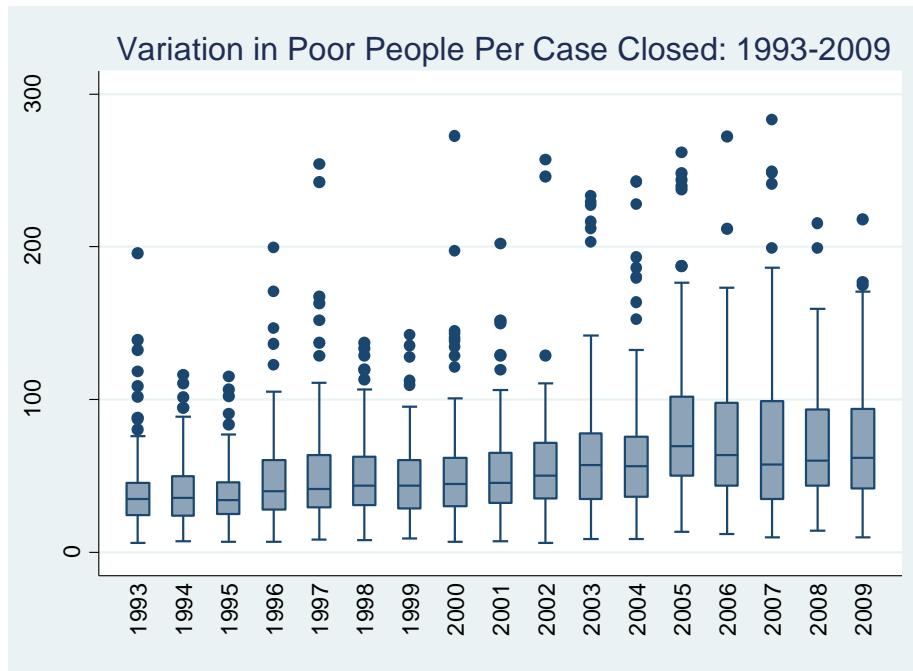


Figure 4.12: Disparities in Rural vs. Urban Service Delivery: 1993-2009

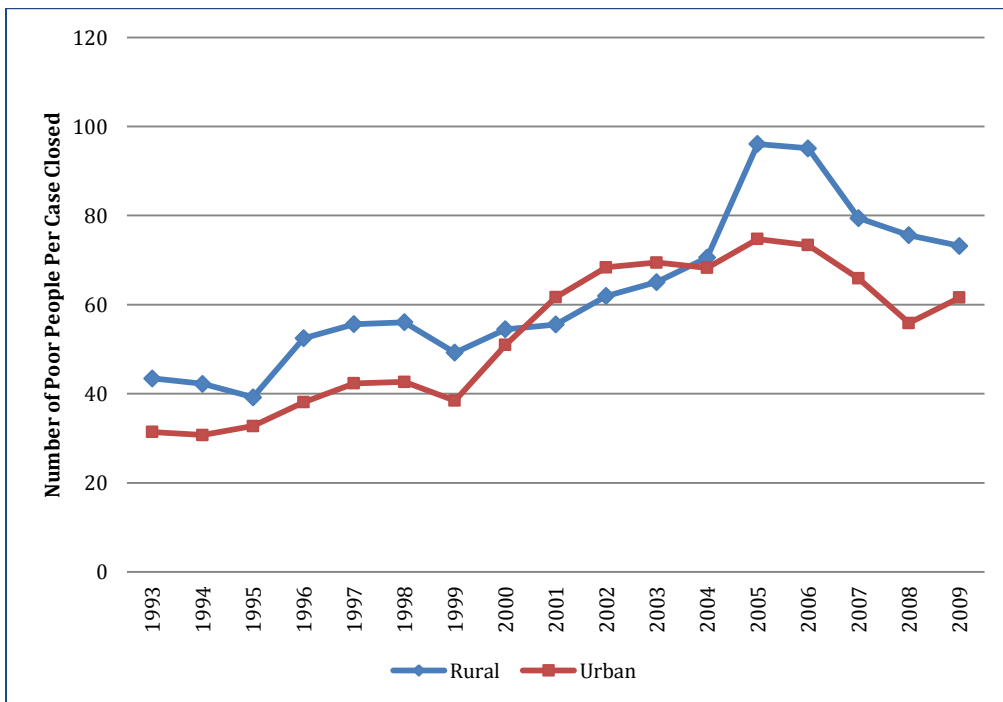


Figure 4.13: Pisgah Legal Services Total Cases Closed By Level of Service: 1994-2010

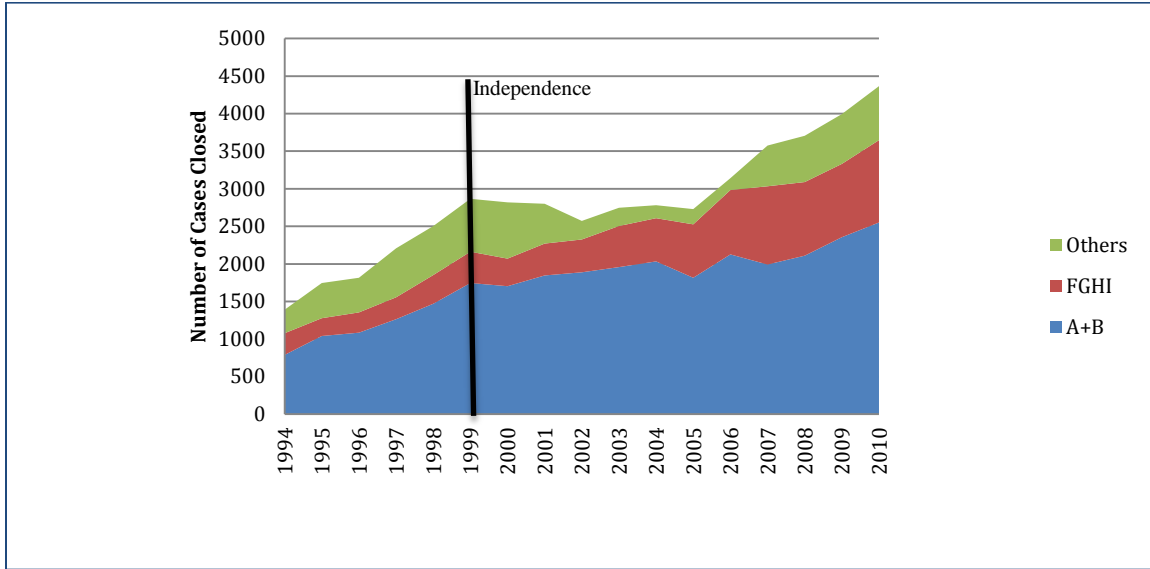


Figure 4.14: Pisgah Legal Services Cases Closed by Substantive Area: 1994-2010

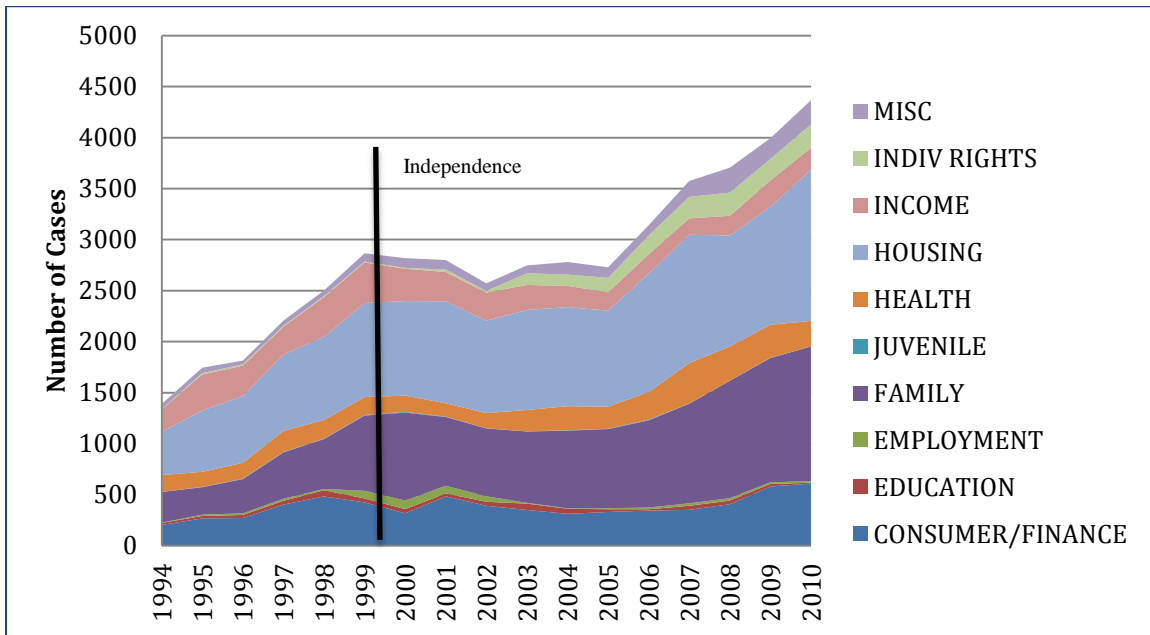


Figure 4.15: Legal Services' Participation in Appellate Litigation: 1990-2010

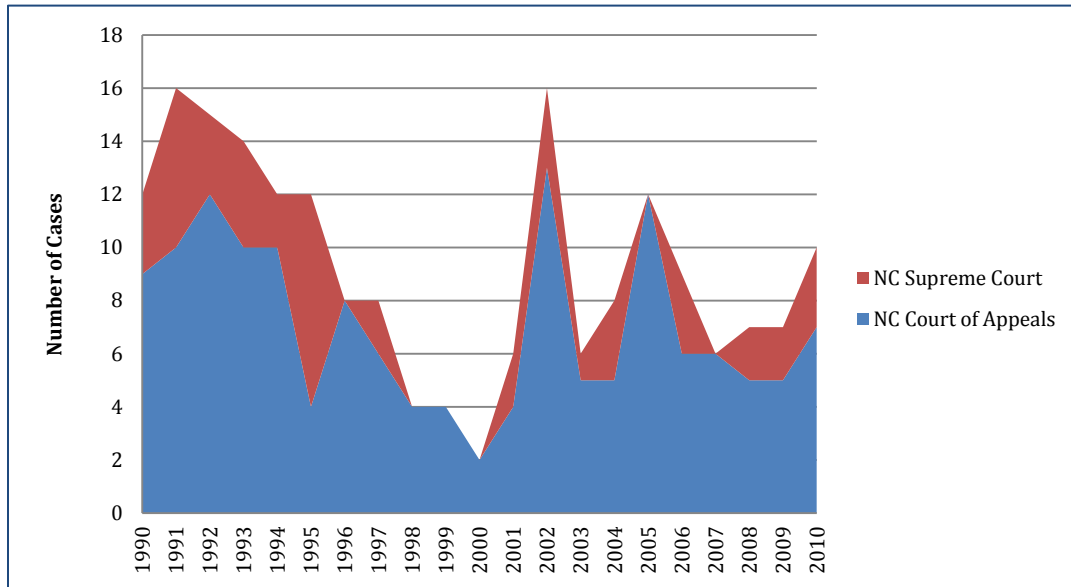


Figure 3.16: Number of Ties Between Actors in NC Appellate Courts: 1990-2010

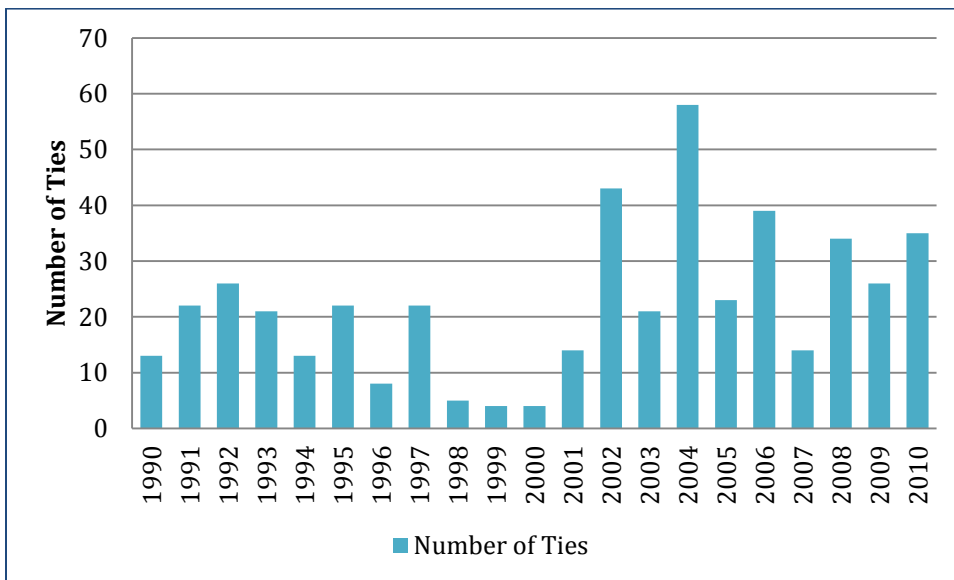


Figure 3.17: Legal Services Network of Co-Counseled Cases in North Carolina Courts
(Red=Case; Blue=Organization)

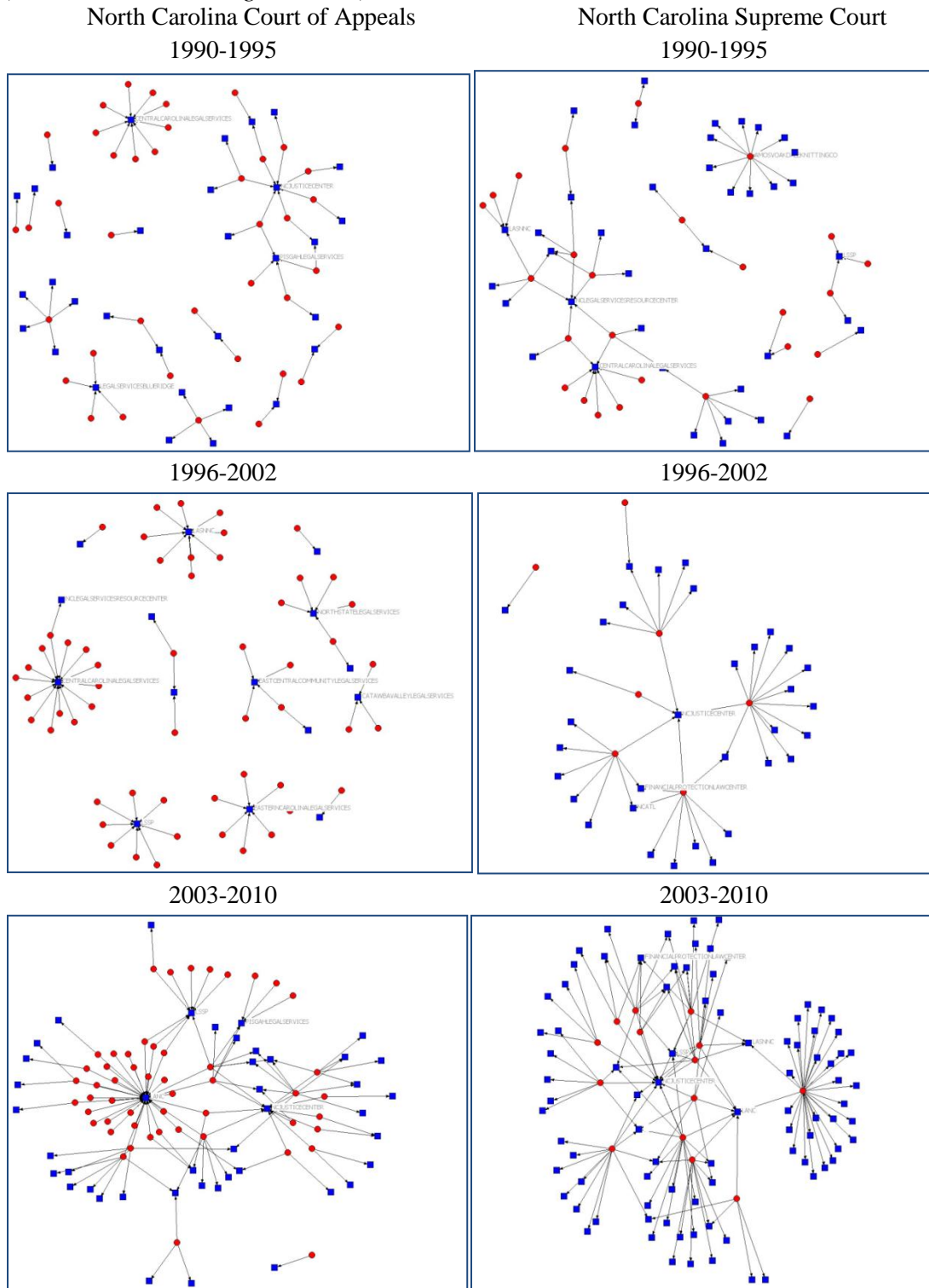
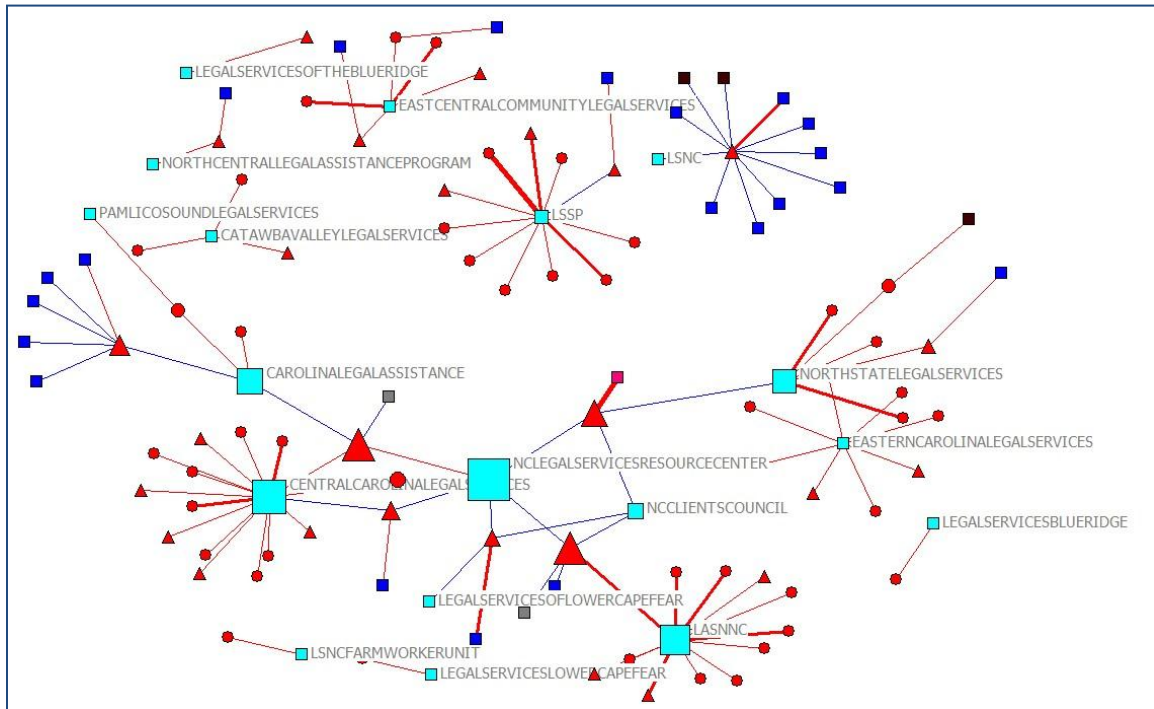


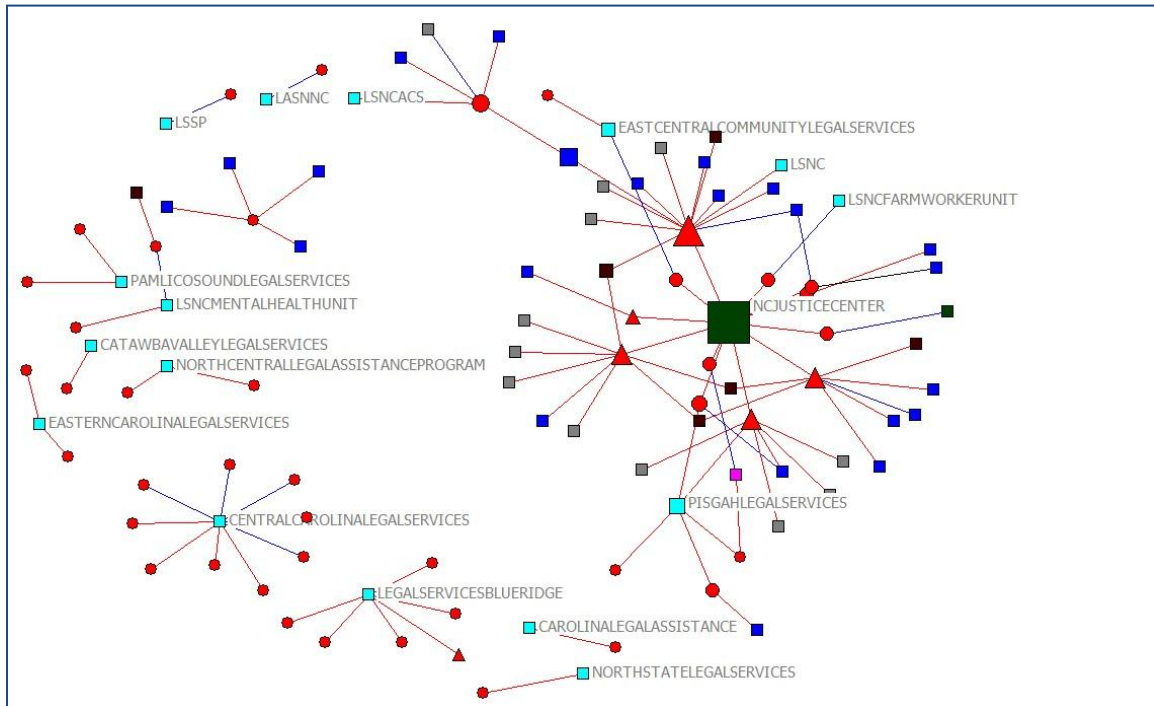
Figure 3.18: Network of Appellate Litigation, NC Court of Appeals and NC Supreme Court: 1990-1995



Nodes: Light Blue = LSC-Funded Legal Services Organization
 Dark Green = Non-LSC Funded Legal Services Organization
 Dark Blue = Private Law Firm
 Maroon = Public Interest Law Organization (non-legal services)
 Grey = Advocacy Organization (non-legal)
 Pink = Government Agency
 Red Triangle = NC Supreme Court Case
 Red Circle = NC Court of Appeals Case
 Size of Node = Betweenness Centrality

Ties: Red = counsel
 Blue = Filed *Amicus Curiae* Brief
 Thickness = Number of Attorneys Involved

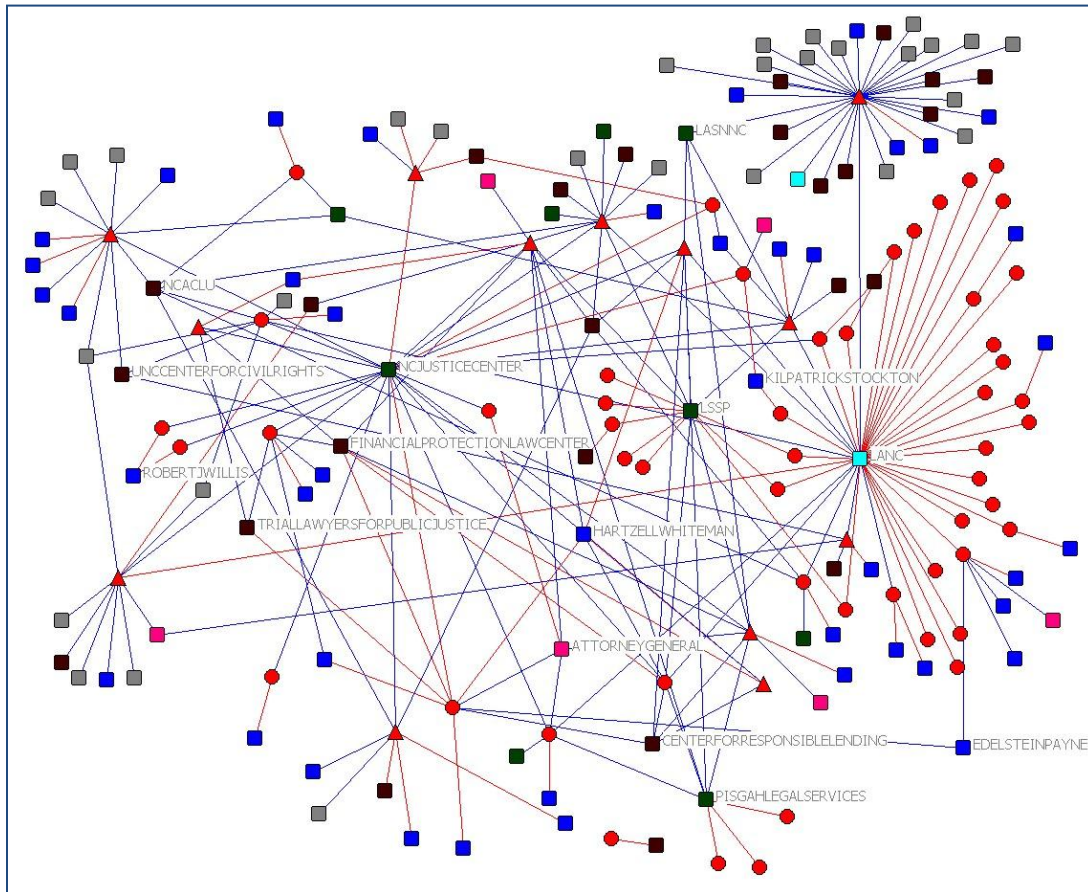
Figure 3.19: Network of Appellate Litigation, NC Court of Appeals and NC Supreme Court: 1996-2002



Nodes: Light Blue = LSC-Funded Legal Services Organization
 Dark Green = Non-LSC Funded Legal Services Organization
 Dark Blue = Private Law Firm
 Maroon = Public Interest Law Organization (non-legal services)
 Grey = Advocacy Organization (non-legal)
 Pink = Government Agency
 Red Triangle = NC Supreme Court Case
 Red Circle = NC Court of Appeals Case
 Size of Node = Betweenness Centrality

Ties: Red = counsel
 Blue = Filed *Amicus Curiae* Brief
 Thickness = Number of Attorneys Involved

Figure 3.20: Network of Appellate Litigation, NC Court of Appeals and NC Supreme Court: 2003-2010



Nodes: Light Blue = LSC-Funded Legal Services Organization
 Dark Green = Non-LSC Funded Legal Services Organization
 Dark Blue = Private Law Firm
 Maroon = Public Interest Law Organization (non-legal services)
 Grey = Advocacy Organization (non-legal)
 Pink = Government Agency
 Red Triangle = NC Supreme Court Case
 Red Circle = NC Court of Appeals Case

Ties: Red = counsel
 Blue = Filed *Amicus Curiae* Brief
 Thickness = Number of Attorneys Involved

Conclusions

Legal aid organizations exist to provide the poor with access to the legal system. Legal aid expanded beyond private charity with funding by the federal government as part of the War on Poverty in the 1960s. These legal services organizations still provided individual representation, but their focus was on law reform. Their success in reforming the law to benefit the poor resulted in political backlash. This eventually led to a series of attempts to remove the federal government from the provision of legal services to the poor. Though all of the attempts eventually failed in their primary goal, each succeeded in incrementally pulling back from the more controversial aspects of legal services provision. Finally, in 1996, Congress cut thirty percent of funding to legal services and removed the ability of the federally funded organizations to carry out law reform activities.

The combination of funding cuts and service restrictions had a tremendous impact on legal services organizations and the services they provide. As the current Congress is considering another large-scale reduction in funding to the Legal Services Corporation, an analysis of the effects of prior retrenchment efforts is particularly timely. Using North Carolina as a case study, I examined three research questions:

- How did federal retrenchment efforts in the 1980s and 1990s reshape legal aid provision in the United States?
- How did the legal aid community respond at the statewide and organizational levels to federal retrenchment?

- How did these responses affect service levels, especially in the area of substantive law reform efforts?

The overall lesson from the research is that retrenchment efforts are especially prone to unintended consequences that can have long-term effects, especially when conducted in the context of mission-oriented service organizations with the motivation and ability to innovate and adapt to changing institutional environments. Below I will summarize the main conclusions for each of the three major research questions.

Federal Retrenchment

There were two distinct periods of retrenchment, each with crucially different players and results. The Reagan Administration attempted to retrench the federal role from within the executive branch because it faced a Senate opposed to its efforts. The 104th Congress was able to take a more direct approach, but faced competing policies from the Clinton Administration. Each failed to completely remove the federal government from the provision of legal services, and each may in fact have strengthened the legal services community in North Carolina through the development of strong unintended consequences.

The Reagan Administration's move to re-privatize legal aid provision through its private attorney involvement regulations in fact served to strengthen political support from the private bar for federally funded legal services. This, in turn, led to stronger financial support both from the private bar and from state and local governments. Congress's removal of the most direct means of law reform in 1996 resulted in the development of a parallel community of non-LSC funded organizations, which in turn has resulted in higher levels of reform activity on behalf of the poor in North Carolina.

Nevertheless, each retrenchment has undoubtedly made life more difficult for legal service providers. The need to expend resources in order to obtain funding elsewhere, the increased transaction costs associated with the networked forms of organizations that have developed in response to the retrenchment, and the large-scale reductions in funding from the federal government all make access to justice more difficult for the poor in the United States. The fact that the legal services community has been able to maintain its levels of services despite retrenchment is testimony to the strength of its commitment and the organizational adjustments made in response to the changing federal institutional environment.

Organizational Responses

Legal services organizations in North Carolina responded to the federal retrenchment in 1996 in three primary ways. First, under pressure from the Legal Services Corporation's leadership and a decreasing resource environment, the LSC-funded community consolidated most of its operations into a single entity in 1999 and then fully centralized all LSC-funded activity into a new entity in 2002. Second, the community split into two distinct but connected groups. One group continued to receive LSC funding; the other obtained all funding from other sources. The split into two groups evoked the third response— the development of a networked form of organization for the entire statewide community. Each one of these responses in turn created unintended consequences both in terms of organizational structure and service provision.

Nonprofit organizations with a clear sense of mission are generally more innovative than organizations without such a clear sense (McDonald, 2007). The overriding sense of mission that provided for innovation in North Carolina was a commitment to providing law

reform services to the poor. The establishment of the NC Justice Center and the organizational splits that occurred within LSSP and LASNNC are both examples of this innovation. These innovations allowed the legal services community to continue to provide lobbying and class actions, amongst other things, in a situation in which many businesses with a profit motive would have shut down. The end result of the community split, which clearly was not envisioned by Congress when it enacted the restrictions, was a more robust network of poverty advocacy in the state.

The consolidation and centralization responses differ in an important sense because they did not emanate out of this common sense of mission. Instead, the change was pushed top-down for efficiency reasons. The lack of buy-in from the community itself resulted in a prolonged political battle within the state that removed resources from service provision. The result was a “Dark Ages” of legal services in North Carolina that lasted for more than five years. Once the structural question was settled, however, the community reengaged with its mission and developed stronger network ties and mechanisms of coordination and cooperation, despite large-scale disagreement with the centralized form adopted. The creation of the Planning Council and its evolution into the Equal Justice Alliance and eventually the Equal Access to Justice Coalition are the best examples of this reengagement. The primary lesson, I argue, is that the precise structural form of service provision is decidedly less important than the maintenance of a common sense of mission when it comes to the effectiveness of legal services organizations. Maintaining that sense of mission in turn requires participation in structural decisions by members of the community itself.

The unintended consequence of the centralization movement in North Carolina was the withdrawal of Pisgah Legal Services from the new statewide entities. Though Pisgah may

not be as efficient as the centralized LANC, its success in both fundraising and service provision served as a model for LSSP and LASNNC when they chose to split themselves in 2002. Its continued engagement with the broader legal services community also demonstrated that a hierarchical form of organization is not necessarily the most effective.

Service Levels

Each of these organizational responses had a different effect on the type and level of service provided by the North Carolina legal services community. Centralization of the LSC community appears to have slightly increased efficiency and to have increased the levels of overall service provision. It has not, however, resulted in higher proportions of extended service and it appears to have exacerbated existing service disparities between rural and urban areas. LANC's participation in impact litigation has increased in recent years, however, and though its formal connections to the Justice Center and other non-LSC funded organizations appear to be declining, it is too early to tell if this will have a negative impact on future impact work.

The community split has had significant positive effects on service provision in the state. The Asheville and Charlotte areas, where the two generalized unrestricted groups continue to operate, are closing a huge share of the total individual cases in the state. Each of these offices also continues to be actively engaged in law reform activities as well as statewide planning efforts. The increased costs of doing so do not appear to be negatively affecting their service. The evolution of the Justice Center from a legal services support center to a broader anti-poverty advocacy group also appears to be working in the community's favor at this point. Its tremendous successes in legislative and administrative

advocacy, and its continued place at the center of the impact litigation network in the state, are crucial to the reform efforts of the community. As it loses direct ties with the legal services community, however, it will be interesting to see if its successes diminish.

The development of formal mechanisms of cooperation and coordination between the restricted and unrestricted groups has resulted in minimal overlap of individual service provision and strong sources of a shared mission in the state. These ties within the network have been absolutely crucial to the maintenance of law reform activity in the state, activity that seems to have increased over the last five years. Again, however, there is evidence of the weakening of some of these ties, such as the demise of the task forces. Whether advances in technology or the emergence of a stronger Equal Access to Justice Commission make up for these losses will be an important question going forward.

Contributions to the Literature

The primary contribution of this study lies in its detailed explanation of the real-world effects of federal policy change on legal services organizations in North Carolina. Empirical studies of the effects of federal policy change typically rely on broad changes in funding levels and service provision, without exploring the corresponding and potentially mitigating effects of organizational adaptation to those changes. By combining an in-depth study of these organizational changes with an empirical analysis of their effects on service provisions, this study provides a solid foundation from which to further explore these issues.

The study also contributes to explaining how mission-oriented nonprofits differ from the business-oriented organizations typically analyzed in studies on organizational behavior. As McDonald (2007) points out, missions serve both long- and short-term purposes for

organizations. In the long run, nonprofits must maintain a clear and compelling mission in order to survive in changing resource environments (Ahmed, 1999). In the short-term, missions drive the precise innovations and adaptations that facilitate survival (McDonald, 2007). By clearly explicating how a shared sense of mission allowed for the survival of law reform capabilities in the legal services community in North Carolina, this study provides support for this important idea. It also provides a foundation from which to compare the adherence to mission in legal services communities in other states and how differences in such commitment may have affected service provision.

Finally, the findings of the study regarding the effects of centralization of legal services activities in North Carolina both provide initial insight to, and raise interesting questions about, the debate on the best organizational form for coordinating social movement activities. The forced top-down centralization of LSC-funded activities in the state had several unintended consequences, but the most important is the effective exclusion of key players in the community who opposed the consolidation and the growing inequities in service distribution between rural and urban areas. Their eventual success in striking out on their own, and their continued presence within the broader network, suggest that structural changes based on increasing efficiency are inherently flawed in this context.

Policy Implications

The study of the responses of the legal services community in North Carolina to federal policy changes reveals important insights into the mechanisms of unintended consequences of institutional design. I believe the most important of these insights revolves around the use of force in solving collective action problems when the primary incentives to participate are purposive, such as in mission-oriented nonprofits. LSC's heavy-handed

approach to forcing centralization in North Carolina ignored the political, economic, and cultural realities of the situation on the ground. The reduction in service levels that accompanied the prolonged fight over centralization in North Carolina are only now being overcome, and the primary reason service levels have risen is the creation of entities operating outside of the centralized structure. On the other hand, the community was able to reengage with its mission once the structural debate had ended, suggesting the importance of simply making a decision and adapting to it. I believe, however, that what allowed the community to move forward after consolidation was the emergence of a new, more participatory process. Numerous studies have shown that people who utilize the legal system are satisfied with their service, even if they do not like the outcome (See, e.g., ABA, 1994). Similarly, the engagement of community members in the reconfiguration debate through the Planning Council provided at least a sense of procedural justice, despite the fact that the Planning Council disagreed with the outcome.

Another important policy implication is the overwhelming need for additional federal resources for legal services communities. Though the community in North Carolina has been relatively successful in obtaining funds from non-federal sources, the pursuit of such funds is both costly and risky. The legal services community in North Carolina currently is facing a severe budget problem because its major non-federal sources are hampered by the poor state of the economy. IOLTA funding is dependent on interest rates and state funding is tied by balanced budget requirements in North Carolina. The precariousness of overreliance on such sources is perhaps best illustrated by New Jersey, historically the most generous provider of legal services in the country. IOLTA funding dropped from \$40 million in 2008 to \$8 million in 2010 due to the federal funds rate hovering near zero and declines in home purchases. The

state government similarly cut funds from \$30 million in 2009 to \$9.7 million in 2010. (Spoto, 2011).

Federal funding for individual service representation is more politically viable than reform activities, so legal services advocates should use that fact to their advantage. By ramping up individual service representation using federal money, non-federal resources can be focused on reform activity. In some regards, the “poison pill” restriction may serve as a crucial buffer against the claims of reform opponents. Other restrictions, however, including the prohibition on class actions, serve only to reduce the effectiveness of legal services and have no direct bearing on reform activities. It is a simple fact that sometimes the best and most efficient way to represent an individual client is to group him together with similarly situated clients.

The study also has important implications for social movement strategies that utilize the legal system. The structure that has emerged in North Carolina reveals the potential for a flexible and complementary network of organizations with different specialties to effectively mobilize the system on behalf of their constituents. Movement infrastructures require flexibility to be able to accommodate their changing roles given changing institutional environments. Movement leadership needs to be able to recognize those critical junctures and to control their members’ activities. The restrictions in 1995 took away that flexibility. The creation of a dual-level community brought it back. The existence of an efficient federally funded program allows for effective enforcement of existing rights; the existence of a substantial non-federally funded community allows for effective creation of new rights. The key is to know when to use each tool and to have the ability to coordinate across the two groups to mobilize the right tool at the right time.

Limitations to the Study and Avenues for Further Research

The primary limitation to this study is the lack of a comparison case. Without such comparison, it is impossible to make causal claims or to flesh out some of the potential explanatory factors for differences in organizational responses and service levels. I plan on using the experiences and findings of this single case study to develop further cases in order to address these concerns. Specifically, I would like to compare North Carolina to states with different organizational structures along two axes: level of centralization of LSC-funded programs and the size and scope of the non-LSC funded community. For example, the legal services community in Virginia has a similar non-LSC funded community to that in North Carolina, but it has a highly decentralized LSC-community. Colorado, on the other hand, has a fully centralized LSC-funded operation but lacks the breadth of the unrestricted community found in North Carolina.

There are also limitations on the data and analysis performed for the North Carolina case itself. First, I would like to more fully investigate the role of the private bar in impact litigation on behalf of the poor and in the governance of legal services organizations over time. Data on direct contributions to legal services organizations, membership on boards of directors, and participation in “hotline” or other types of alternative services organized by legal services are a few of the areas I would like to more deeply explore.

Second, the analysis in this dissertation indicates that several of the key variables are currently undergoing significant change. I would like to continue to gather data to investigate the impacts of these changes on service provision. For example, the apparent decline in formal ties between the NC Justice Center and the LSC-funded community may have a significant impact on service in the future. Also, the “soft-boundary” approach of LANC may

result in greater participation of LSC-funded attorneys in impact litigation. All of these things warrant follow-up at a later time.

Finally, one of the most intriguing findings of this study is the apparent increase in disparities between rural and urban service provision as a result of the centralization of LSC-funded activities. This was not something that I expected to find, but it is something I would like to investigate further. Having comparison cases of states with different service configurations and levels of urban versus rural poor would allow me to test this further.

Final Thoughts

So did the intervention of the federal government in the market for legal services improve access to justice for the poor? If we look back to the institutionalization of legal services in the 1960s, the answer is clearly yes. Did the retrenchment efforts of the Reagan Administration and the 104th Congress then decrease levels of access? They certainly did in the short term. But an analysis of the long terms effects suggests that the structure of the legal services community in North Carolina is stronger today than it was in 1980. The diversity of organizations and funding sources, united through a common purpose, seems to provide a more robust structure. However, a significant problem remains—resources. While the community may have more sources of money to pull from, none are as consistent or secure as the federal government. The level of access to justice we provide for the poor, then, will continue to rest on the commitment of the federal government to providing those resources.

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