

# CALIFORNIA RURAL LEGAL ASSISTANCE: THE STRUGGLES AND CONTINUED SURVIVAL OF A POVERTY LAW PRACTICE

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## INTRODUCTION

*In the small towns of America and the State of California . . . [the migrant and the Chicano migrant] had no one to resort to except the lawyer that was representing the Chamber of Commerce or the farmer or the farm corporation, the fellow that would hesitate to take a case because once having taken it, he would lose the business of the commercial people. . . And so the migrant had no recourse whatever . . . The frustration builds, and you have no trust in the judicial system, no trust in the lawyers, no trust in the administration of justice . . . And CRLA came along and they found out that they could trust in people, that once again they could resort to the courts and not to the streets . . . [A] major role that CRLA has played in serving the poor and instilling faith in them and saying, well, this system may work for us . . . And I know that in many areas of California this organization is not known as the California Rural Legal Assistance but as the Chicano Rural Legal Assistance, because it helps the Chicano . . .*

- Mario Obledo, General Counsel, Mexican American Legal Defense and Education Fund, before the Commission on CRLA, April 27, 1971<sup>1</sup>

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\* Executive Director of California Rural Legal Assistance, Inc., Stanford University, 1974; J.D. Boalt Hall, University of California. With very special thanks to Juan Carlos Cancino (Staff Attorney, CRLA), William Hoerger (Director of Litigation, Advocacy, and Training, CRLA), Deborah Escobedo (Staff Attorney, Youth Law Center), and Dean and Law Professor Leo Martinez, UC Hastings College of the Law for their research assistance and editorial input. As in the 1972 article, the author has used the pronoun “we,” and its various forms such as “our” and “us;” these are intended to refer to CRLA as an independent entity and its staff. The article’s title is borrowed from the 1972 CRLA article published in the first issue of this law review. A shorter version of this article was published as *Legal Services Practice: Devolution to Second-Class Justice*, 10 *POVERTY & RACE* 5 (2001), available at [http://www.prrac.org/full\\_text.php?text\\_id=714&item\\_id=7762&newsletter\\_id=58&header=September/October%202001%20Newsletter](http://www.prrac.org/full_text.php?text_id=714&item_id=7762&newsletter_id=58&header=September/October%202001%20Newsletter). Parts were also taken from the 2001 16th Annual Ernesto Galarza Commemorative Lecture, presented at Stanford University, May, 2001, entitled “Surviving 35 Years of Poverty Law Practice: Salvaging Justice-Promises Made to Latino Rural Poor.”

1. Michael Bennett and Cruz Reynoso, *California Rural Legal Assistance (CRLA): Survival of a Poverty Law Practice*, 1 *CHICANO-LATINO L. REV.* 1, 1-2 (1972).

Nearly 40 years ago, the first volume of the Chicano-Latino Law Review began with the above testimony from Mexican American Legal Defense and Education Fund (“MALDEF”) General Counsel Mario Obledo.<sup>2</sup> Obledo was defending California Rural Legal Assistance (“CRLA”) before a blue ribbon commission established by the Office of Economic Opportunity (“OEO”).<sup>3</sup> The purpose of the commission was to review the myriad charges lodged against CRLA in the *Uhler Report*, which was used by Governor Ronald Reagan to rationalize his veto of CRLA’s Legal Aid funding.<sup>4</sup>

CRLA has now survived 40 years since the infamous 1970 Reagan veto, and if political survival were the true gauge of a successful Legal Aid<sup>5</sup> program, then CRLA would consider itself successful indeed.<sup>6</sup> But viewed through the prism of 1960s idealism that gave birth to CRLA, an idealism that believed the injustices of American poverty could be reduced or even eliminated through a concerted government war on poverty,<sup>7</sup> CRLA’s success has in many ways been stunted by political interference. Poverty remains and has in fact increased in many ways throughout rural California.<sup>8</sup>

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2. The subject of these hearings was also discussed in other law reviews. See Jerome Falk and Stuart Pollak, *Political Interference with Publicly Funded Lawyers: The CRLA Controversy and The Future of Legal Services*, 24 HASTINGS L.J. 599, 599-646 (1973).

3. The OEO was established by the 1964 Economic Opportunity Act (“EOA”), Pub. L. No. 88-452, 78 Stat. 508, 42 U.S.C. § 2701 (1964), to administer President Johnson’s anti-poverty programs.

4. In 1970, Governor Reagan vetoed CRLA’s federal OEO funds in an effort to eliminate a program whose cases had negatively impacted the Governor’s own welfare policies and the economic interests of conservative supporters, including the state’s agricultural industry. Primary examples of these cases were *Morris v. Williams*, 67 Cal. 2d 733, 63 Cal.Rptr. 689 (1967), which restored \$210 million of Reagan cuts to the state’s Medi-Cal program, *Ortiz v. Wirtz*, No. 47803 (N.D. Cal. 1967), and *Alaniz v. Wirtz*, No. 47807 (N.D. Cal. 1967), which successfully challenged the importation of Mexican laborers (“Braceros”) into California.

5. “Legal Aid” or “Legal Services Program” refers to the system of civil legal services provided to America’s poor by the federal government originally funded under the OEO and later under the Legal Services Corporation Act of 1974, 42 U.S.C. § 2996 *et seq.* (1974) [hereinafter LSC Act].

6. In response to Reagan’s veto of CRLA’s funding and other controversies at the time, Legal Aid was removed from state level politics and OEO oversight. Through the passage of the LSC Act, a new quasi-governmental agency – the Legal Services Corporation – was established and charged with regulatory and other programmatic oversight of all Legal Aid programs, including CRLA.

7. Lyndon Johnson, President of the United States of America, State of the Union Address (Jan. 8, 1964), available at <http://www.c-span.org/Events/Lyndon-B-Johnson39s-1964-State-of-the-Union-Address/10737419004/> (declaring a “War on Poverty”).

8. In 1970, CRLA’s network of ten regional offices served a low-income population of 186,512. Thirty years later, after CRLA went through an LSC initiated reconfiguration that increased its regional office sites from eleven to fifteen, the poverty numbers increased to 554,731 or nearly tripled. The overall state poverty data is also compelling. According to the 2000 Census, California has the largest poverty

CRLA joined the War on Poverty when it submitted its first OEO application in March 1966 – a “Proposal to Aid Farm Workers and Other Persons Residing in the Rural Areas of California” – and was allocated \$1,276,138 to begin its rural work. CRLA has continued in a “war” mode ever since. Addressing the needs of California’s isolated rural poor and migrating farm worker population requires a type of Legal Aid that is aggressive and willing to litigate statewide policies and practices that adversely impact these communities. For this reason, CRLA has attracted political opposition and governmental interference since its inception. That interference has proven to be ideological in nature and has included opposition to CRLA’s advocacy relating to welfare reform, abortion, immigrant rights, civil rights, voting rights, desegregation, ethnic representation (specifically Latino), and farm labor rights.<sup>9</sup> It has also included ideological opposition to otherwise accepted legal practices, namely, client solicitation and class actions.<sup>10</sup>

This essay describes how CRLA advocacy has remained vibrant and relevant for California’s rural poor and how its contemporary work is just as important as ever as CRLA fights for its own survival and for social change. This is the story of how CRLA has continued its legal reform practice when federal support waned or became outright hostile to the very existence of a national legal services program. Part I describes what distinguished CRLA from mainstream Legal Aid practice during its founding years and continues to do so today — its unique structure and its focus on serving the most vulnerable communities. Part I also provides a glimpse into the work of CRLA, which advances its mission to further access to justice for those most in need of it. Part II describes representative battles CRLA has faced against federal audits and investigations. Oftentimes these audits and investigations were motivated by the desire to chill advocacy considered too controversial. In whole, this essay demonstrates CRLA’s commitment to making real impacts on behalf of some of the state’s most vulnerable populations, and the con-

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numbers in the country with 4.7 million poor. The number of people in poverty increased in the United States by 30% or 1,955,826 and California’s increase was 1,078,545. Therefore, of the total poverty increase in the country, 55% occurred in California. Also of note is that 26% of California workers earn poverty-level wages. In sum, CRLA, with 554,731, has 12% of the state’s poor in its service areas. CRLA’s numbers are virtually equal to the poverty numbers of Indiana and Massachusetts.

9. Since 1974, the LSC Act restricted the use of LSC funds for certain enumerated advocacy activity, including, but not limited to, the following: organizing activity; abortion rights; school desegregation; and those related to military service. See LSC Act, *supra* note 5, at § 2996(f)(b) (1974).

10. See *id.* § 2996(f)(a)(5)(A); see also 45 CFR § 1617.3 (2010).

sequences this type of bold advocacy can have for organizations committed to doing the work.

CRLA's history through five presidential administrations illustrates how efforts to ration justice have impacted not just one program, but scores of rural clients and those seeking justice. It shows how national and state politics continue to subvert a principle that seeks to free Legal Aid of political interference<sup>11</sup> and allow lawyering to be ethical and professional in pursuit of justice for its clients, in this case California's rural poor. This is also a story of survival. Although many anti-poverty programs have fallen victim to the politics of assaults on legal aid, CRLA has remained committed to its founding mission and continues to understand and execute its work as a war on rural poverty.

## I. MAINTAINING A WAR ON POVERTY: ORGANIZATION, PHILOSOPHY AND PRACTICES THAT MADE CRLA DIFFERENT<sup>12</sup>

### A. *The Great Debate: The War on Poverty, With or Without Law Reform?*

From the very beginning, the critical debate regarding Legal Aid has been whether its purpose is to advocate for systemic reform to address issues of poverty, or to apply a "band-aid approach" that addresses individual needs on a case-by-case basis without challenging systemic causes of those needs – namely injustice and poverty.<sup>13</sup> Throughout the history of Legal Aid, its political opponents have relentlessly critiqued legal reform and civil rights work (including efforts to take on politically charged issues such as segregation, voting rights, immigrant representation, abortion rights, and to bring class action suits) as social engineering. Ironically, the bulk of Legal Aid work, including that of CRLA, has never been legal reform but rather addressing the day-to-day problems that burden all poor people; for example, access to public benefits, unlawful eviction, and domestic violence. In practice, CRLA has sought to do both, combining legal reform with individualized service work.<sup>14</sup>

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11. See 42 U.S.C. § 2996(5) (2010) (stating, "The Congress finds and declares that . . . to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures.").

12. This part mirrors the Bennett & Reynoso article, *supra* note 1, which describes what distinguishes CRLA's poverty law practice and explains which principles endured over time despite governmental interference.

13. See generally Alan W. Houseman and Linda E. Perle, *Securing Equal Justice for All: A Brief History of Civil Legal Assistance in the United States*, CENTER FOR LAW AND SOCIAL POLICY 4 (2007), available at <http://www.clasp.org/admin/site/publications/files/0158.pdf>.

14. See Bennett & Reynoso, *supra* note 1, at 3, 21 & n. 4. See also Falk & Pollak, *supra* note 2, at 606-608 & n. 3.

Under the OEO, CRLA was the first rural and the first statewide Legal Services program in the United States. As was first noted in the Bennett and Reynoso article of 1972,<sup>15</sup> and continues to ring true, CRLA has never wavered from its goal to provide unrationed Legal Aid to California's rural poor.<sup>16</sup> In order to accomplish this goal, CRLA has maintained the following organizational principles: (1) a statewide corporate firm structure; (2) a balanced legal advocacy practice that provides individual quality representation while at the same time seeks resolution of systemic poverty issues with broader community and statewide impacts; and (3) a philosophy of prioritizing the most vulnerable within already impoverished populations.

B. *A Statewide Corporate Firm Structure and the Corporate-Plus Model*

Drawing on his experiences at the law firm of O'Melveny & Myers, CRLA's founder, James Lorenz, conceptualized the organization as a corporate firm for the poor. Lorenz made a conscious effort to create a law firm for the rural poor that was isolated from the influences of local politics. He accomplished this first and foremost through the firm's statewide scope, but also by adopting higher standards in litigation, high quality expectations in all legal work, and continuous training of lawyers and non-lawyers alike. As a non-profit, CRLA's model was based on the pursuit of justice and social change via legal reform for low-income clients in impoverished rural communities, rather than profit making, which lies at the heart of the private sector model. The firm's success would be measured by these criteria. Invariably, the legal reform-model of Legal Aid is juxtaposed to the basic Legal Aid service model that focuses on providing individual clients simple access to the civil legal system. However, to be a law firm akin to the corporate firms representing the rich, CRLA had to provide both quality legal defense as well as effective affirmative impact litigation, including a litigation practice active in both the appellate and supreme courts.

What sets CRLA's use of the "corporate" structure apart, however, is how non-attorneys play a key role. Unlike a mainstream law firm, CRLA functions with less paralegal support, emphasizing instead its community-worker capacity to engage in aggressive community development and client education efforts. Through this community-worker structure, CRLA has pursued community development akin to corporate transactional practice that might involve the incorporation of non-profits in rural com-

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15. See Bennett & Reynoso, *supra* note 1.

16. *Id.* at 2-3.

munities, the development of cooperative-type organizations, the provision of legal rights education, or client leadership training.

The statewide corporate model, with a centralized administration and branch office service delivery, has provided numerous advantages. It has allowed CRLA to maximize the delivery of field services by minimizing local office administration, both financially and in terms of personnel. It has allowed CRLA to maintain one financial system for budget administration. Just as importantly, it has allowed for centralization of legal experience through a "corporate partner" model where multiple Directors of Litigation with their own expertise bring complex litigation in all substantive areas within CRLA's priority practice areas.

Centralized legal expertise also allows entry-level attorneys who may be placed in an understaffed rural office the opportunity to serve as co-counsel on complex cases though they may have little prior litigation experience.

The model has also anticipated the needs of its client base to access not only courts, but legislative and regulatory entities as well. At the field office level, the ideal attorney practice combines individual client case representation with broad-impact advocacy in substantive areas mandated by the CRLA system of priority-setting.<sup>17</sup>

### C. *CRLA Advocacy: Defending Civil Rights and Protecting the Most Vulnerable*

Since 1972, CRLA's advocacy approach has always been to have field offices and attorney and non-attorney advocates maintain a "balanced" practice.<sup>18</sup> While some Legal Aid programs established special law reform units, CRLA instead opted for a centralized senior litigator structure that continues today. Although this group once functioned as a group of senior litigators managed by a Director of Litigation, the structure has evolved into a multiple litigation director model, loosely akin to a senior partner or a substantive practice model with individual directors divvying up oversight of field offices geographically. Substantive areas of advocacy are defined through a statewide priority-setting process convened every three to five years, reviewed annually by local offices, and ultimately approved by CRLA's Board of Trustees.

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17. See 45 CFR §1620 (2010).

18. Bennett & Reynoso, *supra* note 1, at 3 (noting that the initial CRLA proposal identified CRLA's "aim [to] 'develop long-range remedies which [would] assist the poor as a class and not just isolated individuals.'"). See also Falk & Pollak, *supra* note 2, at 606 (noting that "one of the principle characteristics of CRLA's activities has been the balance of its program" which included routine cases, representation of low-income groups, legislative activity and bringing "law reform" cases.).

By requiring a greater level of impact advocacy, this balanced approach has set CRLA apart. Subparts 1 and 2 provide a brief discussion of the type of impact advocacy that has distinguished CRLA's legacy, including Latino civil rights, impact advocacy for the rural poor and the most vulnerable.

### 1. *Defending Latino Civil Rights*

Mario Obledo was not incorrect in stating that CRLA's representation of Latino rural poverty interests came to signify, for many, that "CRLA" stood for *Chicano* Rural Legal Assistance. In 1969, CRLA engaged in the first formal attempt to identify issues central to its advocacy. Because California's rural demographics have continued to reflect a growing Latino/Chicano low-income population, CRLA's priorities have continued to reflect Latino issues. CRLA has continued to serve the distinct needs of these communities, which has led to significant Latino-related litigation and legislative initiatives.<sup>19</sup>

These initiatives benefit Latinos living in rural California, but also benefit Latinos living throughout California as well as the rural poor generally. In *Diana v. State Board of Education*, CRLA successfully challenged the use of English IQ testing on Spanish-speaking students that led to their disproportionate placement in classrooms reserved for the mentally retarded.<sup>20</sup> CRLA lawyers were instrumental in drafting the state's current Migrant Education Statute (AB 1382- 1981).<sup>21</sup> The passage of one of the first bilingual education statutes in the United States, the Chacon-Moscone Bilingual-Bicultural Education Act of 1976,<sup>22</sup> was a result of CRLA's legislative advocacy. In *Maria P. v. Riles*, CRLA lawyers obtained a preliminary injunction preventing a school district from denying a Latino child admission to school because of her non-citizen immigration status, preventing the same school district from reporting the child's immigration status to immigration officials, and preventing the state from implementing a provision of the Education Code that required such reporting.<sup>23</sup>

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19. See generally Elaine M. Allensworth & Refugio I. Rochín, *White Exodus, Latino Repopulation, and Community Well-Being: Trends in California's Rural Communities* (The Julian Samora Research Institute, Michigan State University, JSRI Research Report No. 13, 1996), available at <http://www.jsri.msu.edu/RandS/research/irr/rr13.pdf>.

20. CA 70 RFT (N.D. Cal. 1970).

21. See generally CAL. EDUC. CODE §§ 54440, *et seq.* (2011).

22. See *id.*; §§ 52160, *et seq.*

23. See 43 Cal. 3d 1281 (1987).

## 2. *Protecting the Most Vulnerable – Farm Worker Legal Services*

From its inception, CRLA has prioritized the most vulnerable among the rural poor: namely, farm workers. CRLA has understood that even among the poor, there are those that are poorer, those that are further marginalized by migrancy, language, culture, gender, or sexual orientation. It was from our concern for migrants that this philosophy grew.

The founding members of CRLA's Board of Directors included farm worker leaders Cesar Chavez, Dolores Huerta, and Larry Itliong.<sup>24</sup> In 1977, the special needs of farm workers were recognized at the national level when the Legal Services Corporation Act of 1974 was amended to direct the Legal Services Corporation ("LSC") to conduct a study regarding the special access problems of a number of groups including veterans, Native Americans, and "migrants or seasonal farm workers."<sup>25</sup> As a result of this study, special funds were set aside to provide legal services to some of those groups, including migrant farm workers. Since 1978, CRLA has received this special funding to provide legal services to migrant farm workers and their families. The institutionalization of migrant farm worker services ensured that this advocacy would remain at the core of CRLA's work as it has for the past thirty-two years. With this funding, CRLA launched its Migrant Unit with a specific agenda to provide systemic change through legal advocacy for migrant workers. The CRLA Migrant Unit's multifaceted advocacy strategy included litigation, legislative policy, and community-centered efforts to challenge rural poverty issues that specifically impacted migrant farm worker communities.

CRLA's advocacy on behalf of farm workers has changed over the years as the characteristics of migrancy itself have changed, particularly as migrants began "settling out" in California. This change began when in-state migrants won the right to remain in their home-base communities and collect unemployment benefits instead of having to migrate "upstream" to secure these wage replacements.<sup>26</sup> As points of entry for migrants have become more patrolled, more restricted, and more deadly, many migrants have made fewer and less frequent returns to Mexico, choosing instead to remain in California in the off seasons, often even when this means extended periods apart from family back

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24. See generally SUSAN FERRISS & RICARDO SANDOVAL, *THE FIGHT IN THE FIELDS: CESAR CHAVEZ AND THE FARMWORKERS MOVEMENT* 65-89 (1997).

25. See 42 U.S.C. § 2996(f)(h) (2010).

26. See generally STEPHEN H. SOSNICK, *Hired Hands: Seasonal Farm Workers in the United States* (1978).

in Mexico. For farm worker advocates, this more settled poverty has meant a much larger service population as well as new issues.

Yet the immigrant flow ensures that many legal issues remain similar or persist over time. Farm work continues to rank with construction and mining as one of the most dangerous and deadly occupations in the country and the dangers of heat exposure and exposure to toxins remain. Advocacy seeks to curb the most extreme dangers through preventative education and laws requiring the instruction and the use of protective clothing and equipment. CRLA advocacy has successfully resulted in the ban of some carcinogenic toxins like DDT and DBCP and CRLA currently seeks the banning of other toxins migrants are exposed to like methyl bromide. At the same time that CRLA seeks state-wide change, it assists individual farm workers who are victims of pesticide exposure, poisoned crews, and even entire rural communities exposed to pesticide drift from nearby field fumigations.

Farm worker-related impact litigation and administrative advocacy is a part of CRLA's legacy. In 1975, CRLA successfully challenged the use of the short-handled hoe in California fields.<sup>27</sup> In 1986, CRLA's legislative involvement in the enactment of the Immigration, Reform and Control Act ("IRCA") resulted in a new category of permanent residents referred to as "amnesty aliens."<sup>28</sup> Millions of immigrants were successful in obtaining legal permanent resident status through this effort, including farm workers who took advantage of the Special Agricultural Worker (SAW) and Replenishment Agricultural Worker (RAW) provisions. In 1993, CRLA successfully challenged the disqualification of some 300,000 amnesty applicants allowing them to seek legal status before the U.S. Supreme Court in *Reno v. Catholic Social Services*.<sup>29</sup>

In addition to these accomplishments and efforts, CRLA was also instrumental in bringing the issue of sexual harassment in the fields to the attention of the U.S. Equal Employment Opportunity Commission ("EEOC"). As a result, the EEOC began to recognize agricultural sexual harassment violations as a federal agenda item. In *EEOC v. Tanimura & Antle*, \$1.8 million was recovered by the EEOC for farm worker women who suffered sexual harassment in California fields.<sup>30</sup> CRLA also repre-

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27. *Carmona v. Div. of Indus. Safety*, 13 Cal.3d 303 (1975). See generally MAURICE "MO" JOURDANE, *THE STRUGGLE FOR THE HEALTH AND LEGAL PROTECTION OF FARM WORKERS: EL CORTITO* (2005).

28. See Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986).

29. 509 U.S. 43 (1993).

30. *EEOC v. Tanimura & Antle*, C-99-20088-JW (N.D. Cal. 1999). See William Tamayo, *The EEOC and Immigrant Workers*, 44 U.S.F. L. REV. 253 (2009). See also

sented immigrant farm workers who were targeted and brutally beaten in their *de facto* farm labor camps because of their proximity to new and developing subdivisions in San Diego County.<sup>31</sup> CRLA also challenged city ordinances that imposed restrictions on day labor sites as a result of anti-immigrant sentiment.

## II. USE OF FEDERAL AUDITS AND INVESTIGATIONS TO CHILL CONTROVERSIAL ADVOCACY

The reduction of funding and resources and the imposition of regulatory restrictions are just two of the governmental means that have been used to chill politically unpopular Legal Aid advocacy. In CRLA's experience, the aggressive investigatory authority of the federal government has proven equally debilitating. For CRLA, investigatory interference has come in two forms: (1) investigations of specific cases by LSC; and (2) hostile monitoring and auditing of program work by LSC or the LSC Inspector General. These means of interference have been used independently as well as in tandem. Both are easily triggered through political channels, for example, by direct requests of elected officials at the behest of constituent entities that have been impacted by or are otherwise opposed to Legal Aid advocacy.

Under the federal regulatory scheme, LSC has numerous options for influencing Legal Aid program activities as well. For example, LSC can suspend a Legal Aid program's funding,<sup>32</sup> deny the refunding of a program,<sup>33</sup> and/or sanction specific advocacy using a procedure commonly referred to as the "1630 Process," which questions resource expenditures and disallows costs.<sup>34</sup> Using other regulatory authority, LSC can fund programs for limited periods of time, impose special conditions on a program's funding for a limited period, or even force programs to merge. For its efforts on behalf of the rural poor, CRLA has been subject to virtually all of these varied forms of interference.

### A. *The 1630 Process*

The *1630 Process* has existed since the inception of Legal Aid. Its stated purpose is to provide "uniform standards for allowability of costs and to provide a comprehensive, fair, timely,

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William Tamayo, *The Role of the EEOC in Protecting the Civil Rights of Farm Workers*, 33 U.C. DAVIS L. REV. 1075 (2000).

31. See Dong-Phuong Nguyen, *Local Attack Mirrors Rise in Reported U.S. Hate Crime*, S.D. UNION-TRIB., July 21, 2000.

32. See 45 CFR § 1623.

33. See 45 CFR § 1625.

34. See 45 CFR § 1630.

and flexible process for the resolution of questioned costs.”<sup>35</sup> In CRLA’s experience, however, § 1630 has been used to target CRLA in response to bringing politically charged cases, particularly, cases that involve unpopular social issues that charge governmental bodies with varying forms of discrimination in violation of civil right statutes.

In rural communities, discrimination charges are more readily politicized because compact geographies and smaller populations make politics much more personal, an important reality in rural California. Intentioned or not, the message sent by LSC sanctions is that legal aid programs should disengage from such controversial 1630-inducing activity. By injecting a substantial element of risk into decisions to undertake such activities, political interference gives rise to a very serious tension within LSC-funded programs. Where a program’s controversial activity is directed by its board’s priorities (as required by federal regulatory mandate), program directors and advocates are caught between a rock and a hard place.

The CRLA cases presented in the following subsections were all directly responsive to specific CRLA Board priorities in the areas of civil rights, rural education and *colonia* poverty.<sup>36</sup> *Committee Concerning Community Improvement v. Modesto (“CCCI”)*<sup>37</sup> and *McBride v. Modesto City Schools (“McBride”)*<sup>38</sup> were two such cases. CRLA’s participation in the *Lickness* case<sup>39</sup> further highlights a questionable government response to CRLA’s representation of clients motivated by political sentiments.

35. *See id.*

36. *See generally* CHESTER HARTMAN, *POVERTY & RACE IN AMERICA: THE EMERGING AGENDAS* (2006). *Colonia* poverty has been a CRLA priority since 2003. Today CRLA receives significant non-federal funding to pursue litigation, community education and legislative strategies to address its socio-economic impacts. Some writers consider this civil rights advocacy as cutting edge.

37. 583 F. 3d 690 (9th Cir. 2009).

38. No. 372122 (Stanislaus Co. Superior Ct. filed June 8, 2005). *McBride* challenged a graduation standard that was established by the Modesto City School District for students graduating from 8th grade in 2005. Because of the standard, a large group of children in the special education program and limited English proficient children were not going to be allowed to graduate. Concerned parents asked the school board to reconsider its decision to exclude these children from graduation. On May 31, 2005, a little more than a week before graduation, the board voted to continue the policy. CRLA joined Protection & Advocacy, Inc. and challenged the district’s exclusion. A complaint and application for a temporary restraining were filed on June 8, 2006, eight days after the board refused to rescind its policies. Unfortunately the court denied the temporary restraining order, and the children were not allowed to graduate. CRLA has since withdrawn from the litigation because its client family did not wish to be involved further.

39. *See infra* note 42.

## B. CCCI and McBride

The *CCCI* and *McBride* cases, which were also subjected to the 1630 Process, dealt with ideologically charged subject matter. Although not class actions, they were multi-client actions that heavily impacted the interests of Latino clients, Latino immigrants residing in unincorporated places, and Limited English-Proficient students. Both cases involved civil rights actions. Unfortunately, bringing the litigation in both cases resulted in charges by the LSC Inspector General against CRLA, for the first time in its history, for over-representing Latino interests.

The *CCCI* litigation challenged poverty conditions wherein poor, unincorporated neighborhoods were excluded from city services. This litigation addressed a cutting-edge civil rights issue impacting the very basic quality of life for large segments of the rural poor, particularly historically excluded communities of color. *CCCI* was CRLA's first "municipal underbonding" case and, perhaps, the only such case ever litigated in California.<sup>40</sup> "Municipal Underbonding" refers to the situation wherein minority communities adjacent to cities fail to receive basic municipal services, such as water, sewers, streetlights and paved roads, because they are not incorporated within the adjacent cities.<sup>41</sup> Ironically, the LSC Inspector General reported that this type of impact does not address the type of day-to-day problems faced by Legal Aid clients.

For the Latino community, "municipal underbonding" and *colonia* poverty are one phenomenon, products of the same social and economic forces. Rural *colonias* are a form of residential segregation tied to the changing ethnicity of rural California characterized by high concentrations of Latinos and high concentrations of poverty correlated negatively to health, access to better jobs, housing, schooling, health care and other services. Studies indicate that to live in these "Mexican towns" is to accept inferior services and a higher risk of socioeconomic hardship. Rural *colonias* employ the greatest proportion of both men and women in farming, making them the principal centers of labor for farm production and processing in the state. Similarly, this type of segregation has its African-American counterpart. In other parts of the country, such as in Ohio and North Carolina, the same phenomenon and conditions impact African-Americans.

Both cases involve the bringing of multi-client litigation based on violations of civil rights and language rights. Both are

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40. As of the time of this writing.

41. See generally Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008).

strong examples of ethnic- and minority-based advocacy. They involve the rights of disabled clients, non-English speaking children and Latino communities. To attempt to chill this advocacy through an unsubstantiated Inspector General critique is also to undermine the advocacy work of other legal service programs working closely with African-American communities and other racial or ethnic communities.

C. *Lickness et al. v. Kizer et al.*<sup>42</sup> – *The Abortion Restriction and Rural Health Clinic Funding*

In *Lickness*, CRLA successfully challenged Governor George Deukmejian's decision to cut \$24 million of the \$36 million provided by the state legislature for family planning services provided by community health clinics in California. Ultimately, in response to our litigation, the Governor allowed the legislature to restore \$20 million to these clinics. However, because family planning services involved the counseling of pregnant women that were advised of abortion as an option, LSC charged CRLA with having violated the prohibition against involvement with abortion-related activity.<sup>43</sup> In February 1990, CRLA was placed on a month-to-month funding schedule until the investigation was concluded in late December. As a result of the investigation, LSC concluded that CRLA's involvement with *Lickness* and a second case, *Committee to Defend Reproductive Rights v. Myers*,<sup>44</sup> was improper and violated the "abortion-related" prohibition. Although initially threatened with an almost 10% or \$320,000 reduction in funding, the final reduction imposed on CRLA was just \$14,377. Of this total fine, \$13,364 stemmed from costs related to the *Lickness* case. As an organization, CRLA decided that the reduction was a small price to pay for the re-funding of more than 500 health clinics serving nearly 500,000 poor women, and for this reason, did not appeal the reduction.

#### CONCLUSION

CRLA's survival as an organization committed to providing unrationed justice and to serving the most marginalized among California's rural poor has continued for almost 50 years, maintaining the vision handed down by founding members Cesar Chavez and Cruz Reynoso. When CRLA accepted the federal promise and challenge to be a part of a national movement to assist the nation's poor in securing social justice through law, it quickly learned that social change would come at a political

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42. No. 67292 (San Luis Obispo Super. Ct. 1989).

43. 42 U.S.C. § 2996(f)(b)(8).

44. 29 Cal.3d 252 (1981).

price. CRLA also learned that government could be the solution as well as the obstacle in that movement. The difficulties discussed in this essay alone illustrate this. The fact that CRLA continues to be subjected to federal investigations and audits at the behest of powerful rural interests such as the dairy industry is testament to the dangers CRLA and legal aid in general face for defending those most in need of representation.

The high notion that social equality in this country also means that the poorest, even the rural poor, deserve to be represented in the courts as professionally and powerfully as the wealthy has allowed CRLA to engage the politics of rural poverty without relenting. In the process, CRLA has left a meaningful legacy of using civil law to create a just society, particularly that of empowering even the most disempowered and unpopular among our citizenry. Moreover, this legacy has survived periods of severe anti-legal aid sentiment under the leadership of conservative presidential administrations and Congressional majorities.

In the process, we have learned that the strength to endure resistance to social change comes from clarity of purpose. We know who the law was meant to protect in rural places, that in a democracy, "justice for all" is one of the nation's most basic and crucial promises and must not be rationed, that this promise will be tested daily when one seeks to defend the weakest among the already disempowered, and that by staying true to its founding mission and earliest convictions, CRLA will never back down from its calling to defend the most vulnerable of our society.