Love You Madly: The Life and Times of the Neighborhood Legal Services Program of the District of Columbia

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LOVE YOU MADLY: THE LIFE AND TIMES OF THE NEIGHBORHOOD LEGAL SERVICES PROGRAM OF WASHINGTON, D.C.

Brian Gilmore*

ETYMOLOGY

Without equal access to the law, the system not only robs the poor of their only protection, but it places it in the hands of their oppressors the most powerful and ruthless weapon ever created.¹

- Reginald Heber Smith

How can it be, in a country as strong and rich as this one, that tens of thousands of Americans who need legal representation are turned away every year because their government won't support the very program designed to help them?²

- Senator Ron Wyden (D-Oregon)

If we are to keep our democracy, there must be one commandment: thou shalt not ration justice.³

- Judge Learned Hand

There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.⁴

- United States Supreme Court Justice Hugo Black

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³ NLADA, supra note 1.
What are the poor doing tonight?5
- Nat Hentoff

I wonder what the poor people are doing tonight.6
- Fats Waller

For a neighborhood to have its “own” law office, a magical thing to stand between it and the perplexing world of law that often traps people, is highly unusual.7
- Dorothy Gilliam

The landlord say your rent is late, he may have to litigate. . . don’t worry, be happy. . .8
- Bobby McFerrin

The Courts Have Failed the Poor.9
- Justice J. Skelly Wright, United States Court of Appeals for the District of Columbia

If lawyers for IBM or Coca Cola represent their clients aggressively and competently, they are viewed as providing high quality representation. If we do the same on behalf of poor people, we are viewed as radicals who are somehow un-American.10
- Willie E. Cook, Jr.

Justice Is Not Cheap. . .11
- Julian Dugas

PROLOGUE

At the David A. Clarke School of Law symposium, “Strategies for Ending Poverty and Inequality” on April 7, 2006, well-known Washington, D.C. housing attorney Eric Rome12 invoked the name of an organization called “The Neigh-

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6 Id.
8 Excerpted from McFerrin’s 1988 top selling pop single, Don’t Worry, Be Happy (Prob Noblem Music 1988).
10 Willie E. Cook, Jr, Executive Director 1975-2003, NLSP, Address at Antioch Law School Banquet for new students, faculty, and administrators (Aug. 12, 1985) [hereinafter Cook, Jr. Address]. All excerpts are based upon the text of the speech and not the actual speech as delivered.
12 Eric Rome is a partner at the public interest law firm of Eisen & Rome, P.C. The law firm was established in April 1988 by merging the solo practices of the principals, Richard C. Eisen and Eric M. Rome. The firm practices primarily in the areas of housing and real estate and premises liability. Clients include tenant, cooperative and condominium associations, nonprofit and other housing developers, lenders, and individuals.
borhood Legal Services Program” – or as the organization has been known over the years, “NLSP” – only a few moments into his panel presentation. Rome was a speaker on a dual panel entitled “Housing Preservation and Housing Production” at the symposium, but he had stated the name of the storied local legal services program because he had spotted attorney and law professor, Florence Roisman, sitting in the front of the audience.

Roisman was an attorney with NLSP in the 1960’s when the organization altered landlord-tenant law in the District of Columbia in a manner never seen before in the United States. Roisman could only smile as Rome raved about her role and work at the program, as well as the outstanding accomplishments of the Neighborhood Legal Services Program of Washington, D.C. as a whole in fighting for the rights of the poor since its founding in 1964. As the audience applauded Rome’s observation and acknowledgement of Roisman’s presence, other former NLSP lawyers were in the audience clapping furiously for Roisman and for the program committed to equal justice and the poor that will be forever a part of their lives.

This article is a brief historical examination of the origins of the Neighborhood Legal Services Program and an analysis of the work of the program as a federally-funded legal services program for forty years. Part I of this article examines the history of the program in the early years and the birth of the “neighborhood” concept in legal services. Part II analyzes the key precedent-setting housing cases the program litigated in the 1960’s and 1970’s. Part III addresses the criticisms of the program and reviews legal services in general. For instance, almost immediately from its inception, the idea of neighborhood-based legal services for the poor came under assault by political forces interested in destroying these organizations and their underlying governmental support. Finally, this article presents the obvious question: What is the real legacy and lessons left by the Neighborhood Legal Services Program as it continues its work amidst a much different legal services environment?

**INTRODUCTION**

In July 1956, the prestigious Agnes and Eugene Meyer Foundation of Washington, D.C. awarded a $20,000 grant to the District of Columbia Bar Association
Legal Aid Commission to “study legal aid problems” in Washington, D.C.\textsuperscript{15} The generous grant was part of a series of developments that would eventually bring a groundbreaking legal services program for the poor into existence.

It took nearly a decade for NLSP to come into existence following the grant by the Meyer Foundation; yet, over the years, when the history of NLSP is discussed, this little-known, but important, factor affecting the delivery of legal aid to the indigent of the city is rarely mentioned. Of course, action taken by the local bar association in Washington, D.C. to study legal aid delivery services in the city is not the only factor that led to the creation of NLSP; it is just one small element. NLSP was established in 1964 through the efforts of many individuals and as a result of many different factors.

First, in 1964, there was a clear need for a program like NLSP, due to the existing poverty in the city that disproportionately affected the city’s African-American population. Second, experiments with neighborhood-based programs had been completed by 1964 and were endorsed by legal services’ advocates. Third, the intellectual and organizational work of Edgar Cahn\textsuperscript{16} and Jean Cahn\textsuperscript{17} was instrumental in providing philosophical guidance for the creation of NLSP. Last, and most importantly, the District of Columbia, through an unofficial coalition between the city’s local bar associations and the city\textsuperscript{18} itself, realized, many years before the actual creation of NLSP, that there was a need for such a program in the city. All of the elements that found forge the creation of NLSP were in place.

\textsuperscript{15} Legal Aid Commission Given $20,000 Grant, WASH. POST, July 26, 1956, at B5.

\textsuperscript{16} Edgar S. Cahn currently teaches at the David A. Clarke School of Law where he has worked since the law school opened in 1988. He was, along with his late wife, Jean Camper Cahn, co-founders of the Antioch School of Law in 1972 and co-architects of the National Legal Services Program. Antioch, one of the nation’s few clinical public interest law schools, was founded to produce lawyers who would work in the public interest sector. Cahn is the author of numerous books and law review articles and also is the founder of Time Dollars, an organization dedicated to promoting the use of time dollars, a tax-exempt service currency that empowers individuals to translate their personal time into purchasing power in an effort to promote stable families and communities. See Steven Waldman, A Perfect Combination of Chutzpah and Soul, WASH. POST, Aug. 18, 1991, at W8; Telephone Interview with Edgar S. Cahn, Professor of Law, David A. Clarke Sch. of Law, in Wash., D.C. (Mar. 18, 2006) [hereinafter Cahn Interview].

\textsuperscript{17} Jean Cahn (1936-1991), who was born Jean Camper, is the product of a prominent African-American family from Baltimore, Maryland. Her father is Dr. John Emory Toussaint Camper, one of Baltimore’s most famous African-Americans. Camper, a medical doctor, ran his own practice in the city of Baltimore for fifty-seven years. His personal friends were Thurgood Marshall, Charles Hamilton Houston, and W.E.B. DuBois. He was heavily involved in the politics in Baltimore to desegregate the city and even helped fund the NAACP’s \textit{Brown v. Board of Education} lawsuit by soliciting funds from his physician friends to cover costs of the litigation. \textit{Id.}

\textsuperscript{18} The definition of “city” is not the government, but the people, the various communities who would support the presence of the program in their communities.
I. "THE FATHER OF NLSP"

Long-time Washington, D.C. attorney and noted "power broker"19 Julian Dugas20 refers to Howard C. Westwood21 as "the father of NLSP."22 Dugas, the founding Director of NLSP, recalls that Westwood played a critical role in the establishment of NLSP once it was clear that such a program was going to be created.23 Westwood also was able to resolve several divisive issues that arose at the time the program was formed that threatened to derail efforts to create the new and very different legal services program in the city of Washington, D.C.24 "He really was the moving spirit," Dugas states.25

Howard C. Westwood began practicing law in the District of Columbia in 1934.26 By the mid-1950's, he was a partner at the law firm of Covington and Burling27 and, by chance, a member of the board of the D.C. Bar Association. The work Westwood immediately began to engage in at the D.C. Bar in the field of legal aid indirectly led to a prominent role in the creation of NLSP in 1964.

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20 Julian Dugas was founding Director of the Neighborhood Legal Services Program. Dugas was also counsel from the Washington, D.C. school desegregation case, Bolling v. Sharpe, that was part of the groundbreaking Brown cases. Dugas currently teaches Trial Advocacy at the Howard University School of Law. He was born in 1918 in Greenwood, South Carolina, and he graduated from South Carolina State A&M. In 1949, he received his law degree from Howard University School of Law and was admitted to the District of Columbia Bar in 1950. Dugas has taught at the law school for over fifty years. Interview with Julian Dugas, Professor of Law, Howard Univ. Sch. of Law, in Wash., D.C. (Feb. 2006) [hereinafter Dugas Interview].
21 Westwood was a graduate of Swarthmore College and received his law degree from Columbia University in 1933. He served in the U.S. Marines Corps during World War II. He joined the firm of Covington and Burling in 1934. Westwood was also an avid historian writing numerous books on Civil War history. An airline law specialist by trade, one of Westwood's greatest legal feats was to essentially create the Civil Aeronautics Board (CAB) in 1940. Obituary, Howard C. Westwood, Expert in Airline Law, 84, N.Y. TIMES, Mar. 21, 1984, available at http://query.nytimes.com/gst/fullpage.html?res=9A06E3D9143CF932A157500A96298260; Videotape interview by Clint Bamberger with Howard Westwood, Partner, Covington and Burling, LLP, in Wash. D.C. (Oct. 1992) [hereinafter Westwood Interview].
22 Dugas Interview, supra note 20.
23 Id.
24 Id.
25 Id.
26 Howard C. Westwood, Expert in Airline Law, 84, supra note 21.
27 Edward P. Burling and Judge Harry Covington founded Covington & Burling on January 1, 1919. Burling was born in Eldora, Iowa, and was a graduate of Grinnell College and Harvard Law School. He practiced law in Chicago for over twenty years before founding Covington & Burling. Covington was a Congressman from the state of Maryland serving an Eastern shore district. He eventually became Chief Justice on the District of Columbia Supreme Court but soon soured on the position and resigned in order to form Covington & Burling. Joseph C. Goulden, Superlawyers: The Small and Powerful World of the Great Washington Law Firms (Weybright and Talley 1971).
A self-described "socialist," Westwood, like numerous other well-known and influential lawyers in the city, had observed for decades that the Legal Aid Bureau of the city had "very little relationship with the blacks in the community." Despite the fact that thousands of poor blacks in the city could not obtain legal assistance for a myriad of problems, little had been done to address this issue over the years.

Through professional contacts, Westwood became established in the D.C. Bar Association in the mid-1950's and viewed his position within the organization as creating an "opportunity" to address the issue of lack of legal services in the city for the poor. In 1955, Westwood proposed that the D.C. Bar conduct a study of legal aid delivery in the city to determine the direction of some kind of initiative to address the issue. The purpose for proposing such a study was to push the idea along in a "good way." Not long after he proposed the study of legal aid delivery services in the city, the Bar formed a commission to conduct the study. Finally, on December 9, 1955, the D.C. Bar adopted a resolution to commence the study.

By the summer of 1956, the Meyer Foundation of Washington, D.C. had awarded the D.C. Bar the generous $20,000 grant to conduct the study. More than two years later in October 1958, the commission, in a detailed 200-plus page report, explained the shortcomings of legal aid for the poor after an extensive review was undertaken by some of the best attorneys and judicial officials in the city. The report was a key document in the modern development of legal aid in the city. It also stated how the services could be delivered to the needy in particular communities.

Initially, due to the report's statements regarding civil legal services, lawyers and members of the Bar began an aggressive fundraising effort for legal aid services in the city without any thought to a national movement for legal services for the poor. The city's legal aid bureau at the time was under-funded; this had

28 While Westwood uses the term "socialist," it is unclear in what context he is using the term. The author assumes, based upon the response in the video, that Westwood means that the government or the people can solve some of the problems of society. It is not clear if Westwood is referring to himself as a supporter of a strict economic system of socialism as observed in many societies throughout history. Westwood Interview, supra note 21.

29 Id.
30 Id.
31 Id.
32 Id.
33 Id.
34 Legal Aid Commission Given $20,000 Grant, supra note 15, at B5.
35 Westwood Interview, supra note 21.
36 Id.
37 Id.
38 Id.
been the case since its inception.\textsuperscript{39} There was also no real movement to open a new program in the city, despite the obvious need.\textsuperscript{40}

As Howard C. Westwood pursued his “opportunity” to dramatically alter the role of legal aid in the city into the 1960’s, others were at work as well, trying to change the future of legal service delivery to the poor in the nation’s capitol. These other individuals, like Westwood, would prove to be critical to the development of NLSP as the nation’s first comprehensive neighborhood-based legal services provider.

\textbf{A. Legal Aid for the Poor & The Neighborhood Concept}

Edgar and Jean Cahn were very important to the eventual creation of NLSP in 1964. The Cahns were social thinkers and legal activists dedicated to seeking a transformation of class and race issues in American society.\textsuperscript{41} A Jewish man and an African-American woman, respectively, the Cahns single-handedly expanded the conversation regarding legal aid delivery far outside the accepted zones of idealism, seeking to eradicate American poverty in the early 1960’s. The two met at Swathmore College and were married in 1957.\textsuperscript{42} Their marriage was illegal in Jean’s hometown of Baltimore at the time.\textsuperscript{43} Edgar Cahn described it as “supreme madness and wisdom.”\textsuperscript{44} Most importantly, however, their dedication to the cause of social justice for the poor – mainly through the use of the law – was obvious by the early 1960’s.\textsuperscript{45}

By that time, they were both contributing to the implementation of anti-poverty programs in New Haven, Connecticut. Jean Cahn, who had obtained her law degree from Yale University Law School, began working as an attorney at one of the nation’s first neighborhood-based legal services programs for the poor under the umbrella of an organization known as Community Progress, Inc. (CPI).\textsuperscript{46} CPI was “the first of the new initiatives” that emerged in the early 1960’s when social theorists, lawyers, and non-profit foundations began to use legal methods to seriously address the issue of poverty in the United States.\textsuperscript{47} The Ford Foundation provided the seed money for the formation of CPI and the inclusion of a legal

\begin{thebibliography}{9}
\bibitem{39} Cahn Interview, \textit{supra} note 16.
\bibitem{40} Westwood Interview, \textit{supra} note 21.
\bibitem{41} Waldman, \textit{supra} note 16, at W8; see also \textit{supra} notes 17, 18.
\bibitem{42} Id.
\bibitem{44} Id., supra note 16, at W8 (internal quotation omitted).
\bibitem{45} Id.
\bibitem{47} Id.
\end{thebibliography}
services component into the program as part of the foundation’s anti-poverty efforts.\(^{48}\)

However, the legal component of CPI, a neighborhood-based law office for the poor in New Haven, never effectively materialized due to immediate problems that arose regarding the program’s operations. Shortly into its operations, Jean Cahn undertook a controversial criminal case involving an African-American male accused of raping a white woman in New Haven.\(^{49}\) The controversy that arose as a result of Cahn’s decision to accept such a divisive criminal matter resulted in suspension of the program’s operations on February 27, 1963.\(^{50}\) The first experiment of neighborhood-based legal services for the poor was over in just seven weeks, with nothing of note to offer to the public other than its boldness.\(^{51}\)

Following the collapse of CPI’s legal services component, the Cahns did not lose their desire to address issues of social justice through the use of legal skills. In fact, their most significant contributions to the legal aid movement lay in their immediate future. The Cahns relocated to Washington, D.C., where Edgar Cahn became a speechwriter for Attorney General Robert F. Kennedy, and Jean Cahn obtained a position as an attorney at the State Department.\(^{52}\)

While Edgar Cahn wrote speeches for Attorney General Kennedy, an article the Cahns had drafted for the Yale Law Review began circulating around the White House amongst Robert F. Kennedy’s staff and Kennedy’s brother-in law, Sargent Shriver.\(^{53}\) Shriver would eventually become President Johnson’s point person in the war on poverty when he took charge of the Office of Economic Opportunity (OEO) in 1964.\(^{54}\) NLSP would become OEO’s first neighborhood-based legal services operation when that initiative developed.\(^{55}\)

The article written by the Cahns detailed the idea of a neighborhood-based law firm for the poor\(^{56}\) – the failed New Haven experiment reduced to writing. The ideas contained in the article were so impressive that Sargent Shriver made the Cahns an integral part of the discussions regarding anti-poverty initiatives in the Johnson administration.\(^{57}\) Not long thereafter, Edgar Cahn became a mem-

\(^{48}\) Id.
\(^{49}\) Id. at 22-23.
\(^{50}\) Id.
\(^{51}\) Id. at 23.
\(^{52}\) Waldman, supra note 16, at W8.
\(^{54}\) Johnson, Jr., supra note 46, at 40.
\(^{55}\) Gary Bellow, Steady Work: A Practitioner’s Reflections on Political Lawyering, 31 Harv. C.R.-C.L.L. Rev. 297, 298 (Summer 1996); see also infra Part III.
\(^{57}\) Stossel, supra note 53 at 433-34.
ber of Sargent Shriver's staff, and Jean Cahn was hired to set up the national legal services program under OEO.\textsuperscript{58} The now-legendary July 1964 Yale Law Review article, \textit{The War on Poverty: A Civilian Perspective},\textsuperscript{59} is, indeed, their most important and lasting contribution to the evolution of legal aid for the poor into a neighborhood-based law office concept.

The article details what the Cahns referred to as the "military approach" to addressing poverty.\textsuperscript{60} This approach, based upon the New Haven Connecticut experience working within CPI,\textsuperscript{61} was an attempt to consolidate a variety of functions and services into one service program.\textsuperscript{62} The idea that the program designed to address poverty was part of a "war" was taken literally by the Cahns. In addition, maintaining a "civilian perspective" was a key component because this allowed the community, those seeking change and in need of change, to retain significant input into the program in their community.

The approach the Cahns advocated in their article placed the emphasis on the use of lawyers who were situated in the community to achieve fundamental change for the poor of that community. In the words of the Cahns, the justification for such an approach was that there was "a need for supplying impoverished communities the means with which to represent the felt needs of its members."\textsuperscript{63}

A "neighborhood law firm" (the Cahns called for the firm to be "university affiliated") would serve as the "vehicle" for the execution of the "civilian perspective" by "placing at the disposal of a community the services of professional advocates."\textsuperscript{64} The law firm would supply the "opportunity, the orientation, and the training experience to stimulate leadership amongst the community's present inhabitants."\textsuperscript{65}

The structure of such a firm would not only include lawyers, but also "research assistants and investigators who would represent persons and interests in the community with an eye toward making public officials, private service agencies, and local business interests more responsive to the needs and grievances of the neighborhood."\textsuperscript{66} These lawyers would have to establish "communication" and "rapport" with the community they served and would have "ready access to the grievances of the neighborhood."\textsuperscript{67}

\textsuperscript{58} JOHNSON, JR., \textit{supra} note 46, at 64-65.
\textsuperscript{59} Cahn & Cahn, \textit{supra} note 56 at 1317.
\textsuperscript{60} \textit{Id.} at 1318.
\textsuperscript{61} See \textit{supra} text accompanying notes 46-51 for a discussion on Community Progress, Inc. (CPI).
\textsuperscript{62} \textit{Id.} at 1319-21.
\textsuperscript{63} \textit{Id.}
\textsuperscript{64} Cahn & Cahn, \textit{supra} note 56, at 1334.
\textsuperscript{65} \textit{Id.}
\textsuperscript{66} \textit{Id.}
\textsuperscript{67} \textit{Id.}
The article also addressed one of the most important issues regarding lawyers and the poor that had previously functioned as impediments to assistance being provided in the past - socioeconomic status:

The lawyer is not obliged in the same manner to be apologetic about his middle class background because the justification for his presence is he is a professional advocate and that he possesses skills and knowledge not otherwise available. He does not have to pretend to be "one of them" to his clients in order to fulfill his function and merit their confidence. Middle class status thus need not be a barrier for the lawyer. 68

Interestingly, this notion of neighborhood law firms as explained by Edgar and Jean Cahn in 1964 had already gained fruition in another city in the United States by the time the Cahns' article was published. 69 Mobilization For Youth (MFY), 70 an anti-delinquency program in New York City, became the home for such a neighborhood-based legal services program for the poor in March 1963. Located on the Lower East Side of Manhattan, MFY added this legal services component - later known as MFY Legal Services - to its existing services. 71 MFY was, in fact, a foreshadowing of the program the Cahns envisioned, even though they had not been exposed in any manner to the work of Edward Sparer or MFY. 72

MFY Legal Services, the program that was eventually established within MFY, is the creation of attorney and law professor, Edward Sparer. 73 Sparer, who had been involved in union organizing on numerous occasions throughout his professional life, 74 was named director of MFY Legal Services in 1963 and immediately began reaching out to the community to determine its "legal needs." 75

MFY Legal Services became the "prototype" neighborhood-based legal services program at the time with this approach, even though it was just one office in one New York community. The MFY model, with some modifications, would

68 Id. at 1334-35.
70 Id.
71 In 1968, MFY Legal Services became a not-for-profit law firm serving indigent New Yorkers rather than an anti-delinquency organization. It continued to serve the Lower East Side of Manhattan. MFY Legal Services is still in operation today and has served thousands of New Yorkers suffering from poverty. MFY Legal Services, Inc., About MFY, http://www.mfy.org/about.shtml (last visited Mar. 14, 2007).
72 Cahn Interview, supra note 16.
73 According to the New York Times, Edward Sparer was born and raised in New York City, where he graduated from Benjamin Franklin High School in Manhattan. Sparer was also a graduate of City College of New York and Brooklyn Law School in 1959. At the time of his death in 1983, he was a law professor at University of Pennsylvania Law School. David Margolick, Edward Sparer: Legal Advocate for the Poor, N.Y. TIMES, June 25, 1983, at 14.
74 Id.
75 JOHNSON, JR., supra note 46, at 24.
76 Id.
soon help shape the legal landscape that involved providing the poor with legal services. NLSP owes its own design, at least partially, to MFY Legal Services, even though there is no indication that anyone affiliated with NLSP was ever exposed to MFY. Indeed, Sparer's vision for a legal services program based in the community, "governed by the people it served and devoted to challenging the institutional structures that create and maintain poverty,"\(^\text{77}\) is the design of NLSP.

Sparer's model was completely different from the typical legal aid model in which lawyers from law firms would provide pro bono services to the poor but would not be based in the community. Sparer also wanted to place an emphasis on providing lawyers to individual clients, rather than "changing the shape of the legal rules."\(^\text{78}\) MFY Legal Services is the first successful community-based law office that was established in the United States that was able to survive and provide a model for future programs that were being developed at the time.\(^\text{79}\)

B. War on Poverty

Even with the conceptual ideals emanating from individuals such as Jean Cahn and Edgar Cahn and the local emphasis on improving legal aid delivery in the District of Columbia, the chief reason for the creation of NLSP was poverty in the District of Columbia. According to statistics gathered from the United States Census of 1960, one in four African-American families living in the District of Columbia earned less than $3,000 annually.\(^\text{80}\) This figure was significantly worse than the overall national statistics, even though the local poverty numbers for the city for all races were better than the national numbers.\(^\text{81}\) In 1964, the city of Washington, D.C. was also undergoing a very significant demographic change: the city was becoming more and more African-American as whites departed for the suburbs during the city's initial period of desegregation.\(^\text{82}\) In fact, in 1960, Washington, D.C. became the nation's first majority African-American city.\(^\text{83}\)

During this period of desegregation locally and nationally, and as poverty in America became a politically charged issue, the President of the United States at the time, Democrat Lyndon Baines Johnson, declared war on poverty. In his State of the Union address on January 8, 1964, President Johnson asked the na-

\(^{78}\) Id.
\(^{79}\) Id.
\(^{80}\) Frank Porter, District Poverty Rate Lower Than Average Of Other City Areas, Wash. Post, Mar. 4, 1964, at E1. In 1960, according to the Census Bureau, $3,000 annually was considered the poverty line.
\(^{81}\) Id.
\(^{83}\) Id.
tion to join him in this moral struggle. President Johnson described the war on poverty as not a "short" or "easy struggle" but one that the "richest nation on earth" could afford to win. Johnson detailed a comprehensive approach to the "national" problem of poverty and did not propose to relieve poverty but sought to "cure" poverty and "prevent" it. "This administration today, here and now," Johnson stated, "declares unconditional war on poverty in America. I urge this Congress and all Americans to join with me in that effort."

Johnson's vision for such a war entailed programs for a multitude of needs: housing, education, job training, and health care, were just a few; however, it was clear that his approach and demands for results were even broader:

But whatever the cause, our joint Federal-local effort must pursue poverty, pursue it wherever it exists — in city slums and small towns, in sharecropper shacks or in migrant worker camps, on Indian Reservations, among whites as well as Negroes, among the young as well as the aged, in the boom towns and in the depressed areas.

Notably, Johnson's speech did not specifically mention or endorse the idea of providing lawyers for the poor who would assist individuals stuck in poverty in obtaining the goals that Johnson mentioned. However, in the District of Columbia, an answer to that dilemma was emerging: NLSP would become the entity that would provide the lawyers who would fight for the poor.

The establishment of NLSP was already moving closer to reality before Johnson's famous declaration through the creation of a new social service agency in Washington, D.C. by the name of the United Planning Organization (UPO) in 1962. UPO, with private funding from the Ford Foundation, brought NLSP into existence. As the Washington Post reported on September 9, 1963: "A fundamental reorganization of Washington's social service agencies is now under way, financed with Federal and foundation contributions. These organizations have decided, correctly, that the congeries of municipal and voluntary agencies cannot be expected to record themselves, from within, fast enough to overtake their rising responsibilities."

85 Id.
86 Id.
87 Id.
88 Id.
89 Id.
90 Id.
91 UPO, WAY, and others, WASH. POST, Sept. 9, 1963, at A12.
92 Dugas Interview, supra note 20; see also Westwood Interview, supra note 21.
93 UPO, WAY, and others supra note 91, at A12.
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The Washington Post article announced not only the creation of UPO, but also the establishment of another organization known as “Washington Action for Youth” (WAY). The emergence of these two new organizations represented a shift in the city with respect to anti-poverty activities. NLSP arose from that shift.

UPO was comprised of neighborhood service centers that offered services to the poor on a wide range of systemic issues – housing, employment, education, and eventually, legal services. The organization was founded to address “voids” in the community created by poverty and the structure of social service agencies. Despite the fear of providing services already being provided by other organizations, UPO, led by its first director, James Banks, pressed forward with its new programs, which was important. Not long after the founding of UPO, NLSP would come into existence under UPO. NLSP would, however, remain an independent entity and like UPO, new and invigorating to the local communities.

The District of Columbia was in desperate need of change in so many ways too. At the time UPO and NLSP were created, the federal government, by force of the United States Constitution, controlled every aspect of life in the District of Columbia. This control included how the local government allocated its budget and which individuals would actually govern the city on a daily basis. In 1961, right before UPO was founded, the residents of the city finally gained the right to vote for President of the United States. Even with this right, an appointed three-member commission conducted and controlled city operations in 1964, as there were no locally-elected officials. The poor of the city, mostly African-Americans, had little, if any, power or voice in their own affairs in the early

94 Id.
96 UPO, WAY, and others, supra note 91, at A12.
97 James Banks was born James Gouverneau Banks in 1921 in the Barry Farms section of Southeast Washington, D.C. He graduated from Washington, D.C.’s famed Dunbar High School at age fifteen and attended Howard University, where he studied under the legendary sociologist, E. Franklin Frazier. He later obtained a Master’s degree from the University of Pittsburgh. Banks spent most of his professional life working on housing efforts for the poor, including stints at UPO (1963-1967) and the Department of Housing and Urban Development (1967-1969). He died in 2005. Joe Holley, D.C. Housing Official James Banks, 84, Dies, WASH. POST, June 15, 2005, at B6.
98 U.S. Const. art. I, § 8 states, in relevant part, that Congress has the power “[t]o exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States. . . .”
100 U.S. Const. amend. XXIII, § 2.
101 Jaffe & Sherwood, supra note 82, at 28.
Washington, D.C., historically a “Jim Crow” city, was still essentially segregated. Under these conditions, the appearance of a new social service organization such as UPO and a legal entity within that organization, NLSP, would be more than welcome.

The UPO-NLSP project was also ably assisted in its creation by the late Christopher Edley, Sr. Edley, a Program Officer at the Ford Foundation when the grant to UPO to set up a legal services component was awarded, was instrumental in the funding process.

The late Gary Bellow, Deputy Director of the Legal Aid Society of the District of Columbia from 1962-1965 and well-known public interest attorney, drafted the grant proposal that was submitted to the Ford Foundation for approval. Bellow also began serving as Deputy Director of UPO in 1965 as the proposal he forged on behalf of UPO was turned into action. Bellow’s role in the effort was also strange, to a degree. On the one hand, he had been specifically tapped to draft the proposal by UPO, but on the other hand, Bellow was employed by the Legal Aid Society, the structural antithesis of the NLSP model.

UPO and NLSP were new to the city of Washington, D.C., and were community oriented, with services, legal and otherwise, right in the poor neighborhoods they sought to assist. The Legal Aid Bureau was a long-established institution and was considered conservative and traditional in its operations with no real credible connections to the poor black neighborhoods in the city. UPO also had a significant number of blacks working in its operations and programs, while Legal Aid had only a limited amount of black interests. The two organizations

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102 Id. at 28-30.
103 Id.
104 Julian Dugas states that it was, in fact, Edley, Sr. who was instrumental in assisting the securing of funding for the pilot project in 1964. Edley is the father of Christopher Edley, Jr., current Dean of Boalt Hall (University of California at Berkley Law School). Edley, Jr. served in the administration of President William Jefferson Clinton and was a faculty member at Harvard Law School. Edley, Sr. is a graduate of Howard University. After his service at the Ford Foundation, he would become the long-time head of the United Negro College Fund and is often credited with championing the organization’s famous slogan, “A mind is a terrible thing to waste.” Dugas Interview, supra note 20.
105 Id.
107 Id.
108 Westwood Interview, supra note 21; Dugas Interview, supra note 20 (confirming the fact provided in the Westwood videotape interview).
109 Id.
did not trust each other, and real “racial tension”\textsuperscript{110} between the organizations as NLSP moved closer to reality.

Bellow consulted with Edgar Cahn and Jean Cahn before he drafted his proposal and adopted the “neighborhood” concept from the work of the Cahns.\textsuperscript{111} The Cahns forewarned Bellow that the program needed to be independent in order to provide the lawyers with insulation from the organization under which it would be operating.\textsuperscript{112} This last point was the result of their experience in New Haven and the disaster that resulted from the acceptance of one client.\textsuperscript{113} As a result of this concern, Bellow and UPO sought approval for the NLSP project proposal from the Judicial Council, a group comprised of liberal local judges.\textsuperscript{114} The purpose of seeking support from the Judicial Council was to ensure that the project would in fact survive by seeking the support of local well-established judicial figures.\textsuperscript{115} Bellow and UPO were particularly concerned about the local bar association reaction to their proposal because a negative reaction could likely doom the new project.\textsuperscript{116}

Despite the efforts to build support for the proposal from an establishment organization, the Judicial Council rejected Bellow’s initial draft.\textsuperscript{117} One complaint was mainly that the proposal was tainted by language that downplayed the most important reason for seeking a new organization – to provide lawyers to the poor.\textsuperscript{118} Another complaint was the inclusion of extravagant language\textsuperscript{119} in the grant that was politically unacceptable. Howard C. Westwood, the architect of the movement to bring the local Legal Aid Society out of the doldrums, was assigned the task of fine-tuning the UPO-Bellow proposal.\textsuperscript{120} Too much was at stake to allow language in the proposal or some other issue to prevent the NLSP idea from becoming a reality.\textsuperscript{121}

One key sticking point with the proposal was the fact that the Legal Aid Society was disappointed that their organization was not positioned in the proposal to

\begin{itemize}
\item [\textsuperscript{110}] \textit{I}d.
\item [\textsuperscript{111}] JOHNSON, JR., \textit{supra} note 46, at 28.
\item [\textsuperscript{112}] \textit{I}d.
\item [\textsuperscript{113}] \textit{I}d.
\item [\textsuperscript{114}] \textit{I}d.
\item [\textsuperscript{115}] \textit{I}d.
\item [\textsuperscript{116}] \textit{I}d.
\item [\textsuperscript{117}] \textit{I}d.
\item [\textsuperscript{118}] Westwood Interview, \textit{supra} note 21.
\item [\textsuperscript{119}] According to Julian Dugas, the extravagant language centered around the use of terminology that strongly suggested socialism and/or a sociological approach to solving legal problems. Dugas Interview, \textit{supra} note 20. Howard Westwood’s recollection of the problem with the language was similar. Westwood, while suggesting that he too was a “socialist,” did not believe a sociological approach to legal problems was appropriate. Westwood Interview, \textit{supra} note 21.
\item [\textsuperscript{120}] Dugas Interview, \textit{supra} note 20.
\item [\textsuperscript{121}] Westwood Interview, \textit{supra} note 21.
\end{itemize}
participate in a larger manner.\footnote{84}{Id. Westwood notably wanted to bring Legal Aid and NLSP together as one functioning unit but, in effect, this never actually occurred, as the two organizations stayed separate for the most part.} This issue was tabled, at Westwood’s insistence, until a later date, with the intention of resolving the issue.\footnote{122} The fact that Legal Aid lacked any credibility in the black community did not help its case for inclusion in the proposal as the new program took final form.\footnote{123} Nevertheless, Westwood, now a central player in the NLSP project, was adamant regarding the importance of the new neighborhood-based program. “By getting these offices established in neighborhoods, we saw that we could do a much more effective job,” Westwood recalls.\footnote{125}

C. NLSP

When NLSP finally came into existence under UPO through its Ford Foundation grant in 1964, the founding Director of the pilot project was long-time Washington, D.C. attorney Julian Dugas. Dugas was selected by UPO’s then-Executive Director, James Banks\footnote{126} to take charge of the new initiative.\footnote{127} Dugas, a well-seasoned attorney with extensive experience in civil and criminal trial work for decades, unleashed an organization on the city that would perform like no other legal aid organization had ever performed before that time in the entire country.

Unlike the local Legal Aid Society, often criticized at the time for its unwillingness to seek change in the law, NLSP was “aggressive” from the beginning and was “interested in changing the law.”\footnote{128} Its various initiatives and quick presence in the courts was instantaneous. Initially, six offices were planned for opening, with the first office established under the UPO pilot project located at 1411 9th Street in Northwest Washington, D.C.\footnote{129} The first office was situated, as seemed appropriate at the time, amongst “run down houses and cheap liquor stores.”\footnote{130}

The office was staffed with four lawyers. Instantly, members of the local community began to seek assistance for their various problems.\footnote{132} Henry H. Jones, a former United States Attorney in the Department of Justice,\footnote{133} was the manag-
ing attorney of NLSP's first office. In just the first three weeks, approximately "50 men and women" from the community sought assistance for their legal problems at that first neighborhood office managed by Jones. "It was a time of great energy," Jones recalls, "a time of great hope for black people." The problems the clients sought assistance for were the same kind of legal problems most citizens who can afford to retain and pay an attorney take for granted: home improvement, consumer, housing, and fraudulent contracts.

By October 1966, NLSP was well on its way to achieving the goal of increased legal assistance to the poor. The organization was operating ten offices with twenty-nine lawyers and had handled over 6,000 cases on a variety of legal issues in just twenty-one months. It was a significant step forward in not only the local effort to expand legal aid to the poor, but also as a national model for other programs to emulate as other cities sought to provide better legal services to the poor. The program also began operating with federal funding by October 1966.

As reported in the Washington Post in 1966:

Neighborhood Legal Services is the oldest, largest, and most advanced of the 168 legal aid projects funded by Sargent Shriver's Office of Economic Opportunity in cities and rural areas across the country. It is one of the first to do more than give out legal advice on a person-to-person basis. It is now challenging with a batch of test cases, many of the laws and court, Government and business practices that have kept the poor legally inferior to their fellow citizens.

Not only did NLSP operate offices, represent citizens, and provide competent and valuable counsel to the poor of the city right in their communities, but the legal establishment of the District of Columbia immediately took note of this new legal aid effort that began quietly and without much fanfare. Several events highlight the rise of NLSP in the mid-1960's.

First, three local lawyers brought a lawsuit against UPO and the Legal Aid Society for "siphoning off business." The lawsuit was brought against UPO because it was the organization that was underwriting the grant that provided

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Jones, Professor of Law, Howard Univ. Sch. of Law, in Wash., D.C. (June 14, 2006) [hereinafter Jones Interview]; see also Howard University School of Law, Faculty, http://www.law.howard.edu/421 (last visited Mar. 23, 2007).

134 Id.


136 Jones Interview, supra note 133.

137 Id.


139 Id.

funds to NLSP to operate. The lawsuit was lodged because of the focus on cases involving the indigent of the city.\textsuperscript{141}

In addition, the legal community took particular notice of how NLSP had altered the litigation environment for the poor in the city:

Imagine a Washington where a quarter of a million poor people now hailed without lawyers into Landlord Tenant, Small Claims, Traffic, Drunk and Juvenile courts each year started showing up with attorneys, demanding full court hearings and winning 10, 20, even 50 times as many cases as they do now. Judges, lawyers, city agency officials, landlords, and merchants are just beginning to realize the poverty war’s legal aid program could bring all this about here and throughout the Nation. And it worries them.\textsuperscript{142}

The idea of neighborhood law firms fighting on behalf of the poor in court was proceeding forward at NLSP. The program began to accept an initial group of important cases that involved deplorable housing conditions in rental housing, questionable rent regulations in public housing, court procedure in Juvenile Court, and questionable finance charges in commercial contracts.\textsuperscript{143}

Moreover, the efforts of NLSP were so dramatic in the city’s Court of General Sessions\textsuperscript{144} that the judges on the Court accused the program’s lawyers of abuse and delaying tactics.\textsuperscript{145} The D.C. Bar Association took the unprecedented step of instituting an investigation of the program due to its aggressive litigation style.\textsuperscript{146} This action by the local bar association was unprecedented, considering NLSP was only seeking to alter the "status quo"\textsuperscript{147} at the time with respect to poor people and the legal system. "I believe that one of our greatest contributions so far," Dugas told the \textit{Washington Post} in 1965, "is just having those law offices in the neighborhoods so that people can vent their problems in complaints to lawyers."\textsuperscript{148}

By 1965, the "neighborhood" concept forged by NLSP had evolved into a national program through the Office of Economic Opportunity (OEO).\textsuperscript{149} The anti-

\begin{itemize}
\item\textsuperscript{141} \textit{Id.}
\item\textsuperscript{142} Downie, Jr., \textit{supra} note 138, at Cl.
\item\textsuperscript{143} \textit{Id.}
\item\textsuperscript{144} At the time, the Court of General Sessions was the main court for the city. The city’s current court system that is comprised of the Superior Court of the District of Columbia did not yet exist.
\item\textsuperscript{145} Downie, Jr., \textit{supra} note 138, at Cl.
\item\textsuperscript{146} \textit{Id.}
\item\textsuperscript{147} Dugas Interview, \textit{supra} note 20. Dugas’s explanation of changing the status quo appears in the article written by Leonard Downie, Jr. for the \textit{Washington Post}, where Dugas states: "We're just trying to give the poor the same chance in court that everyone else has. . . ."; see Downie, Jr., \textit{supra} note 138, at Cl.
\item\textsuperscript{148} Downie, Jr., \textit{supra} note 138, at C1 (internal quotation omitted).
\item\textsuperscript{149} JOHNSON, JR., \textit{supra} note 46, at 71.
\end{itemize}
poverty efforts of NLSP began to be replicated in cities and states all across the country. There were approximately 300 programs receiving funding between January 1966 and June 1967.\textsuperscript{150} In 1965, OEO awarded NLSP funds to operate as a locally federally funded program under its Legal Services component.\textsuperscript{151} NLSP received $427,590 that year.\textsuperscript{152} In 1966, the amount was increased to $914,025.\textsuperscript{153}

II. A Neighborhood Organization

On September 29, 1967, NLSP executed its Articles of Incorporation.\textsuperscript{154} NLSP had been operating for nearly three years, and, in the words of its founding Director, Julian Dugas, "we were doing our work, representing people in the community."\textsuperscript{155} The organization was operating ten neighborhood offices and a law reform unit.\textsuperscript{156} Notably, the law reform unit established at NLSP was the first such law reform unit in the country.\textsuperscript{157}

The organization was now officially a non-profit corporation operating under the laws of the District of Columbia.\textsuperscript{158} NLSP, as expected, presented important "charitable and educational purposes" as its goal in the articles.\textsuperscript{159} The articles stated the specific purposes as follows:

1. To secure for the indigent equal justice under the law;
2. To furnish legal assistance and representation to such persons and organizations as qualify therefore under standards of indigency adopted by this Corporation and otherwise to provide for the extension of legal services to the indigent;
3. To promote the utilization of legal resources and techniques for the elimination of the causes of poverty; and
4. To promote the education of the indigent on the rights and responsibilities of citizenship.\textsuperscript{160}

With the exception of that section of the articles, there was nothing remarkable about the document; it contained boilerplate incorporation language. The

\textsuperscript{150} Id.
\textsuperscript{151} Karlyn Barker, Legal Help Unit Notes Anniversary, WASH. POST, Oct. 3, 1971, at D1.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
\textsuperscript{154} Neighborhood Legal Services Program of the District of Columbia, Articles of Incorporation, filed Sept. 29, 1967.
\textsuperscript{155} Dugas Interview, supra note 20.
\textsuperscript{156} Id.
\textsuperscript{157} According to Marlin, when he was hired in 1966, he was assigned the task of creating the law reform unit. Telephone Interview with David Marlin, Deputy Dir., NLSP (1966-1968), in Wash., D.C. (Apr. 2006).
\textsuperscript{158} Neighborhood Legal Services Program of the District of Columbia, Articles of Incorporation, filed Sept. 29, 1967.
\textsuperscript{159} Id.
\textsuperscript{160} Id.
founding Board of Programs members of NLSP, however, were notable. Several of the city's better known and well-respected lawyers were part of the Board, including Robert H. Campbell, Shellie P. Bowers, Frederick H. Evans, James P. Fitzpatrick, Daniel J. Freed, William C. Gardner, Jeanus B. Parks, James Stoner, Kenneth Parkinson, and Howard C. Westwood. Westwood, who had been busy with the project to generate funding for legal aid, took a prominent role on the board of NLSP. Campbell, Bowers, and Gardner eventually become well-respected judges in the Superior Court of the District of Columbia, and Jeanus Parks would serve as Executive Director of NLSP following the departure of Julian Dugas.

In addition, the initial NLSP Board included three client members. At the time, the idea of including client board members was revolutionary, due to the relationship that existed at the time between the Legal Aid Society and city's poor communities, most of which were comprised of African-Americans. This significant innovation would immediately have the effect of establishing the organization as credible in the community in which it served. Pauline Hill of 815 Yuma Street, Southeast Washington, D.C. was a client member, as was Wilbert Williams of 725 Brandywine Street, Southeast Washington, D.C. The third and most notable client Board member was Mozelle Moody of 911 Varney Street, Southeast Washington, D.C. Moody has remained a Board member for over forty years.

This idea that clients should become members of the Board of Programs, and, in this case, NLSP, was not readily acceptable to some members of the legal community closely involved with the process. There was tension between members of the Bar who were reviewing the NLSP concept and the client members who would become members of the Board due to this difference of opinion.

The client Board members for NLSP were selected to the Board through their status within the UPO neighborhood service center system. Mozelle Moody

161 Id.
162 Dugas Interview, supra note 20.
163 Valentine, supra note 140, at B3.
164 Id.
165 Neighborhood Legal Services Program of the District of Columbia, Articles of Incorporation, filed Sept. 29, 1967.
166 Mozelle Moody, originally from North Carolina, came to the District of Columbia on January 8, 1956. Upon her arrival, she resided with her family on the 100 block of E Street Northwest. She has resided in the city ever since. Telephone interview with Mozelle Moody, Bd. Member, NLSP, in Wash., D.C. (Feb. 2006) [hereinafter Moody Interview].
167 Id.
168 Cahn Interview, supra note 16.
169 Id.
170 Moody Interview, supra note 166.
became a Board member through this process. Each center elected community members to serve on committees within the UPO structure.

At the same time UPO had formed its community committee structure, however, the community formed its own advisory council called the Metropolitan Legal Services Advisory Council to the Neighborhood Legal Services Program. Originally, there were thirty members on this council that was directly associated with UPO, of which three members of the council became members of the board of NLSP. At the time of the original formation of the program, Moody was residing in Northwest, Washington, D.C. and became a member through UPO's 9th and P Street neighborhood location. The NLSP neighborhood office in that area of the city was located directly across the street.

NLSP's initial "registered office," its headquarters, was located at 416 Fifth Street, Northwest Washington, D.C., in the heart of the downtown government area. Small law firms were located in the neighborhood. The city's court system, as it existed in 1967, was located in this area as well. The articles also listed Julian R. Dugas, its agent for this office, as the founding director of the program.

A. A Legal Upheaval

While the work of NLSP as a legal organization representing the poor and providing that service in the communities in which the individuals resided is a legal revolution, NLSP's greatest victories in the legal field were in the field of housing and, namely, landlord-tenant law. Housing, indeed, was the area of the law that dominated the work time of the NLSP lawyers; this is where NLSP achieved revolutionary change within the existing legal system on behalf of the poor. These legal victories expanded substantive and procedural rights for not only the poor in landlord-tenant cases but also all members of the community.

The revolution NLSP forged in housing began subtly. With ten neighborhood offices and a law reform unit to pursue its aggressive mission, there were more than enough lawyers to handle the daily deluge of residents seeking assistance for...
their legal problems. One housing case, seemingly insignificant at the time, resulted in the first indication that the legal environment in the District of Columbia was changing and that NLSP would be in the forefront of that change.

*Adams v. Lancaster* was a small claims action filed by NLSP attorneys Florence Roisman and Paul Cohen on behalf of Lena Adams, who resided in a building at 1627 T Street, Northwest Washington, D.C. owned by Horace Lancaster. The facts were simple: Adams rented a room from Lancaster for $80. Lancaster was paid the $80. Adams never resided in the room that she paid for because of the existence of housing code violations in the unit. Adams sought return of her $80 from Lancaster, but Lancaster refused to return the funds.

A lawsuit was filed and resulted in a judgment in favor of Adams and an order by the court for the return of the $80. The key principle of the case—that a landlord's violation of the housing code is a violation of their lease agreement—was vitally important to the future work of NLSP. “It was a big deal,” says Roisman, “it was one of the first times a tenant had won a case.”

Roisman did not know at the time, but *Adams v Lancaster*, a seemingly meaningless small claims lawsuit for a miniscule amount of money, was the beginning of a legal revolution in the District of Columbia.

**B. “The Five Pillars”**

Brian Olmstead, one of several attorneys who would play a role in many of the landmark cases that NLSP would litigate during the early years and throughout its history, recalls that when he was a Staff Attorney at the Neighborhood Legal Services Program, attorneys in the program would meet after work regularly to discuss cases and the future strategy for cases as they all conducted the arduous task of trying to change the legal system for the poor in the District of Columbia. This was, of course, one of the unspoken agendas of NLSP since its inception—to actually change the laws that managed to impact the lives of the poor of the city in a negative manner in a variety of ways. This concept is what

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181 Telephone Interview with Florence Roisman, William F. Harvey Professor of Law, Indiana Univ. Sch. of Law, in Indianapolis, Ind. (May 23, 2006) [hereinafter Roisman Interview].
183 *Id.*
184 *Id.*
185 *Id.*
186 *Id.*
187 *Id.*
188 Roisman Interview, *supra* note 181.
189 Brian Olmstead was a Staff Attorney at NLSP beginning in 1965. He was employed in a neighborhood office. He is currently a lawyer living in Massachusetts. Olmstead Interview, *supra* note 180.
190 *Id.*
differentiated NLSP from the Legal Aid Society and other organizations of the time.

Willie Cook, Jr.,\textsuperscript{191} a staff attorney, and managing attorney at NLSP, and its Executive Director from 1975-2003, recalls that the efforts of NLSP to achieve revolutionary change in the legal system were no accident. "It was planned in staff meetings, memos, conferences," Cook says. "There was a conscious strategy to re-write property law, to alter the playing field."\textsuperscript{192}

The \textit{Adams v. Lancaster} case was just one example of how the strategy recalled by Cook began to manifest. \textit{Adams} was not, however, a case that set a legal precedent courts were bound to follow because it was a trial court case. Yet, \textit{Adams} made it clear that changes in the law were possible.\textsuperscript{193}

The cases that led to this change in District of Columbia law with respect to landlord-tenant law, the poor, and for that matter, the entire community, are commonly referred to today as the "Five Pillars."\textsuperscript{194} While the program litigated thousands of cases and dozens of important cases of lasting significance, it is these five cases that solidify NLSP as the city's most important legal services provider in the District of Columbia in the modern era. The "Five Pillars" are \textit{Brown v. Southall Realty Co.};\textsuperscript{195} \textit{Javins v. First National Realty Corp.};\textsuperscript{196} \textit{Pernell v. Southall Realty};\textsuperscript{197} \textit{Edwards v. Habib};\textsuperscript{198} and \textit{Bell v. Tsintolas Realty Co.}\textsuperscript{199} Each case is worthy of closer examination, both for individual importance and as overall historical events.

\section*{C. \textit{Brown v. Southall Realty}}

One of the first important decisions to be rendered by the District of Columbia Court of Appeals as a result of the work of NLSP attorneys was the court decision in \textit{Brown v. Southall Realty Co.}\textsuperscript{200} The decision was rendered on November 7, 1968.\textsuperscript{201} In a sense, the case forms the basis for many of the remaining important legal precedents that were achieved in the 1960's and 1970's by NLSP. While

\textsuperscript{191} Willie E. Cook, Jr. first worked at NLSP while a law student at Georgetown University Law Center. Upon graduation, he was hired as a staff attorney and also served as a managing attorney in the program. From 1975-2003, he was Executive Director of NLSP. Interview with Willie Cook, Jr., Executive Dir. 1975-2003, NLSP, in Wash., D.C. (Feb. 2006) [hereinafter Cook, Jr. Interview].

\textsuperscript{192} Id.

\textsuperscript{193} Roisman Interview, \textit{supra} note 181.

\textsuperscript{194} Cook, Jr. Interview, \textit{supra} note 191.

\textsuperscript{195} 237 A.2d 834 (D.C. 1968).

\textsuperscript{196} 428 F.2d 1071 (D.C. Cir. 1970).

\textsuperscript{197} 416 U.S. 363 (1974).

\textsuperscript{198} 397 F.2d 687 (D.C. Cir. 1968).

\textsuperscript{199} 430 F.2d 474 (D.C. Cir. 1970).

\textsuperscript{200} 237 A.2d 834 (D.C. 1968).

\textsuperscript{201} Id.
Adams set the stage for Brown. Brown is the legal building block for the other cases that followed.

The case involved Lillie Brown, a tenant of Southall Realty, a District of Columbia realty company. Southall Realty sued Brown for non-payment of rent. Brown resided in an apartment at 1340 Kenyon Street, Northwest Washington, D.C. Brown contended at the trial level that rent was not due to her landlord because the apartment contained significant housing code violations at the time the unit was leased. This situation, according to Brown, rendered the lease contract between the parties illegal.

The trial was held in the Court of General Sessions. Once judgment was entered against Brown at the trial level and she was ordered to pay the rent, the appeal of the case was handled by NLSP attorney Florence Roisman. At the time, Roisman was employed in NLSP's law reform unit. Roisman states that initially everyone believed Brown "wasn't worth pursuing because it looked like a loser." Due to the ruling from the Adams' case one year prior to Brown, however, it "helped make sense to take Brown." Roisman pressed forward despite the fact that the District of Columbia Court of Appeals was "very conservative" at the time.

The Brown case addressed two important legal concepts. First, it determined whether a lease agreement between a landlord and a tenant is a contract. Second, Brown determined whether the existence of housing code violations in an apartment that was the subject of the agreement between the parties rendered the lease agreement illegal. With respect to both legal concepts, the District of Columbia Court of Appeals ruled in favor of Lillie Brown:

Although appellant notes a number of errors, we consider the allegation that the trial court erred in failing to declare the lease agreement void as an illegal contract both meritorious and completely dispositive, and for this reason we reverse.

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202 See discussion supra Part II, A.
204 At the time of the case, the District of Columbia Government operated a Housing Division that provided housing inspectors to inspect rental units in an effort to maintain safe and sanitary housing in the city. Brown, 237 A.2d at 836.
205 Id.
206 Olmstead Interview, supra note 180.
207 Roisman Interview, supra note 181.
208 Id.
209 Id.
210 Id.
211 Id.
212 Brown, 237 A.2d at 836.
213 Id.
214 Id.
Due to the fact that at the time the lease was executed there were housing code violations in existence that rendered the unit “unsafe and unsanitary” and the fact that the landlord was aware of the violations, the contract was declared illegal.\textsuperscript{215} “The lease contract was, therefore, entered into in violation of the Housing Regulations,”\textsuperscript{216} the Court wrote, “requiring that they be safe and sanitary and that they be properly maintained.”\textsuperscript{217} In other words, the law of the District of Columbia required rental units to maintain a certain level of habitability. In this instance, the landlord knowingly leased a unit that violated those laws, yet leased the unit anyway.

Most importantly, the \textit{Brown} decision was rooted in contract law. Quoting contract law from a federal court case,\textsuperscript{218} the Court held that “(t)he general rule is that an illegal contract, made in violation of the statutory prohibition designed for police or regulatory purposes, is void and confers no right upon the wrong-doer.”\textsuperscript{219} This holding was not only important for the \textit{Brown} case, but it would prove to be significant well into the future in the development of landlord-tenant law in the District of Columbia.

\textbf{D. \textit{Edwards v. Habib}}

Brian Olmstead was the NLSP attorney who litigated the very important case of \textit{Edwards v. Habib}\.\textsuperscript{220} Olmstead was one of the first attorneys hired by NLSP, and he was hired before any offices had opened for operations.\textsuperscript{221} \textit{Edwards} was yet another critically important case in the development of housing law for tenants in the District of Columbia. In summary, \textit{Edwards} solidified – once and for all – that a landlord could not retaliate against a tenant because the tenant reported housing code violations in a rental unit to the proper governmental authorities.\textsuperscript{222} The ruling was extremely important in regard to the ability of tenants to assert their rights under the law.

Olmstead describes the \textit{Edwards} case as “bizarre” and “typical” at the same time.\textsuperscript{223} The majority of the NLSP's clients were facing the same or similar problems in housing at the time.\textsuperscript{224} Yvonne Edwards, the tenant in \textit{Edwards}, was like many NLSP clients: she was not on welfare, but she was employed by the federal government at the Department of Commerce on salary so low that she,
the mother of three children, lived below the poverty level. At the time, the Commerce Department still had the "colored" and "white" water fountains in place in the building, though it is unclear if segregation was still officially operating in the Department's building.

Edwards' problem was a classic housing issue. One of the biggest issues amongst poor tenants at the time was reprisal from the landlords for attempting to assert their rights as tenants. Due to the rampant use of reprisal by landlords, tenants simply did not complain about housing problems in their apartments. However, Edwards did in fact complain; this made her an excellent candidate for an NLSP-developed retaliation claim. Olmstead raised the issue a number of times in numerous cases previously but had no success because tenants would usually agree to vacate their units.

In Edwards, however, Olmstead was able to achieve a significant victory when the United States Court of Appeals ruled that the retaliatory eviction defense was a legitimate defense that the tenant had a right to prove in court. Prior to Edwards, tenants were not afforded an opportunity to prove their case at trial.

Using the United States Constitution as support for its opinion, the Court held that to allow a landlord to violate the law by using a threat of eviction against tenants who complain of housing code violations defeated the Congressional intent inherent in the District of Columbia housing code. "It was the intent of Congress," Judge J. Skelly Wright wrote, "which directed enactment of District of Columbia housing code, that, while landlord might evict for any legal reason or for no reason at all, he was not free to evict tenant in retaliation for tenant's report of housing code violations to the authorities." In deciding Edwards, the Court conducted what has been described as an "exhaustive review of housing code regulations, Congressional reports, legal commentaries, and judicial precedent," to reach its conclusion. This result alone demonstrates the altered legal landscape NLSP attorneys had been able to achieve in just a few years of operation.

For Olmstead, the decision was a major revelation. "The poor didn't have rights" he realized after the decision, "because they never had anyone to assert

225 Id.
226 Id.
227 Id.
228 Id.
229 Id.
230 Id.
232 Olmstead Interview, supra note 180.
233 See discussion of Javins infra Part I, E. for additional discussion of Justice J. Skelly Wright.
234 Edwards, 397 F.2d at 687.
them before."\textsuperscript{236} Olmstead had been able to assert those rights for Yvonne Edwards. Ultimately, hundreds of tenants in the city would be equally empowered as a result of the historical decision.

E. \textit{Javins v. First National Realty}

Perhaps the most groundbreaking of the cases known as the “Five Pillars” is \textit{Javins v. First National Realty}.\textsuperscript{237} Unlike the other significant cases during the early years of operations at NLSP in the area of housing, \textit{Javins} did not involve a well-known fundamental legal concept easily established in court in a landlord-tenant case. Instead, \textit{Javins} involved an attempt to radically alter the relationship between landlords and tenants in the District of Columbia. For decades, tenants had not been allowed to present any evidence that their apartments were leased to them or were being leased to them in violation of the housing code of the District of Columbia. The \textit{Brown} case, decided prior to \textit{Javins}, clearly offered some degree of hope that tenants would soon be able to present evidence that a landlord was in violation of a lease if the unit contained housing code violations. \textit{Javins} was the next logical step.

In \textit{Javins}, NLSP was representing several tenants in a complex of buildings in Northwest Washington, D.C. known as Clifton Terrace.\textsuperscript{238} \textit{Javins}, and the companion cases, began in the Court of General Sessions for the District of Columbia as complaints for possession of real estate.\textsuperscript{239} The tenants were Ethel Javins, Rudolph Saunders, Stanley Gross, and Gladys Grant.\textsuperscript{240} The tenants had all “refused to pay their rent because of terrible conditions” in the complex.\textsuperscript{241} Each tenant was sued for non-payment of rent and all of the tenants appeared in court with evidence of the violations that included “mouse feces, dead mice, roaches, and pictures of their apartments in the courtroom.”\textsuperscript{242} The tenants were represented by one of the first attorneys hired by NLSP – Edmund E. (“Gene”) Fleming.\textsuperscript{243} Fleming was an attorney in the office located below Clifton Terrace. He handled the \textit{Javins’} cases starting at the trial level and going all the way through the appeal.\textsuperscript{244}

\begin{itemize}
\item \textsuperscript{236} Olmstead Interview, \textit{supra} note 180.
\item \textsuperscript{237} 428 F.2d 1071 (D.C. Cir. 1970).
\item \textsuperscript{238} Richard Chused, \textit{Javins Project}, http://www.law.georgetown.edu/faculty/chused/javins.htm (last visited Oct. 3, 2006).
\item \textsuperscript{239} Id.
\item \textsuperscript{240} Id.
\item \textsuperscript{242} Id.
\item \textsuperscript{243} Id. at 192, 207.
\item \textsuperscript{244} Olmstead Interview, \textit{supra} note 180; Roisman Interview, \textit{supra} note 181.
\end{itemize}
First National Realty moved immediately, as was customary at the time, to exclude all evidence of housing code violations from the proceedings. Following entry of judgment in favor of the landlord at the trial level, the case proceeded to the District of Columbia Court of Appeals. The Court of Appeals affirmed the ruling of the trial court and advanced a very narrow reading of the Brown v. Southall case in affirming the judgments in Javins.

The Court of Appeals held, inter alia, that if housing code violations occur after the parties enter into a lease, such violations do not result in a void and unenforceable lease. In addition, the Court held that the housing code violations of the District of Columbia imposed no contractual duty between the landlord and tenant for the landlord to comply with the code. Following the disappointing affirmation of the Javins' decisions, the cases were appealed and eventually heard before the United States Court of Appeals for the District of Columbia.

Javins would ultimately determine the future of tenants' rights in the Landlord-Tenant Branch of the Court of General Sessions in the District of Columbia. As the Court stated from the very beginning of the decision in Javins, "These cases present the question of whether housing code violations which arise during the term of a lease have any effect upon the tenant's obligation to pay rent." This was the tenant's fundamental dilemma which dated back decades in the Court.

While Javins discussed numerous important issues, the key legal concept that the court ultimately decided is now known as an "implied warranty of habitability" in rental housing. Strangely enough, the phrase "implied warranty of habitability" does not appear in any of the answers at the trial level filed by the four defendants in the Javins' cases, although within their individual answers, there is a singular focus on the concept of habitability as a strategic approach.

The judge who would ultimately draft the very important decision in the Javins' cases was the legendary Justice J. Skelly Wright, the author of the Ed-

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245 Chused, supra note 241, at 192.
246 Id.
247 Id.
250 Id. at 838.
251 Id.
252 Javins, 428 F.2d at 1071.
253 Id. at 1072.
254 Id. at 1073.
255 Chused, supra note 238.
256 Id.
wards decision discussed above; however, it is more appropriate to discuss Justice Wright in the historical context of Javins.

Justice Wright was a distinguished and controversial jurist by the time of the Javins decision. He was born in New Orleans in 1911 and was a 1934 graduate of the Loyola Law School during the Great Depression.\(^{257}\) Although Wright initially taught history in New Orleans in the city's school system, Wright's fate was the law. After serving as an Assistant United States Attorney in New Orleans, President Harry Truman appointed Wright the United States Attorney for New Orleans in 1948.\(^{258}\) Just one year later, Truman appointed Wright to the United States District Court in New Orleans, at the age of thirty-eight, where his judicial legacy would be solidified.\(^{259}\)

Wright's main contribution as a jurist was in the area of desegregation as he consistently ordered the desegregation of society in New Orleans in numerous court cases.\(^{260}\) The New York Times described Wright's career as follows:

Judge Wright, a pioneer in the desegregation of public schools and public transportation in his native New Orleans, was considered one of the most liberal judges in the nation's court system. He was also regarded by many Southern whites as a traitor to his class. Some called him "Judas" Wright.\(^{261}\)

In one of Wright's most famous cases, Bush v. Orleans Parish School Board,\(^{262}\) Wright was especially determined in his legal opinion to enforce the law as it had been rendered in the Brown v. Board of Education\(^ {263}\) decision of 1954. In Bush, black children of New Orleans had sued the Orleans Parish School system because they were subject to inferior segregated education for decades. In ruling in favor of the children, Wright wrote:

It is Ordered, Adjudged and Decreed that the defendant, Orleans Parish School Board, a corporation, and its agents, its servants, its employees, their successors in office, and those in concert with them who shall receive notice of this order, be and they are hereby restrained and enjoined from requiring and permitting segregation of the races in any school under their supervision, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially nondiscriminatory

\(^{257}\) Marjorie Hunter, Judge J. Skelly Wright, Segregation Foe, Dies At 77, N.Y. Times, Aug. 8, 1988, at D10.

\(^{258}\) Id.

\(^{259}\) Id.

\(^{260}\) Id.

\(^{261}\) Id.


\(^{263}\) 349 U.S. 294 (1954).
basis with all deliberate speed as required by the decision of the Supreme Court in Brown v. Board of Education of Topeka, supra.264

Of course, the Bush case did not end Wright's determination. Wright's consistent forcefulness as a federal judge in the South was vitally important to the desegregation movement that ensued in the coming years in the United States.

Eventually, President John F. Kennedy appointed Wright to the United States Court of Appeals for the District of Columbia Circuit265 where his legal opinions and reputation for enforcing equal justice for the poor continued to evolve. Wright's 1969 New York Times Magazine article entitled "The Courts Have Failed the Poor"266 castigated the legal system for its failure to provide equal treatment to the poor and is indicative of his entire career as an attorney and a jurist.

As for NLSP, Wright also played a limited role in the development of the program. When Gary Bellow and UPO267 presented their draft proposal that they intended to submit to the Ford Foundation for funding NLSP to the Judicial Council of the District of Columbia,268 Wright was appointed as chair of the special committee that reviewed and initially rejected the proposal.269 Howard C. Westwood, a member of the special committee, recalls that Wright played an important role in the process.270

For all of these reasons, it was profoundly important that Justice Wright came to write the opinion in Javins and the Edwards case as well. In fact, of the "Five Pillars," Wright is the author of three of the opinions.271

Wright's famous decision in Javins was rendered on May 7, 1970.272 The decision set the tone from the beginning that fundamental legal concepts such as contract law and well-accepted consumer concepts such as warranties are, in fact, enforceable in landlord-tenant agreements:

We now reverse and hold that a warranty of habitability, measured by the standards set out in the Housing Regulations for the District of Columbia, is implied by operation of law into leases of urban dwelling units covered by those Regulations and that breach of this warranty gives rise to the usual remedies for breach of contract.273

265 Hunter, supra note 257.
267 Johnson, Jr., supra note 46, at 28-29.
268 Id.
269 Id.
270 Westwood Interview, supra note 21.
271 Justice J. Skelly Wright also drafted the opinion in Bell v. Tsintolas. See discussion infra Part II, F.
272 Chused, supra note 238.
273 Javins, 428 F.2d at 1073.
The remaining portions of Wright’s opinion explained the reasoning behind the landmark ruling. Indeed, the ruling is very important for its analysis and interpretation of property law. Wright stated that while landlord-tenant relationships are traditionally judged in the context of “feudal property law,” these concepts have little relevance to the modern “city dweller.”274 The idea of a tenant having an “interest” in the “land” below the apartment is not as important as the tenant being most interested in the overall package of services received as a result of the lease agreement.275 An example of Wright’s compelling ability to modernize landlord-tenant law is in Javins, where he stated:

> When American city dwellers, both rich and poor, seek ‘shelter’ today, they seek a well known package of goods and services – a package which includes not merely walls and ceilings, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance.276

The point of Wright’s argument is that landlord-tenant law in the past was based upon its application to an “agrarian” society.277 Tenants in such a society had a strong interest in their use of the land under their control. By contrast, tenants in an urban setting had no use for the land under the building in which they resided; their main concern was the building and the services received. In addition, Wright’s opinion cemented the concept of an implied warranty of habitability into housing law in the District of Columbia.

Contract principles established in other areas of the law provide a more rational framework for the apportionment of landlord-tenant responsibilities; they strongly suggest that a warranty of habitability be implied into all contracts for urban dwellings.278

In explaining the implied warranty, Wright referenced the 1946 court case from the United States Court of Appeals for the District of Columbia of Kay v. Cain.279 Kay is important because it asserted that a landlord “is under an obligation to use reasonable diligence to keep the stairways and other portions so retained under his control, of the building in a safe condition...”280 The case was, in effect, the legal building block for Javins nearly twenty-five years later because it attempted to clarify the obligation of a landlord in a landlord-tenant relationship.

274 Id.
275 Id.
276 Id.
277 Id.
278 Javins, 428 F.2d at 1080.
279 154 F.2d 305 (D.C. Cir. 1946).
280 Id. at 306.
Wright would stress in his opinion that the implied warranty concept is "well established" and that the housing regulations of the city imply such a warranty. In addition, Wright noted, "courts have begun to hold sellers and developers of real property responsible for the quality of their product" and "that the old common law rule imposing an obligation upon the lessee to repair during the lease term was never really intended to apply to residential urban households."

Ultimately, the Javins decision single-handedly transformed landlord-tenant law in the District of Columbia. Wright's opinion and the diligent work of several NLSP employees brought forth an opinion that has now become the codified law of the District of Columbia. The success in Javins demonstrated the huge impact NLSP was having on the city's legal system as the federally funded legal services provider to the poor.

"Gene" Fleming was the NLSP attorney and the attorney of record for the Javins' case from the very beginning. Fleming remained in the case until the end, even though Fleming was employed at Boston Legal Services by the time of the final decision by the United States Court of Appeals for the District of Columbia Circuit. NLSP attorneys Patricia Wald, Margaret F. Ewing, and Florence Roisman filed an amicus brief in the final appeal in the Javins case on behalf of NLSP. Thus, NLSP essentially had two sets of advocates in one of the most important housing cases in the history of the city and - as it would turn out - the nation.

F. Bell v. Tsintolas

The most important employee in the history of NLSP is Willie E. Cook, Jr. The fact that this essay has not stated this assertion earlier is only the function of the organization of the essay. Cook served NLSP as a law student, staff attorney, managing attorney, and, finally, as Executive Director for twenty-eight years. His imprint is a part of the program even to this day.

Cook litigated hundreds of cases while at NLSP, including a large volume of rent strike cases from the 1970's that could be the subject of an entirely separate essay or article. He had a reputation for being fearless, confrontational, intellectually astute, and adept as a legal advocate. He never wavered in his commitment

281 428 F.2d at 1081.
282 Id.
283 Id. at 1076.
284 Id. at 1080.
286 Javins, 428 F.2d at 1071.
287 Roisman Interview, supra note 181.
288 Cook, Jr. Interview, supra note 191.
over the years to the ideals of NLSP. As Edgar Cahn stated, "He was controversi­
sial but he had guts."289

Of the more notable cases Cook litigated as an attorney at NLSP that changed
the law of the District of Columbia with respect to tenants, Bell v. Tsintolas is the
most important. Bell is another landmark case from the United States Court of
Appeals that established critical procedural rights not only for poor people, but
for anyone involved in the local District of Columbia court system. Bell chal­
lenged the "constitutionality of payment of money into the court"290 in cases in
the city's Landlord-Tenant Branch and, in effect, "the whole notion of protective
orders."291

Bell proceeded through the local legal system from a simple lawsuit for non­
payment of rent due to housing code violations to an appeal at the United States
Court of Appeals for the District of Columbia from "motions for stay of orders of
the Landlord-Tenant Branch of the District of Columbia Court of General Ses­
tions."292 There were two cases—Bell v. Tsintolas Realty Co. and Coates v. Rup­
pert Real Estate Co.293 Although the issue in Bell appears simple in nature, the
legal question presented and the intertwined periphery matters are complex.

The Bell case plaintiffs were William T. Bell and Marjorie Bell.294 Bell
presented the United States Court of Appeals with an issue that occurred regu­
larly in the Landlord-Tenant Branch of the Court of General Sessions. Specifi­
cally, the issue concerned whether tenants would be required to pay their rent
into the registry of the Court while the lawsuit proceeded through the system.
The issue was one of paramount importance due to the fact that indigent tenants
appearing before the Court routinely requested permission to proceed without
payment of court costs.295 If the Court required the tenants to pay future rent
and rent allegedly owed into the court registry, such a requirement would act as a
bond requirement and many tenants would not be able to present their defenses
and claims to the Court.

The justice who drafted the opinion in Bell was, once again, Justice J. Skelly
Wright, who had also written the opinion at the same time in the Javins and
Edwards cases. Bell shared a strong relationship to Javins in terms of the legal
issues that were before the Court. Bell is procedural in nature, but the case is
essentially about access to the judicial system for the indigent.

289 Cahn Interview, supra note 16.
290 Cook, Jr. Interview, supra note 191.
291 Id.
293 Id.
294 The decision indicates both Bells resided at 4030 Livingston Road #304, Southeast Washin­
gton, D.C. Id. at 478.
295 The procedure is known as in forma pauperis in the court system that is Latin for "in the
form of a pauper." It allows the party to proceed without payment of court costs. BLACK'S LAW
DICTIONARY 794 (8th ed. 2004).
NLSP again scored major victories for tenants in the District of Columbia with the ruling in *Bell*. Justice Wright stated the important holding as follows:

We conclude that, although the court may, in the exercise of its equitable jurisdiction, order that future rent be paid into the registry of the court as it becomes due during the pendency of the litigation, such prepayment is not favored and should be ordered only in limited circumstances, only on motion of the landlord, and only after notice and opportunity for a hearing on such a motion.\(^{296}\)

As with *Javins*, Wright carefully explained the reasoning of the decision. Wright stated that the payments into the court registry formed a “protective purpose”\(^{297}\) that would assist both the tenant and landlord. The payments should only be made when the tenant had requested a jury trial or “asserted a defense based upon violations of the housing code.”\(^{298}\) Wright also made clear that not only should future payments be paid into the court registry if the landlord demonstrated a need, but an amount less than the rent could be ordered by the Court as well if the housing unit contained violations of the housing code.\(^{299}\) This last point was extremely important to tenants in landlord-tenant actions. From the very beginning, a tenant could begin to present evidence to the Court that the landlord was violating the law in their landlord-tenant relationship.

The *Bell* decision was rendered only five weeks after the *Javins* decision. On behalf of tenants, NLSP had enhanced the procedural due process rights of tenants but also clarified the legal relationship between landlord and tenant in regard to responsibilities, obligations, and legal remedies readily available to either party if one should arise.

**G. Pernell v. Southall Realty**

Of all of the key due process housing cases in the early years of NLSP, *Pernell v. Southall Realty*\(^{300}\) is the most important. The decision in *Pernell* was rendered by the United States Supreme Court and would result, once and for all, in the establishment of a right to a jury trial in landlord-tenant cases in the District of Columbia.\(^{301}\) *Pernell* also brought the cases known as the “Five Pillars” full circle. There is important history leading up to the decision in *Pernell* that is worth summarizing.

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\(^{296}\) *Bell*, 430 F.2d at 479.
\(^{297}\) *Id.* at 483.
\(^{298}\) *Id.*
\(^{299}\) *Id.* at 484.
\(^{300}\) 416 U.S. 363, 384 (1974).
\(^{301}\) *Id.* at 375.
Pernell arose, at least in part, due to confusion in the District of Columbia judicial branch following the re-organization of the court system in 1970. Due to the re-organization and the abolition of the statute in the District of Columbia that established a right to jury trial in Landlord-Tenant cases, landlords began to successfully argue that there was no right to a jury trial in cases that came before the Landlord-Tenant Branch. Conservative judges presiding in the city's court system routinely denied tenants the right to a jury trial in their cases on a regular basis.

NLSP vigorously requested jury trials in all of its landlord-tenant cases in an effort to sustain cases on appeal. Unfortunately, the cases would always "moot out," or the tenants would "move out." Finally, NLSP was able to manage to sustain a case at the trial level and then on appeal with a tenant named Dave Pernell. Pernell leased a home in Northwest Washington, D.C. and was engaged in improving the home in exchange for the right to possession. However, the landlord eventually sued Pernell for possession of the house for non-payment of rent. NLSP, with Barnett as lead counsel, defended Pernell in the lawsuit.

Naturally, Barnett filed an answer, counterclaims, and the all-important jury demand on Pernell’s behalf. The Court, as was customary at the time, denied the jury demand and the matter was appealed to the District of Columbia Court of Appeals, which likewise affirmed the trial court ruling, forcing Barnett and NLSP to seek redress by filing a petition for certiorari before the United States Supreme Court. With the only possibility for relief now at the Supreme Court level, a lawyer from Covington & Burling, Michael Schlanger, was assigned to Barnett to prepare the next stage of the case. Schlanger’s presence and role in the case was part of a partnership that had been recently introduced into NLSP by Howard C. Westwood (see more on this initiative below) between NLSP and the law firm of Covington and Burling in 1969. Schlanger provided Barnett with

303 id.
304 id.
305 id.
306 id.
307 id. According to Barnett, the house Pernell rented was on 13th Street Northwest, in the Park Road area of the District of Columbia.
308 id.
309 id.
310 id.
312 Barnett Interview, supra note 302.
the services of Michael Boudin, an appellate attorney at Covington & Burling, Boudin, whose credentials included graduation from Harvard Law School in 1964, and a Supreme Court clerkship from 1965-1966, was considered the “top appellate lawyer in Washington” at the time.

Once the petition was granted due to the “novel nature” of the issues presented, Barnett, Boudin, and Schlanger wrote NLSP’s merits brief for Pernell together. In addition, with Boudin and Schlanger working on the case, NLSP was able to utilize the extensive resources of Covington & Burling. The result was a fifty-eight page brief, with additional pages of appendix, a legal tour de force. The brief is full of constitutional theory, common law of England dating back several centuries, numerous legal concepts important to the argument forged by NLSP on behalf of Pernell and clear, persuasive writing. The argument was basic:

The language of the Seventh Amendment shows, and decisions of this Court confirm, that the constitutional standard of trial by jury is basically historical and analytical: the right is preserved where the claim is a “legal claim” that would be tried by jury under English common law prevailing when the Seventh Amendment was adopted.

The entire brief was full of very detailed and methodical interpretations of the right to jury trial similar to the above excerpt. Boudin’s experience was critical to the case’s development at the Supreme Court level. Barnett stated that the case required such experience because there were some “really esoteric constitutional issues” in the case. The brief was filed August 27, 1973, and soon thereafter, Barnett was elected to handle the oral argument. He described himself as “incredibly prepared” due to the “most impossible questions” asked during the moot court preparation sessions. “The argument went off beautifully for us,” Barnett recalls. “It was so one-sided.”

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314 Barnett Interview, supra note 302.
316 Id.
318 Barnett Interview, supra note 302.
319 Id.
320 Brief for the Petitioner at 13, Pernell, 416 U.S. at 363.
321 Barnett Interview, supra note 302.
322 Brief for the Petitioner at coverpage, Pernell, 416 U.S. at 363.
323 Barnett Interview, supra note 302.
324 Id.
In the end, the United States Supreme Court voted 9-0 in favor of the petitioner, Dave Pernell. Justice Thurgood Marshall, a graduate of the Howard University School of Law like Barnett, wrote the opinion, stating that the District of Columbia’s court system “must preserve a right to a jury trial.” Landlord-tenant courts, Justice Marshall wrote, are here to see that “justice is done before a man is evicted from his home.”

*Pernell* was another significant victory for NLSP and for legal services in general. The legal work that began with the *Adams* case had come together in *Pernell*, in the nation’s highest court. There were certainly other cases to follow, but in 1974 with *Pernell*, the transformation was complete.

### H. Howard C. Westwood’s Vision: Covington & Burling & NLSP

In the midst of all the legal victories achieved by NLSP during the early years of its operations, another important development for the program occurred involving NLSP’s relationship with a private law firm, Covington & Burling, one of the city’s leading law firms, forged a partnership with NLSP that was unique in nature. This relationship proved to be critical in the *Pernell v. Southall Realty* case as discussed above.

In 1969, Howard C. Westwood, a partner at Covington, and one of the individuals who played a key role in the establishment of NLSP, proposed that Covington firm attorneys serve at NLSP as neighborhood staff attorneys on six-month rotations in the neighborhood offices. The initiative was implemented by Covington. Bingham Leverich, currently a partner at Covington & Burling and an NLSP board member, was one of the first two attorneys to serve at NLSP through the new program.

Ironically, at the time, Leverich was considering trying to obtain an attorney position at NLSP when the firm began this program of allowing its attorneys to provide services on a six-month rotation basis. Leverich recalls being assigned to an office in Southeast Washington, D.C. and describes his experience as “fantastic.” NLSP, according to Leverich, was an “extraordinary” program back then. He served at NLSP for two years taking on additional responsibilities in the process.

The partnership between NLSP and Covington & Burling has continued for over thirty-six years. Approximately 200 Covington attorneys have served work...
details at NLSP in neighborhood offices. There is always an extensive waiting list
of attorneys and staff from Covington to serve at NLSP.\textsuperscript{330}

By 1998, Covington & Burling’s contribution to the program was valued at
approximately $300,000 as a result of the program originally proposed by Howard
C. Westwood in 1969.\textsuperscript{331} While the program initially assigned only two lawyers,
the firm eventually began to provide four lawyers.\textsuperscript{332} Presently, the firm simply
provides the staffing for NLSP’s Northeast office and additionally funds summer
law clerk positions in the program.\textsuperscript{333} The program established between NLSP
and Covington & Burling in 1969 is the origin of externship programs of this
nature in the country.\textsuperscript{334}

I. A Lasting Legacy

The lasting legal legacy achieved by NLSP in the cases collectively known as
the “Five Pillars” is undisputed. NLSP also successfully litigated cases involving
rent strikes by tenants.\textsuperscript{335}

However, the “Five Pillars” are NLSP’s crowning legal achievement from the
eyears of operations. Retaliatory evictions and the concept known as the
implied warranty of habitability are both currently codified defenses in the Dis­

trict of Columbia Municipal Regulations.\textsuperscript{336} In addition, the void lease concept
established in \textit{Brown} remains part of the city’s housing regulations.\textsuperscript{337} If a tenant
requests a jury trial in landlord-tenant court today, there is not a challenge from
landlords if the request is timely. Protective orders, the court process where te­

nants pay their future rent into the court registry, as established in \textit{Bell v. Tsinto­
las},\textsuperscript{338} are part of the legal culture of the court.

On the national front, the implied warranty of habitability concept, as estab­
lished in \textit{Javins}, has been adopted by forty states since 1970.\textsuperscript{339} Numerous states
also recognize the retaliatory eviction defense routinely in their landlord-tenant
proceedings.\textsuperscript{340}

\textsuperscript{330} Id.
\textsuperscript{331} Neighborhood Legal Servs. Program, Historical Outline, (1998).
\textsuperscript{332} Id.
\textsuperscript{333} Id.
\textsuperscript{334} Scott L. Cummings, The Politics of Pro Bono, 52 UCLA L. Rev 1, 78 (2004).
\textsuperscript{335} B.D. Cohen, Housing Authority Eviction Suit Trial Opens, WASH. POST, Dec. 7, 1972, at B3;
B.D. Cohen, Non-Paying Tenants Ask Housing Survey, WASH. POST, Aug. 17, 1972, at B4; Leonard
Downie, Jr., Tenants Hit Rent Increase, WASH. POST, Oct. 14, 1969, at Cl. See also Thompson v.
\textsuperscript{336} D.C. Mun. Regs. tit. 14 § 301(2004); § 307.
\textsuperscript{337} Id. at § 302.
\textsuperscript{338} 430 F.2d 474 (D.C. Cir. 1970).
\textsuperscript{339} Roger Bernhardt & Ann M. Burkhardt, Real Property, 140 (Thompson-West
2000).
\textsuperscript{340} Id. at 141.
III. The Challenge Begins

From the mid-1960’s to 1974, NLSP received federal funding from the Office of Economic Opportunity (OEO).341 OEO provided funding for a multitude of federal anti-poverty programs all across the country in response to Lyndon Johnson’s “war on poverty.”342 Through the years, OEO maintained its “legal services for the poor” component in order to fund legal aid programs across the country. In March 1965, the legal services section of OEO was under the direction of none other than Jean Cahn.343 However, a dispute between Jean Cahn and the director of OEO, Sargent Shriver, over the need for complete autonomy for the program within the government, led to Cahn’s abrupt resignation from the program.344

NLSP, following the end of its Ford Foundation Grant, began to receive its funding from this section of OEO.345 It was the beginning of forty years of funding from the federal government. From the very beginning, NLSP was in a precarious and uncertain position as a legal services provider, like all programs across the country. The fact that NLSP was a new program with new approaches to assisting poor people with their legal problems immediately created a degree of division in the District of Columbia.346 Also, NLSP and the existing Legal Aid Society in the District of Columbia were not in partnership; this was an issue of concern from the very beginning.347 In addition, the support association for legal aid societies across the country, the National Legal Aid and Defender Association (NLADA), did not initially endorse NLSP upon its creation due to the fact that the founders of NLSP did not seek to merge Legal Aid into the project in a significant way.348 In fact, NLADA passed a resolution in December 1964 expressing its opposition to NLSP in the District of Columbia.349

NLSP also did not have adequate independence from the federal government, as the program was funded through OEO. Politics remained an impediment to true freedom for the programs like NLSP. Despite these various issues, NLSP performed fairly well during its first decade of existence operating in the District of Columbia as the city’s chief federally funded legal services program and the nation’s first comprehensive community-based program.

The cases the program litigated in the late 1960’s and early 1970’s changed legal history in the District of Columbia, and the program was regarded around

341 Dugas Interview, supra note 20; see also Cook, Jr. Interview, supra note 191.
343 See supra note 17.
344 SCOTT STOSSEL, SARGE, supra note 53, at 435.
346 Westwood Interview, supra note 21.
347 Id.
348 Id.
349 SCOTT STOSSEL, SARGE, supra note 53, at 435.
the nation for its outstanding legal work. Willie E. Cook, Jr. refers to the work NLSP achieved the first ten to fifteen years in the area of housing as "a revolution in the practice of law, in terms of transferring power from landlords to tenants." In addition, Cook says the period featured a "seismic explosion in precedent setting litigation."

A. Reggie

NLSP also performed well in its early years due to the development of a federally funded legal services fellowship program known as the "Reggie" program in 1967. The Reggie program was short for the Reginald Heber Smith Legal Fellowship program, developed within OEO. The program was named after Reginald Heber Smith, a long time Boston-based attorney who played an important role in the early legal aid movement.

In 1916, Smith was awarded a grant by the Carnegie Foundation to study legal aid delivery in America. He had been employed at the Boston Legal Aid Society since 1912 and had gained a reputation as an innovator in the legal field and as a dedicated public interest lawyer. The by-product of the grant was the 1919 book by Smith titled Justice and the Poor. Smith concluded that the pro bono commitment from private bars to the poor was inadequate. Smith spent most of his professional career as a lawyer in public interest work in Boston following the publication of the book. Due to his dedication, OEO appropriately named its fellowship after Smith, to increase the pool of public interest lawyers. As United States Supreme Court Justice Ruth Bader Ginsburg once remarked of Smith, "Reginald Heber Smith galvanized a national movement to provide lawyers for those who could not afford to pay counsel."

The Reggie program was designed to train talented lawyers possessing high standards of performance and capability who would serve the legal services of-

350 Cook, Jr. Interview, supra note 191.
351 Id.
352 Id.
353 Id.
355 Johnson, Jr., supra note 46, at 178-80.
356 Id.
358 Id.
360 Id. at 6-10.
361 Id.
362 Justice Ruth Ginsburg, United States Supreme Court, Remarks at the Joseph A. Rauh Lecture of the University of the District of Columbia, David A. Clarke School of Law (Apr. 9, 2001).
fices around the country.\textsuperscript{363} Instead of arbitrarily allowing local legal offices to locate individuals to work in the various legal services programs, OEO created an entity that provided the talent for the office from which lawyers could be identified.\textsuperscript{364} In all, over 2,700 fellowships would be awarded through the Reggie program in just nineteen years.\textsuperscript{365} NLSP benefited greatly from the creation of the Reggie program, as a number of very talented lawyers came to work at NLSP as lawyers through the program. Willie E. Cook, Jr. was a product of the Reggie program, as were numerous other dedicated lawyers who came to serve NLSP in its developing years. By 1969, there were “12 Reggies” working in the program.\textsuperscript{366} The program was vitally important in maintaining an adequate pool of competent, dedicated public interest lawyers at NLSP and programs across the country.

B. \textit{Towards LSC}

In 1969, during a particularly vibrant period of public interest legal work that Willie E. Cook, Jr. calls “The Apex,” the federal government, through OEO, funded NLSP in the amount of $927,981.\textsuperscript{367} The funding again demonstrated that OEO was pleased with the legal work of the nation’s first major legal services program. However, in 1969, just days after NLSP was awarded the OEO funding, Richard Nixon was sworn in as President of the United States. The future of legal services programs such as NLSP was hard to predict with a Republican in charge of the program, even though President Nixon expressed support for legal services to the poor.\textsuperscript{368} The New York Times weighed in on the issue:

\begin{quote}
The financial support promised by the Nixon Administration for the Office of Economic Opportunity’s Legal Services attorneys could mean improved representation for the poor – if these dedicated lawyers are permitted to function without interference from state and local political machines.\textsuperscript{369}
\end{quote}

The point was well taken. Political pressures had always been a reality at OEO regarding the funding of particular programs.\textsuperscript{370} Local governments had the ability to seek veto of funding for programs under OEO at their disposal.\textsuperscript{371} Then-Governor of California, Ronald Reagan, provides the most representative example of this pressure.

\begin{flushleft}
\textsuperscript{363} JOHNSON, JR., \textit{supra} note 46, at 178.
\textsuperscript{364} \textit{Id.}
\textsuperscript{365} McCollam, \textit{supra} note 357, at 115.
\textsuperscript{366} Cook, Jr. Interview, \textit{supra} note 191.
\textsuperscript{367} \textit{Fresh Poverty Funds Given Legal Program}, \textit{WASH. POST}, Jan. 18, 1969, at B2.
\textsuperscript{368} \textit{Lawyers for the Poor}, \textit{N.Y. TIMES}, Aug. 31, 1969, at E10.
\textsuperscript{369} \textit{Id.}
\textsuperscript{370} Peter Millus, \textit{Feeling the Sting of Legal Aid}, \textit{WASH. POST}, Feb. 6, 1972, at A1.
\textsuperscript{371} \textit{Id.}
\end{flushleft}
In 1971, Governor Reagan attempted to compel President Nixon to de-fund a program in his state by threatening to withhold support to President Nixon in his re-election campaign if Nixon did not terminate funding to the program. While Reagan’s effort eventually failed, it was a clear example of how politics could have a detrimental affect on the ability of legal services programs to represent their clients without any compromises like all lawyers. NLSP was vulnerable to this particular kind of political pressure.

Terry Lenzner, who served as director of Legal Services within OEO from 1969-1970, expressed, very clearly, that programs such as NLSP that received its funding from OEO "must be protected from...volatile political buffeting...". Lenzner was referring to the kind of political pressures that could damage the attorney-client relationship and ultimately result in sub-par representation. As questions continued to arise concerning the Nixon Administration’s true commitment to an independent legal services program that would fund programs like NLSP without political pressure, Lenzer aimed his critique at the Nixon Administration specifically: “The Nixon Administration has made it increasingly evident,” Lenzner wrote, “that it will trade the right of the poor to justice for potential votes.” For Lenzner, and many others, there was no compromise – the legal services lawyers at programs such as NLSP had to be shielded completely from politics or the concept could never operate effectively. Others involved in the legal aid movement locally and nationally offered similar sentiments.

A fundraising gathering was held at Sargent Shriver’s Washington, D.C. suburban home in Rockville, Maryland on August 6, 1971 in an effort to advance the proposition of freeing NLSP and legal services from OEO administration and funding. A guest at the event paid $25.00 to begin the movement in this direction. “We want to get Congress to set up the Neighborhood Legal Services Program as a non-profit, private corporation – separate from OEO – in order to end the debilitating political pressures the program has suffered,” Mickey Kantor said. Kantor, at the time of the event, was Executive Director of Action for Legal Rights Inc., a lobbying organization that was organized to specifically lead an effort to separate legal services from the political pressures of the federal gov-

372 Id.
373 Lenzner graduated from Harvard Law School in 1964. He was dismissed from his post at OEO legal services during the Nixon Administration for his opposition to the Nixon Administration proposal to shift control of the program to the local level. Terry Lenzner, Federal Lawyers for the Poor, N.Y. TIMES, Dec. 15, 1970, at 45.
374 Id.
375 Id.
377 Id.
378 Id.
The call for separation from OEO was heeded in the end, but the political pressure did not cease.

President Nixon did express support for the national legal services program outside of OEO as a separate corporation. His vision of the program, however, ceded significant control over the program to the Executive branch. Nixon's announced support for the new public corporation on May 5, 1971 resulted in a three-year legislative struggle to, once and for all, create an entity to achieve the goal of providing legal services to the poor free of political pressure.

In July 1974, Congress created the Legal Services Corporation (LSC) with the passage of the Legal Services Corporation Act of 1974. Congress made the mission clear in the purpose section of the Act when it stated that the Act was being enacted "to amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes." The Act created a new section to the Office of Economic Opportunity Act of 1964.

The Act, in pertinent part, stated as one of its goals that "providing legal assistance to those who face an economic barrier to adequate counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of this Act." The Act also addressed the fact that, while under OEO, the legal services component was always in the midst of potential conflicts due to the lack of complete autonomy from a reporting structure that could compromise the ability of the neighborhood offices to represent their clients. "Attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession."

At last, legal services for the poor in America had its own separate agency outside of the federal government. However, as time would reveal, LSC and programs like NLSP were not completely shielded from the insidious politics of the federal government.

379 Id.
381 Id.
382 Id.
385 Id.
386 Id.
387 Id.
388 Id.
The main problem with the legislation was that President Nixon and future presidents retained the power and authority to appoint members of the LSC board. This was a critical concession. Once the law was in effect, each President could control the political ideology of the board of LSC. Thus, again, the independence so long sought after by advocates of legal services remained in jeopardy.

The LSC Act, with these provisions and others, was signed into law by President Nixon right before he resigned from office in August 1974 in the midst of the Watergate scandal of July 26, 1974; it was one of his last acts as President.

C. Ronald Reagan

Naturally, upon the election of Ronald Reagan as President of the United States, LSC and all of the programs that it funded since 1974, including NLSP, would come under a vicious financial attack. While Reagan was Governor of California, his dislike of legal services programs for the poor became well known. Reagan’s desire to re-make legal services for the poor in the United States would ultimately have a great impact upon NLSP. During the Carter Administration, LSC enjoyed good funding levels for four consecutive years. In fact, under President Jimmy Carter, LSC experienced its only period of “minimum access” – a level of funding sufficient to provide a minimum of two lawyers per 10,000 poor people.

Under President Ronald Reagan, the call for change was immediate and substantial. Reagan’s Budget Director, David Stockman initially called for a twenty percent decrease in funding for LSC. However, Reagan’s budget request for the program in his first budget proposal as President would abolish the program entirely by offering “zero funding” to LSC for 1982. Representatives from NLSP testified at Congressional hearings and urged clients to contact Congress as well, in an effort to salvage funding for LSC and for NLSP that was heavily dependent upon the funding. In the end, President Reagan partially achieved his goal. LSC would have to endure a significant decrease in funding in the new era of more conservative lawmaking. While LSC would continue to exist, the funding

389 Id.
390 The Act also contained numerous restrictions on activities including, but not limited to, limitations on cases involving abortion, desegregation, military desertion, and balloting. See 42 U.S.C. § 2996 (1974).
391 Legal Services Bill is Signed, WASH. POST, July 26, 1974, at A7.
392 See supra notes 366-70 and accompanying text.
394 Id.
395 Al Kamen, Budget Cuts at Legal Services Corp. Are High on Stockman’s Hit List, WASH. POST, Feb. 16, 1981, at 7.
397 Id.
changes represented a monumental change for NLSP and for programs all over the country.

NLADA, the legal aid advocacy organization, describes the cuts in LSC funding as follows:

In response to pressure from the White House, Congress reduced funding for the Corporation for 1982 by 25 percent, slashing the appropriation from $321 million in FY 1981 to $241 million in FY 1982. The cut represented an enormous blow to legal services providers nationwide. Programs were forced to close offices, lay off staff, and reduce the level of services dramatically. In 1980, there were 1406 local field program offices; by the end of 1982 that number had dropped to 1121. In 1980, local programs employed 6559 attorneys and 2901 paralegals; by 1983, those figures were 4766 and 1949, respectively. Programs also cut back on training, litigation support, community education, and a host of other efforts.\(^{398}\)

The decrease in funding at NLSP as a result of Reagan's financial assault on the program was catastrophic. The program lost $456,000 in funding from LSC.\(^{399}\) The effect on operations at NLSP was felt by 1983. The program, like most programs, would not be able to continue its operations in the same manner. For NLSP, this translated into the loss of numerous attorneys and the closure of two of its neighborhood offices.\(^{400}\) Luckily, the program was somehow able to continue to operate its pure neighborhood concept with offices located in numerous neighborhoods in 1985.\(^{401}\)

D. Staying the Course

Despite the reduction in funding, restrictions on programs, and greater oversight from the federal government, NLSP, under the direction of Willie E. Cook, Jr.,\(^{402}\) continued to pursue its mission as it had done from the first day of its operations. Diligent legal assistance continued to be offered at five neighborhood offices and a law reform unit, a testament to the dedication of the program to its mission over the years. Dedicated and very experienced veteran attorneys remained in the program despite low salaries and the lack of a pension plan.

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401 According to the NLSP's old letterhead, in April 1985, following the first decrease in funding, NLSP was operating five neighborhood offices at the following locations in the District of Columbia: 1130 6th Street Northwest; 3166 Mount Pleasant Street Northwest; 1213 Good Hope Road Southeast; 1337 H Street Northeast & 2804 Martin Luther King, Jr. Avenue Southeast The program also operated a law reform unit at the time.
402 Cook was appointed Executive Director in 1975. Cook, Jr. Interview, *supra* note 191.
Lynn Cunningham, director of the program’s law reform unit during this period and one of several dedicated NLSP veteran attorneys, forged a second wave of important litigation conducted by NLSP during his time working in the program. The important legal victories achieved by the program were in the wide array of areas: housing, welfare, food stamps, Medicaid, and homelessness. Cunningham was “given free rein” to work on almost any kind of case. He also was able to effectively partner with local law firms who would eagerly litigate cases on a pro bono basis. This aspect of NLSP’s work enabled the law reform unit to continue to produce outstanding results despite the huge funding cut in 1982 by President Reagan. Cunningham’s legal work was extremely creative as well.

Franklin v. Kelly was a challenge to the manner in which the District of Columbia was administering its food stamp program in the city. Cunningham brought the lawsuit because the District of Columbia had been “engaging in practices that discourage or prevent the filing of applications, failing to provide information and assistance to homeless persons and to AFDC recipients who are categorically eligible for expedited assistance, and delaying the processing of applications.” The District Court, as a result of the lawsuit, appointed a special master to monitor the system and seek a systemic overhaul of the delivery of services.

In Salazar v. District of Columbia, Cunningham sought a similar repair of the city’s failing Medicaid delivery system. There were multiple plaintiffs all alleging violations of Medicaid statutes and federal civil rights laws. The suit, which achieved the goal of improving and exposing the city’s defective Medicaid system, eventually became a class action that continues today with enforcement mechanisms still operating effectively.

403 Lynn Cunningham graduated from Columbia Law School in 1972. From 1972-1978, Cunningham was in private practice, including working in the law offices of Florence Roisman, which actually served as the D.C. branch of the National Housing Project. Cunningham began working for NLSP in August 1977 and remained at NLSP until 1996. Cunningham was Director of the NLSP Law Reform unit from 1980-1996. From 1996-2005, Cunningham was a Clinical Law Professor at the George Washington University School of Law. Cunningham, also an ordained Episcopal Priest, currently resides in Dubois, Wyoming. Telephone interview with Lynn Cunningham, Rector, St. Thomas Episcopal Church, in Dubois, Wyo. (May 2006) [hereinafter Cunningham Interview].

404 Id.
405 Id.
408 Id.
411 954 F. Supp. at 278.
412 Cunningham Interview, supra note 403.
Finally, the most important case NLSP tried during Cunningham’s reign as director of law reform is *Pearson v Kelly*. 413

E. *Pearson v. Kelly*

*Pearson v. Kelly* will be forever known as the public housing receivership case. *Pearson* was a lawsuit brought by NLSP and the Washington Legal Clinic for the Homeless with lawyers from Covington & Burling, NLSP’s long time legal partner. The lawsuit sought to, once and for all, alter the services received by low-income residents of the District of Columbia residing in public housing. 414 The suit was filed due to the failure of the city public housing agency to renovate vacant public housing units and offer these units to those in need of housing. 415

A lawsuit became inevitable when the agency received a “failing grade” in 1994 from the United States Department of Housing and Urban Development (HUD), the cabinet-level agency that provided funding for many of the District agency’s programs. 416 The local government previously expended considerable effort to try to correct the problems in the agency. 417 All efforts to correct the problems failed or fell well short of desired outcomes. 418 Cunningham had attempted to avoid a lawsuit by negotiating directly with government officials on the problems. 419 The poor ranking did not bode well for the District. Some of the reasons were familiar:

Of more than 11,000 units, at least 2,400 units were vacant and, in many cases, all but abandoned. More than half of the occupied units had substantial housing code violations. Winters routinely exposed residents in hundreds of units to lack of heat or hot water for varying periods of time, as DCHA maintenance staff struggled to patch old boilers, heating systems, and heating lines. 420

The suit filed by Covington & Burling, NLSP, and the Washington Legal Clinic for the Homeless was, in part, a class action civil rights lawsuit. The plaintiffs sued under 42 U.S.C. § 1983, 421 and “to enforce a section of U.S. Housing Act that

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413 No. 92-CA-14030 (Sup. Ct. D.C. 1994).
415 Id.
417 Id.
418 Id.
419 Id.
420 Id. at 75-76.
421 42 U.S.C. § 1983 (1871) (the civil rights statute) states, in relevant part that:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen
prohibits 'constructive demolition' of public housing by an agency failing to maintain the housing.\(^422\) The lawsuit also alleged that the public housing agency violated "the Annual Contributions Contract (ACC) between HUD and the agency by failing to maintain its public housing units in decent, safe, and sanitary condition."\(^423\)

The lawsuit was very successful and resulted in the placement of the public housing agency in receivership in 1995 to correct its problems in services and management delivery.\(^424\) By this point, the agency had been renamed the District of Columbia Housing Authority (DCHA) through separate legislation that would place it outside of the District of Columbia government.\(^425\) DCHA, once a beleaguered provider of public housing, was released from receivership in 2000 and had greatly improved its service delivery and reputation.\(^426\)

\[ F. \textit{Roy Pearson} \]

In addition to the outstanding legal work orchestrated by Lynn Cunningham, the program also benefited for over twenty years from the leadership of Roy L. Pearson, Jr.\(^427\) Pearson's work was indicative of the kind of legal activity that NLSP had been engaged in from the beginning, back in January 1965.

Pearson was one of the best attorneys the program hired. He tried numerous important cases and was central to the ability of the program to remain operating as a public defender program.\(^428\)

\(^422\) Cunningham, supra note 416, at 78.
\(^423\) Id.
\(^424\) Id. at 84-88.
\(^427\) Roy Pearson was born on August 14, 1950 in Chicago, Illinois, attended public schools in Chicago, graduated from Lake Forest College in Lake Forest, Illinois and the Northwestern University School of Law in Chicago. After graduating from law school, Pearson moved to Washington, D.C. to accept a graduate teaching fellowship at Georgetown University Law Center. For two years, he taught and administered a clinical program at Georgetown University Law Center for second- and third-year law students. Pearson then accepted a position with the D.C. Neighborhood Legal Services Program as a staff attorney. His trial accomplishments included two jury verdicts in excess of one million dollars. In 1989, Pearson was promoted to the position of Assistant Director for Legal Operations. In that position, he supervised five branch offices and two litigation units of the city-wide legal services program and a staff of up to sixty persons. Pearson departed NLSP in 2002. Currently, he is an Administrative Law Judge with the District of Columbia Office of Administrative Hearings. E-mail from Roy Pearson, Admin. Law Judge, D.C. Office of Admin. Hearings, to author (June 6, 2006) (on file with author) [hereinafter Pearson E-mail].
under so many difficulties, including financial problems directly attributable to
the cuts in funding. Pearson litigated numerous cases resulting in favorable re­
results for hundreds of poor people in the city of Washington, D.C. His most nota­
ble case was Woodner Co. v. Breeden.428

Woodner stands as an important case not only for its legal holdings, but for the
strategy it represented. Woodner was not a case where an almost defenseless te­
nant was sued and sought to prevent an eviction using the legal process. Woodner
involved aggressive action on the part of a group of tenants who resided in an
inner city apartment building full of housing code violations.429 The tenants re­
sided at 2440 16th Street, Northwest Washington, D.C. and had formed a tenant
association in 1979 due to the landlord's deplorable maintenance of the prop­
erty.430 In the meantime, the landlord was seeking to convert the property to
condominiums and was using various tactics in an attempt to empty the property
of all tenants.431 Ultimately, the competing agendas resulted in a complex and
lengthy lawsuit brought by the tenants with NLSP (Pearson) as counsel.

The tenants filed suit against the landlord, alleging “poor housing conditions”
and “intimidation by the landlord in attempting to convert the premises from
rental to condominium.”432 The lawsuit alleged, among other items, “intentional
infliction of emotional distress” and “nuisance” on the part of the landlord and
sought not only “compensatory damages,” but “punitive damages” as well.433 At
trial in February 1989, the tenants were victorious. The jury awarded the tenants
over $1 million in compensatory damages and $15 million in punitive damages
against multiple defendants.434 The District of Columbia Court of Appeals would
modify the trial court’s damage award to a degree but, in the end, the final settle­
ment between the parties did not result in an unfavorable outcome for the te­
nants.435 Woodner is another example of the creativity NLSP exhibited over the
years in seeking full redress for its clients despite restrictions on activities im­
posed by the federal government. Even under difficult circumstances, NLSP was
still able to pursue its mission.

429 Id.
430 Id. at 932.
431 Id.
432 Id. at 931.
433 Id. at 929.
434 Id. at 933.
435 According to Pearson’s account of the final decision in the case, the District of Columbia
Court of Appeals affirmed a jury verdict (with interest) of $1.3 million and remanded for a new trial
on the calculation of punitive damages. When the trial judge ruled that the defendants could pay up to
$25 million in punitive damages, they settled rather than have a jury determine the amount. The
amount of the settlement is confidential. Pearson E-mail, supra note 427.
G. Republican Takeover

The year before DCHA was placed in receivership due to the lawsuit filed by NLSP and others, the Republican Party surged to power in the November 1994 Congressional elections and took control of the United States Congress.\(^{436}\) For the first time in decades, Republicans controlled both legislative chambers of Congress.\(^{437}\) LSC was, once again, immediately a target of conservative ire and was earmarked for extinction.\(^{438}\) It also looked as if NLSP would sustain too large a decrease in funding to survive into the future.

In 1996, two years after the Republican takeover, NLSP experienced another severe loss in funding as a result of the Republican rise to power. LSC’s funding was reduced from $400 million in 1995 to just $278 million in 1996.\(^{439}\) NLSP sustained a fifty-six percent decrease in funding. The law reform unit was closed following the decrease, as were four neighborhood offices.\(^{440}\) Staff positions were eliminated and long time employees resigned. Following its second restructuring, NLSP operated just three offices: a Southeast office, a Northwest office, and a Northeast office. The Northeast and Northwest offices operated from the same building.

Also, a number of additional restrictions were placed upon programs such as NLSP that received federal funding. While restrictions on activities had been passed previously into law, these restrictions were especially limiting for a program that prided itself on its ability to make a difference in the lives of poor people through aggressive legal work. The restrictions included prohibitions on cases involving “legislative redistricting, challenges to welfare laws or regulations, and civil lawsuits on behalf of prisoners and many categories of immigrants.”\(^{441}\) Lawyers from programs such as NLSP were also forbidden from participating in “class actions, claiming court-ordered awards of attorneys’ fees, and engaging in lobbying.”\(^{442}\) Most destructively, the restrictions extended to activities “paid for by other non-LSC public funds (other than tribal funds)”\(^{443}\) as well. As an example, this restriction meant that programs could not collect outside funding to file


\(^{439}\) Whelan, *supra* note 393, at 18-19.

\(^{440}\) This account of this period is based upon author’s own firsthand knowledge of the events at the time. From 1993 to 1998, the author was a staff attorney at NLSP and was in attendance at numerous meetings where the changes were announced.

\(^{441}\) Roslyn Powell, *LSC Restriction Fact Sheet #5*, (June 20, 2001), http://www.brennancenter.org/programs/pov/factsheet_nonlsc.html.

\(^{442}\) *Id.*

\(^{443}\) *Id.*
class actions if they receive any LSC funding. The restrictions have been modified slightly due to litigation, but programs such as NLSP funded by LSC are still in a very precarious position.

H. Antioch Speech

If there was any individual who best expressed the sentiments of the legal services community and NLSP during the difficult era of decline in legal services programs, it was the Executive Director of NLSP, Willie E. Cook Jr. On August 12, 1985, well before the 1996 funding decrease that NLSP had to endure, and sometime before all of the other troubling issues began surfacing, Cook spoke at the Antioch School of Law banquet to welcome new students, faculty, and administrators. Cook’s speech that day is one of the most important, yet widely unknown, expressions of those involved in the neighborhood legal services movement since the early 1960’s.

Antioch School of Law was a public interest clinical law school founded by Jean Cahn and Edgar Cahn in order to train public interest lawyers who would work on behalf of individuals who could not otherwise afford an attorney. Antioch arose from the same energy that resulted in the creation of NLSP, the Reggie Program, and the national legal services work founded under OEO. At the time it was founded, Antioch Law School was a revolutionary idea. Cook’s appearance at Antioch was more than appropriate and his speech was full of important issues that would soon dominate the rest of his tenure at NLSP.

Welcome to the latest horror movie in town. It is a B Grade, starring a bit player, who I am told is a great communicator. It’s main ingredients are: safety nets for the poor, new federalism, tax exemptions for racist educational institutions, increased unemployment, recession, multi-billion dollar budgets for bombs and MX missiles, attacks on affirmative action, decimation of programs that benefit poor people, tax bonanzas for corporations and rich friends, and – oh yes, less I forget, glittering china for state dinners, served by a hostess who I am told has exquisite taste and penchant for million dollar gowns. The star of this show, our commander in chief, is the darling of the New Right. His followers call him the best hope of getting the government off people’s backs. I grew up on the corner of 15th and P Streets, Northwest, here in D.C., and I don’t have any problems piercing pearpdent smiles. I recognize racist menaces when I see them.

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444 Id.
445 See supra note 16.
447 Cook, Jr. Address, supra note 10.
Cook’s address was a mixture of politics and anger, as it presented the dilemma of legal services and what the future held for such programs in the starkest of terms. In fact, in the early portions of the speech, it seems as if Cook is comparing the dilemma of legal services programs to the historical plight of oppressed groups:

I hear a lot these days about the inappropriate tactics of the 60’s. We are told that we need to be careful, not to offend people with strident rhetoric. I say Bullshit. If there is anything that Black people learned long ago, it is that oppressors will stuff as much down our throats that we are willing to swallow. The by-word folks is – resistance – planned, organized, and sustained. To those of you in this audience who are serious about justice for those who are disenfranchised, your allegiance should be first and foremost, to those principles and ideals, not to an oppressive system that doesn’t respect people. Whether you are in legal services or private practice, it is important to understand that this system – legal, economic, and political – places little or no value on poor people or people of color. It will not matter if you are courteous, reasonable, or conciliatory. You will still get a foot up your ass. We should use our legal skills to confront and challenge this system on behalf of people who are disenfranchised.\textsuperscript{448}

Cook implored his audience that as “public interest lawyers” they had a “responsibility to the people” they serve.\textsuperscript{449} In Cook’s view, the poor and people of color were viewed with “contempt” in this society; therefore, there was only one choice – oppose the repression that was always at work.\textsuperscript{450}

Cook reserved some of his harshest words for the Legal Services Corporation (LSC) in the speech. At the time, Ronald Reagan was still President, and LSC reflected Reagan’s view of legal services programs. But Cook’s speech highlighted the new difficulties legal services programs such as NLSP had to confront daily in order to survive.

For the past three years the Legal Services Corporation has conducted a vicious campaign of terror and intimidation directed at clients, legal services employees, and legal services programs. This has resulted in a level of fear that has paralyzed some people in our community. We all know the long list of outrageous actions that have been taken by the Legal Services Corporation in recent months. They have raided regional offices and seized personal papers and other documents, without regional office personnel consent.

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\textsuperscript{448} \textit{Id.} \\
\textsuperscript{449} \textit{Id.} \\
\textsuperscript{450} \textit{Id.}
\end{flushright}
Where are we in Legal Services? Is this Nazi Germany? Is there any freedom of thought and expression left?451

Cook's speech again revealed the lack of independence of the legal services programs. The programs so desperately in need of total autonomy to represent their clients effectively had not achieved that goal. The Reagan era had been a revelation in that respect. Cook's call for resistance from legal services providers back in 1985, however, was a foreshadowing. NLSP and all the other legal services' programs were still impeded by political and governmental pressures.

Cook's speech was a call to legal arms against the Legal Services Corporation and the political forces that were now in charge of the agency. His call was simple: resist and oppose any and all tactics implemented by LSC and work diligently and zealously, as before, on behalf of the clients.452 In Cook's opinion, no sacrifice seemed too great, no compromise need be sought under circumstances where LSC was being used to destroy all of the great programs all over the country:

We must be willing to stand up and face our enemies squarely during these times of adversity. If you are looking for a safe job, Legal Services is not the place for you. It is not safety we should strive for, but justice for our clients. I have an unyielding optimism about the survival of ideals and principles that are fair to people. If we believe in those principles and ideals, then we must fight for them.453

In the end, Cook's final charge was for the legal services community to be "unbowed, unafraid, unyielding, and uncompromising."454 Cook would deliver that speech or offer some version of it numerous times over the years, and never once did he waver from his own personal and professional ideals.455

Despite the efforts of Cook and many others, however, the political changes in the federal government over the years eventually led to modifications in NLSP's service delivery. NLSP could not stem the tide of change in the system and the program became something entirely different from its original aggressive style and clearly less effective. Roy Pearson most accurately summed up the catastrophic alterations in the program over the years that effectively ended NLSP's run as a revolutionary legal services program. Pearson states that, among other things, the following factors led to the diminishment of NLSP in the legal services community:

451 Id.
452 Id.
453 Id.
454 Id.
455 The author notes that Cook delivered a version of this speech at the D.C. School of Law while he was a student at the law school. See Cook, Jr. Address, supra note 10. In addition, some of the comments appear in a 1995 Washington Times article on Cook entitled, Lawyer is Defender of the Poor. Adrienne Washington, Lawyer is Defender of the Poor, WASH. TIMES, Apr. 24, 1995, at C6.
a) The low level of compensation and lack of retirement benefits (which meant continued turnover of staff); (b) the Reagan administration's success in defunding the back up centers that had provided training and research assistance to field programs such as NLSP; (c) the Reagan administration's success in dramatically cutting back grants to legal service providers and in restricting the kinds of cases we could handle; (d) LSC's prohibition on NLSP seeking or accepting attorneys' fees.  

All of these factors and others, according to Pearson, led to the demise of NLSP and reduced the program to a state that Lynn Cunningham describes as irrelevant and "in the background." Thus, as had been the concern from the very beginning, the first great neighborhood-based legal services program for the poor in the United States was changed due to the inability to insulate itself from politics. The "volatile political buffeting" that Terry Lenzner warned about as dangerous to programs like NLSP had done its damage, and the damage could not be undone.

IV. THE FUTURE IS NOW

Even under very difficult conditions of operation, with poor funding and poor resources, NLSP in its later years was able to manage several very important legal victories in appellate court. The program continued to operate its three neighborhood offices, although only one office was truly in a neighborhood. Thousands of clients were serviced, even during the restricted period. The legal victories achieved by NLSP time and again were precedent-setting legal cases that will have a far-reaching effect on the rights of the poor, and in at least one very important case, the disabled. One very important legal victory occurred in an area of the law that NLSP usually did not participate in on an on-going basis. The evolution of housing law made it necessary. This case was most illustrative of the kinds of victories NLSP achieved in a very different time.

A. Kriegsfeld v. Douglas

*Kriegsfeld v. Douglas* is one of the program's legal victories in the field of fair housing. While the case began as a landlord-tenant action alleging violation of the lease, it was ultimately decided based on the laws and regulations relating to the Fair Housing Act.

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456 Pearson E-mail, supra note 427.
457 Cunningham Interview, supra note 403.
458 Lenzner, supra note 373, at 45.
459 The author was counsel in the case both at the trial level and for the successful appeal to the Court of Appeals. At the time of the case, author was a staff attorney in a neighborhood office at NLSP. Following his departure from the program, NLSP and the Legal Aid Society handled the *en banc* appeal following the first successful appeal.
The issue was simple: a mentally ill, alcoholic tenant named Evelyn Douglas was sued for possession of her apartment due to poor housekeeping and unsanitary conditions. On behalf of Douglas, NLSP requested a reasonable accommodation in an effort to prevent an eviction by assisting her in complying with the lease agreement. A social worker that had been working with Douglas offered to provide housekeeping assistance. NLSP requested that: Douglas be allowed to remain in her apartment, the housekeeping assistance would begin, and the suit be stayed or dismissed pending an attempt to accommodate the tenant.

NLSP presented a case to the court that asserted defenses for Douglas under the Fair Housing Act. Testimony from a social worker and from a mental health expert was available for the Court. Both stated that Douglas's mental illness prevented her from keeping her unit in sanitary condition. The tenant required assistance. The fact that there was evidence that the landlord knew she was mentally ill and that the landlord was aware of the request for reasonable accommodation was brought before the Court. At every step of the proceedings, Kriegsfeld refused to consider the accommodation. The trial judge refused to allow the testimony to be presented to a jury and refused for any consideration of the accommodation request under the Fair Housing Act. Douglas was rendered defenseless and was evicted.

The case, as expected, reached the District of Columbia Court of Appeals. The Court embraced all of the arguments presented by NLSP and reversed the trial court's rulings. Senior Justice John Ferren, writing for the majority, was emphatic about the core issue at stake:

We do not address that question of ultimate remedy, which may or may not become an issue. But we do agree with the tenant that the trial court erred in its rulings, and that this case must be remanded for a new trial in which she may present her discrimination defense to the jury.

The Court essentially held that the accommodation offered by NLSP on Douglas's behalf could not simply be ignored by the landlord or dismissed.

Following a successful petition for *en banc* review by Kriegsfeld, the Legal Aid Society and NLSP filed briefs on behalf of Douglas resulting again in a

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461 *Id.* at 954.
462 *Id.*
463 *Id.* at 954-56.
464 *Id.* at 954.
465 *Id.* at 964-67.
466 *Id.* at 956.
467 *Id.* at 968.
favorable ruling for the tenant, Evelyn Douglas. The decision was nearly the same as the original opinion. The decision resulted in a remand of the case back to the trial court for a consideration of the reasonable accommodation defense.

The Douglas cases are extremely important for tenants who suffer from disabilities and are sued for possession due to a violation of their lease that can be linked to their disability. Further, NLSP also established itself in the field of fair housing.

B. NLSP 2006

On a day-to-day basis, life at NLSP, the most important neighborhood-based legal services program ever created in the United States, continues. It has survived. There are still three neighborhood offices and the important and unique relationship between NLSP and Covington & Burling has never been stronger.

In 1994, NLSP and Covington & Burling began paying the ultimate complement to Howard C. Westwood by starting a legal fellowship for recent law school graduates in his honor. Originally, Covington & Burling wanted to celebrate the 25th anniversary of the partnership between NLSP and the firm. However, it was decided that an excellent way to celebrate the work of Howard C. Westwood would be to begin legal fellowships in his name. NLSP still receives two Westwood fellows from Covington & Burling each year. NLSP’s funding with LSC continued uninterrupted throughout the turmoil that emerged in the late 1990’s. There were some difficult moments, but the funding continued. In 1997, NLSP received funding in the amount of $838,489; in 1998, NLSP was granted $781,508. By 2001, the grant award had increased to $849,867. The funding was, unfortunately, still inadequate. Salaries for staff and attorneys remained very low; therefore, many long-time veteran attorneys departed the program under these conditions. Luring new talent has also proven difficult. In early 2003, after twenty-eight years as director of the program, Willie E. Cook, Jr., the heart and soul of the program, retired. The program’s funding for ensuing years has been similar, and most of the restrictions continue to hamper the program’s activities. NLSP’s funding amounts from 2003-2005 consist of the following amounts: $758,610 (2003); $927,440 (2004); $922,278 (2005). The city of Washington, D.C. is a much different city than it was when NLSP took up the cause of equal

469 Barbara McDowell of the Legal Aid Society argued the second appeal although NLSP was still on record as Counsel. The author, counsel in the first appeal and the trial, had resigned from NLSP in November 2003.
470 Douglas, 884 A.2d at 1115.
471 Leverich Interview, supra note 328.
472 Id.
justice for the poor with passion and energy never seen before in any city nation­wide. There are numerous small legal services providers available in the city. There are law school clinics. The local bar and other bar associations are more engaged in the plight of the city’s most vulnerable citizens. Much of this more aggressive engagement by new legal services providers is directly attributable to the indomitable standard set by NLSP over the last forty years, especially in the early years. The new programs in Washington, D.C. have also focused more on providing services directly in the communities on a regular basis.

The LSC restrictions placed upon the program still hamper its ability to conduct large scale, impact litigation on its core issues. Thus, the problems NLSP encountered over the course of its history should be a lesson to the other programs in the future – complete independence from the winds of political change is mandatory. Funding for programs must be more than adequate; funding must be consistent and reflective of the financial realities that young legal professionals will encounter.

As for the dynamic personalities who forged the NLSP revolution: Where is the next Howard C. Westwood, Edgar Cahn, Jean Cahn, Willie E. Cook, Jr., Florence Roisman, Mozelle Moody, Norman Barnett, and all the others that made lasting impressions through their service? Perhaps most of all, this part of NLSP – talented and unique legal advocates who seized the moment – will be difficult to replicate; the various factors that coincided in the 1960’s that brought NLSP into existence will likely not happen again. Yet, the pendulum of equal justice is unbalanced again and needs to be recalibrated, and the community eagerly awaits tomorrow’s heroes for equal justice.