

The Afterlife of the Great Society:

Richard Nixon vs. the Permanent Government, 1969-1974

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Short Abstract

Richard Nixon assumed the presidency promising to rid the United States of Lyndon Johnson's Great Society programmes that he believed had 'reaped an ugly harvest of frustration, violence, and failure across the land'. Yet despite repeated and determined attempts across five-and-a-half years in office, Richard Nixon's presidency came and went, and – for the most part – the social programmes of the Great Society persisted. The question which this dissertation seeks to answer, then, is a simple one: why? This question will be answered through an examination of three domestic programmes that began or dramatically expanded during the Great Society – the Legal Services Program, Volunteers in Service to America, and the Food Stamp Program.

The Afterlife of the Great Society argues that true domestic political power in the United States resided in a powerful network of interests that this dissertation terms the Iron Diamond. This Iron Diamond comprises the bureaucracy, Congressional Committee staffers, District Court judges, and public interest lawyers. These actors were each individually powerful in the formulation and implementation of domestic policy, but it is when they work together that their true power is seen. Centering these actors causes us to reconsider the nature of power within the U.S. political system and corrects a historical literature which exaggerates the domestic power of the President.

Long Abstract

Richard Nixon assumed the presidency promising to rid the United States of Lyndon Johnson's Great Society programmes that he believed had 'reaped an ugly harvest of frustration, violence, and failure across the land'. Yet despite repeated and determined attempts across five-and-a-half years in office, Richard Nixon's presidency came and went, and – for the most part – the social programmes of the Great Society persisted. The question which this dissertation seeks to answer, then, is a simple one: why?

The Afterlife of the Great Society argues that true domestic political power in the United States resided in a powerful network of interests that this dissertation terms the Iron Diamond. This Iron Diamond comprises the bureaucracy, Congressional Committee staffers, District Court judges, and public interest lawyers. These actors were each individually powerful in the formulation and implementation of domestic policy, but it is when they work together that their true power is seen. Centering these actors causes us to reconsider the nature of power within the U.S. political system and corrects a historical literature which exaggerates the domestic power of the President.

The Afterlife of the Great Society illuminates the power of the Iron Diamond through an examination of three domestic programmes that began or dramatically expanded during the Great Society – the Legal Services Program (LSP), Volunteers in Service to America (VISTA), and the Food Stamp Program (FSP). The dissertation adopts a chronological structure because the programmes, broadly speaking, follow a similar narrative arc over the course of the Nixon presidency.

The first chapter concerns the Food Stamp Program between Nixon's inauguration and December 1969. The first two years of the Nixon presidency witnessed a substantial growth in the FSP, where participation grew from 2.9 million to 10 million, and costs from \$248 million to \$2 billion. Rather than attributing credit to the President or the Congress, this chapter argues that these significant increases were driven by programme liberalisation within the USDA bureaucracy coupled with the consequences of District Court suits challenging enrolment in the Food Stamp Program. The expansion of the Food Stamp Program to all counties, the biggest driver behind this growth, was enacted in response to District Court decisions in California and Texas which mandated expansion. These cases were brought by the federally-funded California Rural Legal Assistance LSP and Columbia Center for Social Welfare Policy and Law.

The second chapter looks at the Legal Services Program from December 1969 through to December 1970. The lens for looking at the LSP will be the issue of ‘regionalization’. As part of the Administration’s New Federalism agenda, power was to be devolved from the central Washington bureaucracy, perceived by the White House as sympathetic to the poverty lawyers and their causes, to the regional offices, which the White House viewed as more unreceptive to those points of view. This chapter will demonstrate how Office of Economic Opportunity (OEO) bureaucrats were able to subvert the White House’s ‘regionalization’ plan. Second, it will argue that the intra-bureaucratic clashes between OEO Director Donald Rumsfeld and LSP Director Terry Lenzner had real-world policy implications.

The third chapter takes the narrative from 1970 through to 1972 with the Volunteers in Service to America programme. In this period, the White House moved away from the accommodationist tendencies of their first two years and begin to ‘go to work quietly to begin the elimination of VISTA’. This attempt to eliminate the ‘confrontation tactics’ of VISTA saw the creation of the National VISTA Alliance, a dissident group of current and former VISTA Volunteers. Through this group’s careful navigation of insider-politics, they were able to become the official representatives of the VISTA Volunteers whose views influenced Federal bureaucrats. The effect of bureaucratic leaking as a strategic tool to influence policy will be also examined. The success of these efforts was evidenced in the creation of Action, a new agency which united Federal volunteer efforts, complete with a guarantee that VISTA would continue its anti-poverty focus.

President Nixon’s landslide victory in the 1972 presidential election, coupled with the Watergate scandal, dramatically changed the tenor of the Nixon Administration’s second term in office. As such, this dissertation contains a brief introduction to the second term and its historical context. This includes the focus on divisive cultural issues as well as the Administration’s outreach to ‘white ethnics’ as part of their New Majority strategy.

Chapter four sees an aggressive White House keen to seize control of domestic policy making following its decisive electoral victory. This new zeal was best exemplified with the appointment of strident poverty program critic Howard Phillips as the Acting Director of OEO. Phillips sought to institute the ‘immediate and timely demise’ of OEO, and particularly sought to crush the Legal Services Program, which he declared ‘rotten’. This was a response driven by the White House’s belief that ‘bureaucratic sabotage of its domestic initiatives... had marred its first term’. In response to this, Phillips and the White House sought to stack the OEO bureaucracy with allies from the organised conservative movement but the changes introduced by this group were

stubbornly resisted by career OEO bureaucrats. Phillips' plan was thwarted by two court judgements of Judge William Jones of the D.C. District Court. The first blocked the Nixon Administration's attempt to defund all OEO funded programs and the second ruled that Phillips, who was not nominated before the Senate, was serving 'illegally' and ordered him to take no further action. For all the noise of Phillips, little changed.

The fifth chapter again shows the Nixon Administration seeking to influence domestic policy through staffing changes in the bureaucracy. The first section of this chapter demonstrates how the Nixon Administration sought to re-staff the bureaucracy of the Action agency. Rather than in the previous chapter, where the White House installed trusted ideological allies, the White House used the staffing of Action to reward its newfound 'New Majority' supporters. This chapter argues that the decision to hire 'New Majority' candidates for key Action posts corrupted the staffing process and caused the Action agency to be headed by someone not equipped for the task. The chapter tests this theory with the Domestic Volunteer Service Act of 1973, which sought to provide a legislative underpinning to the Action agency. The passage of the Act provides a graphic illustration of the important role played by Congressional staffers. As this chapter will show, these staff authored the legislation which bound the program participants to its original core anti-poverty focus. This chapter makes an important contribution to understanding the relationship between Federal agencies and the legislative branch, and demonstrates how they were much more responsive to, and constrained by, the Hill than the White House.

The dissertation's final substantive chapter concerns the Food Stamp Program between 1973 and 1974. While the first chapter witnessed the President constructively engaging with elements of anti-hunger policy, it now saw him drastically trying to reduce the cost of 'those damn programs'. Ronald Pollack, the protagonist from Chapter One returns. This chapter describes how Pollack used District Court suits to challenge regulations promulgated by USDA. Through a series of resounding District Court victories, as well as two successfully defended appeals to the Supreme Court, Pollack's new organisation, the Food Research and Action Center changed the course of the Food Stamp Program. This included further increasing participation in the program, shifting burdens from the states to the Federal government, and a Court-mandated outreach program. The second section of the chapter deals with another piece of litigation brought by Pollack which saw the District Court order the creation of a new anti-hunger program, the Special Supplement Feeding Program for Women, Infants, and Children (WIC). Though stridently opposed by the White House and the USDA bureaucracy, this program grew

rapidly from a \$40 million pilot programme to a \$100 million new Federal program, starkly demonstrating the policymaking power wielded by District Court judges.

The conclusion presents a summary of the dissertation's finding before briefly bringing the narrative up to the present day. The conclusion notes that the Iron Diamond which protected the anti-poverty programmes during the Nixon presidency also prevented conservative retrenchment during the Ford and Reagan presidencies. While noting the continued power of some elements of the Iron Diamond, notably the bureaucracy, the dissertation concludes with an examination of the reforms instituted by the Congressional Republicans in the wake of their 1994 mid-term victory. These reforms fatally undermined the Iron Diamond decimating the 'brain' of Congress by reducing the number of Congressional committee staff by more than one-third and ending the seniority rule for Committee chairs. The thesis concludes that the present state of US politics possesses neither the bureaucratic capability, Congressional nous, faith in government, or optimism to sustain anti-poverty programmes.

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I have written over 300 pages for this dissertation, but this one might have been the most challenging to write. Though a DPhil can be a solitary process at times, mine has been a collaborative process and I could not have done what I have done without those listed here (and no doubt many others that I have unintentionally omitted!).

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Table of Contents

Short Abstract.....	i
Long Abstract	ii
Acknowledgments.....	vi
Table of Contents	ix
Introduction	1
Chapter I: Insatiable appetite: The growing power of bureaucratic and judicial decision-making in the Food Stamp Program	22
Chapter II: ‘To serve the ends of politics rather than the needs of the poor?’: Regionalizing the Legal Services Program	66
Chapter III: ‘Some pretty amazing political clout’: The surprising survival of Volunteers in Service to America.....	111
Introduction to Part Two: ‘The Nixon Counter-Revolution?’	152
Chapter IV: ‘Howie Phillips and his wrecking crew’: The conservatives (try to) take the bureaucracy	163
Chapter V: ‘If it does not help poor people... it is useless’: The battle for VISTA’s soul.....	205
Chapter VI: Controlling the uncontrollable: The losing battle to control Food Stamps.....	247
Conclusion.....	287
Bibliography	305

Introduction

No more divisive monument existed to the domestic legacy of President Lyndon B. Johnson than the headquarters of the Office of Economic Opportunity. The election of President Richard M. Nixon to succeed Johnson was not well-received among the bureaucrats who toiled there daily. And for good reason too. As far back as 1966, former Vice President Nixon had criticised the War on Poverty as being ‘first in promises, first in politics, first in press releases, and last in performance’.¹ On the campaign trail Nixon had lambasted the War on Poverty for reaping ‘an ugly harvest of frustration, violence, and failure across the land’ while the 1968 Republican Party platform called for ‘welfare and poverty programs’ to be ‘drastically revised’.² Vice Presidential candidate Spiro Agnew displayed a stark lack of concern for impoverished communities, telling reporters, ‘if you’ve seen one city slum, you’ve seen them all’.³ Emblematic of the mood inside the OEO headquarters at Nixon’s victory was the sign hung in the elevator - ‘Caution: this building will self-destruct on January 20’.⁴

The attacks on Great Society and War on Poverty programmes continued throughout the course of the Nixon Administration. Over the Administration’s five-and-a-half years in power, Great Society programmes were variously described within the White House as ‘no good,’ ‘conceptually wrong,’ ‘a boondoggle,’ ‘absolutely repugnant,’ ‘inexcusably inefficient,’ ‘prone to

¹ Richard Nixon, ‘Can We Still Win the War on Poverty?’ North American Newspaper Alliance column, 3 April 1966, SF Files, Box 89, RNPL.

² ‘Transcript of Acceptance Speeches by Nixon and Agnew at G.O.P Convention,’ *New York Times*, 9 Aug. 1968, p. 20; ‘Republican Party Platform of 1968,’ Aug. 5 1968, *American Presidency Project*, accessed online 01 Feb 2017, at <http://www.presidency.ucsb.edu/ws/index.php?pid=25841> (1 Feb. 2017).

³ OEO Notes on “Campaign 1968”, n.d., RG381, Public Reaction to OEO Programs, 1965-1971, Box 1, NARA II.

⁴ Memorandum for the President, 15 Dec. 1969, FG6-7 Files, Box 1, RNPL; Remarks by Donald Rumsfeld, 16 Dec. 1969, FG6-7 Files, Box 1, RNPL. Though this story sounds apocryphal, it first appeared in 1968, see Mark Arnold, ‘The Price of a Massive Social Gamble,’ *National Observer*, 14 Oct. 1968, in Corbett Papers, Box 30, LBJL.

waste and even thievery,’ and ‘a national ripoff’.⁵ Yet Richard Nixon’s presidency came and went, and – for the most part – the social programmes of the Great Society persisted. The question which this dissertation seeks to answer, then, is a simple one: why?

The answer illuminates broader debates in the historiography of the Nixon presidency, as well as the historiography of this period. Initial historical and popular scholarship of the Nixon Administration focused overwhelmingly on the twin behemoths of his presidency – Watergate and the Vietnam War.⁶ The sense that early accounts of the Nixon era were just re-litigations of Watergate was captured in Chief of Staff H.R. Haldeman’s description of ‘the Nixon quote “history” closed quote’.⁷ It was not until the early 1990s when historians began to consider what ‘might have been written about if Watergate had not dominated our interpretation’.⁸ The most influential of these was Joan Hoff’s *Nixon Reconsidered* which had the pithier draft title ‘Nixon without Watergate’.⁹ Hoff argued that Nixon ‘achieved more than most of would like to admit,’ though largely attributed the successes to the staff around the President.¹⁰

The return of Nixon’s domestic policies to the forefront of historical scholarship was consolidated over the subsequent decade when eminent scholars such as Iwan Morgan, Melvin

⁵ ‘Meetings of the President with John Ehrlichman,’ n.d., *Papers of the Nixon White House*, Part 3, fiche 3-1-D14; Harper to Ehrlichman, 17 Sept. 1971, Harper Papers, Box 55, RNPL; Buchanan to Nixon, 18 Feb. 1969, POF Files, Box 73, RNPL; Oval, 498-005, 13 May 1971, White House Tapes, RNPL; Burns Diary, 20 Feb. 1969; Burns to Nixon, 14 Feb. 1969, *Papers of the Nixon White House*, Part 3, fiche 5-2-09; Buchanan to Nixon, 10 Nov. 1972, Buchanan Papers, Box 11, RNPL.

⁶ For example, see Stephen Ambrose, *Richard Nixon, Volume II: The Triumph of a Politician, 1962-1972* (New York, 1989), Stephen Ambrose, *Richard Nixon, Volume III: Ruin and Recovery, 1973-1990* (New York, 1992).

⁷ Interview with H.R. Haldeman, 13 Aug. 1987, RNPL, <https://www.nixonlibrary.gov/sites/default/files/forresearchers/find/histories/haldeman-1987-08-13.pdf> (14 May 2020).

⁸ Joan Hoff, *Nixon Reconsidered* (New York, 1994), p. 1.

⁹ Ben Franklin, ‘Three Lawsuits Later, Nixon’s Files Open,’ *New York Times*, 2 Dec. 1986, p. 22.

¹⁰ Hoff, *Nixon Reconsidered*, p. 4.

Small, and Dean Kotlowksi turned their attention to Nixon.¹¹ These works consolidated the scholarly conception of Nixon as a progressive. As David Greenberg has recounted, by the turn of the century, the idea of Nixon as a liberal was ‘conventional wisdom’.¹² Undergirding most of this work was a sense of injustice on behalf of Nixon. ‘It would be difficult to imagine,’ Iwan Morgan wrote, ‘a Democratic president who enacted such a substantial body of reforms receiving such meagre scholarly praise and having his motives scrutinised so unfavourably’.¹³ Despite the greater emphasis placed on domestic policy, there also remained the sense in the recent work that scholars were perplexed by Nixon’s domestic programme, with it being variously described as ‘a riddle,’ ‘ambiguous at best,’ a ‘paradox,’ ‘highly unfocussed,’ and ‘riven by contradictions’.¹⁴

There are four main issues with the current state of Nixon historiography. The first is that most books are doggedly determined to sort Nixon into the ‘liberal’ or ‘conservative’ framework. Some have failed to come down decisively on either ‘side’ and developed their own terminology of Nixon as ‘at once liberal and conservative’ or ‘erratically liberal’.¹⁵ As Matthew Lassiter has persuasively argued, ‘policy outcomes and modes of governance are never inherently liberal or

¹¹ Iwan Morgan, *Nixon* (London, 2002); Melvin Small, *The Presidency of Richard Nixon* (Lawrence, 2003), Dean J. Kotlowksi, *Nixon’s Civil Rights: Politics, Principle, and Policy* (Cambridge, 2009).

¹² David Greenberg, ‘Richard the Bleeding Heart,’ *Reviews in American History*, Vol. 30, No. 1 (March 2002), p. 158.

¹³ Morgan, *Nixon*, p. 69.

¹⁴ Evan Thomas, *Being Nixon: A Man Divided* (New York, 2016), p. 248; Herbert Parmet, *Richard Nixon and his America* (New York, 1995); Romain Huret, ‘Richard Nixon, the Great Society, and Social Reforms: A Lost Opportunity?’ in M. Small (ed), *A Companion to Richard Nixon* (Malden, 2011), p. 202; Joan Hoff-Wilson, ‘Outflanking the Liberals on Welfare,’ in L. Friedman and W. Levantrosser (eds.), *Richard M. Nixon: Politician, President, Administrator* (New York, 1991), p. 87; Irwin Unger, *The Best of Intentions: The Triumphs and Failures of the Great Society under Kennedy, Johnson, and Nixon* (New York, 1996), p. 300.

¹⁵ Unger, *The Best of Intentions*, p. 300; David T. Courtwright, *No Right Turn: Conservative Politics in a Liberal America* (Cambridge, 2011), p. 74. As Hugh Davis Graham observed, Nixon ‘rarely fit the models we use to order our political universe, see Hugh Davis Graham, ‘Richard Nixon and Civil Rights: Explaining an Enigma,’ *Presidential Studies Quarterly*, Vol. 26, No. 1(1996), p. 93.

conservative but rather are shaped by multiple forces across the political spectrum'.¹⁶ This dissertation is inspired by Lassiter's call for historians to 'transcend liberal-conservative binaries' and investigate 'the broad middle ground'.¹⁷

The second flaw in the current historiography is an over-reliance on rhetoric and an under-reliance on policy. Historians of the Nixon presidency have tended to conflate the two. For instance, in *The Seventies*, Bruce Schulman states that Nixon 'dismantled, or at least attempted to dismantle' OEO.¹⁸ These are not the same thing. The aspect of Nixon's domestic agenda that has most interested historians has been his policies relating to the Family Assistance Plan and proposal for comprehensive medical insurance.¹⁹ Neither of these were passed, and they are often presented as cases of 'what if' and as a point of possible disjuncture in American politics.²⁰ This dissertation is not interested in what nearly happened, but what did.

The third weakness is an overreliance on the President as the central actor in American political life. Elliot Richardson, a former Nixon Cabinet Secretary, wrote in his diary that 'the cult of the "strong" presidency,' made it 'appear that the President was responsible for decisions that he could not possibly have known about'.²¹ This description also applies to the historiography of the Nixon Administration, as well as popular writing on American political history more

¹⁶ Matthew Lassiter, 'Ten Propositions for Political History,' in M. Williams et. al (eds.), *Shaped by the State: Toward a New Political History of the Twentieth Century* (Chicago, 2019), p. 369.

¹⁷ *Ibid.*, p. 365.

¹⁸ Bruce Schulman, *The Seventies: The Great Shift in American Culture, Society, and Politics* (New York, 2001), p. 26.

¹⁹ For example, see Scott J. Spitzer, 'Nixon's New Deal: Welfare Reform for the Silent Majority,' *Presidential Studies Quarterly*, Vol. 42, No. 3 (Sept., 2012), pp. 455-81; Michael B. Katz, *The Undeserving Poor: America's Enduring Confrontation with Poverty*, updated edition (New York, 2013), p. 136.

²⁰ For example, see Brian Steensland, *The Failed Welfare Revolution: America's Struggle Over Guaranteed Income Policy* (Princeton, 2008), p. 219.

²¹ Elliot Richardson, *The Creative Balance: Government, Politics, and the Individual in America's Third Century* (London, 1976), p. 65.

generally. For decades, historians have viewed the presidency like Clinton Rossiter, who posited the role as ‘a kind of magnificent lion who can roam widely and do great deeds’.²² The breadth to which this was accepted was underscored by a 1970 report by the Brookings Institution’s Thomas Cronin into college textbooks which found that they described the President as ‘the strategic catalyst in the American political system and the central figure in the international system as well’.²³ This flaw of historiography has been reinforced through popular culture, as seen in television show and film characters such as Jed Bartlet in *The West Wing* or James Marshall in *Air Force One*.²⁴

A fourth problematic underpinning of all these works is the creed that Nixon did not truly care about domestic politics. This can be found in pretty much all of the major biographies, usually centred around one of two Nixon anecdotes - when he told Theodore White that ‘the country could run itself domestically without a President’ or his comment to aide John Ehrlichman that he did not become President to ‘build outhouses in Peoria’.²⁵ Statements about Nixon’s uninterest also appear frequently in memoirs of Nixon’s aides and associates.²⁶ While these

²² Clinton Rossiter, *The American Presidency* (New York, 1956), p. 73.

²³ Thomas E. Cronin, ‘Superman, Our Textbook President,’ *Washington Monthly*, October 1970, p. 50.

²⁴ Jennifer J. Hora, ‘The President as Hero: Don’t Blame Me, I Voted for Bartlet’ in J. Foy (ed.), *Homer Simpson Goes to Washington* (Lexington, 2010), p. 81; G. Calvin Mackenzie, *The Imperiled Presidency: Leadership Challenges in the Twenty-First Century* (Lanham, 2016), p. 46.

²⁵ For the Theodore White quote, see Richard Reeves, *President Nixon: Alone in the White House* (New York, 2002), p. 43; Stephen Hess, *The Professor and the President: Daniel Patrick Moynihan in the Nixon White House* (Washington D.C., 2017) p. 92; Tim Weiner, *One Man Against the World: The Tragedy of Richard Nixon* (New York, 2016), p. 7; Rick Perlstein, *Nixonland: The Rise of a President and the Fracturing of America* (New York, 2009), p. 393; William E. Leuchtenberg, *The American President: From Teddy Roosevelt to Bill Clinton* (New York, 2015), p. 490; James T. Patterson, *America in the Twentieth Century: A History*, 2nd ed. (New York, 1983), p. 445; John Farrell, *Richard Nixon: The Life* (Brunswick, 2017), p. 371. For the Peoria quote, see Perlstein, *Nixonland*, p. 393; Reeves, *President Nixon*, p. 33; Dominic Sandbrook, ‘Salesmanship and Substance: The Influence of Domestic Policy and Watergate,’ in F. Logevall and A. Preston (eds), *Nixon in the World: American Foreign Relations, 1969-1977* (Oxford, 2008), p. 88; Conrad Black, *Richard Milhous Nixon: The Invincible Quest* (London, 2008), p. 580.

²⁶ Most emblematic of the tenor of Nixon’s aide’s memoirs is H.R. Haldeman, *The Ends of Power* (New York, 1978). Haldeman, Nixon’s chief of staff, stated that he had planned to tell ‘the rest of the Nixon story rather than rehashing Watergate one more time’ but Nixon’s interviews with David Frost turned the memoir into a re-litigation of Watergate, see p. xx. Exceptions to this rule include Leonard Garment, *Crazy Rhythm: From Brooklyn, Jazz, and Wall Street to Nixon’s White House, Watergate, and Beyond* (Cambridge,

statements are usually cited to close off a discussion, in this dissertation they will be used to start another: what happens when the President checks out of domestic policy formulation and implementation? Nobody would contend that domestic policy stopped during this period. As Nixon aide Leonard Garment remarked, 'like breathing, domestic policy is a central part of presidential life'.²⁷ This dissertation will address what happens when the Presidency recedes and creates a vacuum in domestic policy formulation. Who takes centre stage?

The primary intervention that this dissertation will make is to centre the bureaucracy as a key actor in domestic policy formulation and implementation. The bureaucracy has been one of the chief casualties of the president-centred historical literature. This dissertation will challenge the flawed assumption in so much of the literature that every policy that was passed by Congress during the Nixon presidency can be credited to (or blamed on) the President. As the Richardson quotation above suggests, this dissertation demonstrates how much domestic policy is made in the modern United States outside of the direct control or knowledge of the President.

In doing so, this work will draw heavily on the work of political scientists, whose understanding that 'reform takes many forms' has often produced a more nuanced understanding of the political system than that of historians.²⁸ For political scientists the 'illusion of Presidential government' has been far more of a truism than for historians.²⁹ As early as 1975, Nixon-era

2001); William Safire, *Before the Fall: An Inside View of the Pre-Watergate White House*, revised edition (New Brunswick, 2005); John Ehrlichman, *Witness to Power: The Nixon Years* (New York, 1982). The advisor who talks most about the Great Society is conservative speechwriter Pat Buchanan, a staunch critic, see Patrick J. Buchanan, *Nixon's White House Wars: The Battles That Made and Broke a President and Divided America Forever* (New York, 2018), pp. 21-8.

²⁷ Tom Wicker, *One of Us: Richard Nixon and the American Dream* (New York, 1991), p. 539.

²⁸ Jeffrey A. Jenkins, 'Introduction: The Rise of a Policy State?' in J. Jenkins and S. Milkis (eds.), *The Politics of Major Policy Reform in Postwar America* (New York, 2014), p. 8.

²⁹ Hugh Heclo, 'The Presidential Illusion,' in H. Heclo and L. Salmon (eds.), *The Illusion of Presidential Government* (Boulder, 1981), p. 2. Notable exceptions include Gareth Davies, *See Government Grow: Education Politics from Johnson to Reagan* (Lawrence, 2012), Edward Berkowitz, *Mr. Social Security: The Life of*

bureaucrat turned political scientist Richard Nathan had argued that ‘relationship between the President and the bureaucracy is the key to understanding domestic affairs under President Nixon’.³⁰ Studies in the mid-1970s confirmed that the bureaucracy was ‘ideologically hostile’ to Nixon and how ‘bureaucratic government’ was ‘a fact of life’.³¹

Highlighting the bureaucracy will also break down the conflation often made by historians and the media of the ‘Administration’ and the ‘government’. When Secretary of State Henry Kissinger told Federal Reserve Chair Arthur Burns in 1974 that America had ‘no government at present’, he was fundamentally wrong.³² While it was true that the President and his White House were distracted, the ‘permanent government’ of bureaucrats persisted.³³ Arizona Senator Barry Goldwater provided a crisp formulation of this reality in 1974. America, he told the *U.S. News and World Report*, had ‘two governments... one government dealing with foreign policy, run by the President... and the government, supposedly administered by the President – but run by the bureaus of Washington’.³⁴ It is with this ‘other government’ that this thesis is concerned.

This ‘other’, permanent government and Nixon had an antagonistic relationship. Nixon had little truck with these power structures that he believed to be interfering with his prerogatives. This was viscerally captured on the White House recording system when the President expressed his

Wilbur J. Cohen (Lawrence, 1995); Brian Balogh, *Chain Reaction: Expert Debate and Public Participation in American Commercial Nuclear Power 1945-1975* (Cambridge, 1991); Joanna Grisinger, *The Unwieldy American State: Administrative Politics since the New Deal* (Cambridge, 2014).

³⁰ Richard Nathan, *The Plot That Failed: Nixon and the Administrative Presidency* (New York, 1975), p. 4.

³¹ Joel D. Aberbach and Bert A. Rockman, ‘Clashing Beliefs within the Executive Branch: The Nixon Administration Bureaucracy,’ *American Political Science Review*, Vol. 70, No. 2 (June 1976), pp. 456-68; Hugh Heclo, *A Government of Strangers: Executive Politics in Washington* (Washington D.C., 1977), p. 4.

³² Burns, diary entry for 25 July 1974.

³³ Hugh Davis Graham, *The Civil Rights Era: Origins and Development of National Policy* (New York, 1990), p. 5.

³⁴ ‘Barry Goldwater Speaks His Mind on Richard Nixon,’ *U.S. News and World Report*, 11 Feb. 1974, p. 40.

desire to ‘strangle those little bastards’ at OEO when they were not following his orders.³⁵

Similar sentiments were recorded when the President moaned to aides that the ‘bastards in the bureaucracy’ were ‘out to screw us’.³⁶

Historians have not totally disregarded Nixon’s relationship with the bureaucracy. But what so many do is treat it as a sideshow and a chance to use the President’s more colourful language, rather than an opportunity to explore the policy implications.³⁷ The best recent work on the relationship between Nixon and the bureaucracy is the 2012 *Journal of Policy History* article by Beverley Gage. In her powerful work, Gage notes how ‘bureaucratic entrepreneurs’ can be ‘some of the most innovative and influential figures in American political history’ but noted how they had hitherto received ‘little attention’.³⁸ This dissertation is inspired by Gage’s work and her call for policy historians to think more about ‘the virtues and pitfalls of bureaucratic power’ and how the ‘administrative state helped to shape popular politics in the twentieth century’.³⁹

This thesis contends that the survival of the War on Poverty programmes is most attributable to the efforts of the bureaucracy (where the term bureaucracy refers to both the career civil service and to the political appointees of the Executive Branch).⁴⁰ It was true, as was reported to the President in 1969, that the social welfare bureaucracy operated ‘virtually independent of [presidential] command’.⁴¹ This dissertation posits bureaucrats as central to the creation of

³⁵ Oval Office, 498-005, 13 May 1971, White House Tapes, RNPL

³⁶ Oval Office, 536-012, 3 July 1972, White House Tapes, RNPL.

³⁷ For example, see Small, *The Presidency of Richard Nixon*, p. 270 and Ambrose, *Triumph of a Politician*, p. 433.

³⁸ Beverly Gage, ‘Deep Throat, Watergate, and the Bureaucratic Politics of the FBI,’ *Journal of Policy History*, Vol. 24, No. 2 (2012), p. 158.

³⁹ *Ibid.*, p. 177.

⁴⁰ As this dissertation will demonstrate, it was *both* career civil servants and political appointees which shaped domestic policy during this period and it would be incorrect to attribute either category with sole responsibility.

⁴¹ Harlow to Nixon, 23 March 1969, FG6-7 Files, Box 1, RNPL.

domestic programmes, deliberately disobeying White House orders, working with Congress to write their own operating legislation, and being vigorous supporters of activism within anti-poverty programmes. Crucially, these activities were conducted not just by career civil servants but also by presidential appointees.

While the bureaucracy was a long-established feature of American political life, this dissertation will argue that it assumed a different complexion during the Great Society.⁴² Chiefly, this pertained to the type of bureaucrat who was hired. A 1968 report by the U.S. Civil Service Commission found that ‘almost all’ of the new recruits had a bachelor’s degree, at a time when this was true for only one in ten of the U.S. population.⁴³ The Commission found that for these new employees ‘the most important job aspect is the work itself’. They also found that the workers favoured ‘more progressive agencies’ and were ‘more interested or concerned with agency change’ than they were with their own ‘personal comfort’.⁴⁴ These changes were noted at the time with the concept of the ‘New Class’ of highly-educated and liberal professionals who were acquiring political and cultural influence.⁴⁵ These characteristics form the framework with which we should think of civil servants who joined their agencies in the late 1960s.

The scale of this dissertation is the Federal bureaucracy housed in Washington D.C., while the specific focus is on poverty programmes that affected ordinary Americans’ lives in an intimate way. The impact of these anti-poverty programmes, as well as how they were adapted by the

⁴² For a history of the U.S. bureaucracy, see Michael Nelson, ‘A Short, Ironic History of American National Bureaucracy,’ *The Journal of Politics*, Vol. 44, No. 3 (Aug. 1982), pp. 747-78.

⁴³ U.S. Civil Service Commission, ‘Beliefs and Attitudes of Young Employees About Their Federal Careers,’ December 1968, FG Files, Box 21, LBJL. Data on the American public at large derived from the 1970 census, see U.S. Census Bureau (1970), *Population and Housing Characteristics for the United States, by State: 1970*, <http://www2.census.gov/prod2/decennial/documents/31679801n1-40.zip> (5 Feb. 2020). This divide was even more pronounced when considering graduate study.

⁴⁴ ‘Beliefs and Attitudes of Young Employees About Their Federal Careers’.

⁴⁵ James Q. Wilson, ‘American Politics: Then and Now,’ *Commentary*, Vol. 67, No. 2 (1 Feb. 1979), p. 45.

communities, has been well-documented in the ‘new grassroots history’ of the War on Poverty.⁴⁶ These studies are highly localised, focussing on either a state or city, and usually focus on one race or social group. These works make a vibrant contribution to our understanding of how the Great Society programmes operated ‘out in the field’. This dissertation seeks not to dismiss this literature but to complement it. The literature has noted how there was a ‘dynamic relationship’ between the bureaucracy and community activists.⁴⁷ This dissertation will seek to explain the ‘equally important’ other part to this equation, and how the Federal dollars and Federal protection for these programmes continued to roll in during the Nixon era.⁴⁸

Secondly, this thesis breaks new ground by presenting the bureaucracy as a complex, multi-faceted, and human institution. Too often the political science literature takes a stark rational choice approach and presume that bureaucrats act purely out of self-protection.⁴⁹ The bureaucrats presented in this dissertation were far more complex. They were passionate about their programmes, not just about protecting their employment. They were true believers in the efficacy of government action. While faith about the role of government was on the wane in the broader public, it was not within the bureaucracy.⁵⁰ As Nixon’s Congressional liaison Max

⁴⁶ Annelise Orleck and Lisa Hazirjian (eds.), *The War on Poverty: A New Grassroots History* (Athens, 2011). Other notable works in this literature include Kent Germany, *New Orleans After the Promises: Poverty, Citizenship, and the Search for the Great Society* (Athens, 2007); Susan Youngblood Ashmore, *Carry It On: The War on Poverty and the Civil Rights Movement in Alabama, 1964-1972* (Athens, 2008); Annelise Orleck, *Storming Caesar’s Palace: How Black Mothers Fought Their Own War on Poverty* (Boston, 2005); Wesley Phelps, *A People’s War on Poverty: Urban Politics and Grassroots Activists in Houston* (Athens, 2014).

⁴⁷ Phelps, *A People’s War on Poverty*, p. 179.

⁴⁸ *Ibid.*

⁴⁹ For example, see William Niskanen, *Bureaucracy & Representative Government* (Chicago, 1971), pp. 39-42

⁵⁰ As Aberbach and Rockman’s 1970 study, 54 per cent of career super-grades in the bureaucracy supported ‘some additional’ or ‘much more government provision of social services’ compared with 24 per cent who wanted ‘less’ or ‘much less’ whereas a study from that same year showed that 68 per cent of American believed that the government ‘waste a lot’ of taxpayers’ money, up from 46 per cent six years earlier, and 44 per cent said ‘the people running the government .. don’t know what they’re doing’, up from 27 per cent six years earlier, see Aberbach and Rockman, ‘Clashing Beliefs,’ p. 461 and Arthur H. Miller, ‘Political Issues and Trust in Government: 1964 – 1970,’ *American Journal Political Science Review*, Vol. 68, No. 3 (1974), p. 953.

Friedersdorf noted, it was impossible to ignore the ‘enthusiasm and dedication of those people at OEO’.⁵¹

This dissertation also considers a range of other often-ignored actors.⁵² First, it considers the role of public interest lawyers. Idealistic law school graduates of the 1960s, they turned their backs on corporate law and elected office and used legal channels to secure victories ‘in the service of civil rights, consumers, the poor, and the environment’.⁵³ They served ‘constituencies and interests previously left out of the political process’.⁵⁴ The movement was enabled by the *Monroe v. Pape* Supreme Court decision of 1961, which dramatically expanded the entitlement to sue, giving ‘standing’ to new actors and generating what Martha Derthick termed an ‘explosion’ in litigation against the Federal Government.⁵⁵ These lawyers were influential players in Washington due to their intimate knowledge of policies, statutes, and regulations.

The claims of public interest lawyers were warmly received by the next actor, District Court judges. The District Court bench underwent significant changes during the Great Society era, a

⁵¹ Interview with Max Friedersdorf, 24 Oct. 2002, *Miller Center Oral Histories*, <https://millercenter.org/the-presidency/presidential-oral-histories/max-friedersdorf-oral-history> (accessed online 15 May 2020).

⁵² The importance of these actors has been emphasised in R. Shep Melnick, ‘From Tax and Spend to Mandate and Sue,’ in S. Milkis and J. Mileur (eds), *The Great Society and the High Tide of Liberalism* (Amherst, 2005), p. 395, and G. Davies, *See Government Grow*, p. 281.

⁵³ K. Hall (ed.), *Oxford Companion to American Law* (New York, 2002), p. 390. For more on the public interest law movement, see Robert L. Rabin, ‘Lawyers for Social Change: Perspectives on Public Interest Law,’ *Stanford Law Review*, Vol. 28, No. 2 (Jan. 1976), pp. 207-61; Michael McCann, *Taking Reform Seriously: Perspectives on Public Interest Liberalism* (Ithaca, 1986), pp. 29-34; Michael W. McCann, ‘Public Interest Liberalism and the Modern Regulatory State,’ *Polity*, Vol. 21, No. 2 (Winter, 1988), pp. 373-400.

⁵⁴ Peter Skerry, ‘The Racialization of Immigration Policy,’ in M. Keller and R. S. Melnick (eds.), *Taking Stock: American Government in the Twentieth Century* (Cambridge, 1999), p. 92.

⁵⁵ Martha Derthick, ‘Crossing Thresholds: Federalism in the 1960s,’ *Journal of Policy History*, Vol. 8, No. 1 (Jan. 1996), p. 67. For more on the history of standing, see Karen Orren, ‘Standing to Sue: Interest Group Conflict in Federal Court,’ *American Political Science Review*, Vol. 70, No. 3 (Sep. 1976), pp. 723-41 and R. Shep Melnick, *Between the Lines: Interpreting Welfare Rights* (Washington D.C., 1994), pp. 47-8

period notable for ‘the extraordinary activism of the federal courts’.⁵⁶ The first reason for this was that the Courts, like the bureaucracy, were a durable institution and many of the key decisions in this dissertation were delivered by Kennedy or Johnson appointees, demonstrating how the liberal legacy of these men continued into the ‘Nixon-era’. District Courts, through their expansive definitions of standing outlined above, led the courts to be ‘drawn deeply into the policymaking process’.⁵⁷ As Shep Melnick has observed, District Courts during the 1970s did not merely ‘follow’ but ‘led’.⁵⁸

Finally, Congress. Rather than Congress as an entire institution, this dissertation will explicitly argue that it was the Congressional staff who were most involved in the creation, implementation, and oversight of domestic policy. The numbers of Congressional staff grew rapidly during this period as a direct response to the rise of Federal responsibilities during the Great Society.⁵⁹ During this period they were even referred to as the ‘Congressional bureaucracy’ and their power was derived the same way as bureaucrats – longevity and intimate knowledge of the political process.⁶⁰ These Congressional staffers did not simply provide constituent services but, as political scientist Richard Pious has argued, they ‘engage[d] in substantive policy making’.⁶¹ Bureaucracies in American politics ‘serve two masters’, as James Q. Wilson observed, and while historians have often depicted bureaucracies as being disloyal to the Administration,

⁵⁶ Jeremy Rabkin, ‘The Judiciary in the Administrative State,’ *The Public Interest*, Vol. 71 (Spring 1983), p. 62.

⁵⁷ Hugh Davis Graham, ‘Legacies of the 1960s: The American “Rights Revolution” in an Era of Divided Governance,’ *Journal of Policy History*, Vol. 10, No. 3 (1998), p. 272. This point is also emphasised in Brian Balogh, ‘Making Pluralism “Great”: Beyond a Recycled History of the Great Society,’ in S. Milkis and J. Mileur (eds), *The Great Society and the High Tide of Liberalism* (Amherst, 2005), p. 167.

⁵⁸ R. Shep Melnick, *Regulation and the Courts: The Case of the Clean Air Act* (Washington D.C., 1983), p. 4.

⁵⁹ Samuel C. Patterson, ‘The Semi-Sovereign Congress,’ in A. King (ed.), *The New American Political System*, 3rd ed. (Washington D.C., 1980), p. 151.

⁶⁰ Harris Fox and Susan Hammond, ‘The Growth of Congressional Staffs,’ *Proceedings of the Academy of Political Science*, Vol. 32, No. 1, p. 112.

⁶¹ Richard Pious, ‘Sources of Domestic Policy Initiatives,’ *Proceedings of the Academy of Political Science*, Vol. 32, No. 1, p. 106.

they failed to recognise that they are actually often responsive to Congress.⁶² And more specifically than responsive to the entire institution, they were particularly responsive to congressional staffers. This gave the congressional staff great power.

The ‘Iron Diamond’

In addition to considering these actors independently, this dissertation is particularly interested in how they interacted with each other. Political scientists have developed the terminology ‘iron triangle’ to refer to the interrelatedness between interest groups, the Congress, and the bureaucracy.⁶³ This was a concept well-established at the time of the Nixon presidency, and a theory often espoused by those most closely involved in domestic policy formulation during this period.⁶⁴ This theory, as Hugh Heclo described it, is ‘disastrously incomplete’.⁶⁵ This dissertation contends that the more appropriate terminology would be an Iron Diamond, comprised of bureaucrats, Congressional staff, District Court judges, and public interest lawyers.

Congressional staff are substituted for the entire Congress as the rapid expansion of Federal responsibilities, as well as the constant need to seek re-election, meant that the body as a whole was not fully engaged with substantive policymaking. As one bureaucrat recalled, the burdens of constantly seeking election meant that many elected representatives were ‘withdrawn from the legislative process’, or, more bluntly, ‘lucky to have any vague idea what’s going on’.⁶⁶ Public

⁶² Hugh Heclo, ‘One Branch or Many?’ in A. King (ed.), *Both Ends of the Avenue: The Presidency, the Executive Branch, and Congress in the 1980s* (Washington D.C., 1983), p. 39; James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (Boulder, 1989), p. 260.

⁶³ Nigel Bowles, *Government and Politics of the United States*, 2nd ed. (Basingstoke, 1998), p. 226.

⁶⁴ Nixon, RN: *The Memoirs of Richard Nixon* (New York, 1978), p. 352; Interview with Robert H. Finch, 23 Feb. 1989, LBJ Presidential Library, accessed online.

<https://www.discoverljb.org/item/oh-finchr-19890223-1-09-57> (1 Feb 2020); interview with Caspar Weinberger, 4 Jan. 1978, Reichley Interviews, Box 2, GFPL.

⁶⁵ Hugh Heclo, ‘Issue Networks and the Executive Establishment,’ in A. King (ed.), *The New American Political System*, p. 88.

⁶⁶ Author’s interview with Charles W. Ervin, 15 July 2019. Lawrence Dodd wrote that the importance of re-election was such that its pursuit could ‘become all-consuming’ while Richard Fenno wrote that ‘good public policy’ was just one of ‘three basic goals’ for House of Representatives members alongside ‘re-election and power within Congress,’ see Lawrence Dodd, ‘Congress and the Quest for Power,’ in L. Dodd and B. Oppenheimer (eds.), *Congress*

interest lawyers are substituted for interest groups as the rise of rights claims made through the courts meant that it was these lawyers, who understood the ‘arcane workings of federal regulation’, who were able to make more successfully effect change the interest groups who did not.⁶⁷ District Court judges are added as they were not merely vessels to interpret law but were active players in formulating domestic policy.

The final key intervention into the historiography that this dissertation will make concerns the cycles of American politics. Inherent to the president-centric literature is the sense that epochs in American history revolve around four- or eight-year presidencies. This ‘presidential synthesis’ had been under attack since the 1940s, yet it persists.⁶⁸ This is evident in the literature which seeks to break down eras into the ‘Johnson era’ or the ‘Nixon era’. Second, the decade has become the key unit of time analysis, with scholars writing of the ‘sixties’ or the ‘seventies’. In this literature, Nixon’s presidency spanning two decades fits awkwardly. Scholars either see Nixon’s presidency as occurring at the beginning of the ‘long 1970s’, as per Schulman, or at the end of a longer 1960s, per Berkowitz.⁶⁹ Despite the ‘intense scholarly re-engagement with the 1970s’ this literature has been critiqued for its tendency to ‘either ignore or pay only passing

Reconsidered (New York, 1977), p. 268; Richard Fenno, *Home Style: House Members in their Districts* (Glenview, 1978), p. 137. Another vital work from this period explaining Congressional behavior is David Mayhew, *Congress: The Electoral Connection* (New Haven, 1974).

⁶⁷ Hugh Davis Graham, ‘Since 1964: The Paradox of American Civil Rights Regulation,’ in M. Keller and R. Shep Melnick (eds.), *Taking Stock: American Government in the Twentieth Century* (New York, 1999), p. 196.

⁶⁸ Thomas Cochran, ‘The “Presidential Synthesis” in American History,’ *American Historical Review*, Vol. 53, No. 4 (1948), pp. 748-59; Julian E. Zelizer, *Governing America: The Revival of Political History* (Princeton, 2012), pp. 17-40.

⁶⁹ The best review of the literature on the 1960s is Michael Heale, ‘The Sixties as History,’ *Reviews in American History*, Vol. 33, No. 1 (2005), pp. 133-152. In particular, see pp. 135-136 for Heale on the ‘slipperiness’ of periodisation of the 1960s and 1970s. Berkowitz writes of the 1970s as an ‘informal era’ from 1973 to 1981 whereas Schulman sees a ‘long 1970s’ from 1969 to 1984, see Edward Berkowitz, *Something Happened: A Political and Cultural Overview of the Seventies* (New York, 2007), p. 1; Schulman, *The Seventies*, p. xvi. Hugh Heclo described the 60s as ‘a plastic term reaching backward to the mid-1950s and forward to the mid-1970s’, see Hugh Heclo, ‘The Sixties’ False Dawn: Awakenings, Movements, and Postmodern Policymaking,’ *Journal of Policy History*, Vol. 8, No. 1 (Jan. 1996), p. 35. Huntington’s periodisation of the ‘fourth period’ in American history from 1960-1975 is closest to my own, see Samuel Huntington, *American Politics: The Promise of Disharmony* (Cambridge, 1981), p. 167.

attention' to social welfare programmes.⁷⁰ What this dissertation will show is that, if we focus on enduring institutions like the bureaucracy and the courts, we can see that eras of governance do not neatly fit into these narrow segments. As evident in the title, it will show that the Great Society did not die on 20 January 1969. Instead, the development of a distinct 'Great Society approach to policymaking' continued to shape domestic policy formulation for at least two decades afterwards.⁷¹

The focus of this dissertation is not the presidency, but it nevertheless contributes to our understanding of that institution.⁷² Interestingly, the President's powers and role within the system of American governance was a topic which intrigued both Johnson and Nixon, but has sadly been ignored by many scholars.⁷³ While there is much writing on the 'history of the president' there is significantly less on the 'history of the presidency'.⁷⁴ While not a history of President Nixon, this dissertation will shine light on the institution of the presidency during the reign of Richard Nixon.

⁷⁰ Kim Phillips-Fein, '1973 to the Present,' in E. Foner and L. McGirr (eds.), *American History Now* (Philadelphia, 2011), p. 179; Daniel Amsterdam, 'The President, Congress and Federal Social Policy in the 1970s,' in M. Rose and R. Biles (eds.), *The President and American Capitalism Since 1945* (Gainesville, 2017), p. 268.

⁷¹ For the concept of a 'long Great Society' era, see Matthew Grossman, *Artists of the Possible: Governing Networks and American Policy Since 1945* (New York, 2014), pp. 103-29 and Gareth Davies, 'The Great Society After Johnson: The Case of Bilingual Education,' *Journal of American History*, Vol. 88, No. 4 (2002), pp. 1405-29. For the quote, see Harper to Weinberger, 22 June, 1972, Harper Papers, Box 47, RNPL.

⁷² For recent scholarship on the presidency, see Brian Balogh, 'Confessions of a Presidential Assassin,' in B. Balogh and B. Schulman (eds.), *Recapturing the Oval Office: New Historical Approaches to the American Presidency* (Ithaca, 2015), pp. 1-7.

⁷³ In his final year as President, Johnson showed interest in a 'Commission on the Presidency', see Joseph Califano to Johnson, 23 May 1968, ExFG999-24 Files, Box 2, LBJL. Nixon also showed a great deal of interest in the institution of the Presidency during his transition, see Franklin Lincoln to Nixon, 11 Nov. 1968, Contested Files, Box 20, RNPL.

⁷⁴ Stephen Skowronek, 'The Unsettled State of Presidential History,' in B. Balogh and B. Schulman (eds.), *Recapturing the Oval Office* (Ithaca, 2015), p. 14.

Structure

This dissertation will use the case study of three anti-poverty programmes to develop an argument about the importance of bureaucratic power during the Nixon Administration. The first two initiatives – the Legal Services Program (LSP) and the Volunteers in Service to America (VISTA) – were novel innovations of the Johnson Presidency, created through the Economic Opportunity Act of 1964 which was the founding legislation of the War on Poverty. The third programme, the Food Stamp Program, dated back to the presidency of Franklin D. Roosevelt, and was housed in the Department of Agriculture. The first two were explicit anti-poverty programmes while the third, Food Stamps, belonged to what Hugh Heclo termed the ‘covert anti-poverty programs’ of the Great Society.⁷⁵ Rather than selecting three OEO programmes, this dissertation includes the USDA-operated Food Stamp Program to demonstrate that the argument is broadly applicable to policymaking during the 1960s and 1970s and not narrowly limited to just one agency.⁷⁶

A chronological framework has been adopted for this dissertation. This is because, broadly speaking, the programmes examined follow a similar narrative arc over the course of the Nixon presidency. It begins with inattentiveness in the first two years of the Presidency followed by a more concerted effort to tighten domestic spending in years three and four. This dissertation’s second part, aligning with the second term of Nixon’s presidency, witnesses a clear disjuncture in the Administration’s approach. This was a time in which an emboldened Nixon, in the wake of his landslide 1972 presidential election victory, sought to dramatically recast the domestic programmes of the Federal Government and institute a wholesale cleanout of the Federal

⁷⁵ Hugh Heclo, ‘The Political Foundation of Anti-Poverty Policy,’ in D. Danziger and S. Weinberg (eds.), *Fighting Poverty: What Works and What Doesn’t* (Cambridge, 1986), pp. 324-5.

⁷⁶ Inspiration is drawn here from Lassiter’s emphasis on the importance on comparative analysis, see Lassiter, ‘Ten Propositions for Political History,’ p. 368.

bureaucracy. With six chapters and three programmes, a chronological structure allows this dissertation to examine each programme at two different points within the Nixon presidency. As will be evident in the argument, the efforts made by the Administration changed, but the policy outcomes did not.

Source Base

The archival material cited in this dissertation is drawn from a wide range of collections. Naturally, as this is a dissertation on the Nixon era, it draws from the material at the Richard Nixon Presidential Library in Yorba Linda, California. Due to the extensive litigation over the Nixon Presidential Materials, the creation of a National Archives-endorsed Presidential Library occurred only in 2007.⁷⁷ This saw an additional 35 million pages of material become available to researchers over the past decade.⁷⁸ This thesis considerably draws from material at the National Archives. This includes both the holdings in Washington D.C., which provide bountiful sources on District Court decisions and Senate Committee staff, as well as at College Park, which provides the material for the bureaucratic agencies. These sources have been remarkably untapped by historians of this period. This is for pragmatic reasons. Despite the diligent work of National Archives and Records Administration archivists, these records are so vast, and often not yet coherently arranged, that using them is difficult. The chapters on the Legal Services Program draw additionally from the collections at the National Equal Justice Library, which provide an unparalleled insight into the worldview of LSP lawyers. This dissertation is also able

⁷⁷ Gillian Flaccus, 'Federal Archivists Take Control of Nixon Library,' *Washington Post*, 12 July 2007, p. C9.

⁷⁸ Joan Hoff, 'Researchers' Nightmare: Studying the Nixon Presidency,' *Presidential Studies Quarterly*, Vol. 26, No. 1 (1996), pp. 259-75.

to draw from an unpublished memoir from a key OEO bureaucrat, as well as another set of private bureaucratic papers provided to the author.⁷⁹

Another innovation of this dissertation is the oral history interviews that have been conducted. These ten interviews and written correspondence include bureaucrats (both career and Nixon appointed), White House staffers, public interest lawyers, and Congressional committee staff. As other historians have noted, the use of oral history interviews, particularly for events which occurred nearly half a century ago, can be problematic.⁸⁰ These interviews have not been relied upon for factual information absent corroborating contemporary evidence. Rather, they are most useful for providing texture for the dissertation, and to flesh out the people involved in the political process. In this way, we can see that they are not mechanical actors, but complex, passionate, and fallible.

Programmes

The first programme to be featured is the Food Stamp Program (FSP). The FSP was designed by the Department of Agriculture (USDA) in 1939 as a way to re-distribute surplus farm products. From the beginning though, there was a strong anti-poverty hue to the programme. In the words of the FSP's first administrator, the purpose of the programme was to 'build a bridge across [the] chasm' between 'farm surpluses' and 'under-nourished city folk'.⁸¹ During the John F. Kennedy Administration, the programme expanded from its narrower mission of redistributing surplus food and then swelled during the Johnson Administration with the passage of the Food Stamp

⁷⁹ The memoir is C. Robert Lane, *Supergrade, or Essays on the Federal Executive Suite*, n.d., unpublished manuscript, author's collection. The private papers are those of Randal Teague, OEO's Deputy Assistant for Operational Activities (1971-73).

⁸⁰ For discussion, see Alistair Thompson, 'Memory and Remembering in Oral History,' in D. Ritchie (ed.), *The Oxford Handbook of Oral History* (Oxford, 2011), pp. 77-95.

⁸¹ H.R. Rep 95-464, pp. 716 (1977).

Act of 1964, its first authorising legislation. Not a simple cash-based welfare system, the Food Stamp Program enabled low-income Americans to purchase ‘stamps’ that they could then use for increased purchasing power at certain grocery stores. To use an example from the early years of the Nixon Administration, as inherited from Johnson, a family of four, whose monthly income was \$100, could exchange \$44 for \$78 worth of stamps, thus boosting their food purchasing power by 77 per cent.⁸² At the beginning of the Nixon presidency, the Food Stamp Program cost \$248 million per year and served nearly three million Americans.

The second programme is the Legal Services Program (LSP). The LSP provided funding for neighbourhood law offices to assist poor people with civil matters. This emphasis on legal remedies to the issues of poverty in some ways gives this programme a conservative status – channelling rights claims through the courts rather than the streets.⁸³ The more controversial element of the LSP was that it enabled federally-financed lawyers to engage in class action lawsuits on behalf of the poor. This allowed LSP lawyers to launch legal suits against Federal, state, and local governments, as well as landlords and private businesses. The LSP had many significant victories in these class action suits, including *King v. Smith*, which invalidated residency requirements for welfare payments, and *Goldberg v. Kelly* which prohibited governments from withdrawing or denying welfare without a hearing. Legal historian Susan Lawrence has argued that cases bought by the LSP were responsible for the ‘substantial attention’ that the Supreme Court gave to welfare rights during this period.⁸⁴ LSP lawyers also won cases with political consequences, including a court-ordered reversal of Medicaid cuts in California. These LSP lawyers aroused such opposition, in the words of one Senator, because they sought to ‘redress

⁸² Nick Kotz, *Let Them Eat Promises: The Politics of Hunger in America* (Garden City, 1971), p. 259. There were differences between states, but this is a useful illustrative example.

⁸³ Transcript, ‘Face the Nation,’ 7 Dec. 1969, in RG381, Glennan Files, Box 9, NARA II.

⁸⁴ Susan Lawrence, *The Poor in Court: The Legal Services Program and Supreme Court Decision Making* (Princeton, 1990), p. ix.

the maldistribution of power' in American society. Beginning with a very modest budget of \$20 million in 1966, by 1968 the Legal Services Program had expanded to include 1800 lawyers, in 850 neighbourhood offices, with a budget of \$45 million.⁸⁵

The third programme is Volunteers in Service to America (VISTA). VISTA was conceived by the Johnson Administration as a domestic counterpart to the Peace Corps. Instead of sending young Americans to disparate parts of, to use the terminology of the time, the 'third world', as the Peace Corps did, VISTA recruited and trained volunteers for the impoverished regions of the United States. These volunteers, President Johnson declared, would serve as 'the first frontline fighters in our war against poverty'.⁸⁶ To do this, the VISTA volunteers were expected to join the communities they were helping. Though termed 'volunteers', programme participants received a very modest 'living allowance' of \$75 per month.⁸⁷ By 1968 enrolment in VISTA had exceeded that of the more established Peace Corps, with a VISTA spokesperson attributing it to America looking inward, and the 'pendulum of history' swinging from 'Africa, Asia, and Latin America to Harlem, Hough, and Appalachia'.⁸⁸ Like the LSP, there was a bifurcated approach to VISTA's activities, what one scholar has termed the 'compensatory/service' approach and the 'community/advocacy' approach.⁸⁹ In the former, VISTA volunteers perform small acts of community service, such as organising a kindergarten or a small community library. Others, upon visiting the communities, came to realise that the problems of the poor could not be solved through these 'Band Aid approach' but rather only through creating systematic change

⁸⁵ E. Clinton Bamberger, Jr., 'The Legal Services Program of the Office of Economic Opportunity,' *Notre Dame Law Review*, Vol. 41, No. 847 (1966), p. 847; 'OEO Staff Manual', 18 Aug. 1972, Corbett Papers, Box 2, NEJL; PACEO Fact Sheet, 'Legal Services', n.d., PACEO Files, Box 91, RNPL.

⁸⁶ Simeon Booker, 'The Great Society,' *Ebony*, Aug. 1965, p. 148.

⁸⁷ *Ibid.*, p. 6.

⁸⁸ Joseph A. Loftus, 'VISTA Gains Recruits as the Peace Corps Lags,' *New York Times*, 4 July 1968, p. 8.

⁸⁹ David Pass, 'The Politics of VISTA in the War on Poverty,' PhD Diss., Columbia University, 1972, pp. xviii.

such as a rent strike or other forms of political mobilisation.⁹⁰ Taken together, these programmes provide a useful lens to make broader judgements about the durability of the Great Society during the Nixon presidency.

As he prepared to leave office, President Johnson wrote a letter to Sargent Shriver, the former Director of the Office of Economic Opportunity. Johnson told Shriver, presently serving as the US Ambassador to France that, 'I do believe that what we have begun... will endure'.⁹¹ These programmes survived, this dissertation argues, not through luck or a change of heart in the White House, but thanks to the powerful actors of the permanent government. This was a political regime that fiercely protected Federal programmes from conservative attack. It was a regime that would not simply vex Nixon, but would hold fast for a quarter of a century following Johnson's presidency.

⁹⁰ 'Nixon Seeking a Softer Image for VISTA,' *New York Times*, 14 June 1970, p. 73.

⁹¹ Johnson to Shriver, 3 Jan. 1969, WE Files, Box 32, LBJL.

Chapter I

Insatiable appetite: The growing power of bureaucratic and judicial decision-making in the Food Stamp Program

No domestic question more clearly demonstrated Richard Nixon's tumultuous first year as President than the issue of hunger. He became the first President to call publicly for 'an end to hunger in America' while also believing 'that the whole anti-hunger campaign was a hoax and a disgrace'.¹ Undeniable, though, was the growth of the Food Stamp Program during his first-term. When Nixon acceded to the presidency 2.9 million Americans received food stamps.² Within two years, this number would reach 10 million.³ This growth in participation matched a massive expansion of expenditure, from \$248 million in FY1969 to over \$2 billion in FY1972.⁴

The 'Nixon as liberal' historiographical school has claimed this growth of Food Stamps as evidence of the President's latent liberalism.⁵ Interpretations less charitable to the President credit Congress, and in particular its liberal members such as South Dakota Senator George McGovern.⁶ This chapter's first section explores the insider politics of the White House as they came to terms with the issue of divining an anti-hunger policy agenda. It observes a White House grappling with the very nature of domestic policy formulation itself, as seen in the

¹ 'Special Message to the Congress Recommending a Program to End Hunger in America,' *Pub. Papers* 350 (6 May 1969); Burns, diary entry for 21 Aug. 1969.

² Department of Agriculture Appropriations for 1970: Hearings before a Subcommittee of the Committee on Appropriations, House, 91st Cong. 29 (1969).

³ George Shultz to George McGovern, 17 June 1971, WE Files, Box 60, RNPL.

⁴ *Ibid.*

⁵ For example, see Morgan, *Nixon*, pp. 66-7; Frank Stricker, *Why America Lost the War on Poverty: And How to Win It* (Chapel Hill, 2007), p. 133; Wicker, *One of Us*, p. 539; Randall Woods, *Quest for Identity: America since 1945* (Cambridge, 2005), p. 320.

⁶ For example, see Patterson, *America's Struggle Against Poverty*, p. 168; Sam Rosenfeld, 'Fed by Reform: Congressional Politics, Partisan Change, and the Food Stamp Program, 1961-1981,' *Journal of Policy History*, Vol. 22, No. 4 (2010), pp. 474-507, Ronald King, *Budgeting Entitlements: The Politics of Food Stamps* (Washington D.C., 2000), and John Ferejohn, 'Logrolling in an Institutional Context: A Case Study of Food Stamp Legislation,' in Wright et al. (eds.), *Congress and Policy Change* (New York, 1986), pp. 223-54.

development of new institutions such as the Council for Urban Affairs. It will also highlight the bifurcated nature of the Nixon White House and the deep policy divides existing between its liberal and conservative camps, and how these relationships affected policy.

The subsequent two sections will make the larger claim that what actually occurred in the White House was not particularly consequential. Instead, it will demonstrate how change was driven by a bureaucratic-judicial nexus throughout 1969.⁷ The second section of this chapter will demonstrate how District Courts around the country, revolutionised during the Kennedy and Johnson years, dramatically expanded entitlement to the FSP through a liberal reading of the equal protection clause. Importantly, these cases were all brought by lawyers funded through the Office of Economic Opportunity.⁸ The third section will detail the pivotal role of bureaucrats in the Department of Agriculture whose dreams of programme liberalisation far outpaced those of the White House. They achieved their goals through the creation of a new institution, the Food and Nutrition Service, to oversee the delivery of anti-hunger programmes.

The Johnson Presidency

The issue of hunger was one which first emerged in the twilight years of the Johnson presidency. As has been covered extensively, the genesis of a hunger awareness in the United States can be traced to the Congressional visit by Democratic Senators Joseph Clark and Robert F. Kennedy

⁷ While historians have neglected this nexus, it has been found in political science literature including Jeffrey Berry, *Feeding Hungry People: Rulemaking in the Food Stamp Program* (New Brunswick, 1984), and Melnick, *Between the Lines*, pp. 183-232.

⁸ The anti-hunger movement has been neglected in the literature on the public interest law movement, see Marie Failing and Ezra Rosser (eds), *The Poverty Law Cannon* (Ann Arbor, 2016) and Martha F. Davis, *Brutal Need: Lawyers and the Welfare Rights Movement, 1960-1973* (New Haven, 1993).

to the Mississippi Delta region in 1967.⁹ This attention led to the broadcast of an hour-long documentary *Hunger in America* first shown on CBS on 21 May 1968. After feeling ‘ashamed’ watching the broadcast, South Dakota Democratic Senator George McGovern launched the Senate Select Committee on Hunger and Malnutrition (SSCHM).¹⁰ The SSCHM, launched in 1969, comprised eight Democrats and five Republicans and was widely applauded for its bipartisan approach to hunger issues.¹¹ McGovern, the committee’s chairman, described the sessions as ‘constructive, warm, and sometimes humorous’.¹² Action was also stimulated by the media, particularly the reporting of *Washington Post* reporter Nick Kotz.

By late 1968, as his presidential term drew to a close, it was apparent to Johnson’s aides that hunger was an issue they could no longer ignore. The President had been lobbied by anti-hunger activists in the Poor People’s Campaign, and Congressmen continually wrote to him regarding their constituents’ concerns over the *Hunger in America* documentary.¹³ Joe Califano, Johnson’s most trusted domestic aide, wrote to LBJ in June 1968 telling him that while Johnson had ‘clearly’ made ‘his mark in the fields of education, health, jobs, and poverty’ the ‘one area remaining’ was ‘food’.¹⁴ Califano noted that there had been ‘virtually no increase in the level of expenditures on food assistance over the last eight years’.¹⁵ While the Johnson Administration

⁹ For example, see David Ballantyne, ‘A Public Problem.... Rather Than a Question of Social Welfare’: Ernest F. Hollings and the Politics of Hunger,’ *The Sixties*, Vol. 8, No. 1 (2015), p. 78; Kotz, *Let Them Eat Promises*, p. viii.

¹⁰ George McGovern, *The Third Freedom: Ending Hunger in Our Time* (Lanham, 2002), p. 69.

¹¹ Bruce Miroff, *The Liberals’ Moment: The McGovern Insurgency and the Identity Crisis of the Democratic Party* (Lawrence, 2009), p. 36.

¹² *Ibid.*, p. 72.

¹³ DeVier Pierson to Lyndon Johnson, 23 May 1968, FG Files, Box 213, LBJL; Gonzalez to Freeman, 20 June 1968, FG Files, Box 213, LBJL.

¹⁴ Joseph Califano to Lyndon Johnson, 25 June 1968, FG Files, Box 213, LBJL.

¹⁵ *Ibid.*

had largely withdrawn its political capital from the broader fight against poverty, the President was unable to ignore the ‘explosion’ of focus on hunger.¹⁶

Johnson’s response centred on expanding the Food Stamp Program ‘to meet the tragedy of hunger in America’.¹⁷ Three aspects of the Johnson Administration’s engagement with hunger foreshadowed the Nixon Administration’s approach. The first element was financial. ‘Sooner or later,’ an aide warned Johnson in June of 1968, ‘we are going to be pinned down on [the] dollar gap between our stated intentions and the necessary funds’.¹⁸ This concern was echoed by Agriculture Secretary Orville Freeman who bluntly told the President: ‘one thing is clear, we need more funds’.¹⁹ A problem had already occurred in March of that year when Secretary Freeman had ‘overcommitted himself’ by allowing more counties into the Food Stamp Program than he had budgeted for.²⁰ Fearful of ‘potential embarrassment’, the Bureau of the Budget was forced to work with various agencies, including the Office of Economic Opportunity, to ‘pick up the... tab’.²¹ While hunger was an easy rhetorical focus for members of the legislative branch, the Executive Branch was caught in a bind when its promises outstretched its finances.

The second major issue was challenging negative narratives about the Administration in the media. This was a particular problem for the Administration due to the media’s loss of deference, particularly heightened after the failure of the Tet Offensive in January 1968.²²

¹⁶ Rosenfeld, ‘Fed by Reform,’ p. 480.

¹⁷ ‘Statement by the President Upon Signing the Bill extending the Food Stamp Program for 3 Years,’ *Pub. Papers* 519 (8 Oct. 1968).

¹⁸ Memorandum to Johnson, 12 June 1968, FG Files, Box 213, LBJL. Exacerbating the Administration’s financial concerns was the 1968 fiscal crisis, see Robert M. Collins, ‘The Economic Crisis of 1968 and the Waning of the “American Century”,’ *American Historical Review*, Vol. 101, No. 2 (1996), pp. 396-442.

¹⁹ Orville Freeman to Johnson, 12 June 1968, FG Files, Box 213, LBJL.

²⁰ Charles Zwick to Johnson, 23 March 1968, FG Files, Box 213, LBJL.

²¹ *Ibid.*

²² Kathryn Olmstead, *Challenging the Secret Government: The Post-Watergate Investigations of the CIA and FBI* (Chapel Hill, 1996), pp. 22-24.

Secretary Freeman was particularly aggrieved by both the reporting of the *Washington Post*'s Nick Kotz and the *Hunger in America* TV program. Freeman accused Kotz of 'making a major muck-raking enterprise out of picking at our programs any way he can'.²³ He was also equally, and more publicly, scornful of the 'shoddy journalism' of CBS's documentary. Writing to the President of CBS to express his 'disappointment' and 'indignation', Freeman labelled the programme 'a travesty to objective reporting'.²⁴ He demanded 'equal time' for a right-of-reply on CBS for the Department of Agriculture, a request which was promptly dismissed. Special Counsel to the President DeVier Pierson, however, provided a more holistic view. While the 'extent' of the hunger issue was up for debate, Pierson wrote, the issue was clearly 'very emotional' and the 'existence of unmet need simply can't be denied'.²⁵ Pierson had concluded, correctly, that attempting to attack either the press or hunger activists over the issue of poverty was not a winning strategy. Even Freeman, though apparently not heeding his own advice, observed that hunger was a 'very touchy situation' and needed to be dealt with carefully.²⁶

The third hallmark of the Johnson Administration approach was a difficulty in dealing with Congress, unusual for the master legislator Johnson. Food Stamps was a thorny issue for Capitol Hill. While power over agriculture policy had traditionally been wielded by conservative Democrats like Texan W. R. Poage, an opponent of the program, by mid-1968, liberals were beginning to involve themselves with Food Stamp politics in Congress. It created a tightrope for the Administration to walk. They sought to expand the programme to appease urban liberals but were fearful of 'upsetting' Southern conservatives by 'giving free food to these negroes in the Delta', as Secretary Freeman put it.²⁷ While Freeman was contemptuous of 'city liberals' like St

²³ Freeman to Califano, 1 Feb. 1968, Name Files, Box 231, LBJL.

²⁴ Freeman to Frank Stanton, 27 May 1968, FG Files, Box 213, LBJL.

²⁵ Pierson to Johnson, 27 May 1968, FG Files, Box 213, LBJL.

²⁶ Freeman to Johnson, 12 June 1968.

²⁷ Freeman to Califano, 7 July 1967, FG Files, Box 213, LBJL.

Louis' Leonor Sullivan, he was unwise to ignore their growing influence.²⁸ The Senate also frustrated the Administration. Freeman accused the Clark-Kennedy Senate Committee of being a 'three-ringed circus' whose only purpose was to 'embarrass' the Administration'.²⁹ The Johnson Administration, so proactive during the 89th 'Great Society' Congress struggled in a more reactive role during the 90th.

Enter Richard Nixon

When Nixon assumed office in January 1969, the hunger issue demanded immediate Administration attention.³⁰ From as early as February it was obvious, as one White House official wrote, that hunger was 'going to become a critical political issue in the course of the Administration'.³¹ Richard Nathan, Assistant Director of the Bureau of the Budget (BOB), said that month that 'there [was] real promise in the newly-emerged recognition that malnutrition is a national problem against which this Administration can launch a major effort with real pay-off'.³² For a President who was more interested in international affairs, hunger appeared an easy issue for him to 'get things moving' on the domestic front.³³

The draft Administration working paper 'A Nixon Initiative on Hunger' demonstrated how politics was the primary motivator for the White House. The document cited hunger as 'one of our greatest political opportunities since we could blame the situation on the Democrats'.³⁴ The report urged the Administration to 'go on the offensive' for fear of 'get[ting] bombed' by

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Hunger was considered one of nine major domestic priorities, see Memorandum for the President, 23 Jan. 1969, Moynihan Papers, Series I, Box 264, LOC.

³¹ Christopher DeMuth to Daniel P. Moynihan, 11 Feb. 1969, HE Files, Box 13, RNPL.

³² Richard Nathan to Moynihan, 17 March 1969, Price Papers, Box 17, RNPL.

³³ Diary Entry: 24 Jan. 1969, H.R. Haldeman Diaries Collection, RNPL.

³⁴ 'A Nixon Initiative on Hunger,' draft, 14 April 1969, HE Files, Box 13, RNPL.

Congress and being forced into a more reactive posture.³⁵ The Administration was also cynically keen to deny positive press coverage to George McGovern, identified as early as August 1969 as a potential opponent for Nixon in 1972.³⁶ This partisan view of the issue was not a unique occurrence. An article from *Time* magazine in December 1969 was forwarded to the President concerning hunger.³⁷ The only things underlined in the whole article were the names of three Democratic Senators. The Republican Administration knew the potency of the hunger issue and, in particular, the ability of the House and Senate Democrats to exploit it as a political issue.

Cabinet

Overall responsibility for the Administration's anti-hunger agenda would belong, as it did in the Johnson White House, with the Secretary of Agriculture. For this role, Nixon selected the 64-year old Indiana agricultural economist Clifford Hardin. Hardin was described by the President to USDA employees as 'a man that understands the problems of hunger and malnutrition'.³⁸ White House aides described Hardin as 'very concerned' about hunger issues and he actively sought briefings from USDA, marking quite a noticeable reversal from his Democratic predecessor who showed little interest in hunger issues.³⁹

Hardin was emboldened because of Nixon's broader tendency to devolve authority to Cabinet members on domestic issues. This was initially a plan designed during the transition to 'preserve' the President's time 'for the things that really matter'.⁴⁰ The President desired for 'minor

³⁵ *Ibid.*

³⁶ The *Evening Star* in an article in August 1969 was already describing McGovern as a 'presidential hopeful', see Mary McGrory, 'The Flap Over Food Stamps,' *Evening Star*, 18 Aug. 1969, located in Moynihan Papers, Box 44, RNPL.

³⁷ Arthur Burns to Richard Nixon, 20 Dec. 1969, HE Files, Box 3, RNPL.

³⁸ Remarks to Employees at the Department of Agriculture, *Pub. Papers* 23 (3 Feb. 1969).

³⁹ DeMuth to Moynihan, 11 Feb. 1969.

⁴⁰ H. R. Haldeman Handwritten Agenda, 19 Dec. 1968, Contested Files, Box 36, RNPL.

decisions' to be kept away from his desk, though this was be interpreted very liberally by some members of Cabinet.⁴¹ John Ehrlichman recalled that their instructions to Cabinet members were for them to be 'more or less autonomous'.⁴² This frustrated conservatives within the Administration, with one bemoaning within a month of taking office how the Cabinet secretaries had already become 'prisoners of career civil servants'. He bemoaned that they 'push for their departments, care not about money, rely on LBJ's people, and talk like them'.⁴³ Hardin, who worked closely with senior bureaucrats from his Department, proved to be very much in the mould who so irked Burns.

A new policy approach

One of the novel structural innovations of the Nixon Administration to White House governance was the advent of a Council for Urban Affairs (CUA), designed as the domestic policy counterpart to the National Security Council.⁴⁴ It was inaugurated as a response to the changing demographics of America, with its founding Executive Order noting that by 1969 nearly three-quarters of American citizens lived in cities yet governments had only responded to urban issues 'in a haphazard, fragmented, and often woefully short-sighted manner'.⁴⁵ Conversely, the EO promised that the CUA would begin the proper 'formulation and implementation of a national urban policy'.⁴⁶ The CUA was conceived by the White House Urban Affairs Advisor Daniel Patrick (Pat) Moynihan, the liberal academic who was a close domestic advisor to the President. The CUA initially had a membership of ten, including the

⁴¹ *Ibid.*

⁴² John Ehrlichman, 'The White House and Policy-Making,' in K. Thompson (ed.), *The Nixon Presidency: Twenty-Two Intimate Perspectives* (Lanham MD, 1987), pp. 130.

⁴³ Burns, diary entry for 12 Feb. 1969.

⁴⁴ This is often referred to in other literature at the Urban Affairs Council (UAC).

⁴⁵ Exec. Order No. 11452 34 FR 1223 (1969).

⁴⁶ *Ibid.*

President, Vice-President and various Cabinet Secretaries with domestic responsibilities.⁴⁷

Moynihan told Nixon that he believed urban affairs issues were all ‘manageable if only we will manage them’.⁴⁸ Clearly the Great Society influence on the Federal Government still endured.

Responsibilities for addressing the hunger crisis were assigned to the Surplus Food and Nutrition subcommittee of the CUA. The subcommittee comprised Commerce Secretary Maurice Stans and HEW Secretary Robert Finch and was chaired by USDA Secretary Hardin. The subcommittee was tasked with investigating ‘poverty related malnutrition’ and reported its findings to the broader CUA on 17 March. It was this meeting which would decide the Administration’s policy. Hardin, who as Chair was tasked with briefing the CUA, told the full committee that his subcommittee was ‘absolutely convinced that hunger is a serious problem’ and that the Administration’s policy ‘should be to wipe this from our land’.⁴⁹ Hardin continued that hunger was ‘the hottest item of the domestic front’. The President was initially sceptical, asking his Secretary, ‘are we allowing their propaganda to pull us in?’⁵⁰

In practical terms, the subcommittee’s proposal called for a significant overhaul of the Federal government’s anti-hunger policies. The first recommendation was that the Administration step up its rhetorical focus on hunger, including in a prime-time speech by the President. Nixon had been urged by his closest advisers to give more frequent Presidential statements, arguing that they ‘convey to the country the image of dynamic leadership’.⁵¹ The President agreed with this recommendation and urged the CUA to ‘use all the rhetoric, so long as it doesn’t cost us

⁴⁷ Moynihan to Nixon, 9 Jan. 1969, Moynihan Papers, Series I, Box 264, LOC.

⁴⁸ *Ibid.*

⁴⁹ ‘Minutes of the Meeting of the Council of Urban Affairs,’ 17 March 1969, Moynihan Papers, Series I, Box 265, LOC.

⁵⁰ See *ibid.* for Nixon’s remarks. The President was referring here to Congressional liberals.

⁵¹ Burns, diary entry for 27 Feb. 1969.

money’.⁵² The Administration wanted to be *seen* to be doing something more than it actually wanted to *do* something. This was particularly true in areas where Johnson was perceived to have faltered. Referring to what the note-taker called ‘the political battle’ over hunger, Hardin told the President that ‘we must show we are digging into it’.⁵³ This would, Hardin urged the President, ‘take the play away from the McGovern subcommittee’.⁵⁴ One eye was always on the politics of the situation.

The idea of the Federal Government being ‘seen to be doing something’ was a relatively recent phenomenon in American politics. Political scientist Shep Melnick describes how the ‘discovery of social problems’, of which hunger was certainly a case, ‘led to demands for public solutions’.⁵⁵ Hunger was seen as a ‘national problem’ and so activists called for a ‘national program’ to respond.⁵⁶ Participants in the Nixon White House were aware of this, with Elliot Richardson, Nixon’s future Secretary of Health, Education, and Welfare (HEW), reflecting on how ‘expectations’ of government ‘flourished’ during the Great Society era.⁵⁷ Richardson described the feeling that ‘every conceivable problem must have some legislative solution’ and that the government was captured by a spirit of ‘don’t just stand there, do something!’.⁵⁸ One of the most prominent scholars of this impulse is James Q. Wilson, who wrote of the ‘lowering of the legitimacy barrier’ in social policy whereby ‘since there is virtually nothing the government has

⁵² ‘Minutes of the Meeting of the Council of Urban Affairs,’ 17 March 1969. Two of Nixon’s allies would assert that he was joking, see Daniel Patrick Moynihan, *The Politics of a Guaranteed Income: The Nixon Administration and the Family Assistance Plan* (New York, 1973), pp. 122; Author’s interview with John R. Price, 30 Jan. 2019.

⁵³ ‘Minutes of the Meeting of the Council of Urban Affairs,’ 17 March 1969.

⁵⁴ *Ibid.*

⁵⁵ R. Shep Melnick, ‘Governing More But Enjoying it Less,’ in M. Keller and S. Melnick (eds.), *Taking Stock: American Government in the Twentieth Century* (Washington D.C., 1999), pp. 287-290.

⁵⁶ Environmental Health Problems: Hearings before the Select Committee on Nutrition and Human Needs, Senate, 90th Cong. 2187 (1970).

⁵⁷ Richardson, *The Creative Balance*, p. 125.

⁵⁸ *Ibid.*, p. 128.

not tried to do, there is little it cannot be asked to do'.⁵⁹ This was certainly evidenced in the anti-hunger policies of the Nixon Administration.

Policy

The Surplus Food and Nutrition Subcommittee also – and importantly – made a series of policy recommendations. Underpinning these recommendations was an innate preference for Food Stamps over commodity distribution.⁶⁰ This preference marked another continuity with the Johnson White House.⁶¹ The main issue with food stamps, the subcommittee believed, was that they were still too unaffordable for too many Americans. To rectify this, they recommended that Food Stamp costs should never exceed 30 per cent of a family's income. They also recommended the introduction of national eligibility standards 'to eliminate the inequities between the states'.⁶² According to Moynihan's handwritten notes of the meeting, Hardin estimated the total cost of these changes at \$350 million for FY1970.⁶³

Backlash

Commerce Secretary Maurice Stans optimistically told the President that the proposed programme 'may... not [be] nearly as costly as we now expect'.⁶⁴ This view was not widely shared within the government. James Lyday, an analyst at the OEO's Office of Research, Plans, Programs, and Evaluations, described the costing — \$610 million for FY1970 — as 'not credible

⁵⁹ Wilson, 'American Politics, Then and Now,' p. 41. For more on this theme, see Balogh, 'Making Pluralism "Great" Again,' pp. 162-3; Melnick, 'Governing More But Enjoying it Less,' pp. 280-306.

⁶⁰ 'Report of the Committee of the Urban Affairs Council on Food and Nutrition,' 17 March 1969, Moynihan Papers, Series I, Box 265, LOC.

⁶¹ Califano to Johnson, 25 June 1968.

⁶² 'Report of the Committee of the Urban Affairs Council on Food and Nutrition,' 17 March 1969,

⁶³ Daniel Moynihan, Handwritten Notes, n.d., Moynihan Papers, Series I, Box 265, LOC.

⁶⁴ 'Minutes of the Meeting of the Council of Urban Affairs,' 17 March 1969.

if the program is to reach any significant portion of the population specified as eligible'.⁶⁵ By Lyday's reckoning, the eligibility guidelines outlined by the SFN would necessitate the enrolment of 30-35 million Americans. Lyday also warned his boss of a potential political issue – OEO, Lyday wrote, would be stuck either 'not helping the poor to receive their benefits under the law' or be in a position of 'causing cost increases in the program of substantial proportions'.⁶⁶ This was very much the echo of a memorandum eleven months earlier to President Johnson of the Administration being 'pinned down on [the] dollar gap between our stated intentions and the necessary funds'.⁶⁷

The White House debate over hunger was reflective of the broader divisive policy debates which occurred amongst White House staff across 1969. The debate was so visceral because it felt to the participants like a battle for the President's ideologically-ambiguous soul. Both conservatives and liberals within the Administration felt that the President was truly one of them. Broadly speaking, the liberal forces within the White House were led by Pat Moynihan and the conservatives by Presidential Counsellor Arthur Burns.⁶⁸ These battles extended down to their staffs, which John Ehrlichman described as 'like oil and water'.⁶⁹ Both physically and temperamentally the men were polar opposites, with one scholar describing them as having 'nothing in common except high IQs'.⁷⁰ Moynihan was a registered Democrat who had worked in the Kennedy and Johnson White Houses; Burns a noted conservative who had served under Eisenhower. Nor was there love lost between the two men. In his diary, Burns described

⁶⁵ James Lyday to Donald Rumsfeld, 26 May 1969, Moynihan Papers, Box 68, RNPL.

⁶⁶ *Ibid.*

⁶⁷ Memorandum to Lyndon Johnson, unknown author, 12 June 1968.

⁶⁸ A good overview of the Burns-Moynihan rivalry can be found in Taylor Branch, 'Patrick Moynihan's Ship of Fools,' *Washington Monthly*, January 1973, pp. 6-19. See also 'Interview with Bill Baroody', 27 Sept. 1974, Reichley Interviews, Box 1, GFPL.

⁶⁹ Ehrlichman, 'The White House and Policy-Making,' p. 130.

⁷⁰ Tevi Troy, *Intellectuals and the American Presidency: Philosophers, Jesters, or Technicians?* (Oxford, 2003), p. 91.

Moynihan as caring ‘neither for truth nor public money’.⁷¹ This ‘ideological animosity’ was not merely a clash of two egos. It would have policy implications for the President’s entire domestic agenda.⁷²

The issue of hunger was a further battle in this proxy war. Burns strongly opposed the President’s course of action on hunger, believing him to have been led astray by liberals in the Administration. Burns’ opposition was two-fold. First, he believed that the President had been duped by the CUA.⁷³ Burns fired off an urgent memo to White House aide Ken Cole stating that Burns felt that he had not been ‘correctly informed’ of the total cost when he had agreed to the Surplus Food and Nutrition Subcommittee’s recommendations and feared Nixon had been misinformed as well.⁷⁴ Second, Burns did not believe hunger existed. He fretted in his diary that the Administration’s ‘political talk may create a problem where none really exists’.⁷⁵ In a memorandum to the President, copied to all members of the SFN Subcommittee, Burns bluntly wrote ‘What is the hard evidence on ‘hunger’ and ‘malnutrition’ in the United States?’.⁷⁶ Burns disputed Hardin’s presentation to the UAC affairs committee, lambasting it as overly reliant on information prepared by Arnold E. Schaefer, the head of HEW’s Nutrition Program. He described the Senate Select Committee on Nutrition as similarly gullible.⁷⁷

The Family Assistance Program (FAP)

The Administration’s action in the realm of food stamps needs to be understood in the context of its broader welfare strategy. Richard Nixon campaigned for the presidency pledging to ‘take

⁷¹ Burn, diary entry for 21 Aug. 1969.

⁷² Ehrlichman, ‘The White House and Policy-Making,’ p. 130.

⁷³ Burns, diary entry for 21 Aug. 1969.

⁷⁴ Burns to Kenneth Cole, 6 May 1969, Burns Papers, Box A23, GFPL.

⁷⁵ Burns, diary entry for 6 March 1969.

⁷⁶ Burns to Nixon, 17 March 1969, Moynihan Papers, Series I, Box 265, LOC.

⁷⁷ As proof of the division, Secretary Finch would testify before a Senate committee that he ‘accept[ed] the conclusions’ of Schaefer, see *The Nixon Administration Program: Hearings before the Select Committee on Nutrition and Human Needs*, Senate, 90th Cong. 42 (1969).

an activist view' of the presidency.⁷⁸ The presidency, he wrote, 'offers a chance to *do* something'.⁷⁹ Nowhere was this more apparent in his first-term than his revolutionary plan to reform the entire welfare system. The proposal, spearheaded by Moynihan but conceived by Treasury officials, advocated for the replacement of all forms of welfare benefits with a guaranteed minimum income for all Americans.⁸⁰ This became known as the Family Assistance Plan.⁸¹ The public was very receptive, as discovered by Moynihan aide Stephen Hess who, after reviewing the mail received by the White House, found that 'no Presidential domestic statement in nearly a decade had such overwhelmingly favourable response'.⁸²

Central to the concept of the Family Assistance Plan (FAP) was the eradication of other forms of welfare payments. This included food stamps, and the discussions of 'cashing out' food stamps was central to all planning relating to both iterations of FAP.⁸³ The Administration considered the expansion of food stamps to be 'massive (but temporary)'. This would recede with the passage of FAP at which point they would be 'phased out... at the earliest possible date'.⁸⁴ It was within this framework – that welfare reform would be enacted and food stamps abolished – that all future political decisions were made by the Administration. This led to the

⁷⁸ Nixon-Agnew Campaign Committee, 'Nixon on the Issues,' 17 Oct. 1968, Nathan Papers, Box 3, Hoover.

⁷⁹ *Ibid.* Italicisation in original document.

⁸⁰ Daniel Patrick Moynihan, *The Politics of a Guaranteed Income*, p. 114. The main driver behind FAP was to reign in the spiralling costs of the Aid to Families with Dependent Children (AFDC) costs, see 'Meeting of the President with John Ehrlichman et. al.,' n.d., *Papers of the Nixon White House Microfilm Collection*, Part 3, fiche 3-1-A09.

⁸¹ For more background on the Family Assistance Plan, see Gareth Davies, *From Opportunity to Entitlement: The Transformation and Decline of Great Society Liberalism* (Lawrence, 1996), pp. 211-33; James T. Patterson, *America's Struggle Against Poverty in the Twentieth Century* (Cambridge, 1994), pp. 192-8; Jill Quadagno, *Color of Welfare: How Racism Undermined the War on Poverty* (New York, 1994), pp. 83-100.

⁸² Donald Hess to Moynihan, 22 Aug. 1969, Moynihan Papers, Series I, Box 264, LOC.

⁸³ 'Meeting of John Ehrlichman with Unspecified Person,' 1969, *Papers of the Nixon White House Microfilm Collection*, Part 3, fiche 3-1-D03.

⁸⁴ James Lyday to John Wilson, 12 Jan. 1970, RG381, OPRE Files, Box 2, NARA II.

short-term thinking on the Administration's behalf, as they sought to create a temporary programme rather than the developing a stand-alone food stamps policy.

Implementing the UAC Recommendations

The first Council for Urban Affairs recommendation to be addressed by the White House was the presidential message to Congress. The process of drafting the speech only furthered White House fissures. Burns, unable to speak to the President over the message, created a 'huge flap' and threatened his resignation.⁸⁵ Burns blamed the obstructionism on Assistant to the President for Domestic Affairs John Ehrlichman, perhaps over the latter's decision to give lead-writing duties to Moynihan.⁸⁶ Symbolic of the difficulty that the Administration had in crafting a coherent message on hunger to the Congress, they next turned to top bureaucrats at the Department of Agriculture.⁸⁷ In a perfect encapsulation of their lack of planning, this approach was made the night before the speech was due to be delivered.⁸⁸

In his message to Congress of 6 May 1969, Nixon declared hunger 'embarrassing and intolerable' and that 'the moment is at hand to put an end to hunger in America'.⁸⁹ Both Nixon's supporters and detractors alike would use this quote as proof of his sincerity – or his hypocrisy.⁹⁰ He

⁸⁵ Diary Entry: 25 March. 1969, H.R. Haldeman Diaries Collection, RNPL.

⁸⁶ Cole to Burns, 6 May 1969, Burns Papers, Box A12, GFPL.

⁸⁷ Interview with Isabelle M. Kelley, 26 Aug. 1983, Interviews of Women in the Federal Government Oral History Project, 1981-1983, Schlesinger Library.

⁸⁸ *Ibid.*

⁸⁹ 'Special Message to the Congress Recommending a Program to End Hunger in America,' *Pub. Papers* 350.

⁹⁰ For use of this quote as a testament to the President's sincerity, see USDA Press Release, 28 July 1969, McCaw Papers, Box 1, Hoover; 'Talk by Richard E. Lyng at the National Cannery Association's Food Editor's Workshop,' 8 May 1970, Moynihan Papers, Series I, Box 296, LOC. For challenges, see for example 'Taking Back the Lunch Money,' *Washington Post*, 9 Oct. 1971, pp. A14; Clifton Craig to George McGovern, 11 Jan. 1973, Series 4, Box 623, McGovern Papers.

pledged to act with 'vigour' in doing so.⁹¹ The speech changed the tenor and substance of the debate about hunger by utilising the presidency's 'bully pulpit'. One direct consequence was the response of Ralph Yarborough, the liberal Democratic Senator from Texas, who praised the speech and said 'I do not believe now, after this statement by the Chief Executive, that anyone else will contend that there is no hunger, no malnutrition in America'.⁹² The speech was very well received by the public too, with messages to the White House approving the speech outnumbering the negative by six-to-one. Despite the reservations of conservatives within the Administration such as Burns, a Rubicon had been crossed.⁹³

May 1969 would prove to be a tumultuous time for the Nixon Administration on hunger. In early April, civil rights leader Reverend Ralph Abernathy, the leader of the Poor People's Campaign, requested a series of meetings with senior Administration officials to discuss hunger. Hardin agreed to meet Abernathy and invited him to the White House, while Moynihan extended the invite for Abernathy to meet with the entire Council for Urban Affairs.⁹⁴ After the meeting, Abernathy gave a press conference on the steps of the White House. Just a stone's throw from the Oval Office, Abernathy described his meeting as 'the most disappointing and fruitless of all such meetings held in Washington'.⁹⁵ A CBS journalist commented that it was 'the strongest dressing down of any President on his own doorstep in the memory of veteran White House correspondents'.⁹⁶ The President was outraged. He lashed out that the events were proof

⁹¹ 'Special Message to the Congress Recommending a Program to End Hunger in America,'

⁹² Nixon Administration Program Hearings, p. 41.

⁹³ It is also an example of what James Q. Wilson termed the 'lowering of the legitimacy barrier' whereby attacking hunger and malnutrition was now seen as a Federal responsibility, Wilson, 'American Politics, Then and Now,' p. 41.

⁹⁴ Hess to Moynihan, 12 May 1969; 'Memorandum of Events,' n.d., Krogh Papers, Box 61, RNPL.

⁹⁵ Alexander Butterfield to Haldeman and Ehrlichman, 15 May 1969, Krogh papers, Box 61, RNPL.

⁹⁶ *Ibid.*

that his instincts not to meet activists such as Abernathy were sound. Emphasising the depths of his frustration, the President told his staff 'no more of this'.⁹⁷

The Conference

One of the key pledges of the 6 May Congressional message was the convocation of a White House Conference on Food, Nutrition, and Health. This was to be held in December of 1969 and was the brainchild of a charismatic and quixotic White House advisor Jean Mayer. Mayer was a Professor of Nutrition from Harvard who had entered the White House in June 1969 on the recommendation of Moynihan.⁹⁸ Mayer would grow to frustrate the Administration and his 'surprising candor,' as *LIFE* magazine put it, would win him few friends.⁹⁹

The road to the Conference was rocky. What the Nixon Administration had thought would be an easy PR-victory soon soured. Scepticism was sky high. An August *Wall Street Journal* article derided White House conferences as 'monumental wastes of time and effort' and warned that this one faced a similar fate, particularly due to the dangers in trying to balance the demands and needs of anti-hunger activists and business interests.¹⁰⁰ Moynihan warned the President that he 'must be prepared ... for some trouble'.¹⁰¹ This echoed Moynihan's earlier comment to Housing and Urban Development Secretary George Romney that White House conferences were either 'enormously important events or near disasters'.¹⁰² Nixon's unease was elevated a month later when the *New York Post* claimed that the Conference was 'about to disappear in a cloud of

⁹⁷ *Ibid.*

⁹⁸ Jamie Heard, 'Fighting Poverty with New Means,' *National Journal*, Vol. 1, No. 4 (22 Nov. 1969), p. 198.

⁹⁹ 'Dr. Jean Mayer, The Nation's Food Watcher,' *LIFE*, Vol. 67 No. 22 (28 Nov. 1969), p. 42.

¹⁰⁰ Alan Otten, 'Politics and People: Thought for Food,' *Wall Street Journal*, 13 Aug. 1969, in Moynihan Papers, Box 44, RNPL.

¹⁰¹ Moynihan to Nixon, 21 Aug. 1969, Moynihan Papers, Box 44, RNPL.

¹⁰² Moynihan to George Romney, 18 June 1969, Romney Papers, Box 12-P, BHL.

obfuscation'.¹⁰³ Even seemingly simple tasks proved difficult. While it was initially planned that USDA would finance the Conference, advice from the Department of Justice indicated that there were 'serious legal problems' due to technical language in USDA's appropriations bill.¹⁰⁴ Funding then had to be cobbled together from various agencies whose statutory language permitted such expenditure.

One of the looming issues surrounding the conference was the speech that the President was scheduled to give. Not only would it be in front of the 2,000 delegates to the conference, it would be broadcast live to the nation. Much like the 6 May address to Congress, the speech sparked another demarcation dispute between the Moynihan and Burns forces. Responsibilities were first given to Mayer, which was problematic since he had been frozen out of White House decision-making since the fall.¹⁰⁵ Responsibility was then expanded to include John Price, a respected White House speechwriter, but then grew again to include both Burns *and* Moynihan. By December, Burns had fallen out with the President over FAP and was contemplating resignation.¹⁰⁶ Haldeman described in his diary, two days before the speech, Burns and the President 'disputing statistics' from the draft and wanting the entire thing re-written.¹⁰⁷ Both Price and Moynihan phoned Haldeman to warn him that Nixon 'would be booed' if he gave the Burns-led version of the speech. That afternoon, with less than 24 hours until the address, Nixon and Ehrlichman re-wrote the entire speech. Haldeman termed their product 'acceptable but camel-like'.¹⁰⁸ His droll recollection of the speech drips with the Administration's frustration

¹⁰³ Frank Mankiesicz and Tom Braden, 'An Empty Conference,' *New York Post*, 16 Sep. 1969, Moynihan Papers, Box 44, RNPL.

¹⁰⁴ Edward Morgan to Clifford Hardin et. al, 17 Oct. 1969, Krogh Papers, Box 74, RNPL.

¹⁰⁵ McGrory, 'The Flap Over Food Stamps'.

¹⁰⁶ Burns, diary entry for 18 Aug. 1969.

¹⁰⁷ Diary Entry: 30 Nov. 1969, H.R. Haldeman Diaries Collection, RNPL.

¹⁰⁸ Diary Entry: 1 Dec. 1969, H.R. Haldeman Diaries Collection, RNPL. This is a reference to the adage that 'a camel is a horse designed by a committee,' see Henry Kissinger, *The White House Years* (Boston, 1979), p. 378.

about the conference: ‘went pretty well, no boos, adequate though not overwhelming applause. At least it’s done’.¹⁰⁹

The saga of the speech is reflective of the Administration’s experience of the conference. Haldeman complained about the ‘ridiculous demands’ of anti-hunger activists with whom he was forced to meet.¹¹⁰ John Brown, a Haldeman deputy, complained that the Conference merely provided ‘a forum where hunger militants could voice their numerous complaints’.¹¹¹ He noted how these ‘militants’ including Senator McGovern and Jesse Jackson ‘dominated’ while Administration-aligned representatives were ‘clearly on the defensive’.¹¹² In terms of actual proceedings, the Conference’s 26 panels produced over 400 recommendations for the Administration, including expansion of the Food Stamps Program, increasing child nutrition programs, and indexation of Social Security payments.¹¹³ The Administration’s bill for the conference was \$1 million.

Back in April, a White House policy paper had warned that hunger risked going from ‘our greatest political opportunity’ to ‘our biggest liability’.¹¹⁴ By December 1969, in the wake of the ‘fiasco’ of the hunger conference, hunger had been unequivocally moved to the liability column.¹¹⁵ Whereas at the start of the year the issue of hunger had offered such promise, 1969 ended with the President *not getting booed* being seen as a victory. The issue placed significant strain on the domestic policy team, particularly the relationship between the Moynihan and

¹⁰⁹ *Ibid.* A transcript of the speech can be found at ‘President’s Reading Copy, White House Conference on Food, Nutrition, and Health,’ President’s Personal Files, Box 53, RNPL.

¹¹⁰ Diary Entry: 5 Dec. 1969, H.R. Haldeman Diaries Collection, RNPL.

¹¹¹ John Brown to Ehrlichman and Moynihan, 6 Dec. 1969, HE Files, Box 13, RNPL.

¹¹² *Ibid.*

¹¹³ *Summary Report of the White House Conference on Food, Nutrition, and Health* (Washington D.C., 1970), p. 3.

¹¹⁴ ‘A Nixon Initiative on Hunger,’ draft, 14 April 1969, HE Files, Box 13, RNPL.

¹¹⁵ Nixon handwritten annotation, cited in Davies, ‘The Great Society After Johnson,’ p. 1412.

Burns forces, including nearly pushing Burns to resign. Where the White House had hoped to appear proactive and ahead of the Democrats on the issue, they were now clearly on the defensive.

The Hidden Challenge

On his first day as Secretary of Agriculture, Clifford Hardin received a memorandum that would shape the Administration's first-term approach to hunger more than anything he would ever do in the Council for Urban Affairs. The letter, from USDA General Counsel Edward M. Schulman described the 'pending legal actions challenging the administration of the Food Stamp and Commodity Distribution Programs'.¹¹⁶ Hardin was urged to bring this directly to the attention of the President, which he likely did at the following day's first Cabinet meeting.¹¹⁷ The letter revealed 22 cases before various U.S. District Courts challenging eligibility for entitlement to anti-hunger programs. As demonstrated in the graphic below, these cases were spread right across the United States. The cases concerned eligibility for particular counties to be enrolled in the feeding programmes.

¹¹⁶ Edward Shulman to Hardin, 21 Jan. 1969, WE Files, Box 60, RNPL.

¹¹⁷ Handwritten note from Dwight Chapin, n.d, WE Files, Box 60, RNPL. This note indicates that the previous memo was left in the Cabinet room. Both of the suggested owners of the document – Hardin and Paul McCracken – were in the Cabinet room with the President on Jan 22, see Presidential Daily Diary, 22 Jan. 1969, RNPL.

Agriculture Committee since 1955.¹²⁰ Pollack's article was a clarion call for public interest lawyers, who Pollack called on to 'familiarise themselves with the intricacies of the food programs' and then launch class action lawsuits against the states. Class action lawsuits had been used to great success by the civil rights movement, in particular the NAACP's Legal Defense Fund, and had subsequently become a model of achieving social change.¹²¹

Pollack was not just an academic activist but also a leading trial advocate. His name was on each of the twenty-two Food Stamp lawsuits of which Hardin had been notified. Pollack had first become outraged at the existence of America's hunger crisis during his time as a civil rights activist in Mississippi in 1964 and 1965.¹²² It forged in him the desire to use the judicial system to 'do something significant' about hunger.¹²³ After graduation from New York University Law School, Pollack co-founded the Center for Social Welfare Policy and Law (CSWPL), based at Columbia University in New York City.¹²⁴ The Center was funded through a grant from the Federal Government's Office of Economic Opportunity at a cost of \$230,000 per year.¹²⁵ OEO funding of public interest law firms – the government essentially suing itself – was one of conservatives' greatest criticisms of the OEO. In November 1968, the CSWPL comprised just eight attorneys. Their remit was to 'conduct test litigation,' 'prepare materials for poor people' on their legal rights, and 'affect administrative changes of numerous government benefit

¹²⁰ *Ibid*; see also Kenneth Finegold, 'Agriculture and the Politics of U.S. Social Provision,' in M. Weir et. al. (eds.), *The Politics of Social Policy in the United States* (Princeton, 1988), p. 225.

¹²¹ Megan M. Francis, *Civil Rights and the Making of the Modern American State* (New York, 2014), p. 8.

¹²² 'The Hunger Lawyers,' *Time Magazine*, Vol. 108, No. 5 (2 Aug. 1976) cited in 128 *Cong. Rec.* 25295 (1976); Author's interview with Ronald Pollack, 4 May 2020.

¹²³ Author's interview with Ronald Pollack.

¹²⁴ As Martha Davis has noted, the CSWPL unfortunately do not have their materials deposited anywhere, Davis, *Brutal Need*, p. 148. The CSWPL was originally founded through a grant from the Ford Foundation, and then OEO, see Johnson, *Justice and Reform*, p. 181.

¹²⁵ Bertrand Harding to De Vier Pierson, 26 Nov. 1968, *The War on Poverty, 1964-1968 Microfilm Series*, Part 1, Reel 16, fiche 0480; Benjamin Franklin, 'U.S. Sued for Rise in Food for Poor,' *New York Times*, 20 Nov. 1968, p. 25.

programs’.¹²⁶ In November 1968 the CSWPL dramatically announced that they would be undertaking a ‘systematic attack against hunger in America’ with the aim of proving, through the law, that ‘hunger in the United States is illegal’.¹²⁷ The ambitious Pollack was just 25 when the 23 concurrent District Court cases were filed.

Pollack and his team at CSWPL had a sophisticated understanding of the American legal system. Pollack teamed up with public interest lawyers across the nation, often funded by OEO’s Legal Services Program, to launch his wide array of suits. Each of the District Courts then nominated a three-judge panel to hear the case. In a conference call with each of the lawyers involved, Pollack and his allies selected the cases which had been assigned to the judges most sympathetic to their cause. The group agreed that the two most favourable were those in California and Texas.¹²⁸

California – *Hernandez v. Hardin*

Alejo Hernandez was a farmworker and father of nine who resided in San Benito County, California, who earned an average weekly income of just \$90. Had Hernandez lived fifteen minutes away from his then-dwelling, he would have been entitled under California law to either Food Stamps or Commodity Distribution. But as his county – like twenty-one of California’s fifty-eight counties – had refused to participate in the USDA programs, so Hernandez and his family received no assistance and had to feed his whole family for under fifty cents per person per day.¹²⁹ The lawsuit was full of emotive language for the judges, noting that Hernandez’s wife’s most recent pregnancy had ended in stillbirth due to her malnourished state.¹³⁰ The brief

¹²⁶ Pollack to Holman, 12 July 1968.

¹²⁷ Franklin, ‘U.S. Sued,’ p. 25.

¹²⁸ Author’s interview with Ronald Pollack.

¹²⁹ California, Hearings before the Select Committee on Nutrition and Human Needs, Senate, 91st Cong. 2956-7 (1969).

¹³⁰ *Ibid.*, p. 2957.

also included the legally irrelevant but highly emotive point that Hernandez's family were fed on less money than the California Welfare Department's seeing-eye dogs. Such was the 'extraordinarily moving' nature of Hernandez's plight, he was flown to Washington as part of a push to garner national media attention about the hunger issue, which was successful.¹³¹

In the suit, which aimed to institute a feeding programme in each California county, CSWPL was joined by the California Rural Legal Assistance program. Hernandez was well-known to CRLA as they had represented him in an earlier suit in 1967 against California's Welfare Department.¹³² In their complaint, CSWPL and CRLA alleged that through allowing twenty-one of its counties to not operate food programs, California was in violation of the fifth and fourteenth amendments (due process and equal protection clauses, respectively). They particularly emphasised the latter, noting that their plaintiffs met all the eligibility requirements for food assistance *except* 'for the requirement as to county of residence'.¹³³ They charged that the Federal and State Governments were focusing on 'the irrational basis of residence rather than the statutory basis of need'.¹³⁴ They also emphasised that California was the 'richest agricultural state' in the 'richest agricultural nation' yet one-quarter of San Benito lived below the poverty line.¹³⁵

Important to this matter was the issue of 'standing' before the court. During the early 20th century, courts were reluctant to intervene in cases where their authority was not clear under Article III of the Constitution. This changed during the Warren Court and its 'reassertion of

¹³¹ Author's interview with Ronald Pollack. For example, see 'Suits Discussed,' *Washington Post*, 21 Nov. 1968, p. B7; 'Group Plans Additional Food Assistance Lawsuits,' *San Antonio Express*, 21 Nov. 1968, p. 12; Don Kendall, 'Food Suits Mark Start of Campaign,' *Danville Register*, 21 Nov. 1968, p. 11.

¹³² 'His Children Legitimate – So No Benefits,' *Santa Cruz Sentinel*, 5 May 1967, p. 19.

¹³³ California Select Committee Hearings, p. 2957.

¹³⁴ *Ibid.*, pp. 2959. This charge was levelled against the federal Department of Agriculture as they had approved California's plans.

¹³⁵ *Ibid.*, p. 2958 (1969).

judicial power'.¹³⁶ These broad interpretations of judicial powers greatly increased the scope of judicial authority and allowed courts to intervene in all manner of political and policy disputes.¹³⁷ These powers legitimated their involvement in interpreting the statutes relating to the Food Stamp program. Equally important was the erosion of the concept of 'sovereign immunity' which forbade suits against state or federal governments.¹³⁸ It was the changing of standing and sovereign immunity interpretations which transformed the courts from the main impediment, to the main enhancer, of welfare programs.¹³⁹

On 30 December 1968, during the Johnson-Nixon transition, the District Court handed down an 'extraordinary' decree.¹⁴⁰ Noting the 'substantial amount of hunger' in California's neglected counties, Judge Stanley Weigel ordered the Secretary of Agriculture to institute Food Stamp Programs in every county in California where one did not currently exist.¹⁴¹ Weigel, a President Kennedy appointee to the Court, noted that 'the Federal Food programs at issue are intended to but are not now benefiting needy and hungry persons in these counties' and found that this was in contravention of the equal protection clause.¹⁴² The Court noted the discretionary power of the Secretary of Agriculture, noting that he had already implemented Commodity Distribution Programs in 'more than 40 counties' in 1968 'despite the opposition of the counties'. This was

¹³⁶ Melnick, *Regulation and the Courts*, p. 10.

¹³⁷ This is best described in *ibid.*, pp. 10-12.

¹³⁸ R. Shep Melnick, 'Taking Remedies Seriously: Can Courts Control Public Schools?' in J. Dunn and M. West (eds.), *From Schoolhouse to Courthouse: The Judiciary's Role in American Education* (Washington, D.C., 2000), p. 20.

¹³⁹ Jeremy Rabkin, 'The Judiciary in the Administrative State,' *Public Interest*, Vol. 71 (1983), pp. 62-84.

¹⁴⁰ Author's interview with Ronald Pollack.

¹⁴¹ 'Is Hunger in America Unconstitutional?' *The Delta Democrat-Times* (Greenville, Mississippi), 7 Feb. 1969, p. 1.

¹⁴² Emphasising the lasting legacy of judicial appointments, Wiegel remained on the bench until 1997, three and a half decades after Kennedy's death. Complaint for Declaratory Relief and Injunction, Civil Action No. 50333, 19 Nov. 1968 cited in California Senate Select Committee Hearings, pp. 2956-61.

despite California's State Department of Social Welfare Food Stamp Manual stating that the FSP was 'not designed as an income maintenance or Public Assistance Program'.¹⁴³

Now within the last three weeks of his term, Orville Freeman, Johnson's outgoing Secretary of Agriculture dragged his heels. Representatives of the CRLA wrote to the Californian authorities that they were 'most concerned' by Freeman's 'dilatory tactics' and accused him of attempting to ignore the Court Order.¹⁴⁴ The first full day of the Hardin-led Department of Agriculture was no better. Director of Consumer Food Programs for the Western District Charles Ernst, delegated by Hardin to act as the 'Department's full authorised agent', indicated in a meeting on 21 January with Californian and CRLA representatives that the new Administration 'had no intention' of complying with the Court Order.¹⁴⁵ Referencing the civil rights struggles of the past decade, A CRLA representative warned Hardin that 'as any lay man, and some Southern Governors know, compliance with a Federal Court Order is not contingent upon the approval of the Chief Executive of the White House'.¹⁴⁶ This did not prove persuasive.

CRLA returned to court to oppose an Application to Stay by the Federal Government. In their filing, CRLA claimed that the blame 'rest[ed] totally with the Federal Defendants' as the State of California had agreed to 'fully comply' with the Order. On 4 February 1969, a three-judge session of the Court dismissed the Administration's Stay. Importantly, the panel also ruled that the costs of implementing the programme 'must be borne by the Federal Government'.¹⁴⁷ Harry

¹⁴³ Isabelle Kelley to Clifford Hardin, 30 Sept. 1969, RG16, Secretary's Correspondence, Box 5072, NARA II.

¹⁴⁴ California Senate Select Committee Hearings, p. 2962.

¹⁴⁵ Robert Gnaizda to Clifford Hardin, 21 Jan. 1969, RG16, Secretary's Correspondence, Box 5012, NARA II.

¹⁴⁶ *Ibid.*

¹⁴⁷ Deposition of Charles M. Ernst, 11 Mar. 1969, Civil No. 5033, RG21, District Court for the Northern District of California, Box 465, NARASF.

Bernstein, writing in the *LA Times*, wrote that ‘while there is some speculation that the Nixon Administration might try to step up food programs’ to end hunger, ‘CRLA wants to achieve the same goal through the courts, and do it quicker and make it permanent’.¹⁴⁸ Though the Federal Government was unwilling to comply, counties often felt differently. While the arguments proceeded in court, fifteen of the outstanding counties chose to comply with the court order.¹⁴⁹ By the end of February, only six counties in California did not have a food programme in place.¹⁵⁰ This increased participation is attributable to counties no longer needing to pay to participate in the anti-hunger programmes.¹⁵¹ Though long-reluctant to participate in the program, the Court Order forced the hands of the counties, and the Federal financing of the implementation costs sweetened the deal.

The *Hernandez* victory was just one of several important victories for the CRLA during this period. In the 1969 Financial Year, the CRLA’s 36 salaried attorneys undertook 15,423 cases.¹⁵² The vast majority — nearly 90 per cent — were representations of individuals but the most important wide-ranging contribution was made in their class action suits.¹⁵³ Victories won by CRLA through federal courts in FY1969 included important legal wins concerning consumer rights (*Vasquez v. Karp*), workplace rights for farm workers (*Munoz v. Unemployment Insurance Appeals Board*), refusing entry to foreign agricultural workers (*Alaniz v. Wirtz*), increasing California’s minimum wage (*Rivera v. Division of Industrial Welfare*), the end of the man-in-the-

¹⁴⁸ Harry Bernstein, ‘U.S. Court to Hear Constitutional Plea on Right to Food,’ *Los Angeles Times*, 6 Feb. 1969, p. 52.

¹⁴⁹ Richard Lyng to Ronald Reagan, 9 April 1969, RG16, Secretary’s Correspondence, Box 5072, NARA II.

¹⁵⁰ ‘Status of Selected California Counties,’ 2 April 1969, RG16, Secretary’s Correspondence, Box 5072, NARA II.

¹⁵¹ Lyng to Reagan, 9 April 1969, RG16, Records of the Secretary, General Correspondence, Box 5072, NARA II. This was initially suggested by bureaucrat Rodney Leonard, see Leonard to Hardin, 22 Jan. 1969, RG16, Records of the Secretary, General Correspondence, Box 5072, NARA II.

¹⁵² Migrant and Seasonal Farmworker Powerlessness: Hearings before the Subcommittee on Migratory Labor, House, 90th Cong. 1620 (1970).

¹⁵³ *Ibid.*, p. 1628.

house rule (*Macias v. Finch*), and mandating welfare recipients be notified of their rights of appeal against government decisions (*Diaz v. Quitarino*).¹⁵⁴ The nominations by Kennedy and Johnson of liberal-leaning Justices, as well as an expansion of the number of District Court seats, had reaped liberal victories nationwide.¹⁵⁵

The *Hernandez v. Hardin* case would have a dramatic impact on the issue of hunger in the United States. The immediate consequence of the suit was the expansion of the Food Stamp Program in California, the most populous state. The CRLA estimated that this expansion to the final nineteen California counties had introduced another 85,000 participants to the program.¹⁵⁶ The legal victory would prove consequential. It buoyed the prospect of other public interest lawyers and caused ‘a step-up of interest’ in other legal challenges to hunger programs.¹⁵⁷ Importantly, it would motivate Pollack and his team to continue in their quest to end hunger in America.

Texas – *Jay v. USDA*

In Texas, 109 of the 254 Texan counties operated neither a Food Stamps or Commodity Distribution Program, which meant that up to 200,000 otherwise eligible Texans were denied access to food programs.¹⁵⁸ Texas was well represented on agricultural issues in the Congress, with its representative of the 11th District, W.R. Poage, serving as the Chairman of the House

¹⁵⁴ *Ibid.*

¹⁵⁵ For more on this see, Sheldon Goldman, *Picking Federal Judges: Lower Court Selection from Roosevelt Through Reagan* (New Haven, 1997), pp. 154-197; Kevin Lyles, *The Gatekeepers: Federal District Courts in the Political Process* (Westport, 1998), p. 76.

¹⁵⁶ Migrant and Seasonal Farmworker Powerlessness hearings, p. 1628.

¹⁵⁷ California Select Committee Hearings, p. 3009.

¹⁵⁸ Stuart Long, ‘Judge to Order Food Programs for All Texans,’ *Corpus-Christi Caller Times* (Corpus Christie, Texas), 29 Nov. 1969, pp. 8C.

Committee on Agriculture. Poage was part of the ‘troika of conservatism’ blamed by Pollack for the lack of Congressional action on hunger.¹⁵⁹

In their Texan case, Pollack and CSWPL joined forces with the Legal Services Foundation of Dallas, who had successfully sued the state to eliminate their cap on welfare spending.¹⁶⁰ In the initial publicity drive for his lawsuit, Ed Polk, representing the LSFD emphasised that even ‘President Johnson’s own county’ of Blanco, Texas was suffering under hunger and malnutrition.¹⁶¹ In his emotive announcement, Polk claimed that ‘at least’ 20 per cent of the ‘starving’ counties of the USA were in Texas.¹⁶² The two named plaintiffs in Polk’s case were Annie Bell Jay and Willie Doss. Jay was described as having no income, often ‘sleeping rough’ and frequently needing to leave her four children with relatives to care for.¹⁶³ Doss was unable to work and therefore reliant on disability insurance.

Though filed concurrently with the *Hernandez* case, the Texas case (*Jay v. USDA*) was not heard by a judge until over a year later. The attorneys in the *Jay* case once again grounded their arguments in the equal protection clause, arguing that their clients were disadvantaged based on their county of residence. On 30 December 1969, Judge William Taylor delivered the verdict. Taylor was a Johnson appointee who had previously boasted that he had ‘campaigning for Lyndon Johnson every time he ran’.¹⁶⁴ Taylor ruled that the USDA decision to only allow Food Stamps or Commodity programs where the individual counties had approved it was ‘contrary to

¹⁵⁹ Pollack, ‘Legal Services and the Fight Against Hunger,’ pp. 36-8.

¹⁶⁰ ‘Federal Court Hits States Welfare Lid,’ *Amarillo Globe-Times*, 2 July 1969, p. 44.

¹⁶¹ ‘Texas Today,’ *Courier-Gazette*, 20 Nov. 1968, p.1.

¹⁶² *Ibid.*

¹⁶³ *Jay v. United States Department of Agriculture*, 308 F. Supp 100 (1969).

¹⁶⁴ ‘LBJ Names Six Texans to Federal Judge Posts,’ *Baytown Sun*, 29 June 1966, p. 1.

the intent of Congress'.¹⁶⁵ To this point, he specifically referenced the precedent of the *Hernandez v. Hardin* decision, demonstrating how one liberal ruling could have a snowballing effect. In seeking to explain Congressional intent in relation to anti-hunger programs, Taylor ruled that Congress had 'clearly declared its intent' that food programs 'be implemented and made available 'to the maximum extent practicable'.¹⁶⁶ Taylor specifically referenced the 'Congressional declaration of policy' of the 1964 Food Stamp Act. The language declared that it was the 'policy of Congress... to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households'. This intent, however, was not matched in the Act by levels of funding necessary to achieve this. This did not bother Taylor. The judge ruled that USDA had to, within sixty days, create a Commodity Distribution Program in every Texas county without a Food Stamp Program. Furthermore, Taylor mandated that this must be done at Federal – not state or local – expense. His order also placed strict reporting requirements on the USDA, ruling that they had to report monthly to the court on both the number of counties operating a food programme and the number of Texans served by those programs.

Like the *Hernandez* decision, which shifted programme enrolment costs towards the Federal Government, the *Jay* decision placed responsibility for programme administration in Federal, rather than State control. This accelerated the shift identified by a USDA bureaucrat in November of 1968 of food programs changing from a 'passive offering to State and local governments' to a state of 'active encouragement [by] Federal authority'.¹⁶⁷ This shift in governance patterns from the local level to the national has been observed by scholars such as Martha Derthick.¹⁶⁸ The *Hernandez* and *Jay* decisions are part of the pattern Derthick describes

¹⁶⁵ '*Jay v. United States Department of Agriculture*'.

¹⁶⁶ *Ibid.*

¹⁶⁷ 'Address by Howard P. Davis ... at GMA Forum,' 14 Nov. 1968, Administrative Histories – Agriculture, Box 3, LBJL.

¹⁶⁸ Derthick, 'Crossing Thresholds: Federalism in the 1960s,' pp. 64-80.

whereby ‘a whole new perception of state governments as subordinates of the national government... had taken root’.¹⁶⁹ While the state welfare departments still ‘administered’ the program, ‘national supervision’ of the programme was undertaken by the Department of Agriculture, which gave the agency great power.¹⁷⁰ It was a monumental shift in power away from conservative local counties, long hostile to the Food Stamp Program (particularly on racial grounds) toward the federal bureaucracy.

Bureaucracy

On 3 February 1969, Richard Nixon walked on stage at the Department of Agriculture’s fifth wing auditorium to address 450 Departmental employees. For all of his private disdain for bureaucrats, the speech expressed a warm appreciation for the tireless work of the employees. The President particularly addressed his remarks to the ‘career service’, noting how ‘you are the people who have been in the Department for most of your lives’.¹⁷¹ Noting that ‘very few’ had been appointed by his Administration, the President told those assembled that ‘no matter how effective’ his appointees were, they would ‘fail’ without ‘the dedication of the thousands of career people’ who ‘will make the difference between success and failure’.¹⁷² The influential role that these ‘career people’ made in formulating and implementing Food Stamp Program policy during 1969, however, would leave few reasons for White House gratitude.

¹⁶⁹ *Ibid.* The Federal share of the coupon value would grow from 38.3 per cent in 1968 to over 50 per cent by 1970, see Finegold, ‘Agriculture and the Politics of U.S. Social Provision,’ p. 223.

¹⁷⁰ Consumer and Marketing Service, ‘How You Can Fight Hunger in America,’ C&MS-77, May 1969,

¹⁷¹ Remarks to Employees at the Department of Agriculture, *Pub. Papers* 23.

¹⁷² *Ibid.*

The Department of Agriculture had been fundamentally changed by the Great Society and the issue of hunger.¹⁷³ Prior to the Johnson Administration, USDA held ‘no mandate to feed the poor’, according to one senior official.¹⁷⁴ As the Surgeon General had said in 1967, one of the main issues with hunger in the United States was that it was not ‘anybody’s job’.¹⁷⁵ By the end of the Johnson Administration, however, it was clear that responsibilities were in the hands of the USDA, which meant that the USDA had a ‘very different political posture’ when Nixon inherited it.¹⁷⁶

Many policymakers believed the food programmes’ true home belonged elsewhere in the government. What had initially begun as a way to redistribute surplus commodities (and, in the process, provide a subsidy to farmers) had, to all parties involved, clearly become a welfare programme. This disjuncture drew the attention of a White House which was interested in solving ‘policy co-ordination’ problems.¹⁷⁷ The President’s Advisory Council on Executive Organisation (PACEO) found that the welfare programs, in particular, were a key ‘problem area’.¹⁷⁸ This focus on government co-ordination marked a continuity with LBJ.¹⁷⁹ BOB Director Robert Mayo, following up on PACEO recommendations, identified the Food Stamp Program as a priority for reorganisation, noting ‘the absence of clear cut policy objectives’.¹⁸⁰ There was initial support within the Administration, beginning in the days of the transition, to move the food programmes from USDA to the Department of Health, Education, and Welfare (HEW).¹⁸¹

¹⁷³ Susan Levine, *School Lunch Politics: The Surprising History of America’s Favourite Welfare Program* (Princeton, 2008), p. 127.

¹⁷⁴ Interview with Isabelle M. Kelley, 26 Aug. 1983, Schlesinger.

¹⁷⁵ Heard, ‘Fighting Poverty with New Means,’ p. 193.

¹⁷⁶ Interview with Isabelle M. Kelley, 26 Aug. 1983, Schlesinger.

¹⁷⁷ Robert Mayo to Nixon, 20 Feb. 1969, WE Files, Box 60, RNPL.

¹⁷⁸ *Ibid.*, ‘Summary and Analysis of the Task Force,’ Ash Papers, Box 1, RNPL; Advisory Council on Executive Organization to Nixon, 20 Aug. 1969, Weinberger Papers, Box 260, LOC.

¹⁷⁹ ‘The Organization and Management of Great Society Programs,’ 15 June 1967, Price Papers, Box 36, RNPL.

¹⁸⁰ Mayo to Nixon, 20 Feb. 1969.

¹⁸¹ *Ibid.*, Choate to Whitaker, 8 Jan. 1969, Price Papers, Box 17, RNPL.

The White House Conference also recommended such a move.¹⁸² The momentum for change appeared to be building.

The Department of Agriculture, however, was not keen to relinquish the programme. The Director of the Food Stamp Program, Isabelle Kelley, believed that such a move would be ‘senseless’, and fiercely defended the Department’s prerogative to maintain the programme. Kelley’s views were widely shared within the USDA bureaucracy, which viewed the major issues to be at the local level, where it was run by state HEW agencies, rather than something which could be solved through changing the Federal co-ordinating agency. In this, they were strongly supported by Secretary Hardin, who, like all Secretaries was reluctant to suffer the perceived defeat of losing a programme.¹⁸³ This was another example of Secretaries siding with their Departments over the White House, much to the chagrin of those at 1600 Pennsylvania Avenue.

Structural Change

In the early months of 1969, the Food Stamp Program, as well as other USDA food programmes, had been administered through the Consumer and Marketing Service. The CMS was a hybrid created in 1965 whose wide-ranging responsibilities went from food stamps to poultry inspection.¹⁸⁴ This was reflective of the way the FSP was seen as a small component of the broader USDA mission. In reality, USDA was unable to fulfil basic oversight functions,

¹⁸² *Summary Report of the White House Conference on Food, Nutrition, and Health*, p. 3. The move was also endorsed by an editorial in the *Washington Post* which stated that ‘much of the anti-hunger work’ belonged in OEO, see ‘The Nixon Anti-Hunger Plan,’ *Washington Post*, 10 May 1969, pp A14.

¹⁸³ Interview with Isabelle M. Kelley, 26 Aug. 1983, Schlesinger; William Browne, *Politics, Programs, and Bureaucrats* (Port Washington, 1980), p. 150.

¹⁸⁴ Department of Agriculture, ‘This is USDA’s Consumer and Marketing Service,’ Program Aide No. 661, August 1968.

including a state-by-state breakdown of eligibility requirements.¹⁸⁵ The Great Society had changed USDA, but its organisational structure had not yet adapted.

The increased importance of the Food Stamp Program necessitated organisational change. The main instrument for this was the creation of the Food and Nutrition Service (FNS) as a separate division within USDA. The proposal was put forward by Hardin at the Council for Urban Affairs, but had been designed by USDA bureaucrats.¹⁸⁶ FNS's creation was endorsed by the Council of Economic Advisers and the Bureau of the Budget.¹⁸⁷ The FNS would discharge all of the Secretary's responsibilities pertaining to the Food Stamp Act, as well as other feeding programmes.¹⁸⁸ While some anti-hunger activists questioned the purpose of the re-organisation, even they conceded the 'symbolic meaning' of the creation of a separate division to fight hunger.¹⁸⁹

The change heralded a new focus for USDA. As one official wrote, when the feeding programmes were just one core part of the CMS 'attention naturally had to be divided'.¹⁹⁰ The creation of a separate division within the Department would 'focus a greater degree of attention' on hunger and malnutrition.¹⁹¹ This statement was borne out again on 8 August when the Food

¹⁸⁵ Dianne Woodside to Copp Collins, 9 April 1969, RG16, Secretary's Correspondence, Box 5072, NARA II.

¹⁸⁶ John Price to Kenneth Cole, 20 April 1970, WE Files, Box 60, RNPL; Joseph Robertson to Carl Barnes, 25 Nov. 1969, RG16, Secretary's Correspondence, Box 5072, NARA II.

¹⁸⁷ McCracken to Lyng, 14 July 1969, RG16, Secretary's Correspondence, Box 5072, NARA II.; Mayo to Lyng, 7 July 1969, RG16, Secretary's Correspondence, Box 5072, NARA II.

¹⁸⁸ 'Administration Regulations, Amendment No. 79 – Draft,' 3 Dec. 1969, RG16, Secretary's Correspondence, Box 5072, NARA II.

¹⁸⁹ Marian Wright Edelman to William Seabron, 25 July 1969, RG16, Secretary's Correspondence, Box 5072, NARA II.

¹⁹⁰ Seabron to Edelman, 18 Aug. 1969, RG16, Secretary's Correspondence, Box 5072, NARA II.

¹⁹¹ *Ibid.*

and Nutrition Service was officially launched.¹⁹² Internally, the FNS had the ‘mission to solve the hunger problem’ as Assistant Agriculture Secretary Richard Lyng told the first annual ‘family meeting’ of FNS staff.¹⁹³ This was to be achieved through a Washington-based staff of 400, mostly re-assigned bureaucrats from the CMS, with another 1500 regional staff.¹⁹⁴ The most important function of the FNS was that it wrote the regulations of the hunger programmes.¹⁹⁵

Staffing

Edward J. Hekman was selected to run the new agency. Hekman, appointed in July 1969, had previously served as head of the United Biscuit Company before retiring to the post of Vice President of Valparaiso University in Indiana.¹⁹⁶ Hekman was a registered Republican whose specialisation was management, and it is notable that the Administration chose an industry figure rather than someone who would appear more sympathetic to the hunger cause.¹⁹⁷ But it was reflective of the Administration’s belief that what was needed to improve feeding programmes was greater management efficiency.¹⁹⁸ In the press release announcing his appointment, however, it was noted that he was committed to ‘full participation’ by eligible participants in the Food Stamp Program as well as the expansion of food programmes to all 397 counties without one.¹⁹⁹

¹⁹² Hardin, ‘Secretary’s Memorandum No. 1659,’ 8 Aug. 1969, RG16, Secretary’s Correspondence, Box 5072, NARA II; Richard Lyng to Clifford Hardin, 30 April 1969.

¹⁹³ ‘Welcome to the Family Meeting of the Food and Nutrition Service,’ circa 1969, McCaw Papers, Box 1, Hoover.

¹⁹⁴ *Ibid.*; Heard, ‘Fighting Poverty with New Means,’ p. 198.

¹⁹⁵ Berry, *Feeding Hungry People*, p. 70.

¹⁹⁶ Press Release, ‘Secretary Hardin Names Edward J. Hekman to Head New Food and Nutrition Agency,’ 28 July 1969, McCaw Papers, Box 1, Hoover.

¹⁹⁷ ‘Confidential Resume for Federal Employment – Edward John Hekman,’ n.d., Alphabetical Name Files: Edward J. Hekman, RNPL. Testifying to his Republican *bona fides*, House Minority Leader Gerald Ford was listed on his application as a ‘friend’.

¹⁹⁸ Advisory Council on Executive Organization to Nixon, 20 Aug. 1969, Phillip Olssen to John Price, 10 Feb. 1970, AG Files, Box 12, RNPL.

¹⁹⁹ ‘Secretary Hardin Names Edward J. Hekman...’.

More important than the Administrator appointed, though, were the men – and woman – underneath him. These were the people that Nixon referred to in his speech as the ‘career people’. Though one might think of the Department as a conservative institution, there was, according to one of the key bureaucrats, ‘a natural selection of some of the more liberal social views’ within FNS.²⁰⁰ The newly created FNS was heavily staffed by career bureaucrats of USDA, experienced with the politics of food stamps and the machinations of government. They were also much better informed of the legal challenges against the Department discussed earlier in the chapter.²⁰¹ Two examples in particular highlight this – Howard P. Davis and Isabelle M. Kelley.

Davis, the Deputy Administrator of the FNS, was a devout believer in the Food Stamp Program.²⁰² Six months prior to Nixon’s declaration of a war on hunger, Davis had told a gathering of the Grocery Manufacturers of America that there already existed a ‘consensus’ on eliminating hunger in America.²⁰³ Davis maintained this zeal during the Nixon Administration, telling his fellow employees at the FNS that ‘we are glad to accept the Nation’s challenge ... to wipe out hunger and malnutrition in this country’.²⁰⁴ Davis was influential within the Department because of his experience at USDA, having worked at USDA for 27 years by the time Nixon became President.²⁰⁵ Indeed, Davis was already working at USDA before Nixon was first elected to Congress.

²⁰⁰ Interview with Isabelle M. Kelley, 26 Aug. 1983, Schlesinger.

²⁰¹ Ernst Deposition, 11 Mar. 1969. In particular, see Ernst’s testimony that he spoke weekly with Deputy Administrator Howard P. Davis about the lawsuits but not once to Secretary Hardin.

²⁰² Howard P. Davis, ‘The Food Stamp Plan: A Progress Report,’ *American Journal of Agricultural Economics*, vol. 44, No. 2 (1962), pp. 603-6; Frederick V. Waugh and Howard P. Davis, ‘Some Economic Aspects of Food Stamp Programs,’ *Journal of Agricultural Research*, Vol. 13, No. 1 (1961), pp. 74-8.

²⁰³ ‘Address by Howard P. Davis ... at GMA Forum,’ 14 Nov. 1968, Administrative Histories – Agriculture, Box 3, LBJL.

²⁰⁴ ‘Welcome to the Family’

²⁰⁵ ‘Howard P. Davis, Headed USDA’s Food Programs,’ *Washington Post*, 15 Nov. 1978, p. C9.

Another influential career bureaucrat was Isabelle Kelley. Kelley, too, had joined USDA during the Roosevelt years and had risen to become the first female head of an operating programme. Kelley was the Director of the Food Stamp Division, and was well acquainted with the intricacies of the FSP, having been an ‘architect’ of the programme’s legislation.²⁰⁶ She was credited by the agency with developing ‘many of the legal, fiscal, and administrative arrangements’ behind the FSP.²⁰⁷ Kelley was active in furthering the expansion of the Food Stamp Program by enrolling as many counties, using ‘persuasion, cajolery’ and nutrition education, as she could.²⁰⁸ It was Kelley and Davis, along with Hardin and Lyng, who had helped to craft Nixon’s message to Congress in May 1969.²⁰⁹

The New Breed

While the efforts of long-term USDA bureaucrats were important, so too were newer arrivals to the agency. Arthur McCaw was emblematic of the new zeal brought into FNS. McCaw was an African American career civil servant who had previously worked for the United States Agency for International Development in Africa.²¹⁰ Though a ‘rock-ribbed Republican’, McCaw had worked for the Johnson Administration as an advisor on issues relating to the Dominican Republic.²¹¹ McCaw was a leader of progressive change within USDA. In a speech to the National Council of Negro Women in 1969, McCaw promised that the ‘new leadership’ provided by FNS would create a ‘dramatically different approach’ whereby USDA would now

²⁰⁶ ‘Staff Members Win Honors,’ *Food and Nutrition*, Vol. 1, No. 1 (June 1971), p. 12.

²⁰⁷ *Ibid.*

²⁰⁸ Elizabeth Shelton, “‘Richest Woman” Leads Government Fight Against Hunger,’ *Washington Post*, 3 Jan. 1970, p. 34.

²⁰⁹ Interview with Isabelle M. Kelley, 26 Aug. 1983, Schlesinger.

²¹⁰ ‘A.B. McCaw is Elevated,’ *Pittsburgh Courier*, 25 Apr. 1970, p. 3; ‘Arthur B. McCaw (biographical sketch),’ 10 Feb. 1971, McCaw Papers, Box 1, Hoover.

²¹¹ ‘Obituaries – Arthur B. McCaw,’ *Washington Post*, 16 May 1985, p. C6.

look at issues ‘from the perspective of the consumer’.²¹² While Burns and Moynihan debated the link between malnutrition and ‘mental retardation’ behind closed doors, McCaw would tell audiences that the link was inextricably clear.²¹³

Having previously served as Chairman of the Nebraska NAACP, McCaw brought a strong civil rights focus to the FNS.²¹⁴ Director Hekman had also allocated one of his four Special Assistants to the role of civil rights.²¹⁵ This push was supported by Secretary Hardin, who told his top officials that they must ‘correct their defensive attitude’ on civil rights.²¹⁶ Hekman was also a strong advocate for the newly-founded role of civil rights officers within the Department of Agriculture.²¹⁷ At a training session for these officers, he told them that it was their role to ensure that USDA programmes, including food stamps, were ‘fully, freely, and fairly made available to the public’.²¹⁸ He linked this new mission to the ‘philosophy’ of Title VI of the Civil Rights Act of 1964.²¹⁹ It is worth noting here that the ‘troika of conservatism’, as well as many other Southern agricultural interests, which opposed expansion of the Food Stamp Program also opposed the passage of the Civil Rights Act. McCaw emphasised to his civil rights officers that they should not be merely passive in receiving applications for food stamp benefits, rather, they should be actively promoting the FSP to encourage enrolment, including through dispensing

²¹² Arthur McCaw, ‘Speaking Notes to National Council of Negro Women,’ circa Oct./Nov. 1969, McCaw Papers, Box 1, Hoover.

²¹³ ‘Remarks by Arthur McCaw ... at the State Meeting of the Young Women’s Christian Association, Omaha, Nebraska,’ 11 Dec. 1969, McCaw Papers, Box 1, Hoover.

²¹⁴ ‘McCaw to Help Form NAACP,’ *The Lincoln Star*, 10 July 1955, p. 4.

²¹⁵ Stephen Hiemstra, *My Travel Through Life: Memoir of Family Life and Federal Service*, Kindle e-book, published 2016, LOC1133.

²¹⁶ Agency Staff Head Meeting Notes, 23 July 1969, Box 23, Hardin Papers, Nebraska.

²¹⁷ All Regional Director and ‘top Washington staff’ received civil rights training, see Davis to Hardin, 12 Nov. 1969, RG462 FNS Administrator’s Correspondence, Box 1, NARA II.

²¹⁸ ‘Remarks by Arthur B. McCaw at the Civil Rights Training Session,’ April 1970, McCaw Papers, Box 1, Hoover.

²¹⁹ ‘How House Cast Votes on Rights Bill,’ *Washington Post*, 3 July 1964, p. A10; ‘H.R. 7152 – Passage,’ *Govtrack.US*, <https://www.govtrack.us/congress/votes/88-1964/s409> (18 Feb. 2020).

literature and advertisements on TV and on the radio.²²⁰ This went specifically against preferences from the White House that agencies should not ‘exert themselves to bring new persons into the program’ in order to keep costs down.²²¹

Policy

Throughout 1969, there was a ‘growing conviction within the Department’ that significant policy changes would be required within the FSP.²²² This belief was independent of any direction from the Administration. It was led from the top by Secretary Hardin, who was ‘anxious to inaugurate liberalisations that could be made under existing legislation’.²²³ This conviction was shared by his Deputy Secretary, and most trusted advisor on food programmes, Richard Lyng.²²⁴ Lyng was an optimistic believer in Federal capacity, writing in a draft speech for the President that ‘we have the capabilities for eliminating hunger in the United States’.²²⁵ Writing to Senator Allen Ellender, the Chair of the Senate Agriculture Committee, Lyng asserted that the Food Stamp Act of 1964 granted the Department ‘reasonable administrative flexibility’ to change the FSP without the need for Congressional approval.²²⁶ What followed in 1969 was a period of intense liberalisation of programme regulation, including to the purchase requirement, the generosity of FSP benefits, and the provision of free Food Stamps — entirely disconnected from White House priorities.

²²⁰ ‘Remarks by Arthur B. McCaw at the Civil Rights Training Session,’ April 1970.

²²¹ James Lyday to Donald Rumsfeld, 26 May 1969.

²²² Interview with Isabelle M. Kelley, 26 Aug. 1983.

²²³ *Ibid.*

²²⁴ Richard E. Lyng, ‘The Government Nutrition Programs: The Men in Charge,’ *Nutrition Today*, Winter 1970, p. 18. Note that the description of Lyng’s importance to the food programs is drawn from the series of character sketches which accompany the article, rather than Lyng’s self-description.

²²⁵ ‘Eradicating Poverty-Related Malnutrition,’ 19 March 1969, Moynihan Papers, Box 68, RNPL.

²²⁶ Richard Lyng to Allen Ellender, 17 March 1969, RG16, Secretary’s Correspondence, Box 5072, NARA II.

Purchase Requirement

The first of the three most ‘significant’ changes was to the purchase requirement.²²⁷ Under the existing programme rules, the purchase price that Food Stamp recipients paid for their stamps was tied to surveys of the average amount spent on food by low-income households. The technical language of the Food Stamp Act specified that households must be charged ‘equivalent to their normal expenditures for food’.²²⁸ In an example prepared by USDA, a family of four in a Southern state who had a monthly income of \$100 were required to pay \$40 per month to receive their allocation of coupons.²²⁹

Throughout 1968 and into the early months of 1969, USDA had been undertaking a series of rigorous assessments of this purchase requirement. By early 1969, they found an ‘upward bias’ in the payment schedule, meaning that those on the lower end of the income spectrum received less than those who earned more.²³⁰ Key FNS leaders, including Davis, believed the ‘purchase requirement’ needed to be lowered.²³¹ USDA re-interpreted the technical language, as Lyng told Ellender, to reflect instead ‘a reasonable effort by the household to meet its food needs out of its own income’.²³² This reasonable need, USDA concluded after consultation with the hunger lobby, was set at 25 per cent of income. Under these proposed changes, the aforementioned Southern family would now only be required to spend \$25 of their \$100 per month.²³³

²²⁷ ‘Hardin Announces Food Stamp Reform,’ *National Journal*, Vol. 1, No. 8 (20 Dec. 1969), p. 385.

²²⁸ Rodney Leonard to Charles Murphy, 8 May 1969, Pierson Papers, Box 7, LBJL.

²²⁹ Lyng to Ellender, 17 March 1969.

²³⁰ Interview with Isabelle M. Kelley, 26 Aug. 1983, Schlesinger.

²³¹ Department of Agriculture Appropriations for 1970: Hearings before the Subcommittee of Committee on Appropriations, House, 91st Cong. 188 (1969).

²³² Lyng to Ellender, 17 March 1969. This was opposed to the ‘normal expenditure’ threshold.

²³³ Press Release, Department of Agriculture, 18 Dec. 1969, RG462, Request for Participation in FSP Records, Box 4, NARA II.

Economy Diet

These changes were intended to realise the Department's second significant change – the establishment of a 'nutritionally adequate diet'. An interagency bureaucratic taskforce found the previously established standard lacking, believing that 'probably most families could not remain well-nourished on such a diet'.²³⁴ USDA bureaucrats believed that Food Stamp allotments should be sufficient to provide a 'nutritionally adequate diet', not merely to avert starvation.²³⁵ This new standard, developed by the Department's Agricultural Research Service, necessitated raising the generosity of the stamps.²³⁶ The text of the 1964 Act stated that the purpose of Food Stamps was for programme recipients to have 'an opportunity more nearly to obtain a nutritionally adequate low-cost diet'.²³⁷ Lyng's interpretation of this statutory language, as he told Ellender, was that the second clause was primary, and they interpreted Congress's intent as 'authoriz[ing] this Department to issue to all participating families' coupons 'equal to the cost of an economical, adequate diet'.²³⁸

Free Stamps

The third regulatory change was the introduction of free Food Stamps to the poorest Americans. This change had been mooted during the Johnson Administration, but was fiercely rejected by Secretary Freeman.²³⁹ It was particularly opposed by the conservatives on the House and Senate

²³⁴ 'Hunger and Malnutrition: The Problem and Its Solution,' 6 May 1969, Burns Papers, Box A3, GFPL.

²³⁵ Lyng to Ellender, 17 March 1969.

²³⁶ 'The Economy Food Budget,' n.d. Burns Papers, Box A12, GFPL. To demonstrate the breadth of the ARS's mission, they were responsible both for human nutrition and hog cholera, see Department of Agriculture Appropriations for 1970: Hearings before a Subcommittee of the Committee on Appropriations, House, 91st Cong. 261 (1969).

²³⁷ P.L. 88-52, 78 Stat. 703 (1964).

²³⁸ Lyng to Ellender, 17 March 1969.

²³⁹ Ramsey Clark to Lyndon Johnson, 18 June 1968, FG Files, Box 213, LBJL; Marian Wright to Ogden Reid, 22 June 1968, Krogh Papers, Box 61, RNPL.

Agriculture Committees. Senator Ellender told the *Washington Post* that he would ‘insist on no free stamps’ and argued that people must make some sort of financial commitment – ‘even if only a little bit’ – in order to get stamps.²⁴⁰ Poage, the Chair of the House Agriculture Committee, concurred.²⁴¹ These conservatives believed that the minimum purchase requirement was mandated by the Food Stamp Act. Bureaucrats at USDA felt differently. Since the Johnson presidency, they had believed that the issuance of free stamps could be done ‘administratively’.²⁴² A pilot programme run by USDA in early 1969 in South Carolina re-affirmed for USDA bureaucrats that the purchase requirement was a ‘barrier’ to participation by the poor.²⁴³

The USDA under Nixon moved unilaterally against the purchase requirement. Lyng told Ellender that those on the lowest levels of income often had ‘uncertain and generally unpredictable’ income.²⁴⁴ Following this logic, Lyng wrote that the USDA believed that these households – those ‘without ability to rely on their own uncertain incomes to make normal or reasonable food expenditures’ – could in fact ‘be issued an allotment of coupons without charge’.²⁴⁵

These proposed changes formed the basis of the Nixon Administration’s Food Stamp bill announced in May 1969.²⁴⁶ When these changes stalled, they were introduced through amendments to regulations in December of that year. In a memorandum from Lyng to Pat Moynihan, Lyng attributed the large growth of the programme between December 1969 and

²⁴⁰ Spencer Reid, ‘Ellender Asks More Food Aid,’ *Washington Post*, 27 May 1969, p. A4.

²⁴¹ *Ibid.*

²⁴² Leonard to Murphy, 8 May 1968.

²⁴³ Interview with Isabelle M. Kelley, 26 Aug. 1983, Schlesinger.

²⁴⁴ Lyng to Ellender, 17 March 1969.

²⁴⁵ *Ibid.*

²⁴⁶ Memorandum for Hardin, 27 Oct. 1969, RG16, Secretary’s Correspondence, Box 5012, NARA II; John Whitaker to Cabinet, 15 May 1969, Burns Papers, Box A12, GFPL.

June 1970 to ‘the changes announced in December’ and imposed by USDA.²⁴⁷ These were not passed by Congress, but Lyng’s figures illustrate their dramatic effect of the changes. For December 1969 the monthly cost of the FSP was \$24 million. For January 1970, the first month entirely under the new regulatory regime, the cost had more doubled to \$54 million. By the end of April 1970, the cost was over \$85 million per month and there were three million more enrollees than April 1969.

USDA was able to implement its expansion only with an increase in appropriated funds. Principally this was the appropriation of \$610 million for FY1970, a near-doubling of FSP funding. This was called for by Nixon in his 6 May address to Congress and then passed by a voice vote in the Senate in November.²⁴⁸ It is important to note in the case of Food Stamps, however, how reliant the Congress was on the USDA – and FNS in particular – for its information. The figure, \$610 million, had been prepared by Lyng at the Department of Agriculture. Lyng knew that USDA would ‘probably not’ be able to spend that full amount, but the Department made the large request to give the FNS ‘some “operating room”’.²⁴⁹ The Administration and Congress was essentially giving the FNS bureaucracy a blank cheque, and they were taking full advantage.

Conclusion

By January 1970, interest in America’s hunger crisis was waning. White House speechwriter Patrick Buchanan told the President that it was environmentalism that would dominate 1970, not

²⁴⁷ Lyng to Moynihan, 12 June 1970, Moynihan Papers, Series I, Box 296, LOC.

²⁴⁸ ‘Special Message to the Congress Recommending a Program to End Hunger in America,’ *Pub. Papers* 350; Lyng to Hardin, 5 Nov. 1969, RG 16, Secretary’s Correspondence, Box 5012, NARA II.

²⁴⁹ *Ibid.*, Howard Davis to Philip Olssen, 25 July 1969, RG462, Request for Participation in FSP Records, Box 4, NARA II.

'hunger and all that'.²⁵⁰ The President would have been happy to see the back of it. As 1969 faded away, he had lost interest in the 'hunger fiasco' and would grow increasingly sceptical of the escalating cost. From a Presidential or Congressional view, not much had been achieved. Competing attempts, including an Administration-sponsored bill, to reform the Food Stamp Program had stalled in Congress. But from a broader view of the hunger problem, large liberal gains had been made through the judiciary and the bureaucracy. The District Courts had overwhelmingly supported liberalisation of the feeding programmes through broad interpretation of the Constitution's equal protection clause. These decisions meant that any states which did not have complete county coverage of food programmes were either directed to implement one by the Courts, or if they were not subject to suits, could see the writing on the wall. And the liberalisations proposed by the hunger lobby and their supporters in Congress – notably the issuance of free stamps, the lowering of the purchase requirement, and the requirement that stamps provide for a nutritionally-adequate diet – had all been introduced through USDA regulation. Legislative action would have to wait until the passage of the Food Stamp Bill in 1971. While this was seen as a significant victory for liberals in the Congress, it actually represented a mere codification of changes already implemented by the Food and Nutrition Service bureaucracy.

²⁵⁰ Patrick Buchanan to Nixon, 15 Jan. 1970, Nofziger Papers, Box 6, Hoover.

Chapter II

‘To Serve the Ends of Politics Rather Than the Needs of the Poor?’ Regionalizing the Legal Services Program

California Governor Ronald Reagan had an unhappy Christmas present for the Federal Government. Exercising his gubernatorial prerogative, Reagan vetoed the proposed budget of California Rural Legal Assistance (CRLA), a controversial Legal Services Program in his state. Reagan attributed the veto to CRLA’s ‘gross and deliberate violations’ of its stated purpose.¹ Accompanying the press release was a letter from the Director of California’s Office of Economic Opportunity detailing a laundry list of complaints against the CRLA. The complaints centred on CRLA suits which challenged state and local authority.²

What might be surprising is that this letter came not during the Johnson presidency and the highwater mark of the Great Society, but at the end of 1970, when Richard Nixon had held the reins of power for nearly two years. In Reagan’s characterisation of the programme, nothing had changed for the better with a Republican in the White House. If anything, things had got worse. Reagan was not alone among Republicans or conservatives in thinking this.³ The conservative publication *Human Events* chided Nixon for his lack of action on the ‘scandal-ridden, riot-fomenting, anti-poverty program’.⁴ The state of anti-poverty programmes in 1970 poses interesting questions about the domestic agenda of the Nixon Administration, and indeed, about domestic policy formulation more broadly. Nixon had ascended to the presidency pledging ‘substantial changes’ to the poverty programme and yet, two years in, had failed to make

¹ Press Release #585, 26 Dec. 1970, Gubernatorial Papers, Box P11, RRPL.

² Lewis Uhler to Ronald Reagan, 24 Dec. 1970, Gubernatorial Papers, Box P11, RRPL.

³ Jack Anderson, ‘OEO Lawyers Under Pressure,’ *New York Times*, 1 Nov. 1970, pp. B7. Conservative Democrats were also keen to curb OEO, see Lester Maddox to Nixon, 22 Dec. 1969, Agnew Papers, Series 2, Box 14, UM.

⁴ ‘Nixon’s First Year,’ *Human Events*, Vol. XXX, No. 4 (1970), p. 5.

progress in stemming what conservatives perceived as activism within these poverty programmes.⁵

This chapter will use the travails of the Legal Services Program during late 1969 and 1970 to chart the Nixon Administration's grappling for control over the anti-poverty programmes.⁶ At the heart of this dispute is an asymmetrical paradox of power. Legal Services activists feared that the 'power of the presidency' was 'so strong' yet the White House staffers grumbled that they were impotent to curb these programmes.⁷ In particular, this chapter will focus on the issue of 'regionalization' of the LSP. This was a concerted attempt by the White House to divest control from the central headquarters of OEO, perceived to be sympathetic to the LSP's cause, to the state and local authorities, who were much more hostile. It was this 'regionalization' dispute, the *Washington Monthly* reported, which 'cut across almost all the disputes' over Legal Services.⁸ As such, it is a worthwhile case to study. The issue also serves as a way to look at the

⁵ Richard Nixon to Robert Finch, 1 Feb. 1969, FG6-7 Files, Box 1, RNPL.

⁶ There exists little work which sits at the nexus of the Legal Services Program and the Nixon Administration. The best accounts of the LSP are from the histories produced by former Director Earl Johnson Jr., see Earl Johnson Jr., *Justice and Reform: The Formative Years of the OEO Legal Services Program* (New Brunswick, 1978) and Earl Johnson Jr., *To Establish Justice For All: The Past and Future of Civil Legal Aid in the United States*, 3 vols. (Santa Barbara, 2014). The work of political scientist Richard Pious is also insightful, but written without access to historical archives, see Richard Pious, 'Policy and Public Administration: The Legal Services Program in the War on Poverty,' *Politics and Society*, Vol. 1, No. 3 (1971), pp. 365-391 and Richard Pious, 'Congress, the Organized Bar, and the Legal Services Program,' *Wisconsin Law Review* 418 (1972), pp. 418-446. Louis Crust, 'Rationing Justice in Legal Services: Richard Nixon, Donald Rumsfeld, and the New Orleans Legal Assistance Corporation,' *Louisiana Journal*, Vol. 51, No. 4 (2010), p. 479 only devotes a sentence to the 'regionalization' struggle. Historians of the Nixon Presidency have largely disregarded the LSP. Even when it is discussed, as in Hoff, *Nixon Reconsidered*, pp. 61-5 attributes achievements to Nixon (i.e., the creation of the Office of Legal Services) that he had no provable hand in.

⁷ 'Lobbying for Legal Services: An Interview with Michael Kantor,' *Yale Review of Law and Social Action*, Vol. 3, No. 1, p. 20; Ehrlichman to Caspar Weinberger, 28 May 1971, Weinberger Papers, Box 252, LOC

⁸ Mark Arnold, 'Whatever Happened to OEO?' *Washington Monthly*, June 1970, p. 42.

implementation of Nixon's 'New Federalism' agenda on the ground, something few historians have previously done.⁹

The bureaucratic politics detailed in this chapter turned vicious. Both sides believed that the fight over 'regionalization' would shape the future of the Program, or determine if it were to have one at all. LSP advocates within the bureaucracy believed that 'regionalization' was a 'major issue' which would jeopardise 'the independence of the local staff attorney and the project from outside interference'.¹⁰ Bringing the LSP 'closer to local political pressure' would allow the local authorities to effectively neuter the programme, particularly the law reform efforts that they believed to be their most critical work.¹¹ White House officials who argued for 'regionalization' believed that it was the best opportunity to rid themselves of a programme whose 'politically motivated' suits against the government so infuriated them.¹² This was not a fight about finances, with the cost of LSP being 'almost a flyspeck in the Federal budget'.¹³ It was a bitter fight over the suitability of the Nixon Administration funding 'a government financed force for social change'.¹⁴

An important theme of this chapter is how the bureaucracy can operate without oversight or regulation. For most of the period depicted in this chapter, the bureaucracy could largely do whatever it wanted. It wrote its own regulations, amended its authorising legislation, and selected its own officials. When the White House was inattentive to domestic politics — as it was for

⁹ The concept of 'New Federalism' has been discussed frequently in the literature, but few scholars have studied its implementation on the ground. The best treatment is Timothy Conlan, *New Federalism: Intergovernmental Reform from Nixon to Reagan* (Washington, D.C., 1988).

¹⁰ Allan Ament to Terry Lenzner, 8 Aug 1969, Corbett Papers, Box 5, LBLJ.

¹¹ Barbara Fisher to Thomas Mercer, 16 Sep. 1970, Corbett Papers, Box 6, LBJL.

¹² Terry Lenzner, 'Meeting with William D. Ruckelshaus,' 23 April 1970, Corbett Papers, Box 9, NEJL.

¹³ Maynard Toll to Charles Stewart, 21 Nov. 1968, Bamberger Papers, Box 1, NEJL.

¹⁴ David Wilson to John Dean, 4 March 1971, Dean Papers, Box 57, RNPL

much of the period identified in this chapter – the bureaucracy had largely free rein. By the time the White House realised this, as they did periodically, it was often too late.

The clash over power was an ugly one. The scrap over LSP witnessed a White House struggling to come to grips with the realities of executing power and a domestic bureaucracy not accustomed to direction from a Republican-held White House.¹⁵ At a cruder level, it was simply a no-holds-barred turf war. The Director of OEO was labelled a ‘racist’ who was protecting an ‘unruly white power structure’ by one of the agency’s grantees.¹⁶ Terse memoranda between bureaucrats warned colleagues not to make decisions in their absence.¹⁷ One member of OEO described obtaining information from a colleague as ‘like pulling teeth’. The clash was so brutal because the advocates for the LSP so desperately believed in the worthiness of their work and the good that the programme could achieve – and that the programme was fundamentally at risk. The ugliness of the fight illuminates a broader point that while political scientists can theorise bureaucratic decision-making, the reality is often far messier and more personal.

While bureaucratic politics and power struggles between the governmental branches are common to most domestic matters, the role of the broader legal profession is also important. The organised bar, a commonly-used term referring to professional legal associations such as the American Bar Association, the National Legal Aid and Defender Association, and the American Trial Lawyers Association amongst others, were vocal advocates of the LSP.¹⁸ Since the LSP’s

¹⁵ In 1969, a Republican had occupied the White House for only eight of the previous forty years.

¹⁶ John Britain to Donald Rumsfeld, 11 Nov. 1969, Rosenthal Papers, Box 1, NEJL.

¹⁷ Lenzner to Rumsfeld, 14 Aug. 1970, Corbett Papers, Box 9, NEJL.

¹⁸ This has been the case since the Program’s founding, see ‘American Bar Association Resolution In Support of Broadening Legal Assistance to the Poor,’ 8 Feb. 1965, Agency Records: OEO, Box 12, LBJL. For more on the relationship between the LSP and the organised bar, see Sargent Shriver to Bernard Segal, 3 Dec. 1970, Gossett Papers, Box 12, BHL.

inception, the organised bar had a formal relationship with the Legal Services Program through the National Advisory Committee on Legal Services (NAC).¹⁹ Throughout this chapter, the organised bar, channelled through the NAC, would work with the OEO bureaucracy to fiercely resist any attempts to limit the Legal Services Program. As the Nixon-appointed Director of OEO acknowledged, it was these groups that had ‘championed the cause and helped fight the battles’.²⁰ The problem for the Nixon Administration came when these powers were turned on them.

The OEO Inheritance

One of the many Great Society legacies that the Nixon Administration unwillingly inherited from the outgoing Johnson Administration was the Office of Economic Opportunity. An examination of the broader context of the OEO will allow for a more contextualised understanding of the LSP and how it relates to the Nixon Administration’s broader domestic agenda. It was only because the OEO survived the final months of 1969 that there were debates to be had over the LSP in 1970. The survival of the OEO is striking, and must be underscored – five days after Nixon’s inauguration the *Washington Evening Star* had reported that OEO’s ‘disbandment... seemed increasingly imminent’.²¹

As discussed in the introduction of the thesis, Richard Nixon had campaigned for the presidency declaring the poverty programme ‘failed’ and linking it to the ‘the riots that have torn 300 cities

¹⁹ For the relationship between the American Bar Association and the LSP, see Johnson, *Justice and Reform*, pp. 43-70; Pious, ‘Congress, the Organized Bar, and the Legal Services Program,’ pp. 418-445.

²⁰ ‘The Legal, Peaceful, and Responsible Way – Remarks by Donald Rumsfeld,’ 11 Aug. 1970, RG381, Carlucci Files, Box 3, NARA II.

²¹ Charles Bartlett, ‘Poverty Program a Hot Potato for Nixon,’ *Washington Evening Star*, 25 January 1969, p. 5.

apart, resulted in 200 dead and 7,000 injured.²² As one Bureau of the Budget official observed, the Nixon campaign speeches held 'little... substance and hardly any specificity'.²³ The issue of what to do with the agency would be more complicated when in office. OEO was 'frequently a subject of criticism,' but was 'nevertheless a complicated organism containing many elements which... are quite popular,' one OEO bureaucrat insightfully observed.²⁴ The matter became critical for the White House. As HEW Secretary Robert Finch wrote to Moynihan in February of 1969 'the way we restructure and redefine the OEO will determine ... the country's view of our Administration'.²⁵

Nixon's campaign opposition to the poverty programme was not merely political posturing. On 1 February 1969 the President reminded HEW Secretary Robert Finch that he had 'pledged substantial changes in the OEO programmes and approaches' and expected to keep his promise.²⁶ Like the FSP, though, there were many sources of policy input in the White House. The first was from the Task Force on Public Welfare which had been set up as one of a series of ten task forces convened to study pressing domestic issues facing the incoming Administration.²⁷ This Task Force was chaired by Richard Nathan, a former adviser to Nixon's liberal challenger in the 1968 primaries, Nelson Rockefeller.²⁸ Other members of the Task Force included academics James Sundquist and Sar A. Levitan. The selection of Sundquist and Levitan, both of whom had

²² 'The Nixon Answer: The Southern Town Hall,' 3 Oct. 1969, <https://www.youtube.com/watch?v=MzCrkvvDyhQ> (20 Feb. 2020).

²³ Nathan, *The Administrative Presidency*, p. 13.

²⁴ 'Rationale for a One-Year Extension for OEO', 3 Feb. 1969, Harding Papers, Box 35, LBJL.

²⁵ Robert Finch to Daniel Moynihan, 5 Feb. 1969, Moynihan Papers, Series I, Box 484, LOC.

²⁶ Nixon to Finch, 1 Feb. 1969.

²⁷ Carroll Kilpatrick, 'Nixon Names 10 Domestic Study Units,' *New York Times*, 22 Nov. 1968, p. A1.

²⁸ Richard Nathan, 'From Welfare to Workfare: A History of Welfare Reform Under the Nixon Administration,' 7 Sep. 1979, Nathan Papers, Box 18, Hoover.

significant experience in Democratic politics, reflected the ‘serious [and] substantive’ nature of the Task Forces’ work rather than one which would merely reinforce campaign promises.²⁹

The Task Force on Public Welfare recommended the continuation of federal action on behalf of the poor, but proposed significant changes to the War on Poverty.³⁰ The state of Federal anti-poverty policies, they found, reflected ‘a series of overlapping and contradictory co-ordinating authorities’.³¹ The report recommended that a new federal agency, in the Executive Office of the Presidency, be set up with ‘planning, coordination and oversight’ responsibilities but that once programmes had been ‘firmly established’ they should be ‘spun off to other agencies’.³² The emphasis on spinning-off programmes to line agencies was not new, but rather one which had been firmly in the minds of those in the Johnson White House.³³ The overarching emphasis of the Task Force’s recommendations was on helping those who could work find jobs. The emphasis on jobs rather than categorical programmes suggests more of an endorsement of the New Deal than the Great Society.³⁴

²⁹ The Republican Party in Congress had struggled for years to divine a coherent and uniting policy alternative to the War on Poverty, see Mark McClay, ‘A High-Wire Crusade: Republicans and the War on Poverty, 1966,’ *Journal of Policy History*, Vol. 31, No. 3 (2019), pp. 382-405. For primary material on Republican efforts to craft an alternative to the War on Poverty, see Republican National Committee, ‘The War on Poverty: An American Tragedy,’ n.d., Allderdice Papers, Box 51, Hoover.

³⁰ ‘Task Force on Public Welfare: Report to President-Elect Richard M. Nixon,’ 28 Dec. 1968, Moynihan Papers, Series I, Box 264, LOC.

³¹ *Ibid.*

³² *Ibid.*

³³ For example, see Larry O’Brien to Joseph Califano, 3 Jan. 1967, Califano Papers, Box 7, LBJL; Charles Schultze to Califano, 26 July 1966, FG11-15 Files, Box 124, LBJ. Indeed, even the OEO itself internally acknowledged that delegation was ‘assumed by the Framers’ of its operating legislation, see ‘OEO: A Self-Evaluation,’ 1969, Moynihan Papers, Series I, Box 485, LOC.

³⁴ ‘Task Force on Public Welfare,’ 28 Dec. 1968. For more on the continuities and discontinuities between the New Deal and Great Society see Ira Katznelson, ‘Was the Great Society a Lost Opportunity?’ in S. Fraser and G. Gerstle (eds.), *The Rise and Fall of the New Deal Order* (Princeton, 1989), pp. 189-205.

The report of the Task Force was submitted to the Future of the Poverty Program Subcommittee of the Council for Urban Affairs. The subcommittee comprised HEW Secretary and former Lieutenant Governor of California Robert Finch, HUD Secretary and former Governor of Michigan George Romney, Labor Secretary and former Dean of the University of Chicago's Business School George Shultz, and Richard Nixon's former campaign manager, the Attorney General John Mitchell. This eclectic group of individuals is representative of the incoherent ideological complexion of the early Nixon administration, from the liberal Finch to the conservative Mitchell. The subcommittee concluded that OEO was 'born in haste and oversell' and had 'fallen short of its purposes and that serious deficiencies exist in the structure and programs' of the agency.³⁵ The Subcommittee endorsed the Nathan Task Force's recommendation that 'planning, coordination, and evaluation responsibilities' be transferred to 'a reorganised OEO (eventually with a new name)'.³⁶ The Subcommittee also recommended to the President that the Economic Opportunity Act, the legislative underpinning of the OEO which was due to expire on 30 June, 1969 be extended for another year, believing that buying some breathing space would then allow the Administration to 'submit a more extensive legislative proposal' to see OEO 'substantially reshaped in both function and organisation'.³⁷ The broader Council for Urban Affairs endorsed the recommendations.³⁸ The *Washington Star*, reporting on the CUA meeting, emphasised the recommendation of the legislative strategy, writing that 'The Nixon Administration has agreed to press on with former president Johnson's War on Poverty'.³⁹

³⁵ 'Report of the Subcommittee: Future of the Poverty Program and the Office of Economic Opportunity,' 28 Feb. 1969, Moynihan Papers, Series I, Box 484, LOC.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Daniel Patrick Moynihan, 'Progress Report to the President,' 1 June 1969, Moynihan Papers, Series I, Box 264, LOC.

³⁹ Richard Chritchfield, 'Nixon Advisers Agree to Keep OEO,' *Washington Evening Star*, 9 Feb. 1969, in COPE Files, Series 2, Box 25, UM.

The poverty subcommittee's report shared two important similarities with the report produced by the hunger subcommittee. First, the committee members were coming to grips with the changing expectations of government. The subcommittee noted how OEO was not just a 'mechanism' but 'a symbol' of the Federal Government's commitment to the poor.⁴⁰ Second, there was a keen partisan and pragmatic edge. An earlier draft, sanitised before the final product, warned that 'the Press, the Democratic Congress and others will be ready to pounce upon any initial Presidential action which can be characterised as showing a disregard for the poor'.⁴¹

While the White House was evaluating the Office of Economic Opportunity, the agency was also performing a self-assessment.⁴² Much more flattering than either the Nathan Task Force or Subcommittee reports, it did admit that OEO had experienced difficulties in co-ordination, but boasted that 'abundant examples of accepted institutional change now exist'.⁴³ The self-assessment also pushed back on allegations of impropriety, including those made by Nixon on the campaign trail.⁴⁴ The report noted that recent audits of 1238 programmes had found 97.5 per cent of the grants had been 'spent in complete accordance with OEO guidelines'.⁴⁵ It also noted that auditors had found issues with only 0.28 per cent of the agency's \$1 billion budget. This, the self-assessment suggested, demonstrated that 'OEO's operations have been administratively sound'.⁴⁶ Pushing back explicitly at attempts to end the agency, the self-assessment concluded that 'there continues to be a strong need for a separate, independent, responsive, anti-poverty

⁴⁰ *Ibid.* Activists also saw OEO as a 'symbol of our nation's anti-poverty efforts', see Citizens Crusade Against Poverty, 'The War on Poverty – Do We Care?' 19 Feb. 1968, McPherson Papers, Box 14, LBJL. For Congress, see William Crook to Bertrand Harding, 2 May 1968, Crook Papers, Box 2, LBJL.

⁴¹ 'Report of the Subcommittee: Future of the Poverty Program and the Office of Economic Opportunity: Working Paper #1, Draft #2, 7 Feb. 1969, Moynihan Papers, Series I, Box 484, LOC.

⁴² 'OEO: A Self-Evaluation'.

⁴³ *Ibid.*

⁴⁴ During the 1968 presidential campaign, OEO had maintained a point-by-point rebuttal of claims made by candidates, see 'OEO Notes on "Campaign 1968"', n.d., RG381, Public Reaction to OEO Programs, 1965-1971, Box 1, NARA II.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

agency, whose sole responsibility is to deal with the poor'.⁴⁷ This shows that OEO officials believed passionately in the purpose of the agency and that their attempts to stave off Administration attacks sprang from their agency's mission.

The existence of this report attests to OEO's ability to act as an independent operator. The agency conducted its own report to head off an anticipated report by the Government Accountability Office (GAO).⁴⁸ OEO believed that the GAO report would conclude that a 'lack of personnel lies at the root of OEO's evaluation problems'.⁴⁹ By attending to this matter prior to the GAO report, OEO bureaucrats believed they could establish a Working Committee and be seen to be ameliorating the issue when the GAO report was released.⁵⁰ The internal OEO report would also be released to 'friendly members of Congress' to ensure they were on-side.⁵¹

Frustrations Emerge

The Administration, all the way up to the President, became quickly frustrated with their inability to move effectively on the OEO. Even by February, less than one month into the job, the President's patience was wearing thin with the slow pace of government action.⁵² The President and his senior officials placed the blame directly at the feet of intransigent bureaucrats. The identified remedy was to reignite the stalled staffing process, something which was not unique to OEO. A memorandum of February 19 from Haldeman to Moynihan underscored this point.

⁴⁷ 'OEO: A Self-Evaluation'.

⁴⁸ Charles Ryan and Steffen Graae to Harding, 12 Dec. 1968, Harding Papers, Box 35, LBJL. The report had been authored by an aide to the OEO Director, Steffen Graae, see 'Minutes of the Director's Executive Staff Meeting,' 13 Dec. 1968, RG381, Deputy Director Files Subject Files, Box 3, NARA II.

⁴⁹ Ryan and Graae to Harding, 12 Dec. 1968.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Nixon to Ehrlichman et. al., 12 March 1969, POF, Box 1, RNPL. For other examples of the President's frustration, see Nixon to Haldeman and Ehrlichman, 14 April 1969 and Nixon to Ehrlichman, 13 March 1969 both in POF, Box 1, RNPL.

Chief of Staff Haldeman reminded Moynihan that the President ‘wanted to have people who share our views put in charge at all levels’ at the OEO.⁵³ Haldeman followed this up two days later with another memorandum to Moynihan. The President, Haldeman wrote, ‘is not satisfied with doing nothing’ and demanded to know ‘what is going to be done’.⁵⁴ Haldeman indicated in his diary that the source of the President’s frustration was the ‘constant right-wing bitching’ about his political programme.⁵⁵

A further memorandum to the President two days later showed the continued emphasis that the upper echelons of the White House placed on OEO staffing. In the memorandum, Bryce Harlow provided the President with a list of all OEO-Senate confirmable positions, showing how over 50 ‘lower’ jobs were still open.⁵⁶ As Hugh Heclo has observed, it is through the ‘initial personnel appointments... [that] a President gives structure to his administration.’⁵⁷ Harlow’s list highlighted the dearth of attention paid to the staffing of OEO.⁵⁸ At that moment, OEO lacked a permanent Director, Deputy Director, or Assistant Director for any of the programme areas.⁵⁹ These vacancies were causing a political problem for the Administration. Harlow warned his boss: ‘at present, the entire operation functions... virtually independent of your Administration, as if the previous Administration were still in command’.⁶⁰

⁵³ Haldeman to Moynihan, 17 Feb. 1969, FG6-7 Files, Box 1, RNPL.

⁵⁴ Haldeman to George Shultz et. al, 22 Feb. 1969, Moynihan Papers, Series I, Box 485, LOC.

⁵⁵ Haldeman, *The Haldeman Diaries*, p. 31.

⁵⁶ Bryce Harlow to Nixon, 23 March 1969, FG6-7 Files, Box 1, RNPL.

⁵⁷ Heclo, ‘One Branch or Many?’, p. 26.

⁵⁸ Harlow to Nixon, 23 March 1969.

⁵⁹ ‘Key OEO Positions,’ 1969, Moynihan Papers, Series I, Box 485, LOC.

⁶⁰ Harlow to Nixon, 23 March 1969.

‘A Republican Emblem’

Throughout this period, OEO continued to be headed by Bertrand Harding, a career civil servant whom Johnson had recruited from the Internal Revenue Service to steady the ship at OEO after the oft-turbulent leadership of Sargent Shriver.⁶¹ Harding’s appointment was only intended to be temporary.⁶² Yet the Johnson Administration never got around to securing a replacement, so the temporary appointment continued into the Nixon era. Harding described his position during the transition as being ‘in a state of flux’ and by the end of January, with Nixon in office, he was still ‘waiting for the other shoe to drop’.⁶³ Because of this uncertainty, Harding was reluctant to oversee any drastic policy changes.

Harding and his deputies were also reluctant to make permanent appointments owing to the ‘uncertain nature of almost everything to do with OEO’.⁶⁴ They were conscious of the temporary nature of his leadership, believing that no decisive action should be taken until there was ‘Republican leadership’ of the agency.⁶⁵ The problem for the OEO bureaucrats was that this was not forthcoming. As Harding wrote to Shriver in March of 1969, he had been holding off making any significant decisions but ‘time ran out on the new boys’ and they had failed to ‘answer all [of] the questions inherent in a major re-shuffling’.⁶⁶

⁶¹ White House Press Release, 15 July 1968, Macy Papers, Box 241, LBJL. Johnson had told Harding that Shriver had ‘let the program get out of hand’, see ‘Memorandum for File,’ 31 Dec. 1968, Harding Papers, Box 50, LBJL.

⁶² ‘Press Conference No. 120,’ 22 March 1968, Macy Papers, Box 241, LBJ; Harry Hopkins to Jim Jones, 23 March 1968, Macy Papers, Box 241, LBJL.

⁶³ Harding to Johnson, 8 Jan. 1969, Harding Papers, Box 35, LBJL; Harding to Califano, 27 Jan. 1969, Harding Papers, Box 35, LBJL.

⁶⁴ Ottman to Harding, 4 April 1969, Harding Papers, Box 36, LBJL.

⁶⁵ Harding to Shriver, 6 March 1969, Harding Papers, Box 50, LBJL.

⁶⁶ *Ibid.*

Though it was a clear CUA recommendation, the appointment of a permanent OEO Director had been allowed to drift. In a way that was typical of the Administration, the process was unmethodical.⁶⁷ The initial suggestion for the role by Pat Moynihan was liberal New York lawyer, and 1968 campaign official, Leonard Garment.⁶⁸ Continuing the feud recounted in the previous chapter, Moynihan's recommendation was vetoed by Arthur Burns.⁶⁹ Next considered was William Scranton, the former Republican Governor of Pennsylvania, whom the Administration also considered for the Secretary of State position.⁷⁰ Whether or not Scranton was going to accept the job resulted in 'sheer confusion' in the White House, exemplifying how muddled the whole appointment process was.⁷¹ After his refusal, Nixon suggested Walter Thayer, former President of the *New York Herald Tribune*, and Erwin Cranham, editor-in-chief of the *Christian Science Monitor*.⁷² Both men declined. That this eclectic group of men were all from the liberal wing of the Republican party reflected the greater effort that the liberal faction of the White House took in putting names forward.⁷³

The White House would finally act on the OEO Directorship in April 1969. After months of 'looking avidly for a good Republican' without 'much luck,' the Administration had found its man for the job.⁷⁴ And it was a man who worried anti-poverty activists.⁷⁵ The President

⁶⁷ Karen Hult attributes this lack of direction to Nixon 'enter[ing] office with few clearly expressed domestic-policy choices and little interest in domestic or economic affairs', see Karen Hult, 'The Administrative Presidency,' in M. Small (ed.), *A Companion to Richard Nixon* (Malden, 2011), p. 187. The failings of Nixon's first-term staffing process would drive its Administrative Presidency approach documented in Part II of this thesis.

⁶⁸ Haldeman to Moynihan, 14 Feb. 1969, FG6-7 Files, Box 1, RNPL.

⁶⁹ Garment *NEJL* Interview. In his diary, Arthur Burns recorded that Garment was 'brilliant, but his skills as an administrator is [sic] doubtful', see Burns, diary entry for 14 Feb. 1969.

⁷⁰ Haldeman to Peter Flanigan, 13 March 1969, FG6-7 Files, Box 1, RNPL; Burns, diary entry for 23 Feb. 1969; Ehrlichman to Nixon, 6 March 1969, President's Office Files, Box 73, RNPL.

⁷¹ Burns, diary entry for 4 March 1969. Burns would grumble in his diary why it was that he found out 'by accident' that Scranton was no longer under active consideration.

⁷² Flanigan to Haldeman, 24 March 1969, Moynihan Papers, Series I, Box 485, LOC.

⁷³ One of Nixon's aides, John Price, would describe Thayer as 'the Secretary General of the Eastern Republican Establishment,' see author's interview with John Price, 30 Jan 2019.

⁷⁴ Harding to Ralph Phelps, 2 April 1969, Harding Papers, Box 36, LBJL.

⁷⁵ Editorial, 'Putting First Things First (III), 27 April 1969, *Washington Post*, p. 38.

announced on 21 April that he had selected Illinois Congressman Donald Rumsfeld to be his first permanent Director of the Office of Economic Opportunity.⁷⁶ Rumsfeld, who represented one of the wealthiest Congressional districts, was regarded as a 'liberal Republican' though his vote against OEO's creation was highlighted by those who feared for the agency's future.⁷⁷ As with others who had been considered, the approach had been made by Moynihan. Rumsfeld had initially rejected the overtures, believing Nixon's intent with regards to OEO had merely been to 'retrench and reorganize'.⁷⁸ Rumsfeld's change of heart, recalled a decade later as a '51 to 49 decision', suggests that the President convinced him that this was not the plan for the agency.⁷⁹ In his first introduction to senior OEO staff, he told them that his plan was to 'keep OEO going'.⁸⁰

The first four months of the Administration's inheritance of OEO was reflective of its domestic process more broadly. It had vacillated over appointments which allowed the Johnson holdovers to retain their positions well into the (supposedly) new Administration. It had solicited a panoply of policy suggestions from task forces and subcommittees but had failed to act decisively on any of them. It was these failures which contributed to the President's regret and frustration that his Administration had failed to 'get something done with the Republican emblem upon it'.⁸¹

⁷⁶ 'Statement by Donald Rumsfeld,' 21 April 1969, *Rumsfeld Papers*, <http://papers.rumsfeld.com/> (3 March 2020).

⁷⁷ 'Putting First Things First (III),' p. 38; 'Nixon Taps New Chief For War of Poverty,' 22 April 1969, *Salt Lake Tribune*, p. 5.

⁷⁸ Donald Rumsfeld, Memorandum, 4 Apr. 1969, *The Rumsfeld Papers*, <http://library.rumsfeld.com/doclib/sp/77/1969-04-04%20Re%20Decline%20to%20Accept%20OEO%20Position.pdf> (1 May 2018).

⁷⁹ 'Interview with Donald Rumsfeld,' 25 Jan. 1978, Box 1, Reichley Papers, GFPL. According to his Congressional Liaison, Rumsfeld accepted the job after meeting Nixon and confirming his intention to support the agency in exchange for him accepting the role, see author's interview with Carol Mayer Marshall, 31 October 2017.

⁸⁰ Harold Sims, 'Minutes of Senior Staff Meeting,' 26 May 1969, RG 381, Deputy Director Subject Files, Box 13, NARA II. Underline in original.

⁸¹ 'Notes of Leadership Meeting,' 28 Jan. 1969, President's Office Files, Box 73, RNPL.

Legal Services Program

While the advice received by the Administration on the War on Poverty more broadly was often contradictory, the views on the Legal Services Program were remarkably consistent. The transition's Task Force on Public Welfare lauded the LSP for its representative work in 'administrative decisions' noting how 'poor people' often had difficulty with the 'technicalities' of these processes.⁸² The CUA Subcommittee report deemed the LSP 'important' and 'indispensable'.⁸³ The OEO's 'Self-Assessment' was similarly glowing for the LSP, noting that the LSP had borne out the 'fundamental assumptions' made by the Program's founders that 'fundamental changes were necessary in substantive laws, legal procedures, and legal institutions' in order for poor people to have equal economic opportunity and equal justice'.⁸⁴ Rumsfeld, too, was said to favour the Legal Services Program. He saw it as the 'premier program within OEO' because 'it allowed people to settle problems through lawyers in courtrooms instead of with mob violence'.⁸⁵

Part of the reason for the strongly favourable views of the LSP was its support by the organised bar. They closely monitored the programme during the Johnson years and resisted any changes seen as curbing the autonomy of their lawyers.⁸⁶ The organised bar was diligent in immediately lobbying the Nixon Administration. Maynard Toll, the President of the National Legal Aid and Defender Association, wrote to the incoming Administration in November 1968 to advocate for

⁸² 'Task Force on Public Welfare: Report to President-Elect Richard M. Nixon'.

⁸³ 'Report of the Subcommittee: Future of the Poverty Program and the Office of Economic Opportunity'

⁸⁴ OEO: A Self-Evaluation'.

⁸⁵ Terry Lenzner, *The Investigator: Fifty Years of Uncovering the Truth* (New York, 2013), p. 67.

⁸⁶ Pious, 'Congress, the Organized Bar, and the Legal Services Program,' p. 436.

the LSP.⁸⁷ Letters between Legal Services' advocates in the organised bar demonstrate how closely they monitored machinations within the programme.⁸⁸ Legal Services Programs were also encouraged to actively solicit support from local bar groups to 'generate support for local programs'.⁸⁹

The LSP would certainly provide plenty of immediate challenges for the new Director. Even Harding, a Director sympathetic to the programme, was often upset by the antics of the agency.⁹⁰ On his way out Harding warned Rumsfeld about the tendency of the LSP to operate without Directorial oversight. Particularly on Harding's mind was a letter that the agency had received from Minnesota's Democratic Senator Walter Mondale, praising the LSP for its assistance with the drafting of his recently submitted Legal Services for the Poor Act.⁹¹ The Mondale Bill would have increased the budget of the LSP and established the Legal Services Program as a separate division within OEO.⁹² Mondale not only thanked the staff for their assistance but emphasised how an OEO bureaucrat had authored the 'essential basic draft' of the bill.⁹³ Robert Perrin, OEO's Acting Deputy Director, exploded in rage, telling Harding that he was 'mad as hell' at the LSP.⁹⁴ While it was not unusual for executives agencies to be responsive to their Congressional committees, what angered Harding was that the bureaucrat had done so 'without clearance, or even notification'.⁹⁵ The agency's actions were reported to Rumsfeld, who was warned of the

⁸⁷ Maynard Toll to Charles Stewart, 21 Nov. 1968, JL Files, Box 47, RNPL. Showing how the organised bar worked together, Toll told Stewart that he was authorised to speak on behalf of the Director of the American Bar Association.

⁸⁸ William Gossett to Bernard Segal, 24 Dec. 1969, Gossett Papers, Box 12, BHL.

⁸⁹ Terry Lenzner to Wes Hjernevik, n.d., (circa Dec. 1969), RG381, Deputy Director's Subject Files, Box 7, NARA II.

⁹⁰ For example, see Bertrand Harding to Theodore Berry, 27 June 1968, Harding Papers, Box 35, LBJL.

⁹¹ Walter Mondale to Burt Griffin, 4 March 1969, Harding Papers, Box 36, LBJL.

⁹² 'Minutes of the Executive Committee – National Legal Aid and Defender Association,' 14 May 1969, Seymour Papers, Box 141, NYPL.

⁹³ *Ibid.* Ament was a General Attorney in the LSP's central headquarters, see Rumsfeld to All Headquarters Employees, 17 Sep. 1969, Corbett Papers, Box 9, NEJL.

⁹⁴ Robert Perrin to Harding, 6 March 1969, Harding Papers, Box 36, LBJL.

⁹⁵ Harding to Rumsfeld, 6 May 1969, Harding Papers, Box 36, LBJL.

‘type of problem we have with Legal Services’.⁹⁶ ‘The instant situation,’ Harding cautioned the incoming Rumsfeld, ‘is by no means unique’.⁹⁷

Specifically identified as the root cause of this issue was Burt Griffin, the Acting Director of the LSP. Griffin, who had joined an LSP in Cleveland the year the programme started, was a holdover from the Johnson administration.⁹⁸ Unlike Harding, Griffin was not timid about making decisions that would bind the Administration and sought to recruit a permanent Director of the LSP. An offer was made of the Directorship to Paul Harbrecht, Jesuit Priest and Dean of the University of Detroit School of Law.⁹⁹ That the Search Committee comprised five pro-LSP advocates from the organised bar meant that they picked someone who would not have been out of place in the Johnson Administration.¹⁰⁰ After Harbrecht ultimately rejected the offer, Griffin persevered with the search.¹⁰¹ The fact that he was an acting appointment, serving an acting Director of the OEO, under a change of Administration, yet sought to select a director ‘for the next 18 months or 2 years,’ is a prime example of how bureaucrats did not always defer to what the White House perceived as its prerogative.¹⁰²

To instil a degree of discipline and control over the LSP, Rumsfeld prioritised the selection of a new Director.¹⁰³ Selection of a Director was also of keen interest to the ABA, who believed the

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ Biographical information obtained from the cover of Burt Griffin, *Cities within a City: On Changing Cleveland's Government* (Cleveland, 2000).

⁹⁹ Clinton Bamberger to Griffin, 5 March 1969, Corbett Papers, Box 2, NEJL; Earl Johnson Jr., ‘The O.E.O. Legal Services Program,’ *Catholic Lawyer* Vol. 14, No. 2 (1968), p. 106.

¹⁰⁰ Bamberger to Griffin, 5 March 1969.

¹⁰¹ *Ibid.*

¹⁰² Griffin to Harding, 8 April 1969, Corbett Papers, Box 2, NEJL.

¹⁰³ After Griffin had resigned as Acting Director, his successor, Christopher Clancy, made the decision that it should be Rumsfeld to make the appointment, see Clancy to John Cummiskey, 6 May 1969, Corbett Papers, Box 2, NEJL.

importance of this decision could not ‘be overstated’.¹⁰⁴ Rumsfeld offered the Directorship to his 29-year-old Special Assistant, Terry Lenzner, the first important personnel selection of his tenure.¹⁰⁵ Lenzner studied law at Harvard before joining the Department of Justice’s Civil Rights Division, where his first case was the ‘Mississippi Burning’ murders of three civil rights activists.¹⁰⁶ Lenzner then returned north to work as an assistant to John Doar, former Director of the Justice Department’s Civil Rights Division, in his efforts to desegregate New York’s schools.¹⁰⁷ Though ‘not a fan’ of President Nixon, Lenzner accepted the role and it was announced to the public on 14 July.¹⁰⁸ As was typical of the delegated staff appointment process at the time, Lenzner selected his own deputies.¹⁰⁹ As his chief deputy, he selected Frank N. Jones, a 36-year old African American lawyer from Mississippi who had previously worked for the NAACP.¹¹⁰

Lenzner and Jones were initially greeted with great scepticism by the lawyers of the LSP. In November, Lenzner flew to Vail, Colorado, to attend a gathering of poverty lawyers.¹¹¹ Lenzner would recall that his first impressions of the assembled Legal Services lawyers was that it ‘literally looked like a training camp for guerrilla warfare’.¹¹² Lenzner’s first impression was correct – those in attendance were deeply sceptical of the Administration and its new representative standing before them. Lenzner, however, impressed the poverty lawyers. A group of 100

¹⁰⁴ Gossett to Rumsfeld, 9 June 1969, Corbett Papers, Box 2, NEJL.

¹⁰⁵ OEO Press Release, ‘Legal Services Director Appointed,’ 14 July 1969, RG46 Senate LPWC Files, NARA I. Lenzner’s replacement as assistant to Rumsfeld would be Richard ‘Dick’ Cheney.

¹⁰⁶ Rumsfeld to Nixon, 19 Nov. 1969, FG6-7 Files, Box 1, RNPL; Interview with Terry F. Lenzner, 4 Sept. 2002, *National Equal Justice Library Oral History Collection*.

¹⁰⁷ Rumsfeld to Nixon, 11 Sept. 1970, FG6-7 Files, Box 1, RNPL; Lenzner NEJL oral history.

¹⁰⁸ Lenzner, *Investigator*, p. 65; Press Release, ‘Statement by Donald Rumsfeld on Legal Services Program,’ 14 July 1969, Corbett Papers, Box 2, NEJL.

¹⁰⁹ Lenzner, *The Investigator*, p. 68. For Nixon’s inclination to delegate power, including personnel selection, to his Cabinet, see James Pfiffner, *The Modern Presidency* (Boston, 2011), p. 105.

¹¹⁰ ‘Jones Named Vice Dean of Penn Law School,’ *Jet*, 30 Aug. 1973, p. 27.

¹¹¹ Paul Delaney, ‘Poverty Lawyers Get Nixon Backing,’ *New York Times*, 28 Aug. 1969, p. 1.

¹¹² Lenzner NEJL oral history.

rebellious LSP lawyers, organised into the Poverty Lawyers for Effective Action (PLEA), welcomed Lenzner's overtures.¹¹³ Their chairman, Arthur Feinberg, met with Lenzner and was satisfied. After the meeting, Feinberg said that PLEA was 'assured that Mr. Lenzner will support us'.¹¹⁴ Despite this, the group was still wary of the Administration, fearing that they 'weren't sure' that Lenzner truly 'speaks for the Nixon Administration'.¹¹⁵ This cleavage would only grow over the next year.

The poverty lawyers could be forgiven for thinking that Lenzner was not going to be on their side. He was, after all, an ally of a newly appointed Director of whom they were deeply skeptical.¹¹⁶ Both of these character traits, however, hid Lenzner's true passions. Lenzner did not wear his hair long like those assembled at Vail and was rarely 'outraged'.¹¹⁷ But beneath the surface burned a deep commitment to equality. He 'had seen... when cities become inhuman to people' and he was resolved to use the legal system to remedy it. Like Rumsfeld, he saw the LSP as a far preferable alternative to 'extralegal' measures.¹¹⁸

One of Lenzner's first responsibilities was to oversee a restructuring of the Legal Services Program. The LSP had grown out of an experimental programme under OEO's Community Action Program (CAP). Proving successful, LSP had grown to employ 1800 lawyers in 850 LSP offices at a cost of \$45 million per year.¹¹⁹ It was no longer practical for it to continue to sit under the CAP umbrella and report through the Assistant Director for CAP.¹²⁰ Rumsfeld

¹¹³ 'Poverty Lawyers Assured by Chief,' *New York Times*, 29 Aug. 1969, p. 1.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ Jack Rosenthal, 'Advocate for the Poor,' *New York Times*, 29 Aug. 1969, p. 15.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ 'OEO Staff Manual', 18 Aug. 1972, Corbett Papers, Box 2, NEJL.

¹²⁰ Hjørnevik to Lenzner, 12 Aug. 1970, RG381, Deputy Director's Subject Files, Box 7, NARA II.

ordered the change whereby the LSP would become 'separate from and equal to the other operative offices of the other OEO programs' through the creation of the Office of Legal Services.¹²¹ The change would strongly empower Lenzner, who became an Assistant Director of OEO, a move which was strongly endorsed by the existing bureaucracy. Burt Griffin, writing before Rumsfeld took over, noted how the Legal Services Director's reporting to CAP Director during the Johnson years had created 'jealousies and conflicts between the two'.¹²² In these conflicts, Griffin noted, LSP invariably lost out. This change was more programmatic than ideological, resolving structural issues which were long overdue.

The Appropriations Battle

Brewing in the background, alongside this internal reorganisation, was a battle over appropriations. OEO, and all of its constituent programmes, including LSP were funded through the Economic Opportunity Act.¹²³ The outgoing Administration had flagged the appropriation as the first item of business in their transition documentation prepared after the Nixon victory.¹²⁴ The matter had been intermittently raised by those in the Nixon White House, but without urgency.¹²⁵ This lack of decisive action on authorising legislation was emblematic of the 'loss of initiative' within the Administration on the domestic front.¹²⁶ Ultimately, the Administration decided to endorse a two-year extension of OEO to avoid another appropriations fight in the

¹²¹ Branch, 'Ordeal of Legal Services,' p. 12.

¹²² Griffin to Robert Patricelli, 23 April 1969, Moynihan Papers, Box 87, RNPL.

¹²³ This was the original initiating legislation of the 'War on Poverty', passed in 1964 and extended for a further two years in 1967.

¹²⁴ Perrin to Murphy, 21 Nov. 1968, Murphy Papers, Box 11, LBJL.

¹²⁵ Richard Blumenthal to Ehrlichman, 11 May 1969, FG6-7 Files, Box 1, RNPL.

¹²⁶ *Ibid.*

same year as the 1970 mid-term elections.¹²⁷ OEO's survival was a case of a largely uninterested Administration kicking the can down the road.¹²⁸

Congressional appropriations legislation for OEO would pivot on the Legal Services Program. This started in earnest on 14 October with California's Republican Senator George Murphy. Murphy rose to offer an amendment on the 'bad management, bad administration, and misdirection' of the 'so-called War on Poverty'.¹²⁹ In particular, Murphy targeted the California Rural Legal Association, the group integral to the *Hernandez v. Hardin* suit mentioned in Chapter One.¹³⁰ It was these 'law reform' efforts that particularly rankled Murphy.¹³¹ To curb this perceived activism, Murphy's amendment proposed to grant state Governors a 'an item veto over legal services projects in their state'.¹³² This reclamation of gubernatorial authority was welcomed by the National Governors' Conference.¹³³ Despite the best efforts of the Senate's northern Democrats, Murphy's amendment passed the Senate 45-40.¹³⁴

The Murphy Amendment triggered an immediate response from the legal aid profession and the legal profession more broadly, including the American Bar Association whose Board of Governors decried the 'oppressive interference with the freedom of the lawyer and citizen,' (a

¹²⁷ Finch to Ralph Yarborough, 17 Oct. 1969, RG46, Bechtel Files, Box 4, NARA I.

¹²⁸ For example, on the day that Blumenthal raised the re-authorisation with Ehrlichman (11 May), Haldeman wrote that the President was 'preoccupied' with Vietnam 'peace plan,' see Diary Entry: 11 May 1969, H.R. Haldeman Diaries Collection, RNPL.

¹²⁹ 91 *Cong. Record* (1969), p. 29890.

¹³⁰ Particularly antagonising for Murphy was CRLA's litigation to limit DDT usage in Californian farms, which he saw as a front for supporting striking grape workers, see *ibid*.

¹³¹ *Ibid*.

¹³² *Ibid*, p. 29891. Under the present regulations, Governors only had a conditional veto which could be overruled by the Director of OEO, see Jerome Falk. and Stuart Pollack, 'Political Interference with Publicly Funded Lawyers: The CRLA Controversy and the Future of Legal Services,' *Hastings Law Journal*, Vol. 24, No. 4 (1973), p. 599.

¹³³ Charles Rabb, 'Friends, Opponents of Legal Services Try to Change Program Through Corporation Plans,' *National Journal*, 24 April 1971, p. 895.

¹³⁴ CQ Senate Votes 99 to 103, *1969 CQ Almanac* (Washington D.C., 1970), p. 22.

document which was circulated within the White House).¹³⁵ The ABA claimed that the Murphy Amendment ‘threaten[ed] the future’ of the LSP and that it was ‘primarily aimed’ at blocking legal challenges to government actions ‘that are designed to achieve significant improvements in the law affecting the poor’.¹³⁶ The ABA was joined in its opposition by the National Legal Aid and Defender Association and the U.S. Judicial Conference.¹³⁷ The *Washington Post* editorialised against the amendment and praised the LSP as ‘one of the most creative and socially useful projects financed’ by OEO.¹³⁸ All supporters of the LSP were in agreement that the Murphy Amendment was a backdoor way to neuter the programme.

Rumsfeld was immediately opposed to the Murphy Amendment. This may seem like a puzzle given his previously stated desire to tamp down radicalism within OEO programmes.¹³⁹ But Rumsfeld saw it as something that would have broader reaching consequences than only changing a single poverty programme – it – would undermine his authority as Director.¹⁴⁰ Rumsfeld went on CBS’s *Face the Nation* and endorsed the LSP as ‘the most legal, the most reasonable, the most peaceful way to redress grievances in this society that exists’.¹⁴¹ Rumsfeld publicly pledged to leverage his old contacts ‘to work against it in the House’ and testified before

¹³⁵ Legal Services Program of the Office of Economic Opportunity: Hearings before the Subcommittee on Employment, Manpower and Poverty, Senate, 91st Cong. 168 (1970); ‘Resolution Adopted by the American Bar Association Board of Governors,’ 18 Oct. 1969, JL Files, Box 47, RNPL; Price to Ehrlichman, 6 Nov. 1969, OEO Files, Box 1, RNPL; Ehrlichman to Nixon, 13 Nov. 1969, OEO Files, Box 1, RNPL.

¹³⁶ *Ibid.*; see also John D. Robb, ‘Controversial Cases and the Legal Services Program,’ ABA Journal, Vol. 56 (April 1970): 329-31.

¹³⁷ Press Release, National Legal Aid and Defender Association, JL Files, Box 47, RNPL; John Mackenzie, ‘Judges Oppose Senate Curbs on Legal Help,’ *Washington Post*, 3 Nov. 1969, p. A2.

¹³⁸ ‘Lawyers for the Poor,’ *Washington Post*, 22 Oct. 1969, p. A22.

¹³⁹ Donald Rumsfeld, *Known and Unknown: A Memoir* (London, 2013), p. 120. Gauging Rumsfeld’s position on the Murphy Amendment is made more difficult by the fact that neither of his archival collections at the Nixon Library or Library of Congress are presently open to researchers.

¹⁴⁰ Johnson, *To Establish Justice for All*, p. 221. Rumsfeld was also willing to fight for his agency in budget disputes with other Departments, see Don Wortman, ‘Third Quarter Dollar Decisions,’ 22 May 1969, RG381, CAP Director Subject Files, 1965-1969, Box 72, NARA II.

¹⁴¹ Transcript, ‘Face the Nation,’ 7 Dec. 1969, in RG381, Glennan Files, Box 9, NARA II.

a Senate Labor and Public Welfare Subcommittee in opposition to the amendment.¹⁴² ‘The irritations to a county or a state caused by the successful representation of the poor,’ Rumsfeld told the committee, were ‘preferable to the few alternatives left to the poor’ if they were denied access to the courts.¹⁴³ Rumsfeld endorsed a ‘vigorous Legal Services Program’ and decried the Murphy Amendment as ‘crippling’ for the purpose of the agency.¹⁴⁴ Together with Lenzner, Rumsfeld went ‘office to office in the House’ to raise opposition to the amendment, in addition to making over 200 phone calls.¹⁴⁵

The White House was much more equivocal. As on so many other domestic issues, it was wedged between competing priorities. Rumsfeld’s response was so immediate, and so unequivocal, that any White House support for Murphy would have been a betrayal of one of its most trusted appointees.¹⁴⁶ Taking a more holistic view, they also recognised Murphy’s ‘tender political situation’ ahead of a tough upcoming Senate race.¹⁴⁷ Reluctant to commit one way or the other, the White House chose to ‘simply say nothing’.¹⁴⁸

Though described as a ‘crisis’ for the OEO, the legislative deadlock was resolved very positively for the agency.¹⁴⁹ Surprising a pessimistic Rumsfeld, the House and Senate conference passed a bill which extended the agency for two years, with a generous increase in funding on top of the

¹⁴² Jack Rosenthal, ‘Lawyers Oppose a Poverty Plan,’ *New York Times*, 18 Oct. 1969, p. 68.

¹⁴³ Legal Services Program of the Office of Economic Opportunity: Hearings before the Subcommittee on Employment, Manpower and Poverty, Senate, 91st Congress, 15 (1969).

¹⁴⁴ *Ibid.* 15; 30.

¹⁴⁵ Lenzner, *The Investigator*, p. 72; Press Release, ‘Legal Services,’ 20 Nov. 1970, Deputy Director: Subject Files, 1966-1975, Box 7, RG381, NARA II.

¹⁴⁶ Ehrlichman to Nixon, 13 Nov. 1969.

¹⁴⁷ It was the seat, rather than Murphy, they were afraid of losing, see Diary Entry: 11 Dec. 1969, H.R. Haldeman Diaries Collection, RNPL. See entries for Oct. 2, 1969 and 9 Aug. 1969 for White House’s monitoring of the Murphy situation.

¹⁴⁸ Ehrlichman to Nixon, 13 Nov. 1969, FG6-7 Files, Box 1, RNPL.

¹⁴⁹ ‘Another Hurdle for OEO,’ *Washington Post*, 17 Dec. 1969, p. A24.

White House's initial request.¹⁵⁰ The news was particularly rosy for the LSP, surviving what Lenzner believed was a 'legislative crisis'.¹⁵¹ Wisconsin Republican Congressman William Steiger, a strong supporter of the Legal Services Program since its inception, had worked directly with Lenzner to avoid measures similar to the Murphy Amendment being included in the final conference legislation.¹⁵² In order to accommodate the concerns of the more conservative members of the House and Senate, Lenzner drafted an amendment on the relationship between LSP lawyers and farm workers. Lenzner's amendment, drafted in the halls of Congress with tour groups passing by, looked like it was taking a tough line on the lawyers when in fact it would merely enshrine an existing convention that all lawyers would abide by the ABA's Canon of Ethics.¹⁵³

Lenzner's lobbying efforts in Congress were part of a broader effort by the LSP. The Office of Legal Services had developed a comprehensive plan to assign various responsibilities, such as whipping votes and preparing amendments, to different OEO staff.¹⁵⁴ This effort included Headquarters bureaucrats such as Lenzner and the LSP's Director of Research and Development Mickey Kantor, as well as friendly Regional Directors including Atlanta's Dan Bradley. These efforts, and particularly Lenzner's successful work with Steiger, demonstrate the pivotal role that LSP bureaucrats had in ensuring the survival, and growth, of their programme. In the week before the vote, Nixon instructed Haldeman to put a 'hold on Legal Services' because the 'P[resident] doesn't like it'. This instruction either did not make it to – or was ignored by – these OEO bureaucrats. At the end of 1969, the Legal Services Program, which had

¹⁵⁰ Rumsfeld had told his Director of Congressional Relations not to come to the final vote as 'we are really going to get smashed,' see author's interview with Carol Mayer Marshall.

¹⁵¹ Lenzner to Legal Services Staff, 12 Dec. 1969, Bamberger Papers, Box 1, NEJL.

¹⁵² William Steiger to Nixon, 13 Dec. 1968, FG6-7 Files, Box 1, RNPL.

¹⁵³ Lenzner *NEJL* oral history. For more on this provision, see Anthony Partridge to Senior OEO Staff, 19 Dec. 1969, RG381, Glennan Files, Box 3, NARA II.

¹⁵⁴ Michael Kantor to Lenzner, 28 Nov. 1969, Corbett Files, Box 9, NEJL.

appeared doomed when Murphy rose to the Senate floor in October, was now fully funded, with significant increases, for a further two years with no additional restrictions placed upon their activities.

New Federalism comes to the Legal Services Program

There was widespread acknowledgement within the White House throughout the first half of 1969 that the Administration was adrift in domestic policy.¹⁵⁵ The major response to this was the public unveiling of the new concept of ‘New Federalism’, which was announced to the nation in a televised address on 8 August 1969.¹⁵⁶ The President told the nation that ‘a third of a century’ of ‘centralizing power and responsibility in Washington’ had produced a government which was a ‘bureaucratic monstrosity, cumbersome, unresponsive, ineffective’.¹⁵⁷ Nixon’s proposed remedy was ‘a New Federalism in which power, funds, and responsibility will flow from Washington to the States and the people’.¹⁵⁸

As we can see from the reference to ‘a third of a century’, Nixon posited New Federalism as a response to the New Deal. Crucially, though, it was also a direct response to the Great Society. OMB’s Richard Nathan, one of the intellectual fathers of New Federalism, stated that the ‘re-establishment of ... American federalism’ was required as it had been ‘ploughed under by the

¹⁵⁵ Speechwriter William Safire described the first year as a ‘zigzag philosophy’, see William Safire, *Before the Fall* (New York, 2005), p. 219.

¹⁵⁶ Richard Nixon, ‘Address to the Nation on Domestic Programs,’ 8 Aug. 1969, *American Presidency Project* (01 Aug. 2018).

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

Great Society'.¹⁵⁹ New Federalism was both an ideological and a pragmatic response to the growing responsibilities vested in Washington.¹⁶⁰ While agreeing that the over-arching principle of New Federalism was a return of power from the national to the local, the reality of what this looked like vexed the Nixon Administration. This was best evidenced in the so-called 'New Federalist' papers which circulated in the White House in late 1969 and early 1970. Written under the pseudonyms Cato and Publius, the papers articulated differing visions for New Federalism.¹⁶¹ This debate about the 'role and structure of the Federal Government' would bubble along through 1970.¹⁶²

While 'Cato' and 'Publius' saw the debate in grand philosophical tones, the next section of this chapter will investigate what New Federalism looked like in practice. Rumsfeld's decision (at the White House's behest) to pursue 'regionalization' of the Legal Services Program was New Federalism in action, through divesting control of OEO programmes to the regions, had long been an aim of the Administration.¹⁶³ While the Administration's approach to increase state control in pursuing 'regionalization' of the LSP somewhat echoes the desires of the Murphy Amendment, the White House and its appointed officials at OEO wanted to do it on their terms.

¹⁵⁹ Nathan, 'Discourse by a New Federalist,' n.d., Safire Papers, Box 96, LOC. See also Leonard Robbins, 'The Plot That Succeeded: The New Federalism as Policy Realignment,' *Presidential Studies Quarterly*, Vol. 10, No. 1 (1980), p. 99; Alice O'Connor, 'False Dawn of Poor-Law Reform: Nixon, Carter, and the Quest for a Guaranteed Income,' *Journal of Policy History*, Vol. 1, No. 1 (1998), p. 114.

¹⁶⁰ Nathan, 'The New Federalism,' 19 March 1970, Nathan Papers, Box 1, Hoover.

¹⁶¹ Publius, 'New Federalist Paper #1,' n.d., Safire Papers, Box 96, LOC; Cato, 'Federalism: Old and New,' n.d., Safire Papers, Box 96, LOC. 'Publius' was speechwriter William Safire while Cato was White House aide Tom Huston, see Safire, *Before the Fall*, p. 222.

¹⁶² Nathan, 'The New Federalism,' 19 March 1970, Nathan Papers, Box 1, Hoover.

¹⁶³ As far back as February 1969, a report from the Council on Urban Affairs had called for 'a drastic change of approach to the state and local governments' role' in the poverty programme, see 'Responsibility for the Administration of Head Start,' A Report to the President by the Council of Urban Affairs, Feb. 1969, Moynihan Papers, Series I Box 485, LOC.

As with many issues to do with LSP, at stake was power.¹⁶⁴ OEO wanted to retain central control over the programs as they believed it provided cover for the LSP lawyers to pursue controversial cases. In this, they were supported by the organised bar and the legal services lawyers themselves. Local authorities desired control over the programs precisely so that they could *limit* these controversial tactics.¹⁶⁵ The ‘regionalization’ of LSP would primarily play out as a dispute within the bureaucracy. Heading these two camps were LSP Director Lenzner, arguing for central control, and OEO’s Director of Operations Frank Carlucci, pushing ‘regionalization’. What transpired, between the men and their allies, was described at the time as ‘full-scale bureaucratic warfare’.¹⁶⁶

Won’t you please re-fund Chicago (or else join the other side)?

In early 1970, Frank Carlucci wrote to Director Donald Rumsfeld to stress his concern over the LSP’s funding arrangements. Though the Office of Legal Services had been removed from under the Community Action Program umbrella, funding for LSP programs was provided as part of Community Action Agency allocations. The reason for Carlucci’s memo was his concern over ‘a growing number of cases where Legal Services Programs have been removed from CAAs and funded directly’.¹⁶⁷ While seeking to make a broader point about centralised control, Carlucci was specifically taking umbrage with the funding of an LSP in Rumsfeld’s hometown of Chicago, the Legal Aid Bureau (LAB). LAB was funded through the local Chicago CAA, the Chicago Commission on Urban Opportunity.¹⁶⁸ The CCUO was chaired by Chicago’s powerful Mayor Richard Daley, who objected to the perceived interference by legal services lawyers in the affairs

¹⁶⁴ Closely connected to power was money. As one OEO bureaucrat told the Congress ‘the power of the purse is the power of control’, see LSP Hearings, EMP Subcommittee 143 (1970).

¹⁶⁵ Fisher to Mercer, 16 Sep. 1970.

¹⁶⁶ Branch, ‘The Ordeal of Legal Services,’ p. 5.

¹⁶⁷ Frank Carlucci to Rumsfeld, 27 Feb. 1970, RG381, Deputy Director Subject Files, Box 7, NARA II.

¹⁶⁸ Warren George, ‘Development of the Legal Services Corporation,’ *Cornell Law Review*, Vol. 61, Issue 5 (1976), pp. 688.

of his city.¹⁶⁹ Chicago's legal services lawyers had earned the ire of the city establishment for their advocacy for the removal of a racist school principal, resisting 'a proposal for a crosstown expressway' and documenting police brutality during riots at the 1968 Democratic convention.¹⁷⁰ Carlucci wrote to Rumsfeld to 'strongly recommend' that the Legal Aid Bureau be funded through the CCUO. Carlucci deemed it 'reasonable and logical' to accede to Mayor Daley's 'wishes', believing that to do otherwise would 'violate[s] this Agency's stated policy of strengthening state and local government participation' in OEO programs.¹⁷¹

Lenzner took a strong stand on behalf of centralisation in a return memo to Carlucci. Carlucci's Office of Operations, Lenzner wrote, had a 'proclivity for bureaucratic rigidity' and its policies for state control were not a 'strategy' but rather a 'series of arguments predicated upon a fundamental misstatement and/or misunderstanding of existing legislation'.¹⁷² Chicago, Lenzner believed, provided 'empirical evidence' that 'direct funding was desirable' in some cases. Lenzner pointed out that there was not 'a growing number of cases' and in fact Chicago was alone among the nation's 267 LSPs funded this way. In a bureaucratic turf war, Lenzner was advocating for greater discretion for his lawyers while Carlucci sought to constrain their actions and defer to local authorities. In the end, Lenzner's forces won out and OEO agreed to directly fund the Chicago Legal Aid Bureau.¹⁷³

¹⁶⁹ Of the 90 members CCUO board, only 7 were for 'poor neighbourhoods' with the vast majority being 'people Daley could rely on to see things his way', see Adam Cohen and Elizabeth Taylor, *American Pharaoh: Mayor Richard Daley – His Battle for Chicago and the Nation* (Boston, 2001), p. 319. For more on Daley's relationship with the Community Action Program, see Renee LaFleur, *Democracy in Action: Community Action in Chicago, 1960-1968*, unpublished dissertation, Ohio University, 2011.

¹⁷⁰ Jack Katz, *Poor People's Law in Transition* (Rutgers, 1982), pp. 86-8.

¹⁷¹ Carlucci to Hjernevik, 18 Feb. 1970, RG381, Carlucci Files, Box 3, NARA II.

¹⁷² Lenzner to Rumsfeld, 17 July 1970, RG381, Deputy Director: Subject Files, Box 7, NARA II.

¹⁷³ Subcommittee on Regionalization, 'Regionalization of Legal Services: An Examination of Problems and Issues,' 30 Oct. 1970, Cahn and Cahn Papers, Box 1, NEJL.

‘Decentralization’

Having lost the battle over Chicago, Rumsfeld and Carlucci decided to escalate the war. On 8 June they announced the ‘decentralization’ of the LSP.¹⁷⁴ The proposal called for ‘an orderly transfer to the Regional Offices immediately’ of key central headquarters authorities including hiring, grant-reviewing, and grant-making powers.¹⁷⁵ Lenzner was incensed at what he saw as the usurpation of his authority. He wrote that the Office of Operations’ position ‘betrays its antipathy for legal services program quality and content’.¹⁷⁶ Lenzner, and the Office of Legal Services, were on the warpath.

In dire need of assistance, Lenzner reached out to the organised bar.¹⁷⁷ As when it intervened to head off a proposed ‘regionalization’ in 1967, the American Bar Association came out forcefully against the proposed changes. John D. Robb, from the ABA’s Standing Committee on Legal Aid wrote to ABA Director Edgar Wright, declaring regionalisation ‘an extremely serious threat’ to the future of the LSP.¹⁷⁸ Unlike a year earlier where they had worked together with Rumsfeld to defeat the Murphy Amendment, the ABA came out forcefully against Rumsfeld’s proposed changes. ABA Director Edgar Wright described the changes as ‘unwise, unwarranted, and unacceptable’ in a forceful letter to Rumsfeld.¹⁷⁹ Wright also wrote to all state bar Presidents to engage them in opposing the change.¹⁸⁰

¹⁷⁴ Carlucci to Hjernevik, 8 June 1970, ACLU Papers, Series 3, Box 1136, Princeton.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ Branch, ‘The Ordeal of Legal Services,’ p. 15.

¹⁷⁸ *Ibid.*

¹⁷⁹ LSP Hearings, EMP Subcommittee 253 (1970).

¹⁸⁰ John Inglehart, ‘Congress, Interest Groups Resist Legal Services Regionalization Plan,’ *National Journal*, Vol.2, No. 44 (1970), pp. 2393.

The National Legal Aid and Defender Association resolved that ‘regionalization’ would ‘jeopardise the strength [and] the professional quality’ of the LSP.¹⁸¹ There was some degree of self-interest evidenced here by the organised bar. They had carefully positioned themselves as an influential player in Washington politics, lobbying one national office. As the *National Journal* noted, this would be ‘diminished’ if they were then spread across ten regional offices.¹⁸²

Evident in the organised bar’s opposition are strong elements of what *Washington Monthly* termed ‘professional xenophobia,’ referring to their strong desire to have legal services policies set by lawyers rather than ‘lay administrators’.¹⁸³ This line of attack was repeated by Congressional opponents of regionalisation, such as Minnesota Democrat Walter Mondale.¹⁸⁴ Mondale expressed his concern that ‘a gifted young lawyer’ in an LSP would have to go ‘through a nonlawyer [*sic*] who they know is very close to the local political forces’.¹⁸⁵ Changes made to the Regional Offices throughout 1970 had centralised control in non-lawyers, with just two of the ten Regional Directors holding law degrees.¹⁸⁶

The Office of Legal Services’ bureaucracy was effective at slow-walking the issuances from on high. The implementation for ‘regionalization’ was due by 30 June, yet the day came and went and it had not eventuated.¹⁸⁷ On 20 July, OEO Congressional Liaison Carol Khosrovi wrote to OEO Deputy Director Wes Hjernevik to enquire ‘why the Legal Services Program was not regionalized on July 1st’.¹⁸⁸ Khosrovi stressed that there was ‘a good deal of interest on this issue

¹⁸¹ LSP Hearings, EMP Subcommittee 448-9 (1970).

¹⁸² Inglehart, ‘Congress, Interest Groups,’ p. 2393.

¹⁸³ LSP Hearings, EMP Subcommittee 253 (1970).

¹⁸⁴ Inglehart, ‘Congress, Interest Groups,’ p. 2393.

¹⁸⁵ *Ibid.*

¹⁸⁶ Inglehart, ‘Congress, Interest Groups,’ p. 2398.

¹⁸⁷ Johnson, *To Establish Justice for All*, vol. 1, p. 241.

¹⁸⁸ Carol Khosrovi to Hjernevik, 20 July 1970, RG381, Deputy Director: Subject Files, Box 7, NARA I.

in the Congress'.¹⁸⁹ Hjernevik followed up with Lenzner on 12 August, affirming to him that there should 'be no misunderstanding of intent' and that regionalisation would occur 'as soon as the regions were staffed up and operating to our satisfaction'.¹⁹⁰ Lenzner replied on 25 August rebuffing his Deputy Director.¹⁹¹ He wrote that Regional Directors did 'not fully understand the importance of preserving the professionalism in this program' and that he 'must insist that sufficient administrative and policy independence remain in the Office of Legal Services' in the Washington headquarters.

Lenzner had long been sceptical of the regions, having been warned when he took the job that central control was imperative to combat the 'Kafkaesque layers of bureaucracy'.¹⁹² If central control was not maintained, he was warned by an LSP that this would lead to 'incredible waste and inefficiency'.¹⁹³ Lenzner may have had in mind a memo he received in July, which was distinctly pessimistic about the state of the regional offices.¹⁹⁴ The memo described OEO Region I, covering the North-East of America, as a 'semi-autonomous empire' where it was 'extremely difficult to implement national priorities'. Region IV was 'a disaster of crisis proportions' with staff who were 'incompetent, lazy, insensitive, etc.'¹⁹⁵ Unsurprising given the evidence provided in this chapter, this memorandum to Lenzner was written by a central headquarters bureaucrat.

Also opposing regionalisation was the National Advisory Committee (NAC), the body which Sargent Shriver had created to shore up the political support of the organised bar for the LSP.¹⁹⁶

¹⁸⁹ *Ibid.*

¹⁹⁰ Lenzner to Hjernevik, 25 Aug. 1970, RG381, Deputy Director Subject Files, Box 7, NARA I.

¹⁹¹ *Ibid.*

¹⁹² Simon Rosenthal to Lenzner, 15 July 1969, Rosenthal Papers, Box 1, NEJL.

¹⁹³ *Ibid.*

¹⁹⁴ Rosenthal to Lenzner, 18 July 1969, Rosenthal Papers, Box 1, NEJL.

¹⁹⁵ *Ibid.*

¹⁹⁶ Mark Arnold, 'Whither Legal Services,' *Juris Doctor*, February 1971, cited in RG381, OEO Subject and Litigation File, Box 10, NARA II.

NAC united members of various legal groups including the American Bar Association, the National Legal Aid and Defender Association, and the American Trial Lawyers Association'.¹⁹⁷ The NAC had long-supported central control of the LSP.¹⁹⁸ Importantly, the NAC comprised men and women associated with the programme since the Johnson years. Much like long-serving bureaucrats, these men and women on the NAC were familiar with the intricacies of programme regulations, knew the key players in Congress and the bureaucracy, and were adept at selective leaking to the media.¹⁹⁹

The President was largely absent in the discussions about regionalisation. This was typical of the President's approach to domestic policy. The only clue that is evident about his thoughts on the Legal Services Program come from an annotated news summary from October. On an extract about the appearance of rebelling 'poverty lawyers' on television, the President scrawled 'Don [Rumsfeld] – fire them where possible'.²⁰⁰ This is typical of the Nixonian approach to domestic policy, expressing outrage and frustration with liberals, but not sufficiently investing himself in the policy detail to effect change.

In September 1970, Rumsfeld informed the NAC of his intention to 'regionalize' the program.²⁰¹ Due to their keen attention to legal aid issues, and strong contacts within OEO, they already knew this.²⁰² In response, NAC member Jean Camper Cahn, described as one of the

¹⁹⁷ Arnold, 'Whither Legal Services'.

¹⁹⁸ OEO, 'OEO Transition Material – 1968,' n.d., Murphy Files, Box 11, LBJL.

¹⁹⁹ For an example of the political relationships, see Hart to 'Friends of Michigan Legal Services,' 25 Jan. 1971, Houseman Papers, Box 22, NEJL.

²⁰⁰ Wire Reports, Oct. 10-11 1970, *Papers of the Nixon White House*, Part 6B, fiche 34, 26.

²⁰¹ 'Regionalization of Legal Services: An Examination of Problems and Issues'.

²⁰² NAC member John Cumiskey found out about the plan in 'summer', see LSP Hearings, EMP Subcommittee 144 (1970). Cumiskey also presented Congress with a copy of the 8 June 1970 memorandum from Carlucci to Hjernevik initiating regionalisation, see p. 145.

‘philosophers’ of the LSP, commissioned a ‘Subcommittee on Regionalisation’.²⁰³ As could be expected for stalwart supporters of the program, the Subcommittee’s report would ‘reject all of [the] rationales for regionalization,’ arguing that any moves towards regionalisation would increase ‘political interference’, reduce the ‘quality’ of the program, and ‘cause a loss of confidence of the poor in the program’.²⁰⁴ According to the subcommittee member Ted Vorhees, ‘no member ... expressed the slightest doubt over the recommendation’.²⁰⁵ The subcommittee strongly endorsed Director Lenzner as someone in whom ‘they had the greatest confidence’.²⁰⁶ As important as these predictable findings was what the Subcommittee provided — a co-ordinating venue for these various legal groups.²⁰⁷

Decision Time

After much internal frustration and public pressure, Donald Rumsfeld finally relented and in a 14 November press release announced that he had ‘decided not to “regionalize” the Legal Services Program’.²⁰⁸ While this would have raised the spirits of the legal services lawyers, the remainder of the press release was less buoying, for Rumsfeld followed up with six pages of single-spaced regulations which in effect continued the push towards ‘regionalization’.²⁰⁹ As with his previous announcement, ‘everybody concerned with Legal Services... was up in arms’ about the new guidelines.²¹⁰ The Citizens Advocate Center (CAC), a lobby group founded by Edgar Cahn, another of the LSP’s co-founders, said the ‘new procedures achieve administratively the

²⁰³ Burt Griffin, ‘The Legal Services Program,’ 14 Oct. 1968, Bamberger Papers, Box 1, NEJL.

²⁰⁴ ‘Regionalization of Legal Services: An Examination of Problems and Issues,’ 30 Oct. 1970.

²⁰⁵ Theodore Vorhees to Rumsfeld, 12 Nov. 1970, Gossett Papers, Box 12, BHL.

²⁰⁶ LSP Hearings, EMP Subcommittee 161 (1970).

²⁰⁷ For example, see Gossett to Segal, 24 Dec. 1969, Gossett Papers, Box 12, BHL.

²⁰⁸ Rumsfeld to Senior Staff and Directors, 14 Nov. 1970, RG381, Carlucci Files, Box 3, NARA II.

²⁰⁹ ‘Procedures for Administering the Legal Services Program in the Regional Offices,’ 14 Nov. 1970, RG381, Carlucci Files, Box 3, NARA II; Wilson to Dean, 4 March 1971.

²¹⁰ Branch, ‘The Ordeal of Legal Services,’ 18.

precise results which made the proposed regionalisation so objectionable'.²¹¹ The CAC noted, in particular, how Lenzner had lost significant 'power' over the program, and specifically citing the case of the Chicago Legal Services Program as one in which local power would be greatly increased.²¹²

The 14 November regulations caused great tension within the bureaucracy. The following day, six members of the 'senior staff' petitioned Deputy General Counsel Arthur Reid to 'suspend the implementation' of the new regulations as they were developed without the consultation of the Office of Legal Services, including Lenzner, or representatives of LSP's 'constituent groups' including the ABA and NLADA.²¹³ The importance of the organised bar in policymaking in OEO was once again evident. Lenzner's exclusion from the decision-making process in particular highlighted the schism between him and Rumsfeld. The Citizens Advocate Center said that the proposed changes would render Lenzner merely the 'titular head' of the LSP, with little actual authority over the program.²¹⁴

The 'regionalization' dispute attests to the deteriorating relationship between Rumsfeld and his hand-selected LSP Director. After a 'long and acrimonious meeting' in August, Lenzner and his deputy, Frank Jones, had told OEO Deputy Director Wes Hjernevik that they 'would fight regionalization with every means at their disposal'.²¹⁵ In October, Rumsfeld had banned his LSP Director from travelling from Washington D.C. without his approval.²¹⁶ Upset over the

²¹¹ Paul Delaney, 'Antipoverty Director is Accused of Curbing Legal Services Chief,' *New York Times*, 19 Nov. 1970, p. 30.

²¹² LSP Hearings, EMP Subcommittee 297 (1970).

²¹³ Troy Overby et. al to Arthur Reid, 15 Nov. 1970, Cumminskey Papers, Box 2, NEJL.

²¹⁴ John Mackenzie, 'OEO Chief Scored on Legal Aid,' *Washington Post*, 20 Nov. 1970, p. A8.

²¹⁵ Memorandum from Hjernevik, n.d., RG381, Deputy Director Subject Files, Box 7, NARA II.

²¹⁶ Lenzner NEJL oral history.

November 14 regulations, Lenzner travelled to New York to meet with the editorial board of the *New York Times* to encourage them to publicly editorialise against the proposed regulations.²¹⁷ On November 20, the day he returned from New York, Lenzner was summoned to Rumsfeld's office. Refusing to tender the resignation Rumsfeld demanded, Lenzner, along with his deputy Frank Jones, were fired on the spot.

Even for a programme accustomed to turmoil, the Legal Services industry was shaken to its core. OEO official Hulett Askew 'thought everything was coming to an end'.²¹⁸ This was partly inflamed by Jones, who in his final press conference labelled Rumsfeld's actions 'dishonest, immoral and possibly illegal'.²¹⁹ Jones' frustration at his firing can be explained by the fact that he believed the LSP to be 'the second phase of the civil rights movement', something he now saw imperilled.²²⁰ Lenzner, too, issued a stinging press release accusing the Nixon Administration of 'serv[ing] the needs of politics rather than the needs of the poor whenever the two have come into conflict'.²²¹ Once again, the most vociferous advocacy came from the organised bar and the lawyers themselves, who 'aroused a storm of criticism' according to the *New York Times*.²²² Protests broke out amongst the Legal Services lawyers and bureaucrats.²²³ All ten OEO regional directors, not necessarily Lenzner's closest allies, issued a 'unanimous protest statement'.²²⁴

²¹⁷ *Ibid.*

²¹⁸ Interview with Hulett 'Buckey' Askew, 22 July 1991, *National Equal Justice Library Oral History Collection*.

²¹⁹ 'Statement of Frank N. Jones Upon His Removal as Deputy Associate Director of the Office of Legal Services,' 4 Dec. 1970, Corbett Papers, Box 2, NEJL.

²²⁰ Inglehart, 'Congress, Interest Groups,' p. 2393.

²²¹ 'Antipoverty Director Moves to Destroy Legal Services,' n.d., Houseman Papers, Box 22, NEJL.

²²² Jack Rosenthal, 'Bar Groups Score Ousters by O.E.O.' *New York Times*, 22 Nov. 1970, p. 1.

²²³ 'Legal Service Dismissals,' *National Journal*, Vol. 2, No. 48 (28 Nov. 1970), p. 2626.

²²⁴ 'Statement Adopted Unanimously by the National Staff and the Ten Legal Services Directors,' 23 Nov. 1970, Houseman Papers, Box 22, NEJL.

The American Bar Association was particularly incensed. The day before Lenzner had been fired, ABA Director Wright and Rumsfeld had met to discuss the 14 November regulations.²²⁵ Following this meeting, a press release was produced by OEO noting the productive discussions in an attempt to demonstrate a continued relationship with the ABA.²²⁶ The press release was attached to a memo sent to all 265 active LSPs notifying them of the Lenzner and Jones dismissals.²²⁷ This led some to infer that the ABA had endorsed the firings.²²⁸ Rumsfeld insisted that this was ‘unintentional’, but the ABA were highly sceptical.²²⁹

Rumsfeld, and the White House more broadly, were reeling from the political storm which the firings had caused. In power nearly two years, the Administration was still wet behind the ears and not fully comprehending the passionate ire it had provoked. The Senate Labor and Public Welfare Committee announced that it would immediately hold hearings into the termination and demanded that Rumsfeld appear.²³⁰ Rumsfeld refused and asked for the Committee to cancel its hearings. With Rumsfeld and the Committee at loggerheads, a deal was struck. On 12 December, the day before the planned hearings, Rumsfeld announced that he was rescinding his regionalisation plan. In exchange, the hearings were cancelled.²³¹ While Congress had been largely absent from this fight, the actions of the Senate Labor and Public Welfare Committee demonstrated a willingness to protect ‘their’ agencies from White House interference.

²²⁵ Press Release, ‘Rumsfeld Asks American Bar Association Views on Legal Services Program,’ 20 Nov. 1970, RG381, Deputy Director’s Subject Files, Box 7, NARA II.

²²⁶ *Ibid.*

²²⁷ See *ibid* and Press Release, ‘OEO Announces Changes in Legal Services Directors,’ 20 Nov. 1970, Deputy Director’s Subject Files, Box 7, NARA II. For inference, see Branch, ‘The Ordeal of Legal Services,’ p. 18.

²²⁸ Branch, ‘The Ordeal of Legal Services,’ p. 18.

²²⁹ Rumsfeld to Alan Houseman, 27 Nov. 1970, Houseman Papers, Box 22, NEJL; *ibid.*

²³⁰ ‘Legal Service Dismissals,’ p. 2626.

²³¹ ‘Legal Services,’ *National Journal*, Vol. 2, No. 51 (19 Nov. 1970), p. 2793.

Reagan's Christmas Present

With Christmas 1970 less than a fortnight away, all parties involved in the Legal Services Program would have been glad to think that the drama for the year was over. They were mistaken. On 26 December, California Governor Ronald Reagan announced that he planned to veto the \$1.8 million OEO grant for the California Rural Legal Assistance, the major LSP in his state.²³² CRLA had been a constant thorn in the side of Californian conservatives, as evidenced in its fight to expand the Food Stamp Program as well as its advocacy of migrant farm workers which prompted the Murphy Amendment referenced earlier in this chapter.²³³ This advocacy had 'caused great antagonism' between CRLA and 'state and local officials whose power [they] threatened'.²³⁴

Reagan's veto had been long planned. Months earlier he had asked Lewis Uhler, the former member of the far-right John Birch Society whom Reagan had appointed as the state's OEO Director, to investigate improprieties in the CRLA program.²³⁵ The California State OEO accused the programme in a press release of 'gross and deliberate violations of OEO regulations'.²³⁶ Reagan had threatened to exercise his veto the year before but was told by the

²³² 'Reagan Vetoes \$1.8-Million Federal Grant for Poverty Agency,' *New York Times*, 28 December 1970, p. 22. For more background on the Reagan-CRLA relationship, see Falk and Pollack, 'Political Interference with Publicly Funded Lawyers,' pp. 599-646. For the announcement of OEO's funding, see Press Release, 'California Rural Legal Agency Receives \$1.8 Million Grant,' 1 Dec. 1970, RG381, Carlucci Files, Box 3, NARA I.

²³³ CRLA had also successfully sued to reverse \$100 million cutback in Medicaid authorised by Reagan, see Deborah Cantrell, 'A Short History of Poverty Lawyers in the United States,' *Loyola Journal of Public Interest Law*, Vol. 5, No. 1 (2003), p. 27.

²³⁴ Wilson to Dean, 4 March 1971.

²³⁵ *Ibid.* See also 'Report of the Office of Economic Opportunity Commission on California Rural Legal Assistance, Inc.' 25 June 1971, Ehrlichman Papers, Box 45, RNPL.

²³⁶ Nomination: Frank C. Carlucci, John O. Wilson, Carol M. Khosrovi, Committee on Labor and Public Welfare, 29 (1970).

Administration that it would be overturned.²³⁷ The Administration's position in the regionalisation battle had given him hope that this year would be different.

This became 'a big problem' for the White House.²³⁸ Reagan's action now meant that it was up to the Director of OEO to decide whether or not to override the California Governor's veto.²³⁹ Rumsfeld had exercised this authority at least three times in regards to Legal Services Programs.²⁴⁰ It was no longer Rumsfeld's decision, however, as he had shifted to the White House to become Counsellor to the President, so the decision now lay with Rumsfeld's successor, Frank Carlucci.²⁴¹ The elevation of Carlucci, their opponent on 'regionalization,' further raised the suspicions of Legal Services advocates. In the words of Mickey Kantor, an OEO employee who had resigned over the firing of Lenzner and Jones, the CRLA dispute was 'the elephant that broke the camel's back'.²⁴²

CRLA is a perfect case study of the tensions inherent in the LSP. From the point of view of the OEO, CRLA was operating exactly as intended. In December 1969, Lenzner had sent a memo to all OEO staff declaring CRLA an 'excellent operating program' and a shining example of the success of OEO's Research and Development process, which had developed it.²⁴³ Despite its small size (at the time of the veto, it had only 40 lawyers), CRLA had handled 35,000 cases in the previous three years, with a success rate of 85 per cent.²⁴⁴ It was also not undertaking class

²³⁷ 'Governor Reagan and the CRLA Grant,' *Sacramento Bee*, 1 Dec. 1970, p. 1.

²³⁸ *Ibid.*

²³⁹ Stephen Clapp, 'OEO's New Guidelines for States Resurrect Issue of State Control,' *National Journal*, Vol. 2., No. 15 (1970), p. 821.

²⁴⁰ LSP Hearings, EMP Subcommittee 338 (1970).

²⁴¹ Rumsfeld to Carlucci, 26 Aug. 1969, FG6-7 Files, Box 2, RNPL.

²⁴² 'Lobbying for Legal Services,' p. 20.

²⁴³ Lenzner to Legal Services Staff, 12 Dec. 1969. In 1968, the CRLA had been named the best LSP programme in the country, see Michael Bennett and Cruz Reynoso, 'Survival of a Poverty Law Practice,' *Chicano Law Review*, Vol. 1, No. 1 (1972), p. 17.

²⁴⁴ Steven Roberts, 'Poverty Lawyers Succeed on Coast,' *New York Times*, 7 Sep. 1969, p. 33.

actions at an unusually high rate, with less than 0.2 per cent of cases in FY1969 being class action, compared with the national average of 7 per cent.²⁴⁵ As a recognition of their success, CRLA's FY1971 budget, the one Reagan vetoed, contained a more than \$200,000 increase on their FY1970 allocation.²⁴⁶ Their success, which drew the ire of Reagan, drew a large target on the program's back. This reveals an irony inherent in the Legal Services Program philosophy – the more successful they were, the more public they became, the larger target they became. In CRLA's case, the controversy led all the way to the President, who was forced to question what to do with 'this damn CRLA'.²⁴⁷

California, and the involvement of Governor Reagan, made this a bigger problem for the White House than similar issues with other Governors.²⁴⁸ In his three years as Governor, Reagan had quickly attracted a devoted following among conservatives around the country, a demographic Nixon was eager to endear himself with.²⁴⁹ Reagan, a fellow Californian, had launched a tepid campaign for the Republican nomination for the presidency in 1968 and while he did not win a victory over Nixon in a contested primary, Nixon's failure to appear on the ballot in California left Reagan controlling the state's entire delegation.²⁵⁰ Nixon was both personally intimidated by the charismatic conservative and was politically wary of a primary challenge in 1972.²⁵¹ According to Frank Carlucci, Reagan threatened Nixon that if he did not support his veto, he would 'make

²⁴⁵ Clark Holmes, 'The Plot Against Law Reform,' *Washington Monthly*, June 1970, p. 53. Note: 'Clark Holmes' was 'a pseudonym for two former employees of the Office of Economic Opportunity'. PACEO Fact Sheet, 'Legal Services', n.d., PACEO Files, Box 91, RNPL.

²⁴⁶ 'Legal Aid,' *National Journal*, Vol. 2, No. 52 (26 Dec. 1970), p. 2841.

²⁴⁷ Oval Office, Tape 474-009, 26 March 1971, White House Tapes, RNPL.

²⁴⁸ For example, antagonism stirred up in Texas, see Holmes, 'The Plot Against Law Reform,' p. 57, did not seem to trouble the White House.

²⁴⁹ Lisa McGirr, *Suburban Warriors: The Origins of the New American Right* (Princeton, 2015), pp. 189-216.

²⁵⁰ 'Reagan's Delegate Promise,' 5 June 1968, *The Argus* (Fremont, California), 5 June 1968, p. 2.

²⁵¹ For the White House's monitoring of the Reagan situation, see 'Digest of News Reports,' 29 Nov. 1969, *Papers of the Nixon White House*, Part 6B, fiche 19, no. 10; Lyn Nofziger to Haldeman, 18 March 1970, Nofziger Papers, Box 6, Hoover.

sure the California delegation didn't support' him in 1972.²⁵² Attorney General John Mitchell, Nixon's campaign director in 1968 and eventual manager in 1972, was 'very concerned about losing Reagan or having a big fight with Reagan'.²⁵³ The stakes for the White House dealing with a 'mad as hell' Reagan were high.²⁵⁴

As expected, the American Bar Association and associated legal groups came strongly to the defence of the CRLA.²⁵⁵ The Legal Services movement saw Reagan's actions as 'purely political'.²⁵⁶ CRLA also had many friends within the organised bar. Gary Bellow, a member of the LSP's National Advisory Committee, had been CRLA's inaugural Deputy Director.²⁵⁷ With Lenzner and Jones gone, the organised bar instead turned to Legal Services' 'longtime friends in Congress'.²⁵⁸ This is illustrative of Hugh Heclo's point that while presidencies can be turbulent, Congress is often 'stable' and 'operators', such as the organised bar, can 'find ways of operating through the thicket'.²⁵⁹ A particularly useful contact for CRLA was Democratic Senator Alan Cranston, who was a long-time supporter of the program.²⁶⁰ Cranston also happened to be Chair of the Senate Labor and Public Welfare Committee, to which panel the appointment of Carlucci as OEO Director would be sent for confirmation. Cranston, along with fellow LPWC member

²⁵² Interview with Frank Carlucci, 25 June 2007, RNPL.

²⁵³ Interview with Leonard Garment, 24 July 2002.

²⁵⁴ Oval Office, Tape 474-002, 26 March 1971, White House Tapes, RNPL.

²⁵⁵ Nomination of Albert A. Abrahams: Committee on Public Welfare, Senate, 91st Cong. 28 (1970); Louis Pollack to Carlucci, 31 Dec. 1970, both in RG381, OEO Subject and Litigation File, 1967-74, Box 10, NARA II; John Douglas to Whitney Seymour, 17 Jan. 1971, Seymour Papers, Box 141, NYPL; Houseman to Arthur Bowman, 11 Jan. 1971, Houseman Papers, Box 1, NEJL.

²⁵⁶ 'Lobbying for Legal Services,' pp. 20.

²⁵⁷ 'Legal Services Award Winners Named,' *Law in Action*, Vol. 3, No. 7 (Dec. 1968), p. 1.

²⁵⁸ Kantor to Houseman, 13 Jan. 1971, Houseman Papers, Box 1, NEJL.

²⁵⁹ Heclo, 'One Branch or Many?' p. 40.

²⁶⁰ Ken Clawson, 'Cranston Stalls Confirmation of OEO Head,' *Washington Post*, 31 Dec. 1970, p. A2. CRLA's support in the California delegation was not purely partisan. They were also supported by Republican Pete McCloskey, see McCloskey to Carlucci, 28 Jan. 1971, RG381, Carlucci Files, Box 1, NARA II.

Walter Mondale insisted they would not support Carlucci unless he promised the veto.²⁶¹

Carlucci promised a short-term re-funding of CRLA to sate LSP advocates.²⁶² He would eventually offer to re-fund CRLA as well as funding Reagan's proposed alternative to the LSP, Judicare. This was described as a 'masterpiece of diplomatic skill' but was also just the White House throwing money at the problem to make it go away.²⁶³ In the words of White House aide Leonard Garment, 'money solved everything'.²⁶⁴

Throughout 1970, despite all of the spot fires about the LSP's future, the lawyers of the programme continued to notch up impressive legal victories. In March, the Supreme Court handed down the *Kelly v. Goldberg* decision.²⁶⁵ The Court ruled that an Aid to Families with Dependent Children (AFDC) recipient had the right to due process before having their entitlements cut off by the State of New York.²⁶⁶ This 'landmark' decision 'extended procedural due process protections to welfare benefits' and would create a 'due process explosion,' changing the course of welfare entitlement in America.²⁶⁷ This case marked 'a beacon pointing to how

²⁶¹ Carlucci to Ehrlichman, 16 Jan. 1971, FG6-7 Files, Box 2, RNPL; Johnson, *To Establish Justice for All*, p. 83.

²⁶² Press Release, 'OEO Director Frank Carlucci and California Governor Reach Agreement on Refunding CRLA,' OEO Press Release 71-62, 30 Jan. 1970, Hawkins Papers, Box 90, UCLA

²⁶³ Weinberger to Carlucci, 2 July 1971, Weinberger Papers, Box 252, LOC. Evidence of the building frustrations in the White House is seen in Ehrlichman's memo to Weinberger – 'doesn't this kind of thing ever stop?', Ehrlichman to Weinberger, 28 May 1971.

²⁶⁴ Interview with Leonard Garment, 24 July 2002.

²⁶⁵ Legal Services attorneys in the *Kelly* decision were assisted by the Columbia Center on Social Welfare Policy and Law, the organisation which brought the challenges to the Food Stamps Program in chapter one, see Mariely Lopez-Santana, *The New Governance of Welfare States in the United States and Europe* (New York, 2015), p. 164. The best account of the *Kelly v. Goldberg* decision is Davis, *Brutal Need*, pp. 101-18.

²⁶⁶ Theodore Tetzlaff to Phillip Sanchez, 19 Sep. 1972, RG381, Sanchez Files, Box 4, NARA II.

²⁶⁷ Bruce French, 'The Frontiers of the Federal Mandamus State,' *Villanova Law Review*, Vol. 21, No. 4 (1976), p. 660; Dennis Riley and Bryan Brophy-Baermann, *Bureaucracy and the Policy Process* (Lanham, MD, 2006), p. 299; Sylvia Law, 'Some Reflections on *Goldberg v. Kelly* at Twenty Years,' *Brooklyn Law Review*, Vol. 56, No. 3 (1990), pp. 805-30.

lawyers could serve the most disadvantaged'.²⁶⁸ It was tangible victories like this that the LSP and its lawyers were fighting for.

The Corporation

The 'national brouhaha' which accompanied the Lenzner and Jones firings, as well as Reagan's CRLA veto, also obscured important policy developments for the Legal Services Program.²⁶⁹ Much like with Food Stamps, the real action was occurring behind the scenes. On 29 December, three days after Reagan's veto announcement, President Nixon received a memorandum from White House Deputy Counsel Bud Krogh.²⁷⁰ Krogh recommended to President Nixon that he submit legislation to remove the LSP from OEO and transition it to a 'non-profit corporation chartered by the Congress'. The logic was that LSP's location inside the 'Executive Office of the President' meant that the White House 'had to bear the political heat generated by Legal Services activities'. Removing it would 'free the Executive from political controversy'. The President initialled his approval of the idea.²⁷¹

Ostensibly the Corporation concept was derived from a recommendation from the President's Advisory Council on Executive Reorganisation, better known as the Ash Council after its chairman Roy Ash. President Nixon had convened the Ash Council to help streamline the operation of the Executive Branch. Regarding the LSP, the Ash Council had recommended, as Krogh's memorandum quoted verbatim, 'the transfer of the Legal Services Program to a non-

²⁶⁸ Thomas W. Merrill, 'Jerry L. Mashaw, The Due Process Revolution, and the Limits of Judicial Power,' in N. Parrillo (ed.), *Administrative Law From the Inside Out: Essays on Themes in the Work of Jerry L. Mashaw* (Cambridge, 2017), p. 40.

²⁶⁹ Interview with Hulett 'Buckey' Askew, 22 July 1991.

²⁷⁰ Egil Krogh to Nixon, 29 Dec. 1970, POF, Box 8, RNPL.

²⁷¹ *Ibid.*

profit corporation chartered by Congress'.²⁷² The concept, however, had a more complicated genesis. Back in April 1968, Earl Johnson Jr., the Director of the LSP, had commissioned his aide, Constance Dupre, to investigate a future home for the LSP, free from 'the constant bureaucratic fray' within OEO.²⁷³ Dupre's memo recommended that LSP be 'spun off' into an 'independent agency'.²⁷⁴ Dupree's memo would evolve into her boss's concept of a 'National Justice Foundation'.²⁷⁵

The 'Possible Alternatives' proposal that Dupre authored was then circulated to members of the organised bar.²⁷⁶ William Gossett, the President of the ABA, and Maynard Toll, of the NLADA, supported the proposal, and advocated for it before the Nixon White House in February 1969.²⁷⁷ They were aided in this by William Steiger, the Congressman who had worked with Lenzner to circumvent the Murphy Amendment.²⁷⁸ Next to endorse the proposal were members of the LSP's influential National Advisory Committee. In June 1970, while the Ash Council was still deciding on its proposal for the LSP, Jean and Edgar Cahn made a direct pitch to the Council with their 'Legal Services: Alternative Organizational Models' proposal.²⁷⁹ While the Ash Council was initially considering that LSP should be placed under an 'Office of Public Advocate', by September it had been convinced (perhaps by the Cahns' presentation) to change its mind and

²⁷² Memorandum for the President, 'Organisation for Social and Economic Programs – President's Advisory Council on Executive Organisation,' 19 Nov. 1970, Haldeman Papers, New Box 163, RNPL.

²⁷³ Johnson, *Justice and Reform*, p. x.

²⁷⁴ 'Possible Alternatives to Inclusion of Legal Services Program Within the Office of Economic Opportunity,' 25 April 1968, Houseman Papers, Box 1, NEJL.

²⁷⁵ Johnson, *Justice and Reform*, p. x.

²⁷⁶ *Ibid.*, p. xiv.

²⁷⁷ Pious, 'Congress, the Organised Bar, and the Legal Services Program,' p. 439; John D. Robb, 'New Niche for National Legal Services,' *ABA News*, Vol. 57 (June 1971), p. 558.

²⁷⁸ Legal Services Corporation Reauthorization: Hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House, 97th Cong. 824 (1981).

²⁷⁹ Jean and Edgar Cahn, 'Legal Services: Alternative Organizational Models,' 9 June 1970, PACEO Files, Box 84, RNPL.

endorsed the idea of a Legal Services Corporation.²⁸⁰ Once again, the power of the organised bar, channelled through the National Advisory Committee, had decisively shaped the direction of White House policy.

Conclusion

The period between the appointment of Terry Lenzner as Director of the Legal Services Program on 14 June 1969 and the close of 1970 was a particularly tumultuous time in the program's brief history. With the Murphy Amendment, both incarnations of Rumsfeld's 'regionalization', and Governor Reagan's CRLA veto, there were many 'ominous danger signals flashing,' as ABA President Bernard Segal said in August 1970.²⁸¹ Yet if one looks at the policy dimension, the LSP had arguably never been stronger. The restructuring of OEO had meant that the Office of Legal Services now stood as an equal branch within OEO, no longer subordinated as an appendage of the Community Action Programs. It retained the strong and influential support of the organised bar, and the 'political muscle of the attorneys' remained strong. Its Director was now an equal Assistant Director of OEO. As witnessed with Lenzner, this position allowed him to challenge the Director of the Office of Operations (Frank Carlucci), the Deputy Director (Wes Hjernevik) and even the Director himself, Donald Rumsfeld. In every serious issue of state authority which came before the Administration during 1970, whether it be Chicago or CRLA, the matter was decided conclusively in favour of the LSP and Federal centralisation. And finally, the year had concluded with the President endorsing the concept of a Legal Services Corporation, a long-held dream of legal aid advocates, to permanently institutionalise the programme and relieve it from the funding issues it had faced through 1970.

²⁸⁰ Social Programs Staff to The Council, 8 July 1970, PACEO Files, Box 91, RNPL; 'Appendix 6, Legal Services Program,' 30 Sep. 1970, PACEO Files, Box 91, RNPL.

²⁸¹ Bernard Segal, 'President's Page,' *ABA Journal*, Vol. 56 (July 1970), p. 611.

Improvement in the position of the LSP was clear in its most important metrics – it had a larger budget, more lawyers, more law offices, and served more clients.²⁸²

²⁸² 'OEO Staff Manual', 18 Aug. 1972..

Chapter III

‘Some pretty amazing political clout’: The surprising survival of Volunteers in Service to America

In March 1970, Richard Nixon issued a ‘directive’ to White House aide Bryce Harlow to ‘go to work quietly to begin the elimination of VISTA’, the controversial OEO domestic volunteer program.¹ Two years would pass and Volunteers in Service to America, though repeatedly the subject of frontal and subterranean attacks from the highest levels of the Administration and conservatives in Congress, would remain. The two-year period surveyed in this chapter demonstrates the influence of what Richard Nixon angrily described in February 1971, mid-way through this period, as ‘the invisible bureaucracy, the self-perpetuating people that are not elected ... and are not going to change, regardless of who comes in and out’.² These were bureaucrats who would describe their treatment of directives they did not endorse as akin to ‘push[ing] a wet noodle soup’.³ When they saw the future of their programmes challenged, this would intensify and they would launch into outright rebellion.

This chapter will demonstrate how the clear intentions of the Administration could be actively subverted by elements of the civil service. In so doing, it will address what one scholar has termed the ‘regrettable lack of even basic documented policy history for VISTA’.⁴ Scholars of VISTA have tended to ignore the Nixon years, or see them as mere years of retrenchment.⁵

¹ Lamar Alexander to Bryce Harlow, 26 Mar. 1970, FG6-7 Files, Box 5, RNPL.

² Diary Entry: 6 Feb. 1971, H.R. Haldeman Diaries Collection, RNPL.

³ C. Robert Lane, *Supergrade, or Essays on the Federal Executive Suite*, n.d., author’s collection, p. 65. Lane’s unpublished manuscript provides an unmatched insight into the life of career civil servants in Washington.

⁴ Melissa Bass, *The Politics and Civics of National Service* (Washington D.C., 2013), p. 4.

⁵ For example, Marvin Schwartz, *In Service To America: A History of VISTA in Arkansas, 1965-1985* (Fayetteville, 1998) has only seven pages of ‘the Nixon years’, pp. 17-23. The best book on the early years, of VISTA, William Crook, *Warriors for the Poor: The Story of VISTA* (New York, 1969), ends in 1968.

Historians of the domestic programs of the Nixon era have similarly omitted VISTA.⁶ And the programme barely registers a blip in the eyes of Nixon's key biographers.⁷ The best work on VISTA, with the exception of Bass, has been works in unpublished dissertations or in other disciplines, such as organisational theory.⁸

The years between 1970 and 1972 were a bitter battle for VISTA's survival. Those involved in VISTA from all sides – whether a programme recipient, a VISTA Volunteer, or an OEO bureaucrat – believed that the future of VISTA was at stake.⁹ As one Volunteer recounted, they truly felt that the Administration was 'really going after VISTA'.¹⁰ They had good reason for feeling this way, as seen when a letter to a Congressman from a White House aide was edited from 'there are no plans to phase out VISTA' to 'there are no present plans to phase out VISTA'.¹¹

The battles described in this chapter were a fight over emphasis. Supporters of VISTA feared that the Nixon Administration wanted to 'subdue' the programme through stripping it of its

⁶ Hoff, *Nixon Reconsidered*, p. 58 notes how Nixon 'merged the Peace Corps and VISTA,' but does not go into any detail.

⁷ For example, Ambrose, *Nixon: The Triumph of a Politician*, Black, *Richard Milhous Nixon*; Wicker, *One of Us* all fail to make any mention of VISTA, part of the broader lack of interest in domestic policy.

⁸ T. Zane Reeves, *The Politics of the Peace Corps and VISTA* (Tuscaloosa, 1988) provides an interesting insight into the internal bureaucratic politics of VISTA which is written in the field of 'organizational management'. As such, it contains no archival research. Pass, 'The Politics of VISTA in the War on Poverty: A Study of Ideological Conflict' is an unpublished dissertation which provides an insightful study on the VISTA programme but as it is relatively contemporary, there is no archival research. Bass's *The Politics and Civics of National Service* aims to position Nixon's approach to VISTA in the context of a history of national service, rather than in the history of his domestic agenda, as this dissertation seeks to do.

⁹ For examples of this attitude, see VISTA volunteers quoted in Kathryn Aria, *The National VISTA Alliance: A Unique Attempt, by a Segment of American Youth, to Organize for a Specific Political Goal* (Boston College, 1972, MA Thesis), p. 17; interview with Steve Regenstreif, 7 Feb. 2020.

¹⁰ Author's interview with Steve Regenstreif, 7 Feb. 2020.

¹¹ Edward Morgan to Roger Zion, 8 July 1970, draft; Morgan to Zion, 10 July 1970, both in FG6-7 Files, Box 5, RNPL.

community action emphasis, an act that they believed would render the programme a husk of its former self. The tension over community action was at the heart of disputes over VISTA. In some senses, it was quite a conservative program, building on America's passion for volunteerism that had been observed as early as de Tocqueville.¹² But VISTA was a War on Poverty initiative and mixed this placid volunteerism with a fierce streak of community action. Community action meant the 'maximum feasible participation' of poor communities in the poverty programs. This 'substantially elevated the role of marginalized people' which meant that it challenged local power structures.¹³ Often VISTA Volunteers came to see service-delivery volunteerism as 'band-aid approach[es]' to poverty and instead trained their focus on the power structures which created poverty conditions, such as organising rent strikes, voter enrolment drives, or lawsuits against state and local governments in conjunction with Legal Services lawyers.¹⁴ It was this 'community action' that particularly goaded conservatives, including elements of the Administration, but it was something which many of the VISTA Volunteers, along with their allies in the OEO bureaucracy, believed was essential to the program.

This chapter will emphasise two main points. The first is that during 1971 the Nixon Administration began to take a closer involvement in domestic policy. As discussed in the previous chapter, the President had been told earlier that OEO programmes were operating 'virtually independent of your Administration'.¹⁵ The events described in the previous chapter, including the rebellion of Terry Lenzner, only furthered this critique inside the Administration

¹² Alexis de Tocqueville, *Democracy in America: and Two essays on America* (London, 1840, repr. 2003), p. 598. See also Gary Gerstle, *Liberty and Coercion: The Paradox of American Government from the Founding to the Present* (Princeton, 2015), p. 119 for America's long tradition of volunteerism.

¹³ For the background on the 'maximum feasible participation' emphasis of War on Poverty programmes, see Richard Blumenthal, 'The Bureaucracy,' in A. Sindler (ed.), *American Political Institutions and Public Policy* (Boston, 1969), pp. 166-7.

¹⁴ Nixon Seeking a Softer Image for VISTA,' *New York Times*, 14 June 1970, p. 73.

¹⁵ Harlow to Nixon, 23 March 1969, FG6-7 Files, Box 1, RNPL.

and increased the President's desire to enforce greater 'discipline on domestic issues'.¹⁶ It was during this period that the Nixon Administration sought to get on the front foot and create a new agency to co-ordinate federal volunteer programs, including VISTA, reflecting the President's desire to 'get a hold of them [growing federal programs] before they smother us all'.¹⁷

This increase in interest was relative. The Nixon Administration, despite periodic surges of interest, remained largely inattentive to the day-to-day operation of domestic policy. Despite his oft-expressed frustration with the bureaucracy, the President still believed in March of 1970 that he was 'spreading his time too thin'.¹⁸ To rectify this, he told his chief domestic advisor, John Ehrlichman, to ignore 'lower priority items', such as 'education, housing, health, and transportation' and instead urged a 'delegation to the Departments and within the White House staff of complete responsibility for those matters'.¹⁹ This meant that significant decisions about the shape and substance of domestic issues, including VISTA, were made outside of the White House.

This meant that other actors stepped into the policymaking void. Specifically highlighted in this chapter will be the efforts of the National VISTA Alliance, the lobby group comprised of current and former VISTA Volunteers.²⁰ While contemporary media accounts focused on their public actions, such as the large conference held in the summer of 1970, this chapter explains

¹⁶ Nixon to Ehrlichman, 1 Oct. 1969, POF, Box 1, RNPL.

¹⁷ Cabinet Room, Tape 050-001, 9 March 1971, White House Tapes, RNPL.

¹⁸ Nixon to Henry Kissinger et al, 2 Mar. 1970, POF, Box 1, RNPL.

¹⁹ *Ibid.*

²⁰ As a matter of nomenclature, I will capitalise Volunteers to refer specifically to those engaged in the VISTA programme, rather than broader volunteer efforts.

how the NVA began to work with ‘a spirit of cooperation’ with the bureaucracy and became treated as the legitimate representation of the Volunteers’ views.²¹

Looking Back

Much like the LSP, VISTA was another programme which the Nixon Administration struggled to deal with from the beginning. As was common with the Administration, this problem started with staffing. VISTA did not have a permanent Director between June 1968 and January 1971.²²

Between the transition and October 1969, the programme was headed by Acting Director Padraig M. Kennedy, a long-serving VISTA bureaucrat who had joined the programme at its inception in 1965. Kennedy was a true believer in VISTA and desired for the programme to become ‘a major force in the War on Poverty’.²³ After Kennedy’s resignation, the role of Acting Director was assumed by C. Robert Lane, who described himself as a ‘true blue civil servant who... couldn’t care less who’s sitting in the White House’.²⁴

Though they were acutely aware of the need to recruit ‘suitable candidates’ for the VISTA Directorship, OEO Director Donald Rumsfeld reported to Nixon that such people had ‘have proven difficult to find’.²⁵ The job of VISTA Director had been offered in November of 1969 to William Ford, a thirty-five year old African American school teacher who had previously served as Director of Michigan’s Office of Economic Opportunity.²⁶ In a massive embarrassment for the President, who had made the announcement to the public, Ford declined the job citing

²¹ Kevin Lowther to Jerry Brady, 3 March 1971, RG362, Action Director’s Files, Box 1, NARA II.

²² ‘OEO Directs VISTA Volunteers to Aim at Less “Noise,” More Service,’ *National Journal*, Vol 2., No. 22 (May 1970), p. 1145; ‘Hill Provides SST Funding To March 30,’ *Washington Post*, 3 Jan. 1971, p. A26.

²³ Padraig Kennedy to Harding, n.d., Harding Papers, Box 42, LBJL.

²⁴ C. Robert Lane, *Supergrade*, p. 77.

²⁵ Rumsfeld to Nixon, 1 Mar. 1970, FG6-7 Files, Box 5, RNPL.

²⁶ ‘Announcement of Intention to Nominate William R. Ford to be Assistant Director for VISTA,’ 28 Nov. 1969, *Weekly Compilation of Presidential Documents*, Vol. 5, No. 48 (1 Dec. 1969), p. 1668; William Flemming to Nixon, 25 Nov. 1969, FG6-7 Files, Box 5, RNPL. For a profile of Ford, see Impact of U.S. Development Assistance in Africa: Hearing before the Subcommittee on Africa, Senate, 105th Cong. 65 (1997).

‘family commitments’.²⁷ The embarrassment was compounded when the media noted that Ford would have doubled his salary if he had accepted the position.²⁸ No Republicans wanted to lead an agency that their President did not support.

Rumsfeld returned to the drawing board. After consulting ‘widely’ about the post, the Administration made an unusual choice.²⁹ Rumsfeld’s preferred candidate was Richard Blumenthal, a twenty-three-year-old aide to liberal Nixon counsellor Pat Moynihan. Rumsfeld was a booster of Blumenthal. In his introductory memorandum to the President, Rumsfeld praised the young Harvard graduate as ‘one of the most thoughtful, intelligent, and best-balanced young men I have ever met’.³⁰ As well as Rumsfeld’s personal fondness for him, the decision to select Blumenthal was also based on political pragmatism. Among the ‘variety of advantages’ that Rumsfeld sold Nixon on, one was that this was a suitably ‘bold step’ that would receive positive reception in the media and would help him re-assert his authority on domestic policy. Additionally, Rumsfeld and others believed that the President would ‘establish some rapport with young people’ to name such a young person to the position with a strong eye to the 1972 election and the importance of the youth vote.³¹

Rumsfeld promised the President that Blumenthal’s confirmation would receive no opposition in the Senate. He was wrong. 103 Republican members of the House of Representatives contacted the President to indicate their opposition based on Blumenthal being a ‘liberal Democrat’ and

²⁷ ‘Choice to Head VISTA Rejects Post,’ *New York Times*, 6 Dec. 1969, p. 27. For an example of the embarrassing headlines for the President, see ‘Ford Refuses Nixon VISTA Appointment,’ *Lantern Constitution*, 5 Dec. 1969, p. 2A.

²⁸ ‘Choice to Head VISTA Rejects Post,’ p. 27.

²⁹ *Ibid.*

³⁰ Rumsfeld to Nixon, 9 Jan. 1970, FG6-7 Files, Box 5, RNPL.

³¹ For more on the relationship of youth to Nixon, see Seth Blumenthal, *Children of the Silent Majority: Young Voters and the Rise of the Republican Party 1968-1980* (Lawrence, 2019).

claimed that the President was betraying the mandate he received in 1968 to eliminate this ‘political philosophy’ from OEO.³² The letter’s signatories included Representatives who had voted both for and against the OEO extension in 1969, demonstrating how widespread the anger was amongst Republicans, even those that were supportive of the poverty programs.³³ The signatories urged the President to select instead a ‘Republican whose philosophies and positions with regard to social issues are more in line with those of the Nixon Administration’.³⁴ Before the Administration had a chance to reconsider its decision, Blumenthal made the first move. He told the White House that he was unwilling to fulfil the role because he did not want to be ‘window dressing’ for deeper, more substantial changes to VISTA and the poverty programme more broadly.³⁵ This drew attention to previously suspected – but never proven – allegations that the Administration planned to make cuts to the VISTA program.³⁶

The Draft

Rumsfeld’s staffing misjudgement occurred at a critical juncture for the Nixon Administration. The first year of his presidency had shown Nixon grow more and more frustrated with the formulation of domestic policy, particularly regarding reining in what he perceived as out-of-control liberals in the bureaucracy. This fight was about to get worse. On 21 April 1970 Rumsfeld issued *OEO Instruction 303-1*, a one-page document that would unleash an almighty furore on the Administration and, in an undesired consequence, change the future of VISTA.³⁷ *303-1* asked local Selective Services boards to disregard service in VISTA as an acceptable reason

³² Leslie Arends et. al to Nixon, 9 July 1970, FG6-7 Files, Box 5, RNPL.

³³ Arends et. al to Nixon, 9 July 1970, cross referenced with ‘H.R. 12321,’ 12 Dec. 1969, *Govtrack.us*, <https://www.govtrack.us/congress/votes/91-1969/h154> (5 March 2020).

³⁴ Arends et. al to Nixon, 9 July 1970.

³⁵ ‘Policy Dispute Denied as the Reason for Rejection of VISTA Post,’ *New York Times*, 15 July 1970, p. 24.

³⁶ *Ibid.*

³⁷ OEO Instruction 303-1, 21 April 1970, RG381, Carlucci Files, Box 6, NARA II.

to be provided with a draft deferment for the war in Vietnam. This caused a significant fissure between the administration and the VISTA volunteers, particularly as over half of all volunteers were eligible for the draft.³⁸ Indeed, OEO had previously targeted draft dissidents as potential recruits, with recruitment literature in the colour of army fatigues calling for them to ‘serve your country’ in the ‘army to fight poverty’.³⁹

Rumsfeld strongly defended the policy position, arguing that it was both morally correct and in line with broader Administration policy, referring to a recent Executive Order which sought to end all occupational draft deferments.⁴⁰ The end of draft deferments for VISTA Volunteers had long been in the works as Rumsfeld had asked OEO’s Office of Planning, Research, and Evaluation about the ‘relationship’ between VISTA Volunteers and the draft in January of 1970.⁴¹ In the communique, Rumsfeld wrote to VISTAs that their deferment for the draft ‘increase[d] the exposure to the draft-age men from poor families’.⁴² In public, he argued that it was ‘plain wrong’ for ‘middle-class’ VISTA volunteers to receive draft deferments when it meant ‘poor people have to go in their place’.⁴³ A Rumsfeld aide was even less diplomatic: ‘The day that Lady Bountiful comes down from Scarsdale for a day of good works in Harlem is over’.⁴⁴ It is hard, though, not to see this as a petty attempt to spite VISTA volunteers by an Administration

³⁸ Gilmore Wheeler to John Wilson, 10 Feb. 1970, RG381, OPRE Files, Box 2, NARA II. Newspaper reports at the time estimated the figure as between half and three-quarters, see ‘VISTA to End Request for Draft Deferments,’ *Washington Post*, 22 Apr. 1970, p. A8.

³⁹ Pamphlet V-48, ‘We Need an Army to Fight Poverty,’ n.d., RG362, External and Internal Issuances Files, Box 1, NARA II.

⁴⁰ Robert Sherrill, ‘Young, agile, pragmatic Rumsfeld “supports the dickens out of Nixon”,’ *New York Times*, 13 Dec. 1970, p. 241.

⁴¹ Wilson to Rumsfeld, 13 Feb. 1970.

⁴² OEO Instruction 303-1.

⁴³ Sherrill, ‘Young, agile, pragmatic Rumsfeld...’ p. 241.

⁴⁴ Evans and Novak, ‘OEO Director Aims to Remodel Image of VISTA Volunteers,’

whose President was 'all cranked up' by 'selfish' anti-war demonstrations by VISTA and Peace Corps volunteers.⁴⁵

Other significant policy changes to the VISTA programmes followed *Instruction 303-1*. These departures principally marked a subtle attempt to end the community action element of the program, as illustrated by new instructions to VISTA volunteers to 'solve the problems in the areas where they are assigned, rather than teach the poor how to handle those problems'.⁴⁶ This marked a complete revolution from the instructions given by OEO to volunteers in 1967 to 'stimulate initiative' in the poverty community.⁴⁷ The Administration's changes were intended to 'eliminate the confrontation tactics' and produce a 'less controversial organisation better geared to serving'.⁴⁸ Community action and direct service were again pitted as diametrically opposed. These changes were ordered by Rumsfeld, who wanted the agency to turn away from what he described as 'community organisation for the sake of community organisation'.⁴⁹ C. Robert Lane - still Acting Director due to the failed appointment of Blumenthal - was quoted as saying that VISTA would 'no longer' be the place to be 'confronting the establishment'.⁵⁰ Instead, they wanted 'a new type of volunteer', one who 'will work within the system and lower the noise level'.⁵¹ Rumsfeld was trying to make VISTA 'presentable to the Republican constituency that likes its social change quiet and tidy'.⁵²

⁴⁵ Diary Entry: 7 Jan. 1970, H.R. Haldeman Diaries Collection, RNPL; 'Peace Corps Dismisses 12 For Public War Criticism,' *New York Times*, 13 March 1970, p. 2; Oval Office, Tape 486-001, 22 April 1971, White House Tapes, RNPL.

⁴⁶ 'Nixon Seeking a Softer Image for VISTA,' p. 73.

⁴⁷ Volunteers in Service to America, *VISTA Handbook* (Washington D.C., 1967), p. 5.

⁴⁸ 'Nixon Seeking a Softer Image for VISTA,' p. 73.

⁴⁹ 'Narrowed VISTA,' *New Republic*, 25 July 1970, Vol. 163, No. 4., p. 7.

⁵⁰ 'Nixon Seeking a Softer Image for VISTA,' p. 73.

⁵¹ *Ibid.*

⁵² Colman McCarthy, 'VISTA and the Collision of Styles,' *Washington Post*, 27 July 1970, p. A18.

The rebellion begins

The first warning shot from VISTA Volunteers landed at OEO headquarters in May. Earlier that month, most of South Carolina's VISTA Volunteers had met to discuss the recent changes imposed by Rumsfeld. They specifically discussed Rumsfeld's comment that he wanted to end 'community organization for the sake of community organization'.⁵³ The Volunteers steadfastly defended community organisation, believing that they had 'never undertaken community action without a specific purpose'.⁵⁴ They believed that Rumsfeld's proposed changes would 'leave the VISTAs in a position of being unable to promote any real change in the communities in which we work'.⁵⁵ The letter concluded with a paragraph on the decision to end draft deferments. The Volunteers wrote that they 'deplore[d]' the Administration's 'selective attitude' on deferments and stated that deferments for VISTAs should only be removed if accompanied by 'the abolition of all draft deferments'.⁵⁶

This opposition was far more widespread than just South Carolina. By 'early June', groups of current and former VISTA Volunteers had gathered to plan a response to what they saw as the Administration 'going after' VISTA.⁵⁷ The result was the founding of the National VISTA Alliance (NVA). Their founding documents make clear that there were two primary motivators behind the organisation's founding. First was the protection of community action which they viewed as imperilled by the Administration's 'conscious policy to destroy VISTA's effectiveness'.⁵⁸ The NVA believed that volunteers 'should be allowed to participate in all forms

⁵³ 'The Volunteers in Service to America of South Carolina' to Rumsfeld, 16 May 1970, WE Files, Box 59, RNPL.

⁵⁴ *Ibid.*

⁵⁵ 'The Volunteers in Service to America of South Carolina' to Nixon, 26 May 1970, WE Files, Box 59, RNPL.

⁵⁶ *Ibid.*

⁵⁷ For foundation date, see 'History – National VISTA Alliance,' n.d., RG381 General Counsel Files, Box 8, NARA II. See also 'Dear Volunteer,' n.d., RG381, General Counsel Files, Box 8, NARA II.

⁵⁸ 'History – National VISTA Alliance'

of political activity, even to the point of arrest'.⁵⁹ In Chicago, two hundred volunteers signed a statement 'denouncing President Nixon as unconcerned about the poor and asking for more community-oriented projects'.⁶⁰ Secondly, it was their opposition to the War in Vietnam, and in particular the withdrawal of draft deferments for VISTA Volunteers, which motivated them.⁶¹

While the National VISTA Alliance could boast of representing half of VISTA's volunteers, its organisational structure had a much shallower footprint. There were only four people on staff, all paid only 'subsistence' payments rather than an actual salary.⁶² Such was the dedication of these staff members that they lived in a shared house to reduce their costs.⁶³ Their meetings were held at the local Quaker Meeting House in Washington D.C., which also provided them with free office space. In addition to raising dues from current and former VISTA Volunteers, the NVA received donations from labour union groups such as the United Auto Workers and the Teamsters Union. The American Federation of State, County, and Municipal Employees (AFSCME) were also of particular assistance, including providing printing costs for the NVA for their ballot papers and monthly newsletter, *New Morning*.⁶⁴ The group was headed by Executive Director Steve Regenstreif, a former VISTA Volunteer who had served in New Mexico and Texas.

The National VISTA Alliance burst onto the national political scene when they announced a three-day conference to be held at George Washington University in July 1970.⁶⁵ Letters were

⁵⁹ 'Name R. Blumenthal New VISTA Director,' *Great Bend Tribune*, 2 July 1970, p. 3

⁶⁰ Neil Maurer, 'Members of VISTA Plan Protest Here,' *Washington Post*, 19 July 1970, p. D6.

⁶¹ According to the NVA Director, 'a lot of this had to do with the Vietnam War,' see author's interview with Steve Regenstreif, 'The Volunteers in Service to America of South Carolina' to Nixon, 26 May 1970.

⁶² Author's interview with Steve Regenstreif.

⁶³ *Ibid.*

⁶⁴ *Ibid.* For an example, see *New Morning*, March 1971 in RG381, Carlucci Files, Box 6, NARA II.

⁶⁵ 'Workers in VISTA May Form A Union,' *New York Times*, 28 July 1970, p. 28.

sent to all VISTA Volunteers by the NVA inviting them to the conference.⁶⁶ They described the conference as designed to ‘facilitate communication among VISTAs, to promote a feeling of unity, and to present issues about which we are concerned about’.⁶⁷ The NVA specifically noted in its communication to Volunteers how they were concerned about the Administration’s encroachment on ‘community organization’.⁶⁸ This letter drew the attention, and the ire, of Californian Congressman Bob Mathias who wrote to Rumsfeld to ask him to investigate ‘the possible misuse of OEO’s franking privileges’, given that the mail had been posted at the government’s expense.⁶⁹ Another letter was sent by the NVA to solicit funds for the Conference, under the ominous heading of ‘VISTA Dies’.⁷⁰ This specifically asked for donations to stop Nixon’s ‘new directions’ in the VISTA program, including ‘emphasis on services instead of community organization’.⁷¹

The upper echelons of OEO were carefully monitoring the National VISTA Alliance situation. Willard Hoing, VISTA’s Program Director, noted in early July that the NVA could ‘either be a constructive or destructive force’.⁷² Hoing believed that the two variables were ‘how OEO handles it’ and ‘which faction within NVA gains control’.⁷³ Hoing also met with Carol Craig and Mike Fox, two VISTA Volunteers who had resigned to start the steering committee of the NVA.⁷⁴ The meeting was not productive. Hoing reported to Rumsfeld that Fox was ‘surly and uncommunicative’.⁷⁵ The ex-VISTAs asked for permission to use the Department of Health, Education, and Welfare auditorium for their meeting, a request which was swiftly declined. Don

⁶⁶ ‘Dear Volunteer,’ n.d., General Counsel Files, Box 8, NARA II.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Robert Matthias to Rumsfeld, 28 July 1970, RG381, General Counsel’s Files, Box 8, NARA II.

⁷⁰ ‘VISTA Dies,’ n.d., RG381, General Counsel’s Files, Box 8, NARA II.

⁷¹ *Ibid.*

⁷² Willard Hoing to Hjernevik, 10 July 1970, RG381, Deputy Director Subject Files, Box 13, NARA II.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Hoing to Rumsfeld, 10 July 1970, RG381, Deputy Director Subject Files, Box 13, NARA II.

Murdock, a close Rumsfeld aide, was asked by the White House to assess the media impact. 'Judging by what we have been able to find out,' Murdoch wrote, the NVA conference was 'likely to be a rather hostile gathering and might well take on a decidedly anti-Administration flavour'.⁷⁶ Rumsfeld was invited to address the protesting Volunteers but declined. In a three-page response to the NVA, Rumsfeld re-stated his opposition to occupational deferments for VISTA Volunteers but denied their other charges, claiming that allegations that he wanted to end community organisation were 'untrue', though insisting that community organisation should be 'an approach, not an end in itself'.⁷⁷

The atmosphere at the conference at George Washington University in July demonstrated Don Murdoch's prescience. Inside the auditorium were 357 former and present VISTA Volunteers. Among the NVA's invited speakers for the conference were two of President Nixon's most outspoken domestic critics. The first was Sargent Shriver, the original Director of the OEO and the second was Leon Panetta, recently dismissed from the Office for Civil Rights at HEW over disputes about school desegregation.⁷⁸ The invitation of Panetta was a particular goading of the Administration, given that he had become somewhat of a *cause célèbre* in liberal circles because of the defiant nature of his termination. Panetta was also a particular frustration for Nixon personally as he was symbolic of a sense within the Administration that they did not possess sufficient control over liberals in the social welfare bureaucracy, who acted against the explicit desires of the Administration.⁷⁹

⁷⁶ Donald Murdoch to Herb Klein et. al, 25 July 1970, FG6-7 Files, Box 5, RNPL.

⁷⁷ Rumsfeld to Carol Craig, 24 July 1970, FG6-7 Files, Box 5, RNPL.

⁷⁸ Murdoch to Klein et. al, 25 July 1970.

⁷⁹ Davies, *See Government Grow*, pp. 110-21. Aberbach and Rockman, 'Clashing Beliefs within the Executive Branch,' pp. 456-68 provides data on the domination of Democratic-leaning individuals within the social services agencies. Nixon would later call Panetta's book, *Bring Us Together*, 'a case history on how to screw the White House,' see Oval Office, Tape 504-015, 27 May 1971, White House Tapes, RNPL.

Senior OEO officials were furious at Shriver. The member of Shriver's team who had drafted his speech had told OEO bureaucrats that it was going to be 'bland, non-partisan, and non-controversial'.⁸⁰ The speech he actually delivered 'inflamed' the crowd and created an atmosphere that a reporter for *Time* magazine thought would lead to 'bodily damage' to OEO officials.⁸¹ In the speech, Shriver told the audience that 'if you kill VISTA ... you cut part of the heart out of America'.⁸² He accused the Administration of 'starving' VISTA through lack of appointments, highlighting the 25 per cent cutback in staff; there still being no permanent Director or Deputy Director of VISTA; and that Regional Directorships in Seattle, Chicago, Kansas City, Denver, and Atlanta remained vacant.⁸³

Acting Director C. R. Lane was present at the conference, being awkwardly photographed by a *Washington Post* photographer onstage while current Volunteers denounced the actions of the Administration he served.⁸⁴ These photos appeared in national newspapers the next day and told a thousand words. Lane later called this his 'most unforgettable experience in the public service'. 'Those taxpayers who view civil servants as stolid dullards with green eye shades, sitting on high, three-legged stools,' Lane reflected, 'have never been called a M---- F---- in front of 350 people, eight newsmen, and the two wire services'.⁸⁵

As well as being political theatre, the NVA Conference provided an opportunity for NVA leaders to meet with the powerful OEO bureaucrats in Washington.⁸⁶ The National VISTA

⁸⁰ Lane, *Supergrade*, p. 57.

⁸¹ *Ibid.*, p. 57, 61.

⁸² R. Sargent Shriver, 'The Politics of Life and Death,' 29 July 1970, Shriver Papers, Box 112, JFKL.

⁸³ *Ibid.* Shriver was correct, see Carlucci to Lane, 24 March 1970, RG381, Deputy Director Subject Files, Box 13, NARA II.

⁸⁴ Neil Maurer, 'Support for VISTA Worker Demanded,' *Washington Post*, 29 July 1970, p. C7.

⁸⁵ Lane, *Supergrade*, p. 51-2.

⁸⁶ *Ibid.*, 54; Hoing to Rumsfeld, 10 July 1970, RG381, Deputy Director Subject Files, Box 13, NARA II.

Alliance passed a series of resolutions addressed to the Administration.⁸⁷ These principally asked the Administration for 'a commitment ... to the goal of effectively helping the poor'.⁸⁸ The NVA also asked for VISTA to 'recommit itself' to 'community action' rather than its current state which one volunteer described as 'a Band-Aid operation'.⁸⁹ The group demanded the revocation of 'policies preventing Volunteers from taking part in political activities', which could be seen as complementary to community action.⁹⁰ Much anger was also evident about the decision to withdraw draft deferments for VISTA volunteers. As well as the reinstatement of draft deferments, those assembled called for VISTA as an organisation to officially 'condemn' the draft. These nine demands were not welcomed by OEO with each being rejected.⁹¹ Neither were they well received in the White House. When the President was notified of the protest, he scribbled an annotation next to the story, 'Rumsfeld. Cut this'.⁹² This can be drawn out to a broader Nixon frustration with activism within the government that he was unable to rein in, primarily due to the fact that he was neither substantially engaged with domestic policy formulation nor had he installed loyal political operatives to implement his will.

A new certainty?

Throughout this period, the most turbulent in its six-year history, VISTA lacked a permanent Director. The National VISTA Alliance had been steadfastly critical of the leadership of the agency, particularly Acting Director Bob Lane, a fractious personality who rankled fellow leaders

⁸⁷ 'NVA Platform,' n.d., RG362, Action Director's Files, Box 1, NARA II.

⁸⁸ Neil Maurer, 'VISTA Group Urged to Seek Nixon Commitment to Aid Poor,' *Washington Post*, 28 July 1970, p. A16.

⁸⁹ Maurer, 'Support for VISTA Worker Demanded,' p. C7.

⁹⁰ *Ibid.*

⁹¹ 'NVA Demands for Response by Mr. Lane,' 28 July 1970, McGovern Papers, Series 3F, Box 106, Princeton; 'Response,' n.d., RG381, Subject and Litigation File, Box 8, NARA II.

⁹² Daily News Summaries Annotated by the President, July 1970, *Papers of the Nixon White House*, Part 6B, fiche 30, 6B-30-21.

within OEO.⁹³ At the recommendation of respected Nixon aide Bryce Harlow, Carol Khosrovi was selected as the Administration's nominee, once again with the strong support of Donald Rumsfeld.⁹⁴ Khosrovi, 35, had a strong Republican pedigree, having worked for several Republican Congressman and Senators, and she had been the congressional liaison for OEO under Rumsfeld.⁹⁵ Khosrovi had been highly involved in domestic policy planning in the Republican Party in Congress and the early months of the Nixon Administration, serving on the Task Force on Public Welfare discussed in Chapter Two.⁹⁶ Her nomination allowed the White House to address the problems raised by the 101 House Republicans in their letter opposing Blumenthal and calling for a nominee who held a 'Republican... philosophy'. This was not to say that she was broadly welcomed by the conservative movement, with *Human Events* describing her as an 'odd... choice' and questioning her 'ideology'.⁹⁷ Khosrovi's appointment was also significant because her appointment made her one of the top six women in government.⁹⁸ At the same time as Khosrovi's appointment, two Deputy Directors, both under forty, were also named.⁹⁹ The Administration was finally instilling some structure, and a sense emerged that they intended to keep VISTA for the long-term.

Khosrovi caused shock-waves when on her first day as Director, she went unannounced to the headquarters of the National VISTA Alliance.¹⁰⁰ She visited the group to reassure them that she had not been appointed to oversee the destruction of the program. The dialogue was most productive and as far removed as possible from the rowdy scenes at the conference just two

⁹³ For example, see Carlucci to C. R. Lane, 24 March 1970; Carlucci to Hjernevik, 26 March 1970; Lane to Richard Ramsden, 3 March 1970, all in RG381, Deputy Director's Subject Files, Box 13, NARA II.

⁹⁴ Rumsfeld to Nixon, 15 Sept. 1970, FG6-7 Files, Box 5, RNPL.

⁹⁵ CV, 'Carol Khosrovi', n.d., Burch Files, Box 3, GFPL.

⁹⁶ Carol Khosrovi, 'The Eradication of Poverty 25 May 1966, Goodell Papers, Box 12, NYPL.

⁹⁷ 'Rumsfeld Rides Again,' *Human Events*, Vol. 30, No. 30 (29 Sep. 1970), p. 3.

⁹⁸ 'Nixon Picks Woman to Head VISTA,' *Washington Post*, 16 Sept. 1970, p. A4.

⁹⁹ The two other appointments were Deputy Directors of VISTA William Geimer and Ernest Russell, see 'Poverty Agency Fills Posts,' *New York Times*, 12 Nov. 1970, p. 40.

¹⁰⁰ 'Choice as VISTA Head,' *New York Times*, 21 Sept. 1970, p. 26.

months earlier. It was in this meeting that Khosrovi pledged to the dissident volunteers that she was ‘on their side’ and would support them – and the programme.¹⁰¹ Khosrovi did not do so out of a sense of self-preservation but from a genuine and long-standing belief in the aims and ideals of the program, one that she was long committed to. Her overtures were warmly welcomed by National VISTA Alliance, whose Director later recalled Khosrovi as someone who ‘tried to work with us, tried to listen to what we had to say, tried to be open’.¹⁰²

Any positive message that could have been drawn from the Administration’s nomination of a permanent Director was short-lived. A huge multi-page spread in the *New York Times* magazine hailed the outgoing ‘young, agile, pragmatic’ Donald Rumsfeld for his efforts as the ‘de-escalator of the war on poverty’.¹⁰³ In the interview, Rumsfeld was highly critical of the VISTA program, contending that it had attracted too many radicals. ‘It’s a waste of time to train someone who doesn’t want to be a VISTA and who’d rather be a Weatherman,’ Rumsfeld told the *Times*.¹⁰⁴ He trumpeted that VISTA had ‘entered a subdued phase’ after dismissing some of the program’s ‘advocate types’ who ‘organise just for the sake of organising’.¹⁰⁵ Rumsfeld argued that this was actually part of a broader plan to protect the program, contending that the Administration ‘reduced the level of shrillness’ because it ‘turns people off and hardens the crust that separates the poor from the rest of society’.¹⁰⁶ Given that this article appeared less than three weeks after the firing of LSP Director Terry Lenzner and his Deputy Frank Jones, the future of VISTA

¹⁰¹ Author’s interview with Carol Mayer Marshall.

¹⁰² Author’s interview with Steve Regenstreif.

¹⁰³ Young, agile, pragmatic...’ p. 241.

¹⁰⁴ *Ibid.* The term ‘Weatherman’ refers to a member of the radical left-wing Weather Underground organisation who were on the FBI’s most-wanted list.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

looked even bleaker. As Khosrovi wrote to VISTA Volunteers in November 1970, ‘the winds of change are blowing, the new direction is not so obvious’.¹⁰⁷

As well as upping its rhetorical game, the Administration was considering more substantive and substantial changes to VISTA. It would be an urgent issue for Frank Carlucci, who took Rumsfeld’s place at a critical juncture. A memorandum from John Wilson at OEO, to his new Director-designate, Frank Carlucci referred to a proposed 100 per cent ‘reduction’ in VISTA funding being considered.¹⁰⁸ This was supported by galley proofs of the FY1972 budget which indicated the programme was being phased out, explaining that:

‘The Volunteers in Service to America program is being phased out during 1971 and will not be renewed. Volunteers have not proven effective in raising the incomes of the poor, and generally have left little visible lasting impact on poor communities’.¹⁰⁹

The budget papers indicated that the ‘elimination of the program’ would be ‘orderly’.¹¹⁰

There was internal bureaucratic resistance to this proposal, led by Wilson. These cuts were being forced on OEO by the Office of Management and Budget, which was desperately trying to rein in a budget spiralling out of control.¹¹¹ Wilson wrote to Carlucci that cuts to VISTA, part of a broader reduction in OEO funding, would have ‘critically damaging effects’, including a 23 per cent cut in OEO programs and the termination of 60,000 people, 65 per cent of whom, Wilson

¹⁰⁷ Carol Khosrovi, ‘Going Through Changes,’ *VISTA Volunteer*, Vol. 6, No 17 (Nov. 1970). Obtained from VISTA/AmeriCorps Archive.

¹⁰⁸ Reorganization No. 1 of 1971: Hearings Before the Subcommittee on Executive Reorganisation and Government Research, Senate, 92nd Cong. 52-4 (1971).

¹⁰⁹ *Ibid.*, p. 55.

¹¹⁰ *Ibid.*

¹¹¹ Pass, *The Politics of VISTA in the War on Poverty*, p. 216. The best account of Nixon’s handling of the economy is Alan Matusow, *Nixon’s Economy: Booms, Busts, Dollars, and Votes* (Lawrence, 1998).

noted, 'would otherwise be poor'.¹¹² Wilson's opposition to the cuts centred on optics and political pragmatism. OEO, Wilson told his new boss, was 'perceived by many Americans as an important indication of total commitment to the poor' and such reductions would 'severely strain the credibility of the Administration's commitment to the poor'.¹¹³ This is another incarnation of the acknowledgment that OEO was both a 'mechanism' and a 'symbol' of Federal Government attentiveness. Wilson also warned of 'political opposition ... from Mayors and Governors' who would either be forced to 'increase the local share' of the funding for community action programs or 'see the programs phased out entirely'. He warned that it would be 'unsound politically to incur the wrath of mayors who are currently hard pressed to meet existing financial obligations'. Even if there was local political opposition to community programs, mayors and governors recognised that their constituents liked the services being delivered and would suffer politically if they were ended. Additionally, Wilson wrote, it would be 'difficult' for Carlucci's 'first action' to be a 'drastic cut' in his own agency. This is one of the reasons government agencies survive. Those that head them are unlikely to support moves against their own agency which would damage their own long-term career prospects.

The Leaking Begins

In December of 1970, *Washington Post* reporter Nick Kotz's phone rang. Kotz was a well-regarded reporter on social issues who was particularly known for his reporting on the hunger crisis. 'Meet me in the little park at 18th and M Streets. I will have some interesting papers wrapped as a Christmas present,' the voice at the end of the line told Kotz.¹¹⁴ The mysterious caller revealed themselves to be a member of the National VISTA Alliance and the 'interesting

¹¹² Reorganization No. 1 of 1971, Senate hearings, pp. 52-4 (1971).

¹¹³ *Ibid.*

¹¹⁴ Nick Kotz, 'OEO Memorandum Reveals Plans to Eliminate VISTA,' *Washington Post*, 18 Dec. 1970, p. A16.

papers' were a series of 'internal documents' from the Administration, including the documents discussed in the preceding paragraphs.¹¹⁵ The National VISTA Alliance also leaked information to the *New York Times*, which printed large excerpts from the Wilson-Carlucci memo on its front page, above the fold.¹¹⁶ The National VISTA Alliance obtained the papers from an OEO bureaucrat who was sympathetic to their cause (the original document having been accidentally left on a photocopier).¹¹⁷ The NVA's Director recalled that 'a lot of the employees at OEO and VISTA believed in these programs, that's why they went to work for the Federal Government' and that was what motivated them to act when they saw the programmes under threat.¹¹⁸ The extraordinary quantity of these leaks demonstrates the level of revolt within the bureaucracy, pursuing its own interests at the expense of the executive that it is supposed to serve.

While leaking had been a constant at OEO, there was something special about the frequency of that period in time.¹¹⁹ Attesting to this was the 1972 publication of a collection of essays from the *Washington Monthly* entitled *Blowing the Whistle*.¹²⁰ This collection described the 'astonishing defiance of institutional control' over the previous decade.¹²¹ In describing this raft of recent 'dissent in the public interest' the articles chronicled political staffers, government contractors, civil servants, political appointees and military officers who had all publicly leaked in order to force the government's hand on a particular issue. This public defiance was witnessed throughout the bureaucracy, both in the domestic sphere, as with Director of the Office for Civil Rights Leon Panetta, or in the foreign sphere, with the leak of the Pentagon Papers by

¹¹⁵ *Ibid.*

¹¹⁶ 'Nixon Weighs End to VISTA Funds as Economy Step,' *New York Times*, 17 Dec. 1970, p. 1.

¹¹⁷ Nomination: Frank C. Carlucci, John O. Wilson, Carol M. Khosrovi: Committee on Labor and Public Welfare, Senate, 91st Cong. 20 (1970); Author's interview with Regenstreif.

¹¹⁸ *Ibid.*

¹¹⁹ For leaks during the Johnson presidency, see Eric Biddle to Edgar May, 12 Dec. 1967 and Robert Levine to Bertrand Harding, 1 Aug. 1968, both in Moynihan Papers, Box 86, RNPL.

¹²⁰ Taylor Branch and Charles Peters, *Blowing the Whistle: Dissent in the Public Interest* (New York, 1972).

¹²¹ *Ibid.*, p. 286.

government contractor Daniel Ellsberg. It presented a cultural shift in the values of government workers, where instead of blindly following orders from their seniors those involved in government were encouraged to 'stand up to their superiors and fight' and if they failed they must 'be ready to go to the public'.¹²² The 'disease' of leaking would cause 'real problems' for the Nixon Administration over its first-term.¹²³ As Kotz described in the article, the OEO/NVA leaks were 'a deadly serious effort to save threatened OEO programs'.¹²⁴

The timing of the VISTA leaks was a calculated political manoeuvre by the National VISTA Alliance. The first reports appeared in the *Times* a fortnight before the combined nomination hearings of Carol Khosrovi as VISTA Director, Frank Carlucci as OEO Director, and John Wilson as OEO Assistant Director before the Senate's Labor and Public Welfare Committee. The leaks changed the tone and substance of the hearings. Importantly, the Wilson to Carlucci memo had not only been leaked to newspapers but also to pivotal members of Congress such as Senator George McGovern.¹²⁵ McGovern's team referred internally to the memo as 'the captured document'.¹²⁶ Public reporting of the documents would cause the White House to be bombarded by advocates of the poverty program, including state Governors, the National Advisory Council on Economic Opportunity, as well the National Welfare Rights Organization, the Urban Coalition, and the League of Women Voters.¹²⁷

¹²² *Ibid.*, x.

¹²³ Nixon to Haldeman, 12 Nov. 1971, President's Office Files, Box 3, RNPL; Handwritten notes of Cabinet Meeting, 5 Nov. 1971, Malek Papers, Box 5, Hoover.

¹²⁴ Kotz, 'OEO Memorandum Reveals Plans to Eliminate VISTA', p. A16.

¹²⁵ 'The Captured Document,' n.d., McGovern Papers, Series 3, Box 106, Princeton; copy of Wilson to Carlucci memo, n.d., Ford Papers, Box 9, BHL. The newspaper article containing the leaks was also brought to the attention of Congressmen, see Kotz, 'OEO Memorandum Reveals Plans to Eliminate VISTA,' *Washington Post*, p. A16 in Hawkins Papers, Box 90, UCLA.

¹²⁶ 'The Captured Document,' n.d..

¹²⁷ Daniel Evans to Nixon, 31 Dec. 1970, Denver VISTA Lawyers Project to Carlucci and Khosrovi, 8 Jan. 1971; Jack Vaughn to John Robson, 31 Dec. 1970; Robson to National Advisory Council, 6 Jan. 1971 all in RG381, Carlucci Files, Box 6, NARA II.

The leaking of the ‘captured document’ was not the NVA’s only intervention in the hearings. They issued a press release highlighting the substance of the Wilson memo and declared that the changes would be an ‘emasculatation’ of the agency.¹²⁸ They also wrote to Members of Congress, highlighting the proposed budget cuts and urging them to write to Carlucci, Rumsfeld, and the President.¹²⁹ John McGill, the Chairman of the National VISTA Alliance, testified before the Committee.¹³⁰

In the hearings, both Carlucci and Wilson claimed that they had not seen the memorandum (bearing the latter’s name) until called by the journalists to announce that it was being printed.¹³¹ Wilson’s deflections about authoring the memo with his name on it earned laughter from the panel.¹³² Carlucci was forced to deny that VISTA would be ‘zero funded’ and had to repeatedly emphasise his support for the program.¹³³ He said that the discussions were merely bureaucratic ‘dialogue’ and that no formal changes had been agreed.¹³⁴ He also pledged in the hearings his ‘intent to continue to request adequate funding for VISTA [and] to see that the program can continue to operate effectively’.¹³⁵ Carlucci also endorsed community action as OEO’s ‘operational heart’.¹³⁶ Both of these assertions were victories for the NVA. The effusive statements of support elicited from these men would be used to shore up support for the programme in the short term and in the long term provide a baseline for claims of Administration malfeasance. All of this was triggered by the leak of the OEO documents.

¹²⁸ Press Release, ‘OEO Budget to Be Slashed By 23%,’ McGovern Papers, Series 3, Box 106, Princeton.

¹²⁹ NVA Staff to William Ford, 29 Dec. 1970, Ford Papers, Box 9, BHL.

¹³⁰ Nomination hearings of Carlucci et. al., pp. 181-4.

¹³¹ *Ibid.*, p. 21.

¹³² *Ibid.*

¹³³ *Ibid.*, p. 20.

¹³⁴ *Ibid.*, p. 15.

¹³⁵ *Ibid.*, p. 21.

¹³⁶ *Ibid.*, p. 4.

The New Direction

While all three nominees were approved by the Senate, the grilling they received made the Administration change tack with regards to its long-term plans for VISTA. Instead of retrenchment, the Administration turned its focus on developing a positive message with an emollient but distinctly Nixonian cast. This was part of a broader Administration push in the early months of 1971 to strike a more optimistic tone, as evidenced in his 1971 State of the Union address in which the President said that America's 'long, dark night' of 'troubled years' had passed and it was time for its 'spirits [to] soar again'.¹³⁷

One of the first presidential engagements of 1971 was a speech at the University of Nebraska. President Nixon had a fractious relationship with college students in the wake of the Vietnam war and particularly since the Kent State shootings in 1970.¹³⁸ This speech, however, was placatory and was termed 'his most conciliatory speech to American youth' by a local newspaper.¹³⁹ In the address at the University of Nebraska Coliseum, Nixon proposed to 'forge an alliance of the generations,' telling the gathered students that he believed 'one of America's most priceless assets is the idealism which motivates the young people of America'.¹⁴⁰ In terms of policy, he announced that he would be sending a special message to Congress 'asking that the Peace Corps, VISTA, [and] a number of other agencies scattered throughout the Federal Government, be brought into a new agency'.¹⁴¹ Nixon had identified volunteerism as a key

¹³⁷ 'The State of the Union,' 22 Jan. 1971, *Weekly Compilation of Presidential Documents*, Vol. 7, No. 1 (4 Jan. 1971), pp. 89-97.

¹³⁸ John Brown III to Haldeman, 11 June 1970 cited in Oudes (ed.), *From: The President: Richard Nixon's Secret Files*, p. 141.

¹³⁹ 'Nixon Pleased by Welcome in Nebraska,' *Iola Register*, 15 Jan. 1971, p. 1.

¹⁴⁰ 'The President's Reading Copy – University of Nebraska, 14 Jan. 1971,' President's Office Files, Box 63, RNPL.

¹⁴¹ *Ibid.*

theme during his recent speeches in an effort to reclaim the political legacy of volunteerism and return it to its non-confrontational roots.

The idea of combining the various volunteer agencies was a familiar one within the Administration, dating back to its earliest months. Bud Wilkinson, the ex-football coach who led early volunteer initiatives within the Nixon Administration, proposed to Presidential Counsellor Pat Moynihan the ‘merger of VISTA, the Peace Corps... as a nucleus of a National Voluntary Services Agency’.¹⁴² Moynihan, though, had dismissed the concept as an ‘Orwellian “Ministry of Altruism”’.¹⁴³ In April of 1970, Rumsfeld also proposed to unite Federal volunteer programs such as VISTA, Teacher Corps, and the Peace Corps ‘under a new structure with a new direction’.¹⁴⁴ The idea was also floating around outside of government with two professors from Kent State University pitching to the President their concept of a ‘National Services Corps’.¹⁴⁵

The immediate impetus for a new volunteer agency at the turn of 1971 was traceable to the earlier Wilson memorandum objecting to the proposed cuts to VISTA. Wilson’s solution was ‘a Federal volunteer agency’ for Peace Corps and VISTA since ‘politically the two programs require parallel treatment’.¹⁴⁶ That Nixon’s pledge of a ‘new volunteer service corps’ was arrived at after a compromise about the zero-funding saga is supported by VISTA Director Khosrovi.¹⁴⁷ She recalled that after the leaks about the funding – which she was never consulted about – she worked on a compromise with Carlucci and the two most prominent Nixon aides, H.R.

¹⁴² Wilkinson to Moynihan, 5 Feb. 1969, FG6-7 Files, Box 1, RNPL.

¹⁴³ Moynihan’s feelings described in a memo by an unknown author to Ehrlichman, 22 April 1969, FG6-7 Files, Box 5, RNPL.

¹⁴⁴ Tod Hullin to Rumsfeld, 10 April 1970, WE Files, Box 59, RNPL.

¹⁴⁵ Wilbur Franklin and George Moulds to President Richard Nixon, 3 Aug. 1970, RG362, Director’s Files, Box 2, NARA II.

¹⁴⁶ Senate Hearings on Reorganization No. 1., pp. 52-4.

¹⁴⁷ Interview with Carol Mayer Marshall, 17 Nov. 2003, A Few Good Women Collection, Box 8, PSU.

Haldeman and John Ehrlichman. Khosrovi and Carlucci had both been on a task force on volunteer programs, alongside OMB's Dwight Ink and Richard Nathan, who were also working on the idea.¹⁴⁸ Khosrovi says that Nixon 'had never been fond of VISTA' but that she was able to salvage the programme through working with his two trusted aides.¹⁴⁹ The National VISTA Alliance leaks, and the Administration's damage control response had saved the agency. 'This reflected Nixon's thoughts that it was not worth 'fighting, bleeding, and dying over some domestic policy'.¹⁵⁰

The New Agency

A constant theme of the early years of the Nixon Administration was its failure to fill leadership positions. Even when new policy initiatives were announced, they were often handed to acting appointees and the ideas drifted. This was not the case with the new all-volunteer agency, in a sign that the White House was learning from its past mistakes. In the speech at the University of Nebraska, the President named Joseph Blatchford as the head of the as-yet unnamed agency. Blatchford, the current Director of the Peace Corps, had a multifaceted appeal.¹⁵¹ He was a registered Republican and a proven administrator, which appealed to an Administration often dealing with lax managers.¹⁵² Yet he had been a strong advocate for the Peace Corps, and also 'actually looked like a sixties kind of guy', and so had earned the trust of Peace Corps volunteers.¹⁵³

¹⁴⁸ Jamie Heard, 'Plan to Merge VISTA/Peace Corps, Other Volunteer Agencies Nears Approval,' *National Journal*, Vol. 3, No. 20 (15 May 1971), p. 1049.

¹⁴⁹ Interview with Carol Mayer Marshall, 17 Nov. 2003.

¹⁵⁰ Nixon to Ehrlichman, 9 Apr. 1972 cited in Oudes (ed.), *From: The President: Richard Nixon's Secret Files*, p. 411.

¹⁵¹ 'Meeting of the President with John Ehrlichman...', 31 March 1970, *Papers of the Nixon White House*, Part 3, fiche 3-13-D13; 'Hopeful Head of the Peace Corps,' *New York Times*, 15 Jan 1971, p. 12.

¹⁵² Barnard Collier, 'It Got Harder and Harder to Help the Poor,' *New York Times*, 30 May 1971, p. E5.

¹⁵³ Elizabeth Cobbs Hoffman, *All You Need Is Love: The Peace Corps and the Spirit of the 1960s* (Cambridge, 2009), p. 218.

Blatchford moved quickly, demanding full White House support for ‘a bold, affirmative new program’.¹⁵⁴ His first request of the Administration was for an additional \$20 million dollars. Blatchford argued that only such a sum, which would continue to fund the existing agencies in the FY1971 with ‘a substantial addition for new programs’, would be required for the ‘affirmative thrust’ to be maintained and ‘suspicions dispelled’ about the Administration.¹⁵⁵ The White House acquiesced. It was a trap that the Administration fell into frequently – believing that all problems of perception could be solved by a cash splash.¹⁵⁶

This would also launch the Administration into another familiar trap. The details of the agency sketched out by the President in Nebraska were hazy. The agency had no organisational structure, no statement of principles, no charter. It did not even have a name. One of the few things it did have, however, was a deadline. And it was a tight one – 1 March, just 47 days after the President’s announcement at Nebraska. A new task-force was set up to determine ‘what the agency should look like organizationally’.¹⁵⁷ The task-force comprised bureaucrats across government, including two members of OMB, two members of the Peace Corps, two members of VISTA, two members of the Teacher Corps, and two other bureaucrats. OMB’s Anna Macaluso recalled at the time that the work was ‘overwhelming’ and that the tight deadline ‘put us all in a reactive situation’.¹⁵⁸ Macaluso was particularly critical of the representatives of the Peace Corps who ‘naively assumed you could pass the entire plan and work out the details afterward’.¹⁵⁹ Another unnamed member was equally critical, complaining that ‘it was never quite

¹⁵⁴ Blatchford to Ehrlichman, 28 Jan. 1971, Blatchford Papers, Box 1, RNPL.

¹⁵⁵ *Ibid*

¹⁵⁶ This was ironic as it conflicted with their broader design to rein in Federal spending.

¹⁵⁷ Heard, ‘Plan to Merge VISTA/Peace Corps...’, p. 1049.

¹⁵⁸ Interview with Anna Macaluso, April 1971, cited in Pass, *The Politics of VISTA in the War on Poverty*, p. 248

¹⁵⁹ *Ibid*.

clear who was in charge'.¹⁶⁰ It was this ambiguity that allowed the passionate programme advocates to shine.

Planners of the new agency were keenly aware of the possibility of the National VISTA Alliance derailing the merger process. This was prompted by a letter sent from the NVA to Nixon after the Nebraska speech in which they offered to assist with 'planning' of the new agency.¹⁶¹ The President might not have been interested in the views of the NVA, but OEO bureaucrats felt differently, warning that VISTA Volunteers were 'both organized and articulate' and that 'a good deal of bad publicity and commotion could be generated' if they were not involved in the planning process.¹⁶² OEO bureaucrats warned that the strength of this 'outside pressure' of 'current and former VISTA Volunteers' was such that it 'alone may be great enough to preclude Congressional approval'.¹⁶³ In February, C. Payne Lucas of the Peace Corps wrote to his boss Joe Blatchford that that 'the success of the merger will be determined to some extent by how well we maintain communications with the various vested interest groups', singling out the NVA.¹⁶⁴ Lucas recommended that Blatchford meet with the NVA and that it be incorporated into the planning process. Lucas specifically differentiated NVA from the Peace Corp's Committee of Returned Volunteers, who were much more militant and unwilling to engage in constructive planning. Lucas believed that any 'problems' that could be caused by the NVA would be mitigated by 'listening to what the NVA has to say'. The group that had so outraged the President at the NVA Conference was now invited to the drawing board.

¹⁶⁰ Heard, 'Plan to Merge VISTA/Peace Corps ...,' p. 1049.

¹⁶¹ Steve Regenstreif to Nixon, 18 Jan. 1971, WE Files, Box 59, RNPL. It is unclear whether the President personally saw this letter, but a staff member was assigned to respond to the NVA, see Tod Hullin to Richard Nathan, 2 Feb. 1971, WE Files, Box 59, RNPL.

¹⁶² 'OEO Position Paper on the New Volunteer Agency,' 9 March 1971, Blatchford Papers, Box 2, RNPL.

¹⁶³ *Ibid.*

¹⁶⁴ C. Payne Lucas to Blatchford, 3 Feb. 1971, RG362, Action Director's Files, Box 1, NARA.

The National VISTA Alliance enthusiastically took up the opportunity to participate in the planning of the new agency. In March, Steve Regenstreif, the Executive Director of the NVA, wrote to Blatchford offering a 'productive and cordial working relationship'.¹⁶⁵ Three members of the Task Force met with NVA representatives in March of 1971.¹⁶⁶ The 'spirit of cooperation... not confrontation' of the NVA was noted by the representatives of the Task Force, who observed that they were 'clearly prepared to work within the system'.¹⁶⁷ Bill Geismer, VISTA's representative on the Task Force, warned the other members that the NVA were 'capable... of mobilizing considerable publicity and community interest If they deduce that the new agency is going to slight the poor and do even less than VISTA has done, there will be problems'.¹⁶⁸ Key members of the NVA met several times with Director-designate Blatchford and with VISTA Director Khosrovi. NVA were even listed with the 'biggies' on Blatchford's key list of stakeholders.¹⁶⁹ For the NVA, 'working within the system' was proving more fruitful to achieving its aims than its protesting.

The President took an unusual interest in the creation of the federal volunteer organisation. The item was only in the last five minutes of the Cabinet meeting of 9 March 1971 after the President observed that 'we've run out of time'.¹⁷⁰ The President encouraged his Cabinet to act fast to merge the 'hodge podge of agencies'.¹⁷¹ He particularly noted that Governors had expressed their concern to him about duplication within these programs. Nixon told the Cabinet that 'we are on the side of angels to be for change, rather than simply pouring millions into old programs'. The

¹⁶⁵ Regenstreif to Blatchford, 31 March 1971, RG362 Action Director's Files, Box 1, NARA II.

¹⁶⁶ Lowther to Brady, 3 March 1971.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ Lucas to Blatchford, 28 Apr. 1971, Blatchford Papers, Box 2, RNPL.

¹⁷⁰ Cabinet Room, Tape 050-001, 9 March 1971.

¹⁷¹ *Ibid.*

President noted that the agency was still-unnamed, and that ‘if anyone can think of a good name’ the White House would appreciate it.

The next consideration for the Administration and the relevant task forces was how to implement the merger of the volunteer agencies. Though the key bureaucratic agencies of OMB, OEO, HEW, and the Peace Corps supported the planned merger, one of the key disagreements was whether it should be achieved through executive reorganisation or authorising legislation.¹⁷² Blatchford advocated executive reorganisation for positive, practical, and cynical reasons. Positively, Blatchford argued that the ‘announcement of a strong programme will show that the President is on the move,’ as the agency could be created in a much quicker time frame.¹⁷³ Pragmatically, he argued that he needed to have power over the VISTA programme soon if he was to implement the President’s ‘new orientation’, ideally before the new financial year when the new VISTA contracts were to be issued. Cynically, he told the President that he favoured reorganisation because ‘if the Congress must act, there will be alternatives offered by Presidential aspirants’. OMB and the Cabinet were particularly interested in steering clear of the tangled web of liberal-dominated Congressional committees.¹⁷⁴ This mixture of positive reform, pragmatism, and political opportunism would guide the Administration’s approach to the new agency.

The reorganisation route appealed to the President. He had told the Republican Leadership early in his term that he intended to ‘send up more reorganisation proposals than any Administration

¹⁷² OMB to Nixon, 22 Jan. 1971, FG325 Files, Box 1, RNPL. The working group was in favour of the reorganisation though one of its members alleged that Carlucci and Khosrovi were ‘favouring the legislative approach’, see Lowther to Brady, 10 Feb. 1971, RG362, Action Director’s Files, Box 1, NARA II.

¹⁷³ Blatchford to Ehrlichman, 28 Jan. 1971, Blatchford Papers, Box 2, RNPL.

¹⁷⁴ OMB to Nixon, 22 Jan. 1971; Cabinet Room, Tape 050-001, 9 March 1971.

in history'.¹⁷⁵ As he had told his Cabinet, volunteer programs were perfect examples of a government which had grown 'so large, so fast' and that the merger fit with the broader direction of 'reform[ing] the structure of government'.¹⁷⁶ As VISTA and the Peace Corps resided in OEO, which sat under the Executive Office of the President, Nixon did not require legislation to create the new volunteer agency. Instead, using the Reorganization Act of 1939, he could create the new agency by fiat unless vetoed by either chamber of Congress.¹⁷⁷ The alternative, Blatchford believed, would be to simply 'let a bill lie in Congress for months'.¹⁷⁸ The President chose the reorganisation route.

In his March message to Congress, Nixon announced that a new agency called 'Action' would combine the efforts of Federally-sponsored volunteer-based agencies including VISTA, Peace Corps, Foster Grandparents, Retired Senior Volunteers Program, Auxiliary and Special Volunteer Programs, Service Corps of Retired Executives, and the Active Corps of Executives.¹⁷⁹ Though occasionally written in the press as 'ACTION', the name was not an acronym. Whilst Action's origins are unclear, it was ironic that 'action' was listed as a phrase considered 'less desirable' in early stage planning.¹⁸⁰ Nixon called on Congress to 'restructure our thinking about volunteer services' and create order out of the programs which had been 'generated almost at

¹⁷⁵ Buchanan to Nixon, 5 Feb. 1969, POF, Box 73, RNPL.

¹⁷⁶ Cabinet Room, Tape 050-001, 9 March 1971.

¹⁷⁷ 'Congress Accepts Two Executive Reorganization Plans.' *CQ Almanac 1973*

<http://library.cqpress.com/cqalmanac/cqal73-1227520> (accessed 20 May 2020). Reorganisation powers had been deployed often by President Franklin D. Roosevelt and were used by President Eisenhower to create the Department of Health, Education, and Welfare, see Sidney Milkis, 'The New Deal, Administrative Reform, and the Transcendence of Partisan Politics,' *Administration and Society*, Vol. 18, No. 4 (1987), p. 454-9.

¹⁷⁸ Blatchford to Nixon, 29 Jan. 1971, Blatchford Papers, Box 2, RNPL.

¹⁷⁹ 'Message to Congress Transmitting Reorganisation Plan No. 1 of 1971 to Establish Action,' *Pub. Papers* 112 (24 March 1971).

¹⁸⁰ 'New Volunteer Agency Policy Group Meeting,' 22 Feb. 1970, Blatchford Papers, Box 2, RNPL.

random across the spectrum of government'.¹⁸¹ In doing so, Nixon appealed to the 'American tradition of voluntary involvement' and sought to position Action in that pantheon.

The initial staffing announcement for Action was not good news for VISTA. A leaked 'internal staffing report' revealed that 'no present officials of VISTA ... [were] being considered for the principal jobs in Action', causing a VISTA volunteer to declare that Action was 'not a merger' but rather 'an army of occupation taking over'.¹⁸² This line became a key line of attack, as witnessed in a cartoon in its monthly magazine *New Morning*.¹⁸³ The NVA declared the announcement of the merger 'a staggering blow to the war on poverty and the idealism of the American youth'.¹⁸⁴ This was most likely, though, a case of misunderstanding as Action officials affirmed that VISTA had not responded to their request to put forward their preferred candidates.¹⁸⁵

Regardless of the veracity of the report, leaks from the bureaucracy had a significant impact on driving the political narrative. This time, the Administration doubled down on efforts to plug the holes. In a testy letter to Director-designate Blatchford, Presidential aide Ken Cole accused him of leaking key details about the budget to the *Christian Science Monitor*.¹⁸⁶ Cole sternly warned Blatchford that there was 'a better way to resolve budget issues than in public' and that if he had grievances he should raise them in the 'already established and proven budget procedure' rather than through the press. The President had issued a directive to eliminate the 'disease' of

¹⁸¹ *Ibid.*

¹⁸² Jack Rosenthal, 'New Agency Plans Drop VISTA Aides,' *New York Times*, 23 May 1971, p. 48.

¹⁸³ *New Morning*, newsletter of the National VISTA Alliance, March 1971, RG381, Carlucci Files, Box 6, NARA II.

¹⁸⁴ *Ibid.*

¹⁸⁵ Rosenthal, 'New Agency Plans Drop VISTA Aides,' p. 48.

¹⁸⁶ Kenneth Cole to Blatchford, 2 Mar. 1971, Blatchford Papers, Box 1, RNPL.

bureaucratic leaking that he believed was derailing domestic policy.¹⁸⁷ Cole's warning was sent in that spirit. Nixon wrote to Haldeman that he should enforce 'in hard, no uncertain terms' that no member of the White House staff or their subordinates should speak to the press, even off the record. Nixon longed for a 'more disciplined staff' which was both an end in itself but also a means to provide a better model 'to get cabinet officers and other Administration officials to discipline their organisations in this critical period'.¹⁸⁸ In the Action bureaucracy, paperwork relating to the merger was placed in a safe.¹⁸⁹

Reorganisation goes to Congress

The Administration's proposal to create Action, Reorganization Plan No. 1 of 1971 was submitted to the Congress on 24 March 1971.¹⁹⁰ Democrats in Congress were immediately suspicious of the President's motives. Congressman Carl Perkins, a long-time opponent of the President and chairman of the Committee on Education and Labor, signalled that he would seek to muster sufficient opposition to block the Reorganization Plan.¹⁹¹ A memorandum from the Democratic Study Group, the largest liberal organised Democratic Congressional faction, on the reorganisation listed a litany of reasons to oppose the merger, principally that the 'Reorganization Plan would allow the Administration to dismantle VISTA'.¹⁹² It cited as evidence the leaked Wilson-Carlucci memo showing the 100 per cent reduction in funding that was leaked by the National VISTA Alliance. The memo also cited Carlucci's statement in his nomination

¹⁸⁷ Nixon to Haldeman, 12 Nov. 1971.

¹⁸⁸ *Ibid.*

¹⁸⁹ 'VISTA/Peace Corps Merger,' n.d., RG381, Carlucci Files, Box 6, NARA II.

¹⁹⁰ 'Reorganization Plan No. 1 of 1971,' 24 March 1971, *Government Printing Office*, <https://www.govinfo.gov/content/pkg/STATUTE-85/pdf/STATUTE-85-Pg819.pdf> (12 March 2020).

¹⁹¹ 'Perkins Opposes Volunteer Corps,' *Washington Post*, 29 Apr. 1971, p. A15.

¹⁹² Democratic Study Group Fact Sheet 92-5, 21 May 1971, RG362, Administration and Finance Files, Box 4, NARA II.

hearing that there was at that point no plan to end the VISTA programme but that ‘the program would have to be terminated in the context of a much broader governmental reorganisation’.

Congressional hearings on executive reorganisation focused in a substantial measure on the fate of VISTA. Glenn Ferguson, a former VISTA Director and the first witness in the hearings in the Senate Committee on Government Operations, declared that the ‘burden of proof’ should be on the Administration to make the cases for the changes rather than on its opponents.¹⁹³ This view was supported by a number of liberal Republicans, most notably New York Senator Jacob Javits.¹⁹⁴ Testimony by programme officials also argued that these composite volunteer agencies were all separate entities with separate identities and that a merger would obscure the benefits that these differences delivered.¹⁹⁵ Debate also raged about the efficiency and effectiveness of the program. Javits declared that ‘the search for efficiency’ should not be used as ‘an illusion to return the whole thing down the drain’ while other witnesses testified to the difficulty of measuring VISTA’s impact.¹⁹⁶

The NVA also used the Congressional hearings into the Reorganization Plan to advance their agenda. Represented by its Chairman, Thomas Newberry, the Alliance decried to Congress the ‘Administration’s policies of neglect’ and accused the President of ‘submerging VISTA’.¹⁹⁷ Newberry also expressed concern that the proposed funding structure of Action would provide no guarantee that funding allocated to VISTA could not be reallocated within the Action budget,

¹⁹³ Reorganization Plan No. 1 of 1971 Hearings, p. 18.

¹⁹⁴ *Ibid.* p. 28.

¹⁹⁵ *Ibid.* p. 138

¹⁹⁶ *Ibid.* p. 28. Senator Clinton P. Anderson had noted in a letter to the VISTA Director that it was ‘very hard to ever get any kind of evaluation’ of VISTA, see Anderson to Kennedy, 17 Nov. 1970, Anderson Papers, Box 371, LOC.

¹⁹⁷ *Ibid.* p. 36.

effectively killing the programme in the dark.¹⁹⁸ Newberry expressed concern over the reasoning behind the reorganisation. He told the committee that the NVA viewed ‘voluntarism’ as a ‘means and a resource’ not ‘a function or purpose’.¹⁹⁹ He told the committee that he was ‘motivated’ to join VISTA ‘by the word “poverty”’, not the word ‘voluntarism’ and that no possible volunteer had expressed interest ‘just for voluntarism’s sake’ but because ‘they wanted to fight the problems of poverty’.²⁰⁰ Republican Senator John Williams of Delaware expressed support for this idea, saying that ‘voluntary action should be a means to an end, not an end per se’.²⁰¹ Williams proved one of the strongest advocates of VISTA at the hearings telling the committee: ‘I have always considered [VISTA] among the finest of the volunteer efforts’.²⁰² Though the chances of the Congress rejecting the reorganisation plan were considered slim, there was the strongest possible advocacy for it in these hearings.

The lobbying efforts of the National VISTA Alliance proved remarkably effective, having a well-reported and substantive impact. Newberry’s lobbying efforts, originally weak, had been significantly improved thanks to tutoring sessions from the Center for Community Change’s Pablo Eisenberg in how to effectively lobby against the Federal Government.²⁰³ Remarkably, Newberry was recommended to see Eisenberg by Carol Khosrovi, the Nixon appointed head of VISTA.²⁰⁴ Torn over watching her agency be destroyed by the Administration she had sworn to serve, Khosrovi recalled that she was actively ‘rooting for the other side’ during the hearings and

¹⁹⁸ *Ibid.* p. 42.

¹⁹⁹ *Ibid.* p. 40

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.* p. 90.

²⁰² *Ibid.*

²⁰³ Author’s interview with Carol Mayer Marshall, 31 October 2017.

²⁰⁴ *Ibid.*

offering covert assistance to the National VISTA Alliance.²⁰⁵ This action was not simply motivated by self-preservation but by a sincere belief in the beneficial nature of the program.²⁰⁶

The narrative around the Action merger was about to change again. And this time the change would come from a source not typically considered in political history. In June of 1969, two professors from Penn State University had been tasked by OEO with conducting an evaluation of volunteers' perception of their time in the VISTA program.²⁰⁷ The report was originally due for submission in mid-1970 but the project overran and the final study was not delivered until early 1971.²⁰⁸ When the report was released to the public in March of 1971 by OEO, it garnered little attention, and such was the deemed lack of public interest that an article written by journalist Ben A. Franklin was rejected by the *New York Times*.

The intrigue surrounding VISTA caused by the Action reorganisation had changed the *Times*' position. It published Franklin's article on the front page of the 24 May edition of the *Times* - the day before the final vote on Reorganization Plan No. 1 was due to take place. The article had been held since March but the 'assistant managing editor' of the *Times* decided to publish Franklin's article to coincide with renewed public interest in the vote.²⁰⁹ The article, which appeared under the headline 'Life in VISTA Called Radicalizing', shared the report's finding that there was a 'marked leftward trend among the volunteers'.²¹⁰ 13 per cent of volunteer recruited into the programme described themselves as 'radical left' when they enrolled in the programme in 1969, whereas upon their departure from VISTA, 37 per cent described themselves in those

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

²⁰⁷ John Wilson to Moynihan, 20 July 1971, Moynihan Papers, Series I, Box 199, LOC.

²⁰⁸ 'VISTA and its Volunteers,' 15 March 1971, Moynihan Papers, Series I, Box 199, LOC.

²⁰⁹ Pass, *The Politics of VISTA in the War on Poverty*, p. 290-1.

²¹⁰ Ben Franklin, 'Life in VISTA Called Radicalizing,' *New York Times*, 24 May 1971, p. 1.

terms. The number who self-described as either ‘conservative’ or ‘moderate’ fell from 23 to 11 per cent. Lost in the sensationalised reporting was the report’s recommendation that the programme should continue. The *New York Times* decision to publish the finding of the controversial report at such a late stage was something that VISTA’s supporters could not have foreseen.

In the end, neither chamber could muster sufficient votes to oppose the President’s Reorganization Plan. The House failed to override the President’s proposal 131-224.²¹¹ Of the 150 Republican members, all but one supported the reorganisation.²¹² The Democrats were more divided, with 130 opposing the reorganisation and 75 supporting it. In the Senate, the vote was 29-54 opposing the reorganisation. All Republican Senators voted in line with the President and the Democrats split 17-29 against the plan. A *New York Times* post-mortem found that there was a belief that the ‘one-sided vote’ in the Senate committee, including by noted liberals like Hubert Humphrey, could be attributed to ‘concern over the findings’ of the leaked OEO/Penn State report.²¹³ This would similarly have affected the roll call votes in the House.

Creating Action

The creation of Action is the beginning of a story, not the end of one. Though Congress had failed to override the President’s legislative reorganisation, the question of what the new agency

²¹¹ ‘Action Agency: Peace Corps, Vista Merged in New Unit,’ *CQ Almanac* 1971, <http://library.cqpress.com/cqalmanac/document.php?id=cqal71-1254543> (13 May 2020).

²¹² The sole Republican dissident was Michigan Representative Donald Riegel. Riegel, a supporter of the VISTA programme, did not publicly explain his vote, though he was an outspoken opponent of the President and one of the key organisers within the ‘Dump Nixon’ movement in Congress, see ‘Nixon Vowed In 1968 He’d “End War in Six Months”,’ *Traverse City Record-Eagle*, 20 May 1971, p. 12. Riegel’s fractious relationship with the President is covered extensively in Donald Riegle, *O Congress* (New York, 1976).

²¹³ Marjorie Hunter, ‘Merger of VISTA is Backed by the House,’ *New York Times*, 26 May 1971, p. 17.

looked like was still largely to be determined. As described by the *National Journal*, there was consensus only on 'very general recommendations' for the new agency.²¹⁴ All that had been agreed to was contained in the President's reorganisation message, barely three pages long.²¹⁵ Much of the decision-making would, then, be left to the bureaucracy.

A case in point was the selection of the Associate Directorships of Action. According to the Reorganization Plan, Action was to have no more than four Associate Directorships, though it did not specify the responsibilities of any of the roles. New York Republican Senator Jacob Javits, a friend of the poverty program, had observed this. During the legislative disputes over the Reorganization Plan, Javits heavily lobbied the Administration to ensure that there would be an 'Associate Director for Anti-Poverty Programs'.²¹⁶ Javits made his support for the creation of Action conditional on such an appointment.²¹⁷ Javits was in earnest and, accordingly, watched Action like a hawk, continuing to work with OMB's Arnold Weber, as well as Action representatives, to ensure that his deal was maintained.²¹⁸ According to OMB Director George Shultz, Javits was responsible for changes in 'significant points of emphasis in the organizational structure of the new agency'.²¹⁹ Shultz confirmed that Action would have an 'Associate Director for Domestic and Anti-Poverty Programs' to 'emphasise more visibly and forcefully the commitment ... to anti-poverty efforts'.²²⁰ This change demonstrates the impact that a member of Congress could have on policy formulation outside of the strict confines of the Congressional chamber. This was particularly true with Javits, who took a keen interest in 'reviewing the

²¹⁴ Heard, 'Plan to Merge VISTA/Peace Corps...', p. 1052.

²¹⁵ 'Reorganization Plan No. 1 of 1971'

²¹⁶ Mel Najarian to Christopher Mould, 2 Jul. 1971, Blatchford Papers, Box 2, RNPL

²¹⁷ *Ibid.*

²¹⁸ George Shultz to Jacob Javits, 19 May 1971, Blatchford Papers, Box 2, RNPL; Action Steering Committee Minutes, 11 June 1971, Blatchford Papers, Box 2, RNPL

²¹⁹ Shultz to Javits, 19 May 1971.

²²⁰ *Ibid.*

administrative procedures' in the proposal for the new agency.²²¹ Where the NVA had worried that they were going to 'kiss the domestic anti-poverty efforts goodbye' when VISTA went into Action, thanks to the efforts of Senator Javits, it was now baked in.²²²

Equally important as the creation of this role was filling it with someone committed to anti-poverty initiatives. Such a person was found in Christopher Mould. A registered Democrat, Mould had previously served as Director of the Office of Voluntary Action, and was described in Action merger documents as 'exceptionally bright, articulate, politically sophisticated, and committed to the concept of volunteerism'.²²³ Mould was selected by Joseph Blatchford for the position to ensure 'harmony' as he was officially affiliated with neither VISTA nor the Peace Corps.²²⁴ Despite this, Mould held the pedigree of someone sympathetic to anti-poverty efforts. He had been the founding member of a Legal Aid programme in Chicago and had worked for the National Urban Coalition. Importantly, he was also willing to meet with representatives of the National VISTA Alliance during the planning process over VISTA's role within Action and he held meetings with other VISTA Volunteers.²²⁵ Support of VISTA's efforts to obtain a dedicated Associate Directorship was important, but equally important was that the role was filled with someone like Mould committed to the VISTA programme and its emphasis on anti-poverty action.

²²¹ Javits to Shultz, 8 June 1971, Blatchford Papers, Box 2, RNPL.

²²² James Welsh, 'Staff Row May Peril Volunteer Agency Plan,' *Washington Sunday Star*, 21 May 1971, p. A3.

²²³ 'United States Office of Voluntary Action,' n.d., RG362, Director's Files, Box 1, NARA II.

²²⁴ Heard, 'Plan to Merge VISTA/Peace Corps...', p. 1049.

²²⁵ Nancy Gulick to Blatchford, 29 June 1971, Blatchford Papers, Box 2, RNPL.

Planners of the new Action agency continued to engage constructively with representatives of the National VISTA Alliance, due to the 'commitment' made to Senator Javits.²²⁶

Representatives of VISTA met repeatedly with the planners of Action, including Director Blatchford.²²⁷ The NVA worked to ingratiate themselves with the larger planning process at VISTA. When in August 1971 a 'special task force' was formed to review ongoing Volunteer 'concerns' such as 'transportation, health, food and lodging,' representatives of the NVA were assigned to the task force alongside Volunteers and Action officials.²²⁸ This was a continuation of the role played by the NVA in the Congressional appropriations battle, where they were no longer outsider-activists but were actively involved in programme planning.

Despite the ado, continuity marked the transition of VISTA into Action. John Donohue, one of Peace Corps' representatives, noted on 18 June that there was 'no real change in personnel'.²²⁹ Similarly a letter went out to all future Action personnel, including VISTA employees, the week before the creation of the new agency telling them that there was to be 'no material changes other than working for a new agency'.²³⁰ As an early working paper noted, since existing programs such as VISTA 'must operate within the limits of existing legislative authorities for its component parts...VISTA's original mission against poverty is to continue unabated'.²³¹ Despite what the Administration may have grumbled about, members of the working group on Action believed that 'problems of volunteer... behaviour' at VISTA were 'more apparent than real' and there was 'no intention' to amend present policies.²³² Perhaps most demonstrative of the

²²⁶ Carlucci and Khosrovi to Weber, 7 June 1971, Blatchford Papers, Box 2, RNPL.

²²⁷ Gulick to Blatchford, 29 June 1971.

²²⁸ 'Editor's Page,' *The V-Line*, Vol. 1, No. 3 (Aug. 1971), p. 2 located in Blatchford Papers, Box 2, RNPL. *The V-Line* was the official magazine of VISTA.

²²⁹ 'Steering Committee Meeting,' 18 June 1971, Blatchford Papers, Box 2, RNPL.

²³⁰ William Inglis to Blatchford, 17 June 1971, Blatchford Papers, Box 2, RNPL.

²³¹ 'Issues to Be Considered,' 14 April 1971, RG362, Administration and Finance Files, Box 6, NARA II.

²³² 'Policies Regarding Volunteer Behavior,' n.d., RG362, Administration and Finance Files, Box 6, NARA II.

continued health of VISTA during this period was that at the height of uncertainty around VISTA, in May of 1971, the agency needed to purchase an additional switchboard to handle the increased interest in people volunteering with the program.²³³

But what did any of these Federal-level machinations mean for Volunteers on the ground? In reality, little changed. In March of 1971, two VISTA Volunteers were arrested in Silver City, New Mexico for trying to advocate for juvenile rights in prisons and sentencing.²³⁴ Volunteers in Vermont compiled information on tenants' rights to ensure that they could not be discriminated against by landlords.²³⁵ Nancy Cummings, a VISTA in Johnson City, Tennessee, recalled that she was actively involved 'community organizing' amongst the poor during her service in 1970-1972.²³⁶ Jeff Kirsch, a VISTA Volunteer originally from New Jersey who was assigned to service in San Elizario, Texas, instituted a school lunch programme 'much to the consternation of the school administration'.²³⁷ He recalled that he was an "outside agitator" paid by the government to help plain old citizens assert themselves' and that his efforts had 'caused a lot of problems and complaints from local and county officials'.²³⁸ These were all the types of activities which drove VISTA's opponents crazy, activities which changes to VISTA were meant to curb or outright eliminate, activities which continued.

²³³ Frank Matthews to Art Wexler, 27 May 1971, RG362, Administration and Finance Files, Box 6, NARA II.

²³⁴ 'VISTA Volunteers Arrested,' *Silver City Daily Press*, 16 March 1971, p. 1

²³⁵ 'Ryersbach to Leave B-ROC, Williams, Walsh Join Up,' *Bennington Banner*, 5 May 1971, p. 15.

²³⁶ 'Nancy Cassaday Cummings – 1970-72 – Johnson City,' 18 Dec. 2012, *VISTACampus.gov*, <https://www.vistacampus.gov/connect-learn/alumni-stories/nancy-cassaday-cummings-served-johnson-city-tennessee-1970-1972> (12 March 2020)

²³⁷ 'Jeff Kirsch – 1971-2 – San Elizario,' 26 Dec. 2012, *VISTACampus.gov*, <https://www.vistacampus.gov/connect-learn/alumni-stories/jeff-kirsch-served-san-elizario-texas-1971> (12 March 2020)

²³⁸ *Ibid.*

Conclusion

The story of VISTA between 1970 and 1972 is a story of hard-fought victories by the program's advocates. As a Senate insider remarked at the time, 'the VISTA people demonstrated some pretty amazing political clout'.²³⁹ While in December 1971 the programme looked to be on its last legs, it entered 1972 in significantly better shape. VISTA had entered the FY1972 budgetary process at very serious risk of defunding and had emerged with a budget increase, from \$33.1 million to \$45 million.²⁴⁰ In its new home at Action, VISTA would retain its unique name, identity, and anti-poverty focus. None of these were guaranteed at various points throughout the negotiations about the formation of the agency. Significant credit for these victories must be given to the National VISTA Alliance. Though they had entered the political scene as a traditional protest group, they had transitioned to 'working within the system' and had earned a seat at the table in the planning process for the new agency. They displayed a remarkable political nous – agitating against the Nixon Administration when they needed to, such as in the leaking of the Wilson-Carlucci memo to the press and the Congress. But they also presented themselves as 'organised and articulate' and earned the respect of others within the Federal Government. Their bureaucratic knowledge helped save them. Credit for VISTA's survival is also due to OEO bureaucrats who deliberately disobeyed or slow-walked orders from the Nixon Administration that would have decimated their agency, and who were willing to use the tools at their disposal, such as strategic leaking, to achieve these aims. As a VISTA bureaucrat remarked, the Nixon Administration found that when they when they sought to 'tun the screws on VISTA... the screw handles are kind of hard to find and the threads are kind of rusty'.²⁴¹

²³⁹ Collier, 'It Got Harder and Harder to Help the Poor,' p. E5.

²⁴⁰ 'Action Agency: Peace Corps, Vista Merged in New Unit.' *CQ Almanac 1971*, <http://library.cqpress.com/cqalmanac/cqal71-1254543> (13 May 2020).

²⁴¹ Lane, *Supergrade*, p. 69.

Introduction to Part Two

‘The Nixon Counter-Revolution?’¹

Two days in 1972 changed American history forever. The first was 17 June, when five men were arrested by police for burglary and wiretapping at the Democratic National Committee headquarters at the Watergate complex. The ensuing scandal would bring down the Nixon Administration and change the future of American politics.² The second was 7 November, the day Richard Nixon was re-elected President of the United States in one of the largest landslides in US politics. It was these two events, and their unfolding consequences, which would determine the fates of the Nixon Administration, the Great Society programmes, and US domestic policy more broadly. This brief introduction to Part Two of the dissertation will explain how and why the Nixon Administration sought to shatter the power of the ‘permanent government’ using a personnel strategy in its second term. The concluding paragraph will introduce the Watergate scandal and frame its impact on policy.

The ‘Noncampaign’

The two previous times that Richard Nixon had headed the presidential ticket had been two of the closest contests in American history.³ His final campaign in 1972 was to be the exception. The monthly *Gallup* poll between Nixon and his Democratic opponent, Senator George McGovern, never narrowed to less than 19 per cent between May and November.⁴ The incumbent’s lead had even blown out as far as 34 per cent following the replacement of

¹ Patrick Buchanan to Nixon, 10 Nov. 1972, Buchanan Papers, Box 11, RNPL.

² Michael Genovese and Iwan Morgan (eds.), *Watergate Remembered: The Legacy for American Politics* (New York, 2012).

³ For details, see W. J. Rorabaugh, ‘The Election of 1960,’ and Melvin Small, ‘The Election of 1968’ in M. Small (ed.), *A Companion to Richard Nixon*, pp. 122-140; 143-163.

⁴ ‘The Gallup Poll,’ 1 Oct. 1972, Contested Files, Box 43, RNPL; E. W. Apple, ‘Final Polls Signal Landslide Victory,’ *New York Times*, 6 Nov. 1972, p. 1.

McGovern's Vice Presidential nominee, Thomas Eagleton, after the revelation that he had received 'shock therapy' for depression.⁵ The 1972 contest was, in the words of speechwriter William Safire, a 'noncampaign'.⁶ Nonetheless, the campaign was important because the issues – and the outcome – would shape the Administration's second term agenda.

The 1972 election was largely devoid of serious policy debate. The press, Safire recalled, were 'not buying philosophy that year'.⁷ The *Washington Post* reported that Nixon 'did not [discuss] the issues, except in generalities'.⁸ Backed by the powerful finances and 'business-like efficiency' of the Committee to Re-elect the President (CREEP), Nixon's campaign sought to annihilate McGovern, using a divisive and unrelenting brand of 'attack politics' to tar their opponent as an unelectable 'extremist'.⁹ Nixon 'levelled a barrage of populist attacks' against his Democratic opponent on issues including bussing, taxes, 'runaway crime', 'weakness' on national defence, and 'permissive morality'.¹⁰ This was neatly captured in the Republican line that the Democrats were for 'acid, amnesty, and abortion'.¹¹

A critical feature of the Nixon campaign was its orientation toward so-called 'New Majority' constituencies. This was a strategy to entice voters from traditionally-Democratic constituencies, such as 'white ethnics' from Eastern Europe and Catholics, to the Republican Party.¹² Nixon

⁵ Christopher Lydon, 'Eagleton Tells of Shock Therapy on Two Occasions,' *New York Times*, 26 July 1972, p. 1.

⁶ Safire, *Before the Fall*, p. 645

⁷ *Ibid.*, p. 647.

⁸ Carroll Kilpatrick, 'The Incapacity of a Leader to Lead,' *Washington Post*, 12 Aug. 1974, p. A22.

⁹ Dom Bonafede, 'GOP Aims Campaign at Key Voter Blocs...', *National Journal*, Vol. 4, No. 35 (26 Aug. 1972), p. 1347; Ken Khachigan to Buchanan, 9 June 1972, Contested Files, Box 47, RNPL; Miroff, *The Liberals' Moment*, p. 229.

¹⁰ Matthew Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt State* (Princeton, 2006), p. 312.

¹¹ Kevin Phillips, 'How Nixon Will Win,' *New York Times*, 6 Aug. 1972, p. 8.

¹² Robert Mason is the pre-eminent historian of the New Majority, see Mason, *Richard Nixon and the Quest for a New Majority*. See also Paul Frymer and John David Skrentny, 'Coalition-Building and the Politics of

saw these voters as possessing ‘more conservative values and beliefs’ than a Democratic party veering left under McGovern.¹³ In terms of specific policy areas, they were perceived to oppose the morays of the civil rights and sexual revolutions of the late 1960s and they expressed opposition to the anti-Vietnam War movement.¹⁴ The New Majority project was useful to the Nixon Administration in the short-term quest to win the 1972 election and in the long-term for their opportunity to ‘become the backbone of the GOP in future years’.¹⁵

Despite the addition of former OEO Director Sargent Shriver as McGovern’s running mate, the War on Poverty was largely absent from the 1972 campaign. A *Washington Post* survey of voters noted that even among those who viewed Shriver favourably, the War on Poverty ‘almost never’ came up.¹⁶ One of the few direct mentions was when Nixon’s Vice President, Spiro Agnew, denounced the Legal Services Program as ‘politically-inspired social reform’ rather than true ‘assistance to the poor’ during a campaign stop in Minnesota.¹⁷ But the War on Poverty and Great Society featured latently as part of Nixon’s populist campaign seeking to tar the Democrats with the ‘welfare ethic’ while painting the Republicans as representing the ‘work ethic’.¹⁸ It was this terminology and this attitude which would frame the White House’s approach to anti-poverty programmes in the second term.¹⁹

Electoral Capture During the Nixon Administration: African Americans, Labor, Latinos,’ *Studies in American Political Development*, Vol. 12 (1988), pp. 131-61.

¹³ Nixon, RN, p. 761.

¹⁴ Michael Balzano, ‘The Silent Versus the New Majority,’ in L. Friedman and W. Levantrosser (eds.), *Richard M. Nixon: Politician, President, Administrator* (New York, 1991), p. 261.

¹⁵ ‘Conservatives Win Legal Services Victory,’ *Human Events*, Vol. 33, No. 26 (30 June 1973), p. 5.

¹⁶ Haynes Johnson, ‘It’s Shriver Over Agnew For Top Job,’ *Washington Post*, 4 Oct. 1972, p. A1.

¹⁷ Press Conference, 19 Sept. 1972, Agnew Paper, Box 48, UM.

¹⁸ Lassiter, *The Silent Majority*, p. 312.

¹⁹ Tom Hart to Nixon, 10 May 1973, FG325 Files, Box 2, RNPL.

There was a calculated edge to the Administration's adoption of conservative rhetoric and policies during the 1972 campaign. Its perceived inability to rein in the excesses of Great Society liberalism in its first-term had caused a growing cleavage between the Administration and the conservative elements of the Republican Party as well as what was now being called the 'conservative movement'.²⁰ Prominent conservative institutions such as the *National Review* had backed the primary challenge to Nixon by Ohio Congressman John Ashbrook on the basis that they were 'increasingly disturbed by... the major policies and tendencies' of the Nixon Administration.²¹ Conservative groups were aghast at both the President's domestic agenda, including its retention of Great Society programs, and foreign policy, particularly his overtures to China.²² The Administration, conservative speechwriter Buchanan warned the President, was often viewed by conservatives as 'neither fish nor fowl'.²³ This weakness on his right flank was something that the President was determined to shore up heading into his second term.

Even though the election appeared safe, the President and his team zealously followed the minutiae of the campaign. A notable irritant for the president was his suspicion that the bureaucracy was a safe haven for McGovernite liberals. An unsigned letter to the President warned Nixon that 'an attempt is being made through the bureaucracy at HEW to fund groups who will organise to steal the election from you in 1972'.²⁴ Nixon told his staff that he wanted this matter 'watched this very, very carefully'.²⁵ White House appointees at OEO kept a close eye on OEO grantees associations with the McGovern campaign.²⁶

²⁰ James Kilpatrick, 'Report Card for Richard Nixon,' *National Review*, Vol. 21, No. 21 (1969), pp. 532-7; David Broder, 'YAF Convention Urges Drive to Dump Nixon,' *Washington Post*, 5 Sept. 1971, p. A2.

²¹ 'The Ashbrook Candidacy,' *New Republic*, Vol. 24, No. 2 (1972), p. 18-22.

²² William F. Buckley Jr., 'Why John Ashbrook,' *New Republic*, Vol. 24, No. 28 (1972), p. 814.

²³ Buchanan to Haldeman, 14 Jan. 1971, Contested Materials, Box 1, RNPL.

²⁴ Nixon to Ehrlichman, 15 Nov. 1971, POF, Box 3, RNPL.

²⁵ *Ibid.*

²⁶ For example, see Teztlaff to Edelman, 13 Oct. 1972 and Phillips to Sanchez, 7 Feb. 1972 both in RG381, Sanchez Files, Box 4, NARA II.

‘The Greatest Electoral Victory in American History’

When the results came in on the evening of 7 November 1972, it would have been hard to overstate the magnitude of the victory for President Richard Nixon. The incumbent president crushed McGovern from coast-to-coast, winning over 60 per cent of the popular vote and every state except for Massachusetts, amassing an overwhelming 520 (out of 538) electoral college votes.²⁷ One White House staffer declared it ‘the greatest electoral victory in American history’, a remarkable turnaround from four years earlier when Nixon achieved just 43.4 per cent of the vote.²⁸ Nixon interpreted his victory as a mandate to fundamentally recast American government, politics, and society in a materially different way than during his first-term, elected with only a minority of the Presidential vote and with his party controlling neither house of Congress.²⁹

Even before the campaign concluded, Ehrlichman staffers prepared a document on ‘the legacy of the Nixon Years’ which sought to identify the ‘constraints’ on the President’s ability to achieve his ‘objectives’ in the second term.³⁰ The President believed that his first-term agenda had been resisted by the ‘combined inertia of Congress and the bureaucracy’.³¹ While scornful of Congress, the President truly believed that it was ‘bureaucratic sabotage’ that ‘had marred its first term’.³² Or as the President more colourfully put it, ‘we have a bunch of people in the bureaucracy who are out to screw us’.³³ Having won such a decisive victory, Nixon and his

²⁷ ‘Nixon Sees Victory as Mandate to Pursue Goals; White House Faces Fiscal Struggle with Democratic Congress,’ *National Journal*, Vol. 4, No. 46 (11 Nov. 1972), pp. 1727-49.

²⁸ Gannon to Ehrlichman and Cole, 30 March 1973, POF, Box 21, RNPL; Arnold Offner, *Hubert Humphrey: The Conscience of the Country* (New Haven, 2018) p. 334.

²⁹ Nixon, RN, p. 762.

³⁰ Ehrlichman to Nixon, 12 July 1972 and ‘The Legacy of the Nixon Years: Planning for the Second Term,’ n.d., both in Harper Papers, Box 55, RNPL.

³¹ *Ibid.*, p. 761.

³² Ron Sayeb, ‘Nixon’s Administrative Presidency Revisited: Aberration or Watershed?’, *Journal of Policy History*, Vol. 4, No. 3 (1992), p. 250.

³³ Oval Office, 536-012, 3 July 1972, White House Tapes, RNPL.

acolytes believed now was the time to strike against the disloyal bureaucracy and to purge it of its liberals.³⁴

This resolve soured the meeting of the political appointees of the Nixon White House on 9 November 1972.³⁵ The group, convened by Associate Director of Action Charles W. Ervin, had met regularly during the first-term and had become a way for the political appointees to forge a community. The meeting after Nixon's victory two days earlier was not to be the celebration its attendees had hoped – they were all fired 24 hours beforehand.³⁶ Caspar Weinberger, formerly the Director of the Office of Management and Budget, lamented to a colleague: 'What happened — I thought we won?'.³⁷

The dismissal of the entire staff of political appointees, as well as the Cabinet, cleared the slate for the Administration to fundamentally restructure the American government. To nullify the disloyal bureaucracy, Nixon sought to adopt an 'Administrative Presidency' strategy in which the Administration would appoint 'partisans' to key Executive branch positions to ensure 'control over agency policy setting and managerial processes'.³⁸ The Administrative Presidency strategy also sought to 'bypass' the recalcitrant Congress and 'implement [White House priorities] through administrative regulations'.³⁹

³⁴ See also Nixon, *RN*, pp. 761-72; Richard Nathan, *The Plot That Failed: Nixon and the Administrative Presidency* (New York, 1975).

³⁵ Author's interview with Charles Ervin, 15 July 2019.

³⁶ Deputy Press Secretary Gerald Warren later described the Administration's handling of the terminations as 'very clumsy and heavy handed', see 'Interview with Gerald Warren, 6 Jan. 1978,' Reichley Interviews, Box 1, GFPL. Nixon would regret his decision, see Nixon, *RN*, p. 769.

³⁷ Author's interview with Charles Ervin.

³⁸ Nathan, *The Administrative Presidency*, pp. 7 and 47. It was Nathan, a Nixon-era OMB official, who coined the term 'Administrative Presidency'.

³⁹ Margaret C. Rung, 'Richard Nixon, State and Party: Democracy and Bureaucracy in the Postwar Era,' *Presidential Studies Quarterly*, Vol. 29, No. 2 (1999), p. 432.

To staff the bureaucracy with these new ‘partisans’, the Administration turned to Fred Malek, a thirty-six-year-old graduate of Harvard and West Point Military Academy. Malek previously worked in the private sector, and a timely investment in a tool manufacturing company had made the son of a beer-truck driver a millionaire before his thirtieth birthday.⁴⁰ This success had caught the eye of Health Education and Welfare (HEW) Secretary Robert Finch, who brought Malek on board to ‘bring order to the chaos’ in his Department.⁴¹ Malek became the private and public face of the Administration’s battle with the bureaucracy, which he termed in an op-ed for *Business Horizon* as ‘the greatest management challenge in history’.⁴²

After service in the CREEP during the ’72 campaign, Malek was promoted to Deputy Director of the Office of Management and Budget.⁴³ Malek undertook the role reinvigorated in his quest to restructure the bureaucracy. He desired to ‘clean out poor performers... to get new ideas and energies devoted to bold problems’.⁴⁴ Though cognisant of ‘paint[ing] a picture of over-confidence’, he began to prepare a ‘talent bank for post-election staffing’ so that the restructuring could begin as soon as possible.⁴⁵ There needed to be a massive push after the election, Malek believed, so that the Administration could ‘take all the heat at once’ over the massive bloodletting but then ‘get on with the business of making the government work better’.⁴⁶ The apotheosis of Malek’s work would be the production of the Administration’s Federal

⁴⁰ Robert Sherrill, ‘The Hatchetman and the Hatchetmyth,’ *Washington Post*, 6 Feb. 1972, p. PO11.

⁴¹ *Ibid.*

⁴² Fred Malek, ‘Management Improvement in the Federal Government,’ *Business Horizons* (Aug. 1971) in Malek Papers, Box 1, Hoover.

⁴³ Carole Shifrin, ‘Malek Set for OMB Deputy Job,’ *Washington Post*, 9 Dec. 1972, p. A18.

⁴⁴ Malek to Files, 6 Oct. 1971, Malek Papers, Box 5, Hoover; ‘Development of PA and PAs Talent Bank for Post-Election Staffing,’ n.d, Malek Papers, Box 5, Hoover.

⁴⁵ Malek to James, 21 June 1972, Malek Papers, Box 5, Hoover.

⁴⁶ Malek to Haldeman, 4 Nov. 1972, Malek Papers, Box 5, Hoover.

Personnel Manual, better known as the Malek Manual, which outlined plans for securing and maintaining the 'political control' of the bureaucracy'.⁴⁷

The Administration's plans for regaining control of the government were not focused exclusively on the bureaucracy. Another area given critical attention was the selection and structure of the President's new Cabinet. Like the political appointees, the White House demanded the resignation of the entire Cabinet. Malek led the chorus of critics of the old Cabinet. In a pre-election memorandum to Haldeman, Malek identified 'several glaring weaknesses with the President's first-term Cabinet'.⁴⁸ He was scornful that they had become 'representatives and in some cases advocates of their Department's constituencies'.⁴⁹ Malek, ever the businessman, noted that many were 'just poor managers'.⁵⁰ He was particularly contemptuous of Housing and Urban Development Secretary George Romney whom he described as a 'zealot' who prioritised 'the interest of his constituents ahead of those of the President'.⁵¹

The bloodletting of the Cabinet was swift. Only one-third of the President's Cabinet remained in office from the first to the second term. Romney was moved on, as were the Secretaries of Commerce, Defence, and Transportation, among others. The press was scornful about the changes.⁵² Joseph Kraft, writing in the *Washington Post*, claimed that the President had

⁴⁷ H.R. Report No. 94-28 573-727 (1976). Despite the eponymous title given to the report, it was substantially authored by Alan May, see Arthur Levine, 'I Got My Job Through CREEP,' *Washington Monthly*, Nov. 1974, p. 36.

⁴⁸ Malek to Haldeman, 28 Sept. 1972, Malek Papers, Box 6, Hoover.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.* Romney pushed back against Presidential control of the agencies, arguing that 'where those responsible for the departments are not sufficiently involved in developing overall goals, policies, programs, and priorities, they lack the understanding and unity of purpose so essential to cooperative use of the activities they direct', see Romney to Nixon, 3 April 1972, Romney Papers, Box 14-P, BHL.

⁵² For example, see James Reston, 'Changed Mood for New Team,' *Washington Evening Star*, 3 Jan. 1973, p. 22.

‘accomplished the well-nigh impossible feat of assembling a cast of characters duller than ... his first administration’.⁵³ Arthur Schlesinger, who had served under President Kennedy, deemed the new Cabinet ‘the most anonymous in memory, a Cabinet of clerks, of compliant and faceless men who stand for nothing’.⁵⁴

The selection of dull candidates rather than former Governors was a deliberate strategy. The purpose was to select anonymous individuals that the Administration would be able to exert influence over, a reversal of the first-term which constantly saw Cabinet officials buck the official Administration line. One example of changed directives was the removal of the power of Cabinet officials to appoint their own staff. Senior staff were to be selected by ‘the President and his staff’ while lower-level bureaucratic appointments would be made by a panel led by a representative of the White House Personnel Office.⁵⁵ Malek drilled into the new Cabinet members that ‘policy will be determined by the President and his assistants’.⁵⁶ To further highlight their irrelevance, Malek suggested that Cabinet needed only to meet for ‘ceremonial occasions’.⁵⁷

The side-lining of Cabinet was part of a more fundamental restructure of political power within the White House, designed to empower the Chief Executive. In January 1973, Nixon announced that there was ‘a need to revitalise and streamline the Federal government’.⁵⁸ The President

⁵³ Joseph Kraft, ‘Second-Term Cabinet Shuffle Prone to Familiar Troubles?’ *Washington Post*, 26 Dec. 1972, p. A15.

⁵⁴ Arthur Schlesinger, ‘Presidential War,’ *New York Times*, 7 Jan. 1973, p. 26.

⁵⁵ Malek, ‘Cabinet Officer Check List,’ 15 Nov. 1972, Malek Papers, Box 6, Hoover.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.* This was already starting from a low base, given that Nixon’s first secretary of the Cabinet, recalled that his first-term Cabinet meetings ‘did not amount to much’, see ‘Interview with John Whitaker, 15 Feb. 1978,’ Reichley Interviews, Box 1, GFPL.

⁵⁸ Dom Bonafede and John K. Inglehart, ‘End of Counsellor System Enlarges Policy-Forming Role of Cabinet,’ *National Journal*, Vol. 5, No. 20 (19 May 1973), p. 727.

proposed to create four new 'Super Departments' — Departments of Human Resources, Community Development, Economic Affairs, and Natural Resources to replace the existing bureaucratic agencies.⁵⁹ A Counsellor to the President would be appointed from each 'Super Department' and who would report directly to the President. This made them more important than members of the Cabinet, who were expressly told that they were 'not' to report to the President.⁶⁰ The 'Super Departments' idea had first been proposed by the President in 1971 but four different proposals each stalled in Congress.⁶¹ Emboldened by his victory, the President now believed he could introduce the concept without the need for Congressional approval.

President Nixon publicly declared that the purpose of his reorganisation strategy was to 'revitalize and streamline the Federal Government'.⁶² His public justification was that the government was 'unresponsive to the people whom it exists to serve and the Presidents whom the people elect to administer it'. The second half of the President's justification was the most important to him. The purpose of the 'Administrative Presidency' strategy was to circumvent Congress and the bureaucracy and centralise domestic political power in the White House under the 'strong control' of the President.⁶³ Such was the boldness within the White House, that one speechwriter believed that this could make Nixon the 'founder and first magistrate of a political dynasty' which would 'dominate American politics long after the President was gone'.⁶⁴

⁵⁹ For more, see Mordecai Lee, *Nixon's Super-Secretaries: The Last Grand Presidential Reorganization Effort* (College Station, 2010), p. 188.

⁶⁰ Malek, 'Cabinet Officer Check List,' 15 Nov. 1972,

⁶¹ Peter Flanigan to Nixon, 21 Jan. 1971, POF, Box 9, RNPL.

⁶² 'Statement on Executive Branch Management,' 5 Jan. 1973, Weekly Compilation of Presidential Documents, Vol. 9, No.1 (1973), p. 3.

⁶³ Fred Malek, 'Strengthening White House Personnel Leadership,' n.d., Malek Papers, Box 6, Hoover.

⁶⁴ Buchanan to Nixon, 10 Nov. 1972.

The 'Watergate Caper'

While the Administration had huge aspirations for the second term, its remaining eighteen months in office would be consumed by the enveloping Watergate scandal. While many of the famous episodes, including the 'smoking gun' tape that ultimately sealed the President's fate, occurred in 1974, the scandal plagued the Administration for the entirety of its second term. During the campaign, White House aides were already dealing with the fallout from 'the Watergate caper'.⁶⁵ Less than three weeks after Richard Nixon delivered his Second Inaugural Address, the Senate voted 77-0 to convene the Select Committee on Presidential Campaign Activities, more commonly known as the Senate Watergate Committee.⁶⁶ While the inciting incident of Watergate was the 'botched burglary' of the Democratic National Committee, the term quickly grew and came to refer to 'any and all abuses of power by the Nixon Administration' including surveillance and subterfuge on political opponents, the use of the Internal Revenue Service as a political weapon, and the proposed firebombing of the Brookings Institution.⁶⁷ As well as distracting the White House, forced resignations or firings caused by the scandal would decimate the Administration's domestic policy team, most notably with the resignations of the 'high command' of Domestic Counsellor John Ehrlichman and Chief of Staff H.R. Haldeman. The context of the scandal, and particularly its evolving and all-consuming nature, is critical to understanding the political situation in the Nixon White House, and would have devastating effects on its attempts to remake the American political system.

⁶⁵ Diary Entry: 27 June 1972, H.R. Haldeman Diaries Collection, RNPL.

⁶⁶ John F. Burby, 'Coverup is Focus as Inquiry Nears Final Stage,' *National Journal*, Vol. 6, No. 29 (1974), p.1067. The Senate would appoint as its Deputy Counsel the Administration's former Legal Services Director Terry Lenzner.

⁶⁷ John W. Dean, *The Nixon Defense: What He Knew and When He Knew It* (New York, 2015), p. 557.

Chapter IV

‘Howie Phillips and his wrecking crew’: The conservatives (try to) take the bureaucracy

An overwhelming sense of urgency engulfed the Nixon White House in the immediate aftermath of its 1972 victory. Patrick Buchanan, Nixon’s young, brash, right-wing speechwriter, wrote to the President with a plan for eliminating the Office of Economic Opportunity just three days after the election. ‘If we do not eliminate these programs now,’ Buchanan wrote, ‘they will never be eliminated’.¹ The President’s inability to ‘achieve tight control over the beast’ of OEO drove his hunger for the Administrative Presidency outlined in the introduction to Part Two.² The President’s inability to control the government’s ‘anti-poverty machinery’ was highlighted by respected columnists Rowland Evans and Robert Novak as evidence of Nixon’s ‘first-term confusion’.³ The Nixon Administration’s planned approach to the anti-poverty programmes in its second term was neatly summarised in a subtitle of Buchanan’s memorandum’s subtitle: ‘Great Society R.I.P.’⁴

The opening section of this chapter details how the Nixon Administration sought to fundamentally recast the character and complexion of the OEO bureaucracy in 1973 to enable its ‘immediate and timely demise’.⁵ This will centre Howard Phillips, the Nixon-appointed Acting Director of OEO.⁶ Unlike in the Administration’s first-term, where political appointees

¹ Patrick Buchanan to Nixon, 10 Nov. 1972, Buchanan Papers, Box 11, RNPL.

² Buchanan to Nixon, 18 Feb. 1969, POF, Box 73, RNPL.

³ Rowland Evans and Robert Novak, ‘Nixon Muzzles His OEO Head,’ *Boston Globe*, 2 March 1973, in Morrison Papers, Box 1, NEJL.

⁴ Buchanan to Nixon, 10 Nov. 1972, Buchanan Papers, Box 11, RNPL.

⁵ *Ibid.*

⁶ Historians have typically either omitted Phillips from the historical record or downplayed his importance as reflective of Nixon’s changing approach to government, see for example Donald Critchlow, *Phyllis Schlafly and Grassroots Conservatism: A Woman’s Crusade*, (Princeton, 2005), p. 210 which

were often marooned, the White House sought to change the political complexion of the broader bureaucracy. This was through the appointment of the group of conservatives who became known as Howard Phillips' 'wrecking crew'.⁷

Next, this chapter will investigate the effect that Phillips and the other political appointees to the bureaucracy had on policy. While these officials focused on 'dismantling' OEO, which is the public story, this chapter will investigate the effect that they had on the decision to continue with Legal Services and create the Legal Services Corporation.⁸ Despite the headwinds, supporters of Legal Services made significant progress in advancing the idea of a Legal Services Corporation, against the wishes of the President who deemed it 'absolutely repugnant'.⁹

The third section will examine two legal challenges, both filed in the District Court for the District of Columbia, which challenged the appointment of Phillips as well as the Nixon Administration's attempt to defund the Office of Economic Opportunity. A study of these cases will witness the full power of the emboldened public interest law movement, as well as the role

describes Phillips as merely 'a former administration official.' Another example is Godfrey Hodgson, *The World Turned Right Side up: A History of the Conservative Ascendancy in America* (Boston, 1996) whose chronicling of the conservative ascendancy features Phillips but does mention his time at the OEO.

⁷ The 'Wrecking Crew' name was first used by the *Washington Post's* Jack Anderson, see Jack Anderson, 'Howard Phillips' Hit Men at the OEO,' *Washington Post*, 17 Feb. 1973, p. B11 but became part of the terminology of the time, see Tim Robinson, 'Sole Power Held Vested in Congress,' *Washington Post*, 12 April 1973, p. A1. For how the appointees would later adopt the term as a badge of honour, see 'The Charge of the Right Brigade,' 13 June 1983, Book II, Teague Papers.

⁸ William C. Selover, 'Antipoverty Unit Quietly Dissolving,' *Christian Science Monitor*, 23 Sept. 1973, p. 1. As discussed in Chapter Two, there exists little academic work on the Legal Services Program and the Nixon Administration. Emblematic of this is Hoff, *Nixon Reconsidered*, p. 65 which states that 'a court order in 1973 prevent [Nixon] from abolishing' OEO but does not discuss anything about the suit. Hoff's description of Howard Phillips as 'inept' (p. 63) understates the difficulty of abolishing OEO. The best work on the LSP are the administrative histories written by their former Director Earl Johnson Jr., see Johnson, *Justice and Reform*, and Johnson, *To Ensure Justice for All*, 3 vols.

⁹ Oval, 498-005, 13 May 1971, White House Tapes, RNPL.

of the District Courts, wholly independent of the Executive Branch and willing to intervene on matters of public policy.

This chapter will argue that despite the sound and fury of conservatives in OEO and in the burgeoning conservative press such as *Human Events*, real power remained in the Iron Diamond, largely dooming this conservative project. Its failure was further engineered by Congress which, though treated with contempt by the Nixon Administration, was able (through the Courts) to reassert its historic role as the chief setter of domestic policy. Additionally, the organised bar, through its considered understanding of the corridors of power in Congress, was able to effect its will over the policy formulation of the Legal Services Corporation. While the results of the 1972 election might have suggested that all of these elements were marginalised, this chapter will demonstrate that they retained significant power in Washington, complicating the idea of the 'Imperial Presidency'.

Howard Phillips

No single act represented Nixon's renewed antagonism towards the War on Poverty, and his broader second-term tilt to the right, than his appointment of Howard Phillips as Acting Director of the Office of Economic Opportunity in January 1973. From Phillips' resume, it is hard to see why this appointment would be so controversial. Phillips, a Harvard graduate, had entered government service in 1969 as the Deputy Executive Director of the President's Council on Youth Opportunity. He was then hired by OEO Director Frank Carlucci as a Special Assistant before resigning to run as a Republican candidate for the House of Representatives in

1970.¹⁰ After failing to secure the seat, Phillips returned to OEO as the Director of the Office for Program Review (OPR) in October 1971.¹¹ This new division sought to ‘identify and recommend new strategies, policies, and programs for dealing with the problems of poverty in America’.¹²

The bureaucratic language masked a more sinister purpose, for Phillips was not some mainstream government bureaucrat. Rather, he was an ‘intentionally abrasive’ figure within the OEO who harboured a deep disdain for the agency, its intentions, and its actions.¹³ He was a long-time opponent of the Legal Services Program, which he regarded as containing ‘heavy involvement by radical elements’ frequently acting ‘in clear violation of the law’.¹⁴ This antipathy was well known by LSP lawyers at the time.¹⁵ A legal aid advocate, and former Harvard classmate, wrote of Phillips that ‘there is truly no one I have known of whom I think less’.¹⁶ Since his appointment as Director of OPR, reams and reams of memoranda had flowed between Phillips and senior bureaucrats, questioning both individual line items in grant appropriations as well as the broader philosophy that underpinned the whole poverty program.¹⁷ In his background vetting for the Acting Directorship by the Federal Bureau of Investigation, an OEO colleague aptly summarised his role. Phillips, the unnamed source described, was nominally a

¹⁰ Howard Phillips, Response to ‘White House Personnel Operation,’ 6 Oct. 1971, Malek Papers, Box 7, Hoover.

¹¹ Press Release, ‘Howard Phillips Named to Head New OEO Office of Program Review,’ 18 Oct. 1971, RG381, Sanchez Files, Box 6, NARA II.

¹² *Ibid.*

¹³ Evans and Novak, ‘Nixon Muzzles His OEO Head’.

¹⁴ Phillips to Alan MacKay, 11 Feb. 1972, Gergen Papers, Box 99, RNPL.

¹⁵ Interview with Hulett H. Askew, 22 July 2002, Georgia Government Documentation Project, <https://digitalcollections.library.gsu.edu/digital/collection/ggdp/id/5498/> (30 March 2020).

¹⁶ Neal Johnston to Whitney Seymour, 23 Feb. 1973, Seymour Papers, Box 134, NYPL.

¹⁷ For example, see Phillips to Tetzlaff, 3 Apr. 1972; Phillips to Tetzlaff, 22 May 1972; Phillips to Roy Batchelor, 22 May 1972; Phillips to Tetzlaff, 30 May 1972; all in Gergen Papers, Box 100, RNPL.

‘watchdog for the OEO’ but ‘most people at OEO were under the impression that Phillips was a watchdog for the White House’.¹⁸

Phillips’ willingness to be a public and internal critic of the poverty programme cannot be overstated. While serving as Director for Program Review, Phillips gave a caustic – and public – review of the poverty program, arguing that it had been ‘dominated by radical polemicists who, rejecting our Western cultural heritage have sought to advance neo-Marxist notions of rigid, class-structured society’.¹⁹ He claimed that he had ‘example after example’ of OEO funds being used ‘to subsidise self-appointed para-governments’.²⁰ Representing OEO while giving the commencement address at Burdett College in Massachusetts, Phillips decried the bureaucracy’s ‘tendency to elitism and non-accountability’ which he said had led to ‘confusion, frustration, and ... amoral corruption’.²¹ The ‘power of elected officials’ was so weak, Phillips told his audience, that ‘representative authority is transformed into a facade which conceals the diminution of individual liberty’. Nothing could be further from the commencement address typically given by senior OEO officials.²² The rhetorical revolution at OEO was well underway.

Phillips’ suitability for the Acting Directorship was debated in the White House. He came with the endorsement of Nixon ‘hatchetman’ Charles Colson, who believed Phillips to be ‘highly

¹⁸ Federal Bureau of Investigation, Special Inquiry of Howard J. Phillips, 21 December 1972, *Archive.Org*, https://archive.org/details/foia_Phillips_Howard_J._HQ-1, (1 Feb 2018).

¹⁹ Howard Phillips, ‘Remarks prepared for Delivery on Feb. 7 1972,’ RG381, Sanchez Files, Box 6, NARA II.

²⁰ *Ibid.*

²¹ ‘Remarks delivered by Howard Phillips, Associate Director for Program Review ... Commencement Exercises, Burdett College,’ 29 June 1972, RG381, Sanchez Files, Box 6, NARA II.

²² For example, then-OEO Director Sargent Shriver, just five years earlier, delivering the commencement address at Muhlenberg College had told the audience that OEO was ‘helping to create a new kind of humanism in America’ and praised those who worked in OEO programmes ‘not to become better off, but to become better’. Sargent Shriver, ‘Commencement Address at Muhlenberg College,’ 4 June 1967, *Sargent Shriver Peace Institute*, <http://www.sargentshriver.org/speech-article/commencement-address-at-muhlenberg-college> (24 Jan. 2018).

intelligent, capable, and [a] confident administrator'.²³ Frank Carlucci, his old boss, endorsed Phillips but noted that he 'holds very strong philosophical views with which others do not always agree'.²⁴ There was initial scepticism over Phillips' merits from the Personnel shop. OMB's Fred Malek was wary of Phillips. Malek warned Haldeman of his 'severe doubts as to [Phillips'] ability to assume the out-front role' required of a Director.²⁵ Malek added that Phillips' caustic personality had made him 'some vocal enemies on the Hill', but emphasised that he was 'loyal to the President' and would be 'responsive to White House directions'.²⁶ Phillips would not be like previous Directors of OEO who had been captured by their departments.²⁷

After the announcement of his appointment on 28 January 1973, Phillips moved quickly to implement his orders from the Administration to 'clos[e] down the agency'.²⁸ He publicly and proudly boasted of these instructions at any opportunity.²⁹ Such was his enthusiasm that the *Washington Post* said it seemed that Phillips 'would take on the job for free if they don't want to pay him'.³⁰ Phillips' zealotry led the columnists Evans and Novak to describe Phillips' campaign as 'an ideological holy war'.³¹

Phillips caused shockwaves at OEO headquarters when on 31 January, three days after his appointment, he issued a series of five memoranda. These memoranda would shatter the power structure, functionality, and morale of OEO headquarters. Phillips vested himself with all decision-making power (removing it from deputy and regional directors), ordered that all Legal

²³ Safire, *Before the Fall*, p. 17; FBI, Howard Phillips Investigation.

²⁴ *Ibid.*

²⁵ Malek to Haldeman, 4 Dec. 1972.

²⁶ *Ibid.*

²⁷ Buchanan to Haldeman, 14 Jan. 1971

²⁸; Jerry Jones to Alexander Haig, 2 Aug. 1973, Haig Papers, Box 3, LOC.

²⁹ Lou Cannon, 'OEO Chief Savors Shutdown,' *Washington Post*, 4 Feb. 1973, p. A1.

³⁰ David Broder, 'Sacrificing Legality for Efficiency,' *Washington Post*, 2 Feb. 1973, p. A18

³¹ Evans and Novak, 'Nixon Muzzles His OEO Head,'

Services Programs could only be funded in 30-day allotments, and mandated a freeze on hiring and promotions throughout OEO.³² Phillips also announced, in line with the Federal Government's FY1974 budget released the same day, that the Nixon Administration was not requesting any funding for OEO and it would therefore cease operation at the end of the financial year, 30 June 1973.³³ With these acts, Phillips was boldly and brashly declaring a 'ceasefire in the War on Poverty'.³⁴

Phillips was an instrument of OEO's defunding, not its originator. In early January, prior to Phillips' appointment, Deputy Director of the Office of Management and Budget, Frank Carlucci, the former OEO Director, wrote to White House Domestic Advisor John Ehrlichman, outlining the plan for OEO to cease operation from 1 July 1973.³⁵ Carlucci's plan was cleverly designed. Knowing that the poverty programme had a strong constituency in Congress, as demonstrated in Chapters Two and Three, Carlucci designed 'complicated implementing procedures ... designed to minimise to the extent possible the Congress' opportunity to challenge the decision'.³⁶ What the Administration wanted was no Congressional involvement, merely to 'present [them]... with a virtual *fait accompli*'.³⁷ This plan sought to achieve the 'swift and successful dismemberment' of OEO.³⁸ The White House believed, once again, that it could circumvent the Congress on domestic policy issues.

³² Proposed Elimination of OEO and Related Legislation: Hearings before the Subcommittee on Equal Opportunities of the Committee on Education and Labor, House, 93rd Cong. 75-77 (1973).

³³ *The Budget of the United States Government*, Fiscal Year 1974 (Washington DC, 1974), p. 122. Kermit Gordon, of the Brookings Institution, noted that this budget was 'a striking exception' to the rule that 'in any one year, presidents seldom propose major changes in the scope and role of the federal government', see Brookings Institution, *Setting National Priorities: The 1974 Budget* (Washington D.C., 1973), p. vii.

³⁴ 'Phillips' to Assistant, Associate, and Regional Directors, 2 Feb. 1973, Morrison Papers, Box 1, NEJL. Jules Witcover in the *Washington Post* would describe this as a parody produced by OEO bureaucrats, see Witcover, 'Fear, Rumours Plague Staff,' *Washington Post*, 17 Feb. 1973, p. A1.

³⁵ Frank Carlucci to Ehrlichman, 17 Jan. 1973, FG6-7 Files, Box 2, RNPL

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ 'OEO: Cato Strikes by Night,' *Washington Post*, 22 Feb. 1973, p. A18.

Legal Services

Hating OEO in general, Phillips possessed a particular disdain for the Legal Services Program. The program, he claimed was 'rotten and it will be destroyed'.³⁹ Conservatives in the Administration feared the LSP because it 'of all the OEO programs, [was] the one most capable of fundamentally altering America'.⁴⁰ This consistent agonising was due to the significant legal victories that LSP lawyers continued to rack up across 1971 and 1972.⁴¹ For example, in *Tate v. Short*, Legal Services lawyers had successfully overturned a Texas law that people's fines could be converted into jail time if not paid on time. In the case at the heart of the litigation, a man had been sentenced to 85 days labour on a prison farm for failure to pay \$425 in traffic fines.⁴² Their victory, the LSP reported, had 'prevented the imprisonment of many poor persons convicted of minor offenses'.⁴³ The *Tate* decision forced 47 states to change their practice, often to the consternation of local authorities.⁴⁴

Another example was the success of LSP lawyers in the *Fuentes v. Shevin* judgment, handed down by the Supreme Court in June 1972. In this case, the court held that the Florida and Pennsylvania's replevin statutes – concerning the repossession of goods for non-payment – were illegal unless the defendant received due process in a court of law.⁴⁵ Both of the cases involved

³⁹ *Ibid.*

⁴⁰ Anonymous memo cited in Anderson, 'Howard Phillips' Hit Men at the OEO,' p. B11.

⁴¹ Examples from Tetzlaff to Sanchez, 19 Sept. 1972; Fred Speaker, 'Camden Legal Services,' 20 Jan. 1972, both in RG381 Sanchez Files, Box 4, NARA II.

⁴² Tetzlaff to Sanchez, RG381, Sanchez Files, Box 4, NARA II; Carl F. Bianchi, 'Effects of Progressive Court Administration on Legal Services and the Poor in New Jersey,' *Clearinghouse Review*, Vol. 5, No. 2 (1972), p. 734.

⁴³ *Ibid.*

⁴⁴ Ronald Goldfarb, 'Closing America's Debtor Prisons,' *Washington Post*, 14 March 1971, p. D6; Ed Kohn, 'Decisions Cause Problems,' *Delta Democrat-Times* (Greenville, Mississippi), 17 Feb. 1974, p. 3.

⁴⁵ Howard Reben and Robert Mittel, 'Implementing Supreme Court Decisions,' *Clearinghouse Review*, Vol. VI, No. 6 (1972), p. 314; William H. Gardner, '*Fuentes v. Shevin*: The New York Creditor and Replevin,' *Buffalo Law Review*, Vol. 22, No. 1 (1972), pp. 17-44.

the failure to make payments on household goods as part of an instalment plan.⁴⁶ It was even the case, under many state's laws, that purchasers could have made nearly all payments, then have the items repossessed for failing to make one of the final payments.⁴⁷ These laws were on the books across the country, and the *Fuentes* decision forced a change, for example, in Illinois, where replevin had been legal since 1874.⁴⁸ *Fuentes v. Shevin* built off the case law developed in another LSP-led decision, *Boddie v. Connecticut*, which provided that poor people must be granted a divorce hearing even if they could not afford the court fees.⁴⁹ These due process cases greatly expanded access to the courts to the poor and demonstrated how different Legal Services-won decisions ratcheted off each other.

Legal Services under Phillips

The White House recognised that Phillips alone would not be able to control the bureaucracy and a renewed effort to control the bureaucracy was prescribed. Buchanan, writing to the President, suggested that the 'conspicuous removal... of all appointees who resisted the philosophical direction of the Administration would be perhaps the single most beneficial act we could perform to guarantee a successful four years in domestic policy'.⁵⁰ 'A housecleaning of the bureaucracy, coupled with a massive transfer of politically disloyal civil servants,' was 'essential for a successful second Administration,' Buchanan wrote. This was implemented to the strongest degree with the Office of Economic Opportunity.

⁴⁶ Judy Ronzio, 'Order to Aid Area Consumer,' *Edwardsville Examiner* (Edwardsville, Illinois), 24 July 1972, p. 1.

⁴⁷ *Ibid.*

⁴⁸ Mark Spencer, 'Writ of Replevin, Having Writ Since '74, Moves On,' *Pantagraph* (Bloomington, Illinois), 21 July 1973, p. 8.

⁴⁹ John Droney, 'The Specter of State Action in Self-Help Repossession,' *Connecticut Law Review*, Vol. 4, No. 2 (1972), p. 295.

⁵⁰ Buchanan to Nixon, 10 Nov. 1972, Buchanan Papers, Box 11, RNPL.

It is unsurprising, then, given the successes that the Legal Services Program had achieved, and the special hatred held for the programme by conservatives, that the first victim of Phillips' hatchet was the LSP Director. Significantly, and seeming to confirm the suspicions of many in the Nixon White House that their first-term appointment procedures had been sub-par, the terminated Director, Theodore Tetzlaff, was no Johnson holdover but a Nixonian appointee.⁵¹ In fact, Tetzlaff had been appointed in February 1972 on the advice of key conservatives both inside and outside the Administration, including speechwriter Pat Buchanan, Attorney General John Mitchell, Vice President Spiro Agnew and California Governor Ronald Reagan.⁵² This was because of their extreme opposition to the appointment of the alternative candidate, Dan Bradley.⁵³ The perceived error in his appointment could be attributed to a lack of first-term domestic policy focus by the Administration. In various memoranda regarding his appointments, he was referred to as "Tetzlaff", "Tezetla", and "Tetzlo".⁵⁴ The termination of Tetzlaff on 13 February, less than a month into the President's new term, was clear evidence of an Administration which was eager to exercise stricter control over the Legal Services Program in its next term.⁵⁵

No explanation was given for Phillips' action other than the general animosity between the two men. In fact, it was reported by Phillips to OEO employees that Tetzlaff had resigned, though Tetzlaff made it clear to Legal Services advocates that he was fired.⁵⁶ Tetzlaff was representative of the institutionalised Legal Services Program that Phillips despised so much. He had entered the LSP straight out of Yale Law School through the OEO's Reginald Herber Smith Fellowship,

⁵¹ Memorandum for the record, Tod Hullin, 10 Feb. 1972, FG6-7 Files, Box 2, RNPL.

⁵² *Ibid.*

⁵³ Bradley was described by Richard Nordahl as 'a real enemy' and the 'head of anti-Nixon forces in Georgia', see Nordahl to Kenneth Cole, 10 Feb. 1972, FG6-7 Files, Box 2, RNPL.

⁵⁴ *Ibid.*, Tod Hullin, Memorandum for the Record, 10 Feb. 1972.

⁵⁵ William Greider, 'OEO Legal Services Chief Ousted,' *Washington Post*, 13 Feb. 1973, p. A2.

⁵⁶ Phillips to All OEO Employees, 12 Feb 1973, Corbett Papers, Box 12, NEJL; Action for Legal Rights, 'Washington Report,' 16 Feb. 1973, Freedman Papers, Box 1, NEJL.

which recruited high-performing law graduates to the LSP.⁵⁷ After service in the field, Tetzlaff then went to Washington to work under Fred Speaker as Deputy Director of the LSP. Tetzlaff was also a long-term supporter of the Legal Services Corporation concept of which Phillips and conservatives so vehemently opposed.⁵⁸ Following his dismissal, Tetzlaff pledged to work against Phillips and his attempts to ‘jeopardise ... the continued existence of the nation’s legal services program for the poor’.⁵⁹

Enter the Wrecking Crew

As important as the termination of Tetzlaff was the naming of his successor. The failure to properly select new recruits had been highlighted as a failure of the Administration’s first-term approach to the bureaucracy. Buchanan’s staffing memo emphasised not just the need to dismiss disloyal bureaucrats, but the utmost importance of replacing them with demonstrably *loyal* replacements. Buchanan told the President that there was ‘an over-riding need... to create a new “cadre” of Republican governmental professionals who can survive this Administration and be prepared to take over future ones’.⁶⁰

To such a sensitive assignment as the Directorship of the LSP, Phillips turned to J. Laurence McCarty. McCarty, 38 and presently serving as Acting Associate Director for Administration at OEO, was one of Phillips’ ‘closest advisers’.⁶¹ Demonstrating his strong conservative credentials, prior to joining OEO McCarty had served as Chairman of the Conservative Party in

⁵⁷ Author’s interview with Theodore R. Tetzlaff, 31 Jan. 2018. For more on the ‘Reggie’ programme, see Johnson, *Justice and Reform*, pp. 179-80.

⁵⁸ *Ibid.*

⁵⁹ ‘A Letter to ALR from Ted Tetzlaff,’ 16 Feb. 1973, Freedman Papers, Box 1, NEJL.

⁶⁰ *Ibid.*

⁶¹ ‘OEO Leaders Share Common Backgrounds,’ *National Journal*, Vol. 5, No. 16 (1973), p. 572; Phillips to All OEO Employees, 13 Feb. 1973.

Massachusetts and Treasurer of the American Conservative Union.⁶² The selection of McCarty caused consternation in Republican circles as McCarty had sought to solicit a Conservative Party challenger to sitting Republican Senator Edward Brooke in the 1972 election.⁶³ McCarty was described by an ideological ally as the Administration's first LSP Director who 'was genuinely committed to reshaping the Program along more conservative lines'.⁶⁴

The 'new cadre' was not just one individual here or there, but an attempt to change the complexion of the entire OEO. The main reservoir for these new OEO recruits was the conservative activist group Young Americans for Freedom which Howard Phillips had founded in 1960.⁶⁵ Beginning in 1961, YAF had grown exponentially since and by 1973 counted over 60,000 members in over 500 chapters.⁶⁶ By 1967 they were already considered to be part of the 'far right' or 'radical right'.⁶⁷ YAF are an interesting marker in Nixon's relationship with the Conservative movement. In his first-term, Nixon had described the YAF as 'useless'; YAF, in turn, had excoriated him for his domestic policies and rapprochement with China.⁶⁸ Heading towards the second term, the President saw them as a useful ally to reach out to the right and they saw him as their best access to the corridors of power.⁶⁹

⁶² Jeffrey P. Hart, 'Dismantlers of OEO,' *The Herald*, 1 March 1973, in Morrison Papers, Box 1, NEJL.

⁶³ Richard E. Cohen, 'Courts Act as Ally To Congress in Battle with President Over Spending,' *National Journal*, Vol. 5, No. 16 (1973), p. 572.

⁶⁴ 'Why the Administration Should Appoint a Legal Services Director Now,' n.d., Corbett Papers, Box 2, NEJL.

⁶⁵ 'Biography – Howard Phillips,' Conservative Caucus Papers, Series 2, Box 2, Falwell Library. For more background on Young Americans for Freedom, see Gregory L. Schneider, *Cadres for Conservatism: Young Americans for Freedom and the Rise of the Contemporary Right* (New York, 1999), as well as the YAF's self-penned history, 'Rebels with a Cause,' Jan. 1978, YAF Papers, Box 41, Hoover.

⁶⁶ Charles Baker, 'YAFers Take Over at OEO,' *Homefront*, Vol. 8, No. 3 (March, 1973), p. 11 in Morrison Papers, Box 1, NEJL.

⁶⁷ 'Who's Who on the Radical Right,' *Homefront*, May 1967 in ACLU Papers, Series 4, Box 1271, Princeton.

⁶⁸ Nixon to Haldeman, 2 March 1970, WE Files, Box 1, RNPL; 'A Declaration Relating to President Nixon,' 1971, YAF Papers, Box 31, Hoover; L.A. Smith, 'Nixonomics,' *New Guard*, Vol. 11, No. 8 (1971), p. 12.

⁶⁹ Baker, 'YAFers Take Over at OEO,' p. 11.

McCarty was one of over two-dozen conservatives hired by OEO. Randal Teague, the former YAF Treasurer, was brought in as the Deputy Assistant for Operational Activities. Daniel Joy, the former editor of the YAF magazine *New Guard*, replaced Phillips as Acting Associate Director for Program Review.⁷⁰ J. Alan MacKay, another nemesis of the liberal Republican Edward Brooke, was hired in as General Counsel.⁷¹ Others with strong conservative credentials included Ron Fuller, a campaign adviser to Vice President Agnew, and John Schrote, legislative assistant to Goldwaterite Congressman Donald ‘Buzz’ Lukens.⁷² Many of these men had worked together on the Conservative Party Senate campaign of James Buckley in New York in 1970.⁷³ News of this attempted stacking of OEO reached public attention, with the *Washington Herald* describing the scenes at OEO thus:

‘You begin to feel that every time you open a door there you are going to find some former president of YAF or some erstwhile aide to Spiro Agnew or Sen. James Buckley... firing people!’⁷⁴

These men – and they were all men – were at the core of the ‘new cadre’ within OEO.⁷⁵ Such was the degree of bureaucratic change that the Ripon Society, a liberal Republican forum, suggested a better name for the agency would be the ‘Office of Conservative Opportunity’.⁷⁶

⁷⁰ Hart, ‘Dismantlers of OEO’. *New Guard* was ‘particularly critical of Great Society programs as examples of wasteful spending’, see Schneider, *Cadres for Conservatism*, p. 147.

⁷¹ Cohen, ‘Courts Act as All To Congress in Battle with President Over Spending,’ p. 571.

⁷² Hart, ‘Dismantlers of OEO’. For Lukens’ conservative credentials, see Geoffrey Kabaservice, *Rule and Ruin: The Downfall of Moderation and the Destruction of the Republican Party, from Eisenhower to the Tea Party* (Oxford, 2012), p. 301.

⁷³ Author’s interview with Randal Teague, 23 Aug. 2018.

⁷⁴ Hart, ‘Dismantlers of OEO’.

⁷⁵ Evidence on the number of women employed in OEO is difficult to locate. At this time, women held approximately 34 per cent of jobs in the federal workforce, though these were concentrated in the lower pay grades – for example, women made up 82.6 per cent of GS6-8 but only 3.8 per cent of GS16-18, Harry Kranz, *The Participatory Democracy* (Lexington, 1976), p. 141.

⁷⁶ ‘Politics: Reports,’ *Ripon Forum* Vol IX, No. 5 (March, 1973), p. 17.

The conservative political appointments were true believers: Howard Phillips told *NBC News* with fervour that ‘I really believe in the rightness of what I’m doing’.⁷⁷ They connected their specific role to the President’s broader agenda, with Randal Teague observing that ‘if we fail in our tasks, it will be virtually impossible for the President to succeed in his other missions’.⁷⁸ What the new hires wanted to do is best summed up in a document produced by Teague entitled ‘The Office of Economic Opportunity: What is to be Done?’.⁷⁹ The manifesto decried OEO as ‘an impediment to the Administration’s objectives’ and claimed that it aided ‘the political movements which constitute the major opposition to the President’s programs’.⁸⁰ Teague accused the OEO bureaucracy of being beholden to ‘the poverty-consultancy complex’ and not respecting ‘the mandate given in 1968 to reform substantially and substantively the social programs of the Great Society’.⁸¹

The ‘new cadre’ revelled in punishing and goading the bureaucrats of OEO. In a bid to decimate morale, Phillips announced a ban on ‘outstanding performance awards’ for career civil servants and declared that no more annual leave would be authorised.⁸² Memoranda particularly targeted the LSP. They disparaged the ‘radicalism’ of the LSP’s Reginald Herber Smith Fellowship, of which LSP advocates took such great pride, as well as attacking the ‘Antioch “non-structured law school”’ of LSP co-founders Jean and Edgar Cahn.⁸³ Their abrasiveness was also evident in their references to career civil servants as ‘they’.⁸⁴ The conservatives treated the career employees with

⁷⁷ ‘Acting Office of Economic Opportunity Director Howard Phillips...’ 17 Feb. 1973, *NBCUniversal Archives*, <https://www.nbcuniarchives.com/asset/219597> (24 March 2020).

⁷⁸ Randal Teague to Frederick Will, 21 Feb. 1973, Book II, Teague Papers.

⁷⁹ Randal Teague, ‘The Office of Economic Opportunity What is to be Done?’ Nov. 1972, Book II, Teague Papers; Author’s interview with Randal Teague.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Phillips to All Assistant, Associate, and Regional Directors, 31 Jan. 1973, Book II, Teague Papers.

⁸³ ‘Re: The New Legal Services,’ n.d., Corbett Papers, Box 2, NEJL. For more on Antioch’s relationship with the OEO, see Nordahl to Krogh, 14 Nov. 1972, Krogh Papers, Box 10, RNPL.

⁸⁴ Teague to Alvin Arnett, 17 May 1973, Book II, Teague Papers.

such suspicion, they even went so far as to remove the ribbons from their typewriters at the end of the evening so that their memoranda could not be reproduced by bureaucrats or their allies in the unions.⁸⁵

These changes to the bureaucracy were not unquestioningly accepted by supporters of the poverty program. In Congressional hearings, New York Congresswoman Shirley Chisholm pressed Phillips for a list of all former Young Americans for Freedom members who had been employed by him at OEO, prompting Phillips to quip that the agency contained more former members of the Students for a Democratic Society than the YAF.⁸⁶ In a more measured tone, he told the Committee that he would 'object to subjecting any individual ... to screening on the basis of his organizational ties', claiming that he prized ability over ideology.⁸⁷ YAF returned fire at Chisholm, labelling her line of questioning 'McCarthyism Chisholm-Style' in its newsletter.⁸⁸

The New Cadres' Impact

The release of a Government Accountability Office (GAO) report in February 1973 provided a useful case study of the influence of Howard Phillips at OEO. When the report delivered a positive assessment of OEO, and particularly the LSP, the new cadre sought to discredit it, condemning both the report's conclusion and its 'study method'.⁸⁹ The Community Action

⁸⁵ Author's interview with Randal Teague.

⁸⁶ Proposed Elimination of OEO and Related Legislation, Hearings, p. 305. The SDS was one of the more 'radical' New Left groups of the 1960s, see Godfrey Hodgson, *America In Our Time: From World War II to Nixon – What Happened and Why* (Princeton, 2005), pp. 278-82.

⁸⁷ *Ibid.*

⁸⁸ Cartoon, 'McCarthyism Chisholm Style,' *YAF in the News*, March 1973, YAF Papers, Box 71, Hoover.

⁸⁹ Morgan Doughton, 'Observations Regarding 'Utilising Test Data Based on 591 CAAs'', 19 Feb. 1973, Taft Papers, Box 156, LOC.

Agencies, they charged, had ‘become yet another level of over-staffed bureaucracy’ and recommended that their operation be turned over to the states.⁹⁰ Conservative Senator Jesse Helms (R-NC) read the entire report by Phillips appointee Morgan Doughton into the *Congressional Record* and emphasised that its findings had come ‘out of OEO’s own Program Evaluation Office’ and was ‘based upon actual data from within the OEO system’, trying to turn the OEO’s credibility on itself.⁹¹

The GAO Report also highlighted the importance of the conservative press in supporting the Administration’s efforts to defund OEO as Helms leaked the initial GAO assessment to the conservative journal *Human Events*.⁹² During the first-term, Nixon did not have much time for *Human Events*, describing it in 1972 as part of the ‘nut right’ rather than the ‘responsible right’.⁹³ Now, by contrast, he realised the effectiveness of the publication in shoring up support on his right flank.⁹⁴

The Administration had long been preparing its communications strategy to deal with any push-back at its attempts to kill OEO. The President personally directed that some ‘good, sharp anecdotes’ should be found of the ‘horrible examples’ of OEO largesse, which he believed ‘scattered among the Congress and among our surrogates will do more good than tons of lofty rhetoric’.⁹⁵ In February 1973, Deputy Press Secretary Ken Clawson forwarded on to his boss, Ron Ziegler, ‘material relating to the use of Federal funds for illegal activity by OEO staff

⁹⁰ *Ibid.*

⁹¹ 93 *Cong. Record* 5630 (1973).

⁹² ‘Secret GAO Report Shows Scandalous OEO Waste,’ *Human Events*, 17 March 1973, p. 3.

⁹³ Oval Office, 691-005, 21 March 1972, White House Tapes, RNPL.

⁹⁴ *Ibid.*

⁹⁵ Nixon to Ehrlichman, 14 Mar. 1973, POF, Box 4, RNPL.

members'.⁹⁶ These 'bona fide examples of the warts on OEO,' Clawson wrote, would 'justify some of our reasons for cutbacks'. Clawson's project was part of a broader effort by the White House speechwriting team in the second term to maintain a catalogue of 'horror stories' on government programs.⁹⁷ These stories of perceived or real criminal activities were then repeated by conservative politicians and the conservative press, particularly *Human Events*.⁹⁸

As well as installing this 'new cadre,' the Administration also kept a tight focus on remaining bureaucrats, sceptical of the subaltern influence of the 'old hands'. One of the reasons that Phillips was chosen for the Directorship was that he knew 'who the players [were]' among what the President termed 'that damned OEO bureaucracy'.⁹⁹ This tight focus was evident in an April 1973 memo which listed all 57 'Schedule A' lawyer appointments in OEO.¹⁰⁰ Schedule A bureaucrats were political appointees with a specific technical skill.¹⁰¹ For the LSP, they provided specialised legal knowledge and comprised approximately one quarter of the OEO Headquarters staff.¹⁰² This list was circulated in the White House and annotated with asterisks to denote 'bad guys'. Listing fourteen of the fifty-seven as 'bad guys', it included prominent members of the LSP including Ted Teztlaff and Constance Dupre. Dupre has featured previously in this dissertation as she was the author of the 'Possible Alternatives' memo which first suggested a Legal Services Corporation and was one of the OEO bureaucrats dispatched by Terry Lenzner to lobby Congress for the agency's extension in 1969. Only two of the fourteen 'bad guys' were

⁹⁶ Kenneth Clawson to Ronald Ziegler, 23 Feb. 1972, FG6-7 Files, Box 2, RNPL.

⁹⁷ See nine folders entitled 'Horror Stories: OEO' in Gergen Papers, Box 99, RNPL.

⁹⁸ For example, see 'Scandal Stories Illustrate Why OEO Must be Junked,' *Human Events*, 24 March 1973, p. 1. The article concludes: 'More atrocity stories abound, of course, and that's why the White House has decided to eliminate OEO', p. 6.

⁹⁹ Oval, 765-012, 8 Aug. 1972, White House Tapes, RNPL.

¹⁰⁰ Stanley Armstrong to Paul Gomery, 2 Apr. 1973, FG6-7 Files, Box 2, RNPL.

¹⁰¹ Thomas P. Murphy, *Inside the Bureaucracy: The View from the Assistant Secretary's Desk* (London, 2019), pp. 17-8.

¹⁰² Legal Services Corporation Act, Senate Report No. 93-495, in RG46, Senate Labor and Public Welfare Committee Bill Files, Box 10, NARA I.

known Democrats. The conservatives were beginning to see ‘moderate-to-liberal’ Republicans as even more the enemy than the other party.¹⁰³ It also highlights one of the practical barriers to the Phillips project: his appointees were dwarfed not just by career bureaucrats but by Schedule A appointees whose specialised skills were unlikely to be found among YAF apparatchiks.

One particular target of the ‘new cadre’ was the LSP’s fifteen back-up centres. These centres were aligned with major universities’ law schools and conducted specialised research into an area of poverty law.¹⁰⁴ This research was then widely shared with other Legal Services lawyers around the country. For example, the Center for Social Welfare Policy and Law, based at Columbia University, undertook detailed legal research into welfare issues. This was the organisation associated with the legal challenges to the Food Stamp entitlement discussed in Chapter One. Because of their close association with law reform efforts, back-up centres were a target of conservative ire and Phillips moved immediately to close down all fifteen.¹⁰⁵ Marshall Boarman was tasked with ‘prepar[ing] a rationale for phasing them out’. Boarman accused the back-up centres of performing actions which were ‘clearly improper on constitutional and public policy grounds’ and of producing ‘advocacy-oriented reform’.¹⁰⁶

Attempts to shut down the back-up centres were not taken lying down by the ‘old line’ bureaucracy. Constance Dupre, listed as a ‘bad guy’ in the previously referenced document, fired back a memo at Boarman. Dupre dismissively wrote that Boarman’s paper ‘attempts to make a

¹⁰³ Buchanan to Charles Colson and Ehrlichman, 11 Feb. 1972, FG6-7 Files, Box 2, RNPL.

¹⁰⁴ Proposed Elimination of OEO and Related Legislation, Hearings, p. 647.

¹⁰⁵ Marshall Boarman to J. Laurence McCarty, 13 Feb. 1973, Morrison Papers, Box 1, NEJL. *Human Events* termed them “‘left wing’ think tanks’, see ‘New OEO Head Caving in to Liberal Pressure,’ *Human Events*, 21 July 1973, p. 5.

¹⁰⁶ Boarman, ‘The Problem of Backup Centers,’ n.d., Morrison Papers, Box 1, NEJL.

number of distinctions which are not valid in the context of what lawyers actually do'.¹⁰⁷ For Dupre, 'the research and advocacy functions' were 'not separable'.¹⁰⁸ Dupre strongly supported the continuance of durable back-up centres which were able to assist with advocacy and with the 'drafting of legislation or of administrative regulations'.¹⁰⁹ In order to justify his cuts, Boarman had ordered evaluations of the back-up centres. The legal community, tasked by OEO with investigating the centres, rallied around these projects. One Judge praised their 'extremely worthwhile contribution' to the practice of the law as 'the bargain of a lifetime'.¹¹⁰ Another evaluator described the work at one back-up centre as comparable to 'the largest and most respected firms in the private sector'.¹¹¹ The continuance of these back-up centres was strongly supported by the American Bar Association.¹¹² 'Old hands' in the OEO were able to slow-walk the orders and the back-up centres continued.¹¹³

The Legal Services Corporation

Against the background of this chaos and the restructuring of the bureaucracy, advocates of Legal Services were carefully and determinedly working to turn the programme into a permanent Legal Services Corporation. Importantly, this project included figures within the White House and the bureaucracy, neither of which had been totally subsumed by conservatives (when surveyed in 1976 nearly 70 per cent of career executives in the civil service assumed their posts

¹⁰⁷ Dupre, 'Comments on Backup Center Papers,' n.d., Morrison Papers, Box 1, NEJL.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ 93 *Cong. Record* 15008 (1974).

¹¹¹ *Ibid.*

¹¹² Robert Meserve, 'President Meserve Warns...' *Washington Letter*, Vol. 9, No. 2 (1973), p. 1 in Seymour Papers, Box 134, NYPL.

¹¹³ McCarty to Alfred Corbett, 12 April 1973, Corbett Papers, Box 7, NEJL.

prior to 1968).¹¹⁴ The Corporation concept also had strong support out in the field. A report conducted by the American Bar Association found that 91 per cent of Legal Services lawyers believed that the LSP should be ‘spun out’ of OEO and over 60 per cent believed that the best place was an ‘independent or quasi-independent entity’.¹¹⁵

Legal services advocates were eager for the Program to evolve to a Corporation to avoid precisely the drama that they had been witnessing since the failure of *S. 2007*. This bill was the initial version of the Economic Opportunity Amendments of 1971 which had included the provision for the creation of a Legal Services Corporation. The President had vetoed this bill over concerns for other measures in the bill, namely the Child Development Programs.¹¹⁶ Despite the President’s initial wish for a subtle veto message, the finished product crafted by conservatives in the White House was correctly described by legal services advocates as ‘bitter, misleading, and ill-founded’.¹¹⁷ The situation had only worsened since the appointment of Phillips, with one legal services advocate describing the programme during 1973 as being in ‘complete turmoil’.¹¹⁸ To mitigate this, the National Legal Aid and Defender Association, amongst other actors in the organised bar, sought to remove the LSP from the ‘leaky craft of OEO, afloat upon troubled administrative waters, and under attack by men in high office’ and have it placed in a permanent and independent Corporation.¹¹⁹

¹¹⁴ The efforts of Leonard Garment, in particular, contradict Hoff’s assertion that ‘not a single White House staffer’ thought that LSP lawyers ‘should be a party to litigation against executive branch,’ Hoff, *Nixon Reconsidered*, p. 61; Richard Cole and David Caputo, ‘Presidential Control of the Senior Civil Service: Assessing the Strategies of the Nixon Years,’ *American Political Science Review* Vol. 73, No. 2 (1979), pp. 399-413.

¹¹⁵ ‘The Corporation for Legal Services: A Proposal,’ 8 Jan. 1971, RG381, Subject and Litigation Files, Box 10, NARA II.

¹¹⁶ Oval Office, 016-044, 8 Dec. 1971, White House Tapes, RNPL.

¹¹⁷ Joan Hoff, *Law, Gender, and Injustice: A Legal History of U.S Women* (New York, 1994), p. 485; Michael Kantor, ‘To the Editor,’ 10 Dec. 1971, Rhudy Papers, Box 1, NEJL.

¹¹⁸ Author’s interview with Alan Houseman, 24 March 2015.

¹¹⁹ William Klaus, ‘The Legal Services Program in a New Era,’ *NLADA Briefcase* 235 (1972) p. 31, Morrison Papers, Box 1, NEJL.

The renewed push to create a Legal Services Corporation was not entirely new. Rather, it had been instigated a year earlier in response to heightened signals coming out of the White House throughout 1972. Nixon's bombastic Vice President, Spiro Agnew, had become an even more vocal opponent of the LSP, having intervened in a dispute over the Camden Regional Legal Services Program that saw the previous LSP Director resign in protest.¹²⁰ Agnew's speech at the Texas Bar Association in 1972 deeply troubled Legal Services advocates. In the speech, Agnew attacked the LSP as 'a systematic effort to redistribute social advantage' run by 'ideological vigilantes' who performed 'tax-funded social activism'.¹²¹

Little observable action occurred about the creation of a Legal Services Corporation across 1972. The National Legal Aid and Defender Association's magazine *NLADA Briefcase* reported in September 1972 that there was 'no question but that [the Corporation concept] is dead for this year'.¹²² This was an apt summary. Though key Congressional figures, including Republicans Jacob Javits and Richard Schweiker, continued to meet with White House representatives throughout the year, no movement was evident on the Administration's 'primary problem' - the composition of the Corporation's board.¹²³ This was a source of dispute as advocates and opponents of the Corporation both believed that the composition of the board would determine the Corporation's direction.¹²⁴ It was also the reason publicly given by the White House for the 1972 veto. Javits, a liberal Republican, made a number of concessions to the President in his role

¹²⁰ Vice President's Meeting Concerning Camden', 1 Feb. 1972, Agnew Papers, Box 48, UM. Speaker to 'Fellow Members of the Legal Services Program' n.d., RG381, Subject and Litigation Files, Box 10, NARA II.

¹²¹ 'Address by the Vice-President of the United States at the Texas Bar Association', 7 July 1972, Morrison Papers, NEJL.

¹²² Klaus, 'The Legal Services Program in a New Era,' p. 31.

¹²³ Richard Nordahl to Ehrlichman, 20 July 1972, FG999 Files, Box 15, RNPL.

¹²⁴ For example, Egil Krogh to Ehrlichman, 31 July 1972, FG999 Files, Box 15, RNPL.

as liaison between the President and the Senate Labor and Public Welfare Committee, including the number of members of the board, but White House agreement could not be reached. Trying to craft compromises led to various proposals of staggering size, including a 19-member board, as well as complicated appointment procedures that the Administration dismissed as ‘Mickey Mouse formulas’.¹²⁵

Given the imperilled nature of so much of the poverty programme after the appointment of Howard Phillips, one might have expected the LSC aspirations to be dead in the water for 1973. Not so. The FY1974 budget, released in January 1973, which zero-funded the Office of Economic Opportunity, allocated \$71.5 million dollars for the creation of a Legal Services Corporation – the amount previously allocated by OEO for the LSP.¹²⁶ The reason for this was the White House’s belief that separating the LSC would make it easier to close.¹²⁷ This shows the Administration’s constrained authority and autonomy in the domestic policy sphere — it could not have both OEO elimination and no LSC, the personal policy preference of President Nixon.

As Acting Director, Phillips now welcomed the LSC concept, despite having hitherto been a strident opponent.¹²⁸ This was not so much a change of heart as evidence of some political nous. He was willing to let the Corporation pass in order to accomplish the larger goal of closing OEO. In February 1973, Phillips proposed what he called the ‘Federal Legal Aid Corporation

¹²⁵ *Ibid*, Oval, 498-005, White House Tapes.

¹²⁶ American Enterprise Institute, ‘Legal Services Corporation Bill,’ 7 June 1973 in Taft Papers, Box 154, LOC. Phillips to Pete McCloskey, 19 Feb. 1973, McCloskey Papers, Box 195, Hoover.

¹²⁷ Carlucci to Ehrlichman, 17 Jan. 1973. This belief would continue throughout 1973, see Bradley Patterson to Garment, 20 Sept. 1973, Patterson Papers, Box 47, RNPL.

¹²⁸ Jack Anderson, ‘Dismembering OEO Proves to be a Bloody Business,’ *Galveston Daily News*, 18 Feb. 1973, p. 83.

Act'.¹²⁹ Phillips' FLAC was based on the revenue-sharing approach and granted wholesale power over the programme to the states. The purpose, he wrote, was to distribute power from 'anonymous Washington bureaucrats' to 'leaders of the judiciary, the bar, and the executive and legislative branches of the states'.¹³⁰ This was Rumsfeld's 'regionalization' returned. Phillips decried the Administration's 1971 bill as 'toothless' and demanded that FLAC be 'properly worded to prevent improper political activity, group representation ... [and] lobbying'. Similarly, Phillips proposed the banning of 'expenditure of funds on newsletters, training programs, [or] direct action activities'.¹³¹ Presenting the plan to the President in April 1973, Ehrlichman told his boss that the bill would 'in effect... do away with legal services... it's cleverly done but that's what it is'.¹³² Phillips' plan had the support of key conservatives in the Senate including North Carolina's Jesse Helms and Tennessee's Bill Brock.¹³³

The organised bar, the strident opponents of the Nixon Administration over the 'regionalization' battle described in Chapter Two, returned to the political stage to advocate for the Legal Services Corporation. Indeed, not waiting to see what the Administration would do in capitalising on its landslide victory, it was already seeking to organise meetings during the second-term transition.¹³⁴ The organised bar still comprised the same actors as in the earlier chapter, namely the American Bar Association, the National Legal Aid and Defender Association, and other associated groups. It no longer had the formal structure of the National Advisory Committee, which had been abolished by Phillips as an effort to limit the power of the organised bar over the program.¹³⁵ The organised bar groups broadly agreed that the best course of action was the introduction of

¹²⁹ 'The Federal Legal Aid Corporation Act of 1973', 21 Feb. 1973, Cavanaugh Papers, Box 24, RNPL.

¹³⁰ Phillips to James Cavanaugh, 21 Feb. 1973, Cavanaugh Papers, Box 24, RNPL.

¹³¹ *Ibid.*

¹³² Oval, 895-008, 13 April 1973, White House Tapes, RNPL.

¹³³ 'Opposition to Substitution Amendment (S. 1990) Brock-Helms,' n.d., RG 46, Subcommittee on Employment, Poverty, and Migratory Labor Subject Files, Box 14, NARA I.

¹³⁴ Egil Krogh to Robert Meserve, 4 Jan. 1973, JL Files, Box 48, RNPL.

¹³⁵ George, 'Development of the Legal Services Corporation,' p. 689.

the Administration's 1971 bill, which they had been heavily involved in crafting.¹³⁶ The American Bar Association took the lead. All past seven presidents of the ABA sent messages of support to the President.¹³⁷ The *ABA Journal* repeatedly editorialised in favour of a Corporation.¹³⁸ The ABA also attempted to engage in direct lobbying with the White House and OEO. The degree of animus with Howard Phillips, however, was such that representatives of the organised bar stated in a White House meeting that they would 'rather not get into a direct discussion with Howie'.¹³⁹ This was part of the lack of respect that the organised bar had for Phillips and his acolytes, based on the belief that they 'tend to oversimplify problems' and that they did not 'fully appreciate... the complexities' of the issues that they were dealing with.¹⁴⁰ Instead, the bar preferred to deal with the career bureaucracy as well as those in the White House who favoured Legal Services.

Other elements of the organised bar, particularly legal services advocacy groups, also began to accelerate the urgency of their advocacy. William Klaus, the Chairman of the ABA Standing Committee on Legal Aid and Indigent Offenders, wrote an open letter in the *NLADA Briefcase* urging that 'no longer can our battle be confined to the anterooms of Capitol Hill or ABA cocktail parties'.¹⁴¹ Instead he encouraged 'direct, personal contact with local political leaders'. Klaus believed that there were 'dedicated and influential lawyers active in both parties' in 'every hamlet and city, every valley and reservation' that would answer the call for 'the concept of equal justice and open access to our judicial system'. To match this, he also called for a 'coalition of

¹³⁶ Vorhees to Cole, 22 March 1973, Gossett Papers, Box 12, BHL.

¹³⁷ Vorhees to Garment, 20 March 1973, Patterson Papers, Box 47, RNPL. For example, see Edward Kuhn to Garment, 19 March 1973; Edward Wright to Garment, 23 March 1973 in Patterson Papers, Box 2, RNPL.

¹³⁸ For example, see 'The State of Legal Services,' *American Bar Association Journal*, Vol. 59 (May 1973), p. 522.

¹³⁹ Garment to Cole, 25 Apr. 1973, Cole Papers, Box 23, RNPL.

¹⁴⁰ Vorhees to Garment, 28 March 1973.

¹⁴¹ Klaus, 'The Legal Services Program in a New Era,' p. 31.

groups' to come together to support the legal services movement including 'unions, consumer groups, citizen lobbies, religious groups, [and] ethnic organizations'. This was, of course, the sort of direct political organisation and advocacy which so incensed the LSP's conservative opponents like Phillips.¹⁴²

While the Nixon Administration was trying to destroy old enemies, new ones were forming around them. Action for Legal Rights, which was created after the 'regionalization' fight, was 'reactivated' in February 1973.¹⁴³ ALR's 'short-run... goal' was to protect the LSP from Phillips' attack while its 'ultimate goal' was 'a meaningful Legal Services Corporation'.¹⁴⁴ ALR was founded by Mickey Kantor, who had worked in OEO headquarters on the Legal Services Program before resigning after the firing of Lenzner and Jones. ALR's Advisory Board included notable friends of the LSP, including former Directors E. Clinton Bamberger and Earl Johnson Jr., as well as those who had run afoul of the Nixon Administration in the first-term including Terry Lenzner, Frank Jones, and Carol Khosrovi.¹⁴⁵ Like NLADA, ALR encouraged LSP advocates to 'generate as much pressure on your Senators and Representatives... as possible'.¹⁴⁶ The ALR was well-connected in Congress, forming close relationships with key members of the Senate Labor and Public Welfare Committee like Alan Cranston and Walter Mondale.¹⁴⁷ The ALR's regular newsletter also shared detailed analysis of various legislative proposals and Congressional amendments to ensure that LSP advocates were well-briefed.

¹⁴² Memorandum from Howard Phillips, 12 March 1973, Laird Papers, Box A144, GFPL.

¹⁴³ Action for Legal Rights newsletter, 16 Feb. 1973, Freedman Papers, Box 1, NEJL.

¹⁴⁴ *Ibid.*

¹⁴⁵ Action for Legal Rights newsletter, 3 April 1973, Freedman Papers, Box 1, NEJL.

¹⁴⁶ *Ibid.*

¹⁴⁷ Michael Kantor to Alan Cranston and Walter Mondale, 13 Jan. 1972; Kantor to Cranston and Mondale, 24 April 1972, both in Rhudy Papers, Box 1, NEJL.

An influential member of the bar in this case was Howard C. Westwood, a long-time supporter of the LSP, and a partner at the largest corporate law firm in Washington.¹⁴⁸ During this time, Westwood also acted as the honorary ‘Special Counsel to NLADA’.¹⁴⁹ Westwood was well-connected in Republican circles and able to leverage these contacts to ‘get behind the closed doors’ and advance the Corporation concept.¹⁵⁰ He was a self-described ‘golfing buddy’ of House Minority Leader Gerald Ford.¹⁵¹ Westwood was able to connect Ford and former ABA President William Gossett so that Gossett could lobby him on specific provisions of the proposed bill.¹⁵² Westwood’s golfing connections stretched to the White House, where he played regularly with former Secretary of Defence Melvin Laird who would take on greater domestic policy responsibilities over the second term.¹⁵³ Westwood also worked closely with White House staffer Leonard Garment, who praised the ‘huge amount of work’ that Westwood did, particularly on the final details of the proposal.¹⁵⁴ These inter-personal relationships across Washington, often ignored in the literature, were vitally important in the development of the LSC.

Garment’s role was significant. An influential White House aide since the beginning of the Administration, he was a friend of the poverty programme, having been considered initially for the OEO Directorship, and was particularly fond of the LSP.¹⁵⁵ Garment had a long-standing relationship with Ted Vorhees, who served on the LSP’s National Advisory Council and had

¹⁴⁸ Johnson, *To Establish Justice for All*, p. 51.

¹⁴⁹ Howard Westwood to Phillips, 26 Feb. 1973, Gossett Papers, Box 12, BHL.

¹⁵⁰ Interview with Howard Westwood, 21 Jan. 1992, Historical Society of the District of Columbia Circuit, https://dcchs.org/sb_pdf/first-interview-westwood/ (24 March 2020).

¹⁵¹ Westwood to Gossett et. al., 14 May 1973, Seymour Papers, Box 134, NYPL.

¹⁵² *Ibid.*

¹⁵³ Johnson, *To Establish Justice for All*, p. 397.

¹⁵⁴ Interview with Leonard Garment, 24 July 2002, *National Equal Justice Library Oral History Collection*.

¹⁵⁵ Garment, *Crazy Rhythm*, p. 148.

been present at the initial founding meetings of the LSP.¹⁵⁶ While the ‘new cadre’ appointments in OEO had no time for LSP luminaries like Edgar Cahn, Garment and his team greatly respected him.¹⁵⁷ Garment believed that the Administration’s bill should be ‘a collaborative effort between the White House and the Bar’ and sought allies for this vision, circulating clippings from the ABA that emphasised their support for the LSP.¹⁵⁸ Garment also offered to ‘sit in’ on other meetings about the Corporation.¹⁵⁹ Garment became the hero of the Legal Services advocates. He ‘stood fast’ in the face of the ‘Phillips’ forces’, they said, happy to incur their wrath.¹⁶⁰

On the other side of the political spectrum, Phillips and other key conservatives spent the months of February to April lobbying the President to oppose the reintroduction of the 1971 bill. W. Richard Howard, an aide to Chuck Colson, proposed the President should not only abandon the LSC but ‘should get rid of the Legal Services operation entirely’.¹⁶¹ Patrick Buchanan, a close conservative ally of Phillips, wrote to Haldeman that both he and Phillips believed ‘that this Corporation is simply a freezing in of a Legal Services system that has been rife with abuses and politics’.¹⁶² In this advocacy, opponents of Legal Services played on the President’s combative nature, telling his Chief of Staff that surrendering on this issue would

¹⁵⁶ Sargent Shriver to Bernard Segal, 3 Dec. 1970; ‘Regionalization of Legal Services: An Examination of Problems and Issues.’ For the Garment-Vorhees relationship, see Johnson, *To Ensure Justice for All*, p. 392. Vorhees was also the Treasurer of the National Legal Aid and Defender Association.

¹⁵⁷ ‘Exit Interview with Bradley H. Patterson Jr.’ 10 Sep. 1974, Nixon Presidential Materials Project, <https://www.nixonlibrary.gov/sites/default/files/virtuallibrary/documents/exitinterviews/patterson-exit.pdf> (1 Feb. 2020).

¹⁵⁸ Westwood to Gossett et. al., 14 May 1973. Garment to Cavanaugh, 20 Feb. 1973, FG999 Files, Box 15, RNPL; Garment to Cole and Cavanaugh, 1 June 1973, Garment Papers, Box 121, LOC.

¹⁵⁹ Garment to Cavanaugh, 20 Feb. 1973.

¹⁶⁰ Westwood to Gossett et al., 14 May 1973. Phillips would continue to hold a grudge against Garment, see ‘Remarks of Howard Phillips,’ 21 Sep. 1973, Conservative Caucus Papers, Series 2, Box 4, Falwell Library.

¹⁶¹ Howard to Cole and Cavanaugh, 26 April 1973, Cole Papers, Box 23, RNPL.

¹⁶² Buchanan to Haldeman, 14 April 1973, Cole Papers, Box 23, RNPL.

‘guarantee four more years of control over the legal services revolution’ to the President’s enemies including Sargent Shriver, Ted Kennedy, and the *Washington Post*.¹⁶³

The influence of Phillips’ appointees across OEO was also felt in the battles of the Legal Services Corporation. Circulated throughout OEO and the White House were many unsigned memoranda critical of the Corporation concept. Phillips’ hand was evident in another unsigned memorandum entitled ‘Re: The New Legal Services’.¹⁶⁴ The memo expressed the author’s hope that the Administration would ‘implement a “New Legal Services” soon after the election’ and the frustration that they had not.¹⁶⁵ The memo continued that ‘something must be done about legal services’ and that its ‘structure, philosophies, and activities’ must not be allowed to continue. The memo agreed with Phillips that ‘accountability’ and a decentralised programme under the auspices of the state bar associations must be enacted. The memo pointed the finger at the ‘old hands’ still in OEO who had ‘philosophically subverted’ the Nixon appointees and allowed the programme to continue unabated.¹⁶⁶

Most if not all of these memos were leaked to legal services advocates, presumably by an OEO career bureaucrat. When one legal services advocate sent the memorandum mentioned in the previous paragraph to another advocate, he joked that it was on the ‘off chance that you haven’t already seen them’.¹⁶⁷ In fact, while these memoranda appear to have had little influence on Administration thinking, their biggest impact was when they were leaked to the NLADA.¹⁶⁸ The

¹⁶³ Phillips to Haldeman, 16 April 1973, Cole Papers, Box 23, RNPL.

¹⁶⁴ ‘Re: The New Legal Services’.

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ Johnston to Seymour, 23 Feb. 1973.

¹⁶⁸ Michael Bennett, ‘Recent Changes in Legal Services Cause Concern,’ *NLADA Washington Memo*, Feb 1973, p. 2.

NLADA duly passed them on to the *New York Times* where they were used to harden the opposition to the more radical Nixon proposals.¹⁶⁹ This was a tactic used many times by OEO bureaucrats and their allies to oppose conservative encroachment on their programs, as detailed in earlier chapters.

Buchanan pleaded with Haldeman for an opportunity for Phillips 'to present his case to the President', an indication of Phillips' alienation from the true centre of power.¹⁷⁰ The President, while admiring Phillips' 'crusading zeal', was beginning to get frustrated by the 'unnecessary flak' that he attracted.¹⁷¹ He directed Haldeman to talk to him about his 'ill-advised remarks'.¹⁷² Nixon was a lawyer, and disinclined to alienate his professional colleagues. Phillips made one last pitch against the Administration's rumoured reintroduction of the 1971 bill, telling Haldeman that it would be a 'monumental and historic blunder,' adding that 'everything Richard Nixon stands for will continue to be opposed at public expense'.¹⁷³ Ending on the combative tone that he often struck in public, Phillips ended with a plea to Haldeman: 'We won the election. Why let those who we defeated dictate our policies[?]'.

Such was Phillips' urgency that he believed it to be 'the most important domestic policy decision the President can make this year'.¹⁷⁴ While the liberal and conservative elements of the White House appeared to be on track for a major confrontation, a new factor was about to alter the dynamic.

Michael Bennett, 'Recent Changes in Legal Services Cause Concern,' NLADA *Washington Memo*, Feb 1973, Vol. 2, Kent Morrison Papers, Box 1, NEJL.

¹⁶⁹ John Morris, 'Memo Shows New Plans to Narrow U.S. Legal Aid,' *New York Times*, 19 Feb. 1973, p. 16; See also Johnson, *To Establish Justice For All*, p. 394.

¹⁷⁰ Between February and April, Phillips does not appear to even once have met with the President. See Presidential Daily Diary, *Richard Nixon Presidential Library and Museum*.

¹⁷¹ Oval, 860-016, 21 Feb. 1973, White House Tapes, RNPL.

¹⁷² Diary Entry: 21 Feb. 1973, H.R. Haldeman Diaries Collection, RNPL.

¹⁷³ Phillips to Haldeman, 16 April 1973, Cole Papers, Box 23, RNPL.

¹⁷⁴ Phillips to Weinberger, 9 April 1973, Cole Papers, Box 23, RNPL.

Legal Challenges

Compounding the issues that Phillips' guerrillas already faced, across the nation, over fifty legal challenges were filed to halt the Administration's dismantling of OEO. It was these legal challenges that would decide the fate of the poverty program. If the reform impulse of the 1960s appeared to be flagging in some respects by 1973, one important bright spot was the rise of the public interest law movement.¹⁷⁵ The Nixon Administration was about to feel the full brunt of this development.

The most significant of these legal challenges was the case brought by the American Federation of Government Employees 'on behalf of' its OEO members. While traditional histories of trade unions have demonstrated their decline during the 1960s and 1970s, the story of the white-collar unions is one of growing power, reflecting the expansion of government at all levels during the Great Society era.¹⁷⁶ It was an Executive Order from the Kennedy Administration which had initially empowered public sector unions but President Nixon had inadvertently reinforced this trend in 1969 by issuing Executive Order 11491, which created 'an administrative structure for the bargaining process' and established 'a beachhead for union activity within the federal

¹⁷⁵ For the declining visibility of civil rights activism in the early 1970s, Jacquelyn Dowd Hall, 'The Long Civil Rights Movement and the Political Uses of the Past,' *Journal of American History*, Vol. 91, No. 4 (2005), pp. 1233-1263.

¹⁷⁶ For traditional narratives of declension, see Jefferson Cowie, *Stayin' Alive: The 1970s and the Last Days of the Working Class* (New York, 2010); Philip Dray, *There is Power in a Union: The Epic Story of Labor in America* (New York, 2010), p. 548; Joseph McCartin, 'Solvents of Solidarity: Political Economy, Collective Action, and the Crisis of Organised Labor, 1968-2005,' in D. Haverty-Stacke and D. Walkowitz (eds.), *Rethinking U.S. Labor History* (New York, 2010): p. 217-242. A more optimistic tone is struck in Lane Windham, *Knocking on Labor's Door: Union Organising in the 1970s and the Roots of a New Economic Divide* (Chapel Hill, 2017) and Davies, *See Government Grow*, p. 234.

government'.¹⁷⁷ The AFGE pledged 'new and dramatic changes... to bring organised labor to the negotiation table as a full equal to management'.¹⁷⁸

During the first-term, the AFGE had become a thorn in the Nixon White House's side by opposing changes to the poverty programme. In particular, the AFGE had worked closely with the National VISTA Alliance as they sought to unionise to give the NVA greater leverage in their fight with the Administration.¹⁷⁹ In 1970, they had banded together with other groups such as the League of Women Voters to oppose modest cuts in OEO appropriations.¹⁸⁰ This early opposition had taken conventional forms, such as lobbying and petitioning, but by 1973 the AFGE was much more emboldened and became an 'inherent adversary' of Phillips, seeking to use any means necessary to stop the changes.¹⁸¹ One AFGE member attributed this change as coinciding with the retirement of older leadership and the emergence of a more radical new guard.¹⁸² This was best evidenced in their decision to sue the Nixon Administration.

Local 2677 v. Phillips

Local 2677, American Federation of Government Employees v. Howard J. Phillips (hereafter *Local 2677 v. Phillips*) was brought before the District Court for the District of Columbia on 2 March 1973,

¹⁷⁷ Joseph E. Hower, 'Executive Order 10988,' in M. Dubosky (ed), *The Oxford Encyclopedia of American Business, Labor, and Economic History* (New York, 2013), p. 222; James Bowman and Jonathan West, *American Public Service: Radical Reform and the Merit System* (Boca Raton, 2007), p. 234.

¹⁷⁸ AFGE, 'Child's Play?' n.d., Corbett Papers, Box 21, LBJL.

¹⁷⁹ Author's interview with Steve Regenstreif.

¹⁸⁰ Telegram to President Nixon, 23 Dec. 1970, League of Women Voters Papers, Series IV, Box 498, LOC.

¹⁸¹ Federal Bureau of Investigation, 'Subject: Howard Jay Phillips ... Alleged Compromise of FBI Investigative Reports,' *Archive.Org*, https://archive.org/details/foia_Phillips_Howard_J._WFO-1 (1 Feb 2018).

¹⁸² 'Wayne Kennedy,' in Alice Lynd and Robert Staughton (eds.), *Rank and File: Personal Histories by Working-Class Organizers* (Princeton, 2014), pp. 233-52.

less than six weeks after the release of the FY1974 budget which had zero-funded OEO.¹⁸³ The AFGE filed suit ‘on behalf of’ OEO’s employees as ‘the exclusive agency-wide representative for all non-supervisory OEO employees and the eleven local unions of OEO’.¹⁸⁴ AFGE received some pushback on their chosen litigious path with a columnist for the *Indianapolis News* describing the case as ‘the height of bureaucratic arrogance’.¹⁸⁵

When oral arguments began on 22 March, the White House attempted to have the case dismissed. According to a newspaper article which appeared before the case was filed, there was some internal White House discussion about the legality of the OEO defunding before the legal challenge was conceived.¹⁸⁶ YAF loyalist at OEO, Randal Teague, ‘researched thoroughly the statutory and case law’ relevant to the OEO legislation to understand the full scope of the ‘powers of the President’.¹⁸⁷ Indeed, the reaction of Phillips himself to hearing about the Administration’s immediate defunding was scepticism of its legality.¹⁸⁸ Yet the more aggressive voices drowned out the naysayers and the cuts went ahead. When the Deputy Attorneys General presented their case on behalf of the Administration in *Local 2677 v. Phillips*, they principally centred their argument on challenging the court’s jurisdictional power over the case.

¹⁸³ Complaint, Local 2677, *American Federation of Government Employees v. Howard J. Phillips*, Civil Action 379-73, District Court for the District of Columbia, 26 Feb. 1973, RG21, District Court Records, Box 371, NARA I.

¹⁸⁴ *Ibid.*

¹⁸⁵ Loui Hiner Jr., ‘Bureaucratic Arrogance in OEO,’ *Indianapolis News*, 5 March 1973, in FG6-7 Files, Box 2, RNPL. This article was circulated to Ehrlichman, Ronald Ziegeler, and James Cavanaugh as ‘some examples of a more rational media approach to OEO problems’, see Kenneth Clawson to Ehrlichman et al., 19 March 1973, FG6-7 Files, Box 2, RNPL.

¹⁸⁶ Broder, ‘Sacrificing Legality for Efficiency’, p. A18.

¹⁸⁷ Teague to the Consultant to the Director for Delegations and Transfers, 26 Feb. 1973, Book II, Teague Papers.

¹⁸⁸ Broder, ‘Sacrificing Legality for Efficiency’, p. A18. Said Phillips, ‘my first reaction was that it couldn’t be done’.

The plaintiffs presented a three-pronged argument against the Administration's actions. First, they argued that the Economic Opportunity Act Amendments of 1972, the most recent re-authorisation of the War on Poverty which Nixon had signed into law, prevented the President from immediately terminating the Office of Economic Opportunity. They specifically cited sections 2(a), 3(c)(2), and 28, which all concerned appropriations for the 1974 Fiscal Year. Their argument was that as Congress had appropriated the money for the programs for those years, the President did not have the power to impound these funds. This was part of the President's much larger battles with Congress over impoundment – refusing to spend the money that Congress had appropriated — which will be dealt with in greater detail in Chapter Six.¹⁸⁹ Second, they argued that Phillips' termination of the Community Action Agencies, a component of the OEO, violated the Reorganization Act of 1970 as the President had not submitted to Congress a Reorganization Plan which he was legally required to do for the 'abolition of all or a part of a function of an agency'.¹⁹⁰ Finally, the AFGE argued that as Phillips did not publish these changes in the Federal Register they were 'illegal and of no effect'.¹⁹¹

District Court Judge William B. Jones handed down his opinion on 11 April, ruling decisively in favour of the Local 2677. Dismissing the Administration's claims, Jones asserted that this question was 'readily within [the Court's] judicial power'.¹⁹² Judge Jones summarised the White House position as 'argu[ing] that the Constitution confers the discretionary power on the President to refuse to execute laws passed by Congress with which he disagrees'. In his ruling, Judge Jones wrote:

¹⁸⁹ For context, see Matusow, *Nixon's Economy*, p. 216.

¹⁹⁰ See 5 U.S. Code § 903, *Legal Information Institute*, <https://www.law.cornell.edu/uscode/text/5/903>, (20 Jan. 2017), On the final point, Augustus Hawkins, Chairman of the House Subcommittee on Equal Opportunities, had warned Phillips in February that his actions were in violation of the Reorganisation Act of 1970, see Hawkins to Phillips, 13 Feb. 1973, Loen and Leppert Files, Box 7, GFPL.

¹⁹¹ Complaint, *Local 2677, AFGE v. Howard J. Phillips*, Civil Action 379-73.

¹⁹² Order, *Local 2677, AFGE v. Howard J. Phillips*, Civil Action 371-73.

‘All rules, regulations, guidelines, instructions or other communications directing, providing for, or intended to accomplish the termination, dissolution, or abolition of the Office of Economic Opportunity... are unauthorised by law, illegal and in excess of statutory authority’.¹⁹³

The conservative appointees in OEO were downbeat as it was now ‘obvious’ that the Court’s decision meant that the ‘phase-out operation’ could no longer ‘proceed’.¹⁹⁴ The career bureaucrats ‘jammed the lobby’ to celebrate.¹⁹⁵ As well as a win for the bureaucrats, the decision was a victory for the Congress in its institutional battle with the Executive Branch, with Jones declaring that a Presidential budget was ‘nothing more than a proposal to Congress’.¹⁹⁶

Glenn Graves, the lead lawyer in the *Local 2677* case recalled that ‘the case wasn’t very well defended by [the Department of] Justice’, inferring that the White House was ‘preoccupied with Watergate’.¹⁹⁷ By April, when the case was handed down, the Watergate scandal was already engulfing the White House.¹⁹⁸ The Senate Watergate Committee was preparing to hold hearings and by April, Ehrlichman, usually the Administration’s point man on domestic programs, had become distracted with conducting his own Watergate investigation.¹⁹⁹ The weekend following the *Local 2677 v. Phillips* decision was labelled by White House Counsel John Dean as ‘a fateful turning point, when the cover-up finally collapsed’ on the Watergate scandal’.²⁰⁰ While Phillips would claim to be considering an appeal to the ruling, the White House was too distracted.²⁰¹

¹⁹³ *Ibid.*

¹⁹⁴ Teague to Charles McMillan, 13 April 1973, Book II, Teague Papers. Teague later wrote that it was ‘a difficult assignment to accurately and comprehensively formulate contingency plan(s)... without violating the letter or spirit of His Honor’s order’, see Teague to Acting Director (unnamed), 10 May 1973, Teague Papers, Box II.

¹⁹⁵ Bill Kovach, ‘Judge Halts Move to Disband O.E.O.’ *New York Times*, 12 April, p.1

¹⁹⁶ Cohen, ‘Courts Act as Ally to Congress in Battle with President Over Spending,’ p. 571.

¹⁹⁷ Author’s correspondence with Glenn R. Graves, 7 Feb. 2018.

¹⁹⁸ Mason, *Richard Nixon and the Quest for a New Majority*, p. 193

¹⁹⁹ Dean, *The Nixon Defense*, p. 362.

²⁰⁰ *Ibid.*, p. 388. Colson told Haldeman, Ehrlichman, and Nixon on April 12 that ‘the next forty-eight hours are the last chance for the White House to get out in front of this’, see p. 389.

²⁰¹ Memorandum from Alan MacKay, 26 April 1973, Corbett Papers, Box 12, NEJL.

Indeed, a distracted White House's did not lodge an appeal in the *Local 2677* case, much to the surprise of the plaintiffs who expected – and believed Judge Jones expected – one.²⁰²

The Corporation

Legal Services advocates were keen for the Corporation concept not to be 'affected by the collateral skirmish', noting that the legal dramas would be 'temporary' while the Corporation would be 'permanent'.²⁰³ On 13 April, two days after Judge Jones handed down his verdict, President Nixon agreed to re-introduce the Administration's 1971 bill. This was on the direct advice of the respected Counsellor for Human Resources, Caspar Weinberger, and was what had been heavily lobbied for by the organised bar and Leonard Garment.²⁰⁴ In seeking to persuade his President, Weinberger made many of the same claims made by this chapter. He argued that there was 'general support' among the organised bar, and noted in particular the support of the past ABA Presidents.²⁰⁵ Given the broad support for the concept among the Congress, the bar, and 'the clientele', Weinberger noted that the President would have to 'bring on a major political battle' with LSP's advocates if the proposal was abandoned.²⁰⁶ Though it was not stated explicitly, the need to win battles in the context of Watergate is important. Finally, in a direct rebuke to Phillips and his forces, Weinberger noted that the LSP was 'generally considered to be a successful "poverty" program'.²⁰⁷ The 'approach' endorsed by the President did not place any

²⁰² Author's correspondence with Glenn R. Graves. The decision to not appeal was also influenced by the Administration's desire to avoid 'appealing the wrong cases' in the various lawsuits challenging its impoundment policies, see Cole to Nixon, 20 April 1973, POF, Box 21, RNPL.

²⁰³ Vorhees to Garment, 12 April 1973, Patterson Papers, Box 47, RNPL. Vorhees' letter contains a copy of the telephone message that William Gossett left with John Ehrlichman.

²⁰⁴ Weinberger to Nixon, 10 April 1973, Cole Papers, Box 23, RNPL. Weinberger's note indicates that the President signed it on 13 April. For the importance of Weinberger, see Lou Cannon, 'Howard Phillips Finds Out That His Was a 2-Edged Hatchet,' *Washington Post*, 19 May 1973, p. A23.

²⁰⁵ Weinberger to Nixon, 10 April 1973.

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.* For all of the bellicose rhetoric, repeated government investigations found little evidence for abuses within the Legal Services Program. For example, a study of 45 Legal Services Inspections between Feb. 1970 and Feb. 1972 found only 10 to be 'substantiated', see 'Legal Services Inspections,' n.d., RG381, Sanchez Files, Box 6, NARA II.

restrictions on other controversial functions such as the ability to engage in class action suits, suits against governments, or other activist actions.²⁰⁸ It also ensured the future of the back-up centres that the ‘new cadre’ had tried to eliminate earlier in the year.²⁰⁹

Williams et al. v. Phillips

Testifying to the extent to which the courts had become the primary forum for activism during this period, a concurrent lawsuit was filed challenging the legitimacy of Phillips’ tenure as OEO Director. This challenge was the brainchild of Washington D.C.-based public interest lawyers, based out of Hogan and Hartson, a major litigation firm with a *pro bono* arm.²¹⁰ Unwilling to directly confront the President of the United States, the strategy was then spearheaded by Alan Morrison, the co-founder, with consumer rights advocate Ralph Nader, of the Public Citizen Litigation Group in 1972.²¹¹ Having drafted the lawsuit challenging the legality of Phillips’ appointment, Morrison’s next challenge was to find a Senator willing to put his or her name to it, as evidenced by his draft ‘*Senator A and Senator B v. Howard Phillips*’ that was circulated among Senators.²¹² Morrison had previously filed an *amicus curiae* brief on behalf of the Senate Committee chairs on impoundment matters and as such had come to know the Chair of the Senate Labor and Public Welfare Committee, Harrison Williams of New Jersey. Williams was more than happy to oblige and encouraged other Senators to join the suit.²¹³ The proposed case

²⁰⁸ *Ibid.*

²⁰⁹ Kenneth W. Munden, ‘The Office of Economic Opportunity in the Nixon Administration,’ RG381, OPRE Files, Box 107, NARA II.

²¹⁰ Author’s interview with Alan B. Morrison, 30 Jan. 2018. For the rise of *pro bono* arms of major law firms, see Ann Blackman, ‘Some Young Lawyers Leaving Legal Lucre to Give the Poor Aid,’ *Lawton Constitution*, 8 Oct. 1970, p. 6.

²¹¹ For the background of the Public Citizen Litigation Group, see Barbara Craig, *Courting Change: The Story of the Public Citizen Litigation Group* (Washington DC, 2004).

²¹² ‘*Senator A and Senator B. v. Howard Phillips*,’ Taft Papers, Box 156, LOC; ‘*Senator A. and Senator B. v. Howard Phillips*,’ Hathaway Papers, Box 1083, Fogler Library.

²¹³ Author’s interview with Alan B. Morrison; ‘Memorandum of Call,’ n.d., Hathaway Papers, Box 1083, Fogler Library.

was one of a spate of legal challenges by elected representatives over issues including banning nuclear testing in Hawaii, the legality of the Vietnam War, and economic sanctions on Rhodesia.²¹⁴

On March 14 1973 four Democratic senators from the Senate Labor and Public Welfare Committee (Williams of New Jersey, Pell of Rhode Island, Mondale of Minnesota, and Hathaway of Maine) filed suit in the District of Columbia Circuit Court, challenging the eligibility of Phillips to fill the Directorship of OEO without Senate confirmation.²¹⁵ It was one of seven suits filed on this matter, including one by the Migrant Legal Action Program, one of the back-up centres that Phillips had tried to eliminate. The Senators' claim pointed to the wording of the Economic Opportunity Act of 1964 which stated that the agency 'shall be headed by a Director who shall be appointed by the President, by and with the consent of the Senate'.²¹⁶ Phillips had steadfastly refused to appear before the Senate for a confirmation, telling a newspaper reporter 'if my name went up, I'd have to spend all my time up there getting confirmed and I'd never get the place dismantled'.²¹⁷ Indeed, avoiding the notice of the liberal-dominated LPW Committee had been a long-planned intent of the Administration.²¹⁸

The *Williams v. Phillips* case was held pending decision in the *Local 2677 v. Phillips* case. Once that case was decided, the Court could continue with the *Williams* case. In between these cases, the

²¹⁴ 'Standing to Sue for Members of Congress,' *Yale Law Journal*, Vol. 83, No. 8 (1974), p.1678. See also Ralph Nader, 'Making Congress Work,' *New Republic*, Vol. 165, No. 8 (1971), pp. 19-21.

²¹⁵ Complaint for Declaratory and Injunctive Relief, *Williams et. al. v. Phillips*, Civil Action 490-73, Houseman Papers, Box 1, NEJL.

²¹⁶ *Ibid.*

²¹⁷ Broder, 'Sacrificing Legality for Efficiency', p. A18. For Phillips' evasiveness to committee chairs, see Phillips to Hawkins, 16 February 1973; Phillips to Stark, 20 February 1973, Loen and Leppert Files, Box 6, GFPL.

²¹⁸ 'Congressional Strategy on OEO,' n.d., Taft Papers, Box 156, LOC. Phillips' 'severe confirmation problems' had been well-known by the Administration, see Malek to Haldeman, 4 Dec. 1972.

White House would fall into deeper and deeper chaos. Haldeman and Ehrlichman both resigned and John Dean was fired. The *Washington Post* termed this ‘the dismantling of the White House command staff’.²¹⁹ In addition to being his two closest advisors on the domestic front, Haldeman and Ehrlichman were co-designers of the President’s new strategy for his second term.²²⁰ That strategy was now in tatters. This marked a huge undermining of the ‘second Nixon Presidency’.²²¹ Speechwriter Patrick Buchanan declared that the President had ‘publicly amputated his right arm’, his senior staff had been ‘decimated’, and ‘our political adversaries have the scent of blood’.²²² The resulting chaos again distracted the Department of Justice from preparing an adequate defence.

The verdict in the *Williams v. Phillips* case was delivered again by William B. Jones. In its decision of 11 June, the Court found that Phillips was ‘serving unlawfully and illegally’.²²³ The Court issued an order to ‘restrain [Phillips] from taking any actions as Acting Director’.²²⁴ The Court found that the Senators had standing to sue based on a 1972 legal challenge by the litigation arm of the environmental group the Sierra Club. This shows how the burgeoning public interest law movement acted as a ratchet, and litigation beget litigation.²²⁵ The Court noted that the Senators’ standing was ‘aggravated’ by the fact that it was they who should have provided the ‘advice and consent’ that Phillips had ignored.²²⁶ While the White House expected the Senate to be the one

²¹⁹ Laurence Stern and Hayes Johnson, ‘3 Top Nixon Aides, Kleindienst Out,’ *Washington Post*, 1 May 1973, p. A1.

²²⁰ Reeves, *President Nixon*, pp. 546-7.

²²¹ Buchanan to Nixon, 3 May 1973, President’s Personal File, Box 6, RNPL.

²²² *Ibid.*

²²³ Order, *Williams et. al v. Phillips*, Civil Action, No. 490-73, Hathaway Papers, Box 1083, Fogler Library

²²⁴ Opinion, *Williams et. al v. Phillips*, Civil Action, No. 490-73, Hathaway Papers, Box 1083, Fogler Library.

²²⁵ ‘Standing to Sue for Members of Congress, p.1666; Lois Reznick, ‘Temporary Appointment Power of the President,’ *University of Chicago Law Review*, Vol. 41, No. 1 (1973), p. 160.

²²⁶ Opinion, *Williams et. al v. Phillips*, Civil Action, No. 490-73.

to launch ‘last minute attempts’ to halt their attempts to ‘dismantle OEO’, they were sideswiped by the Judicial branch.²²⁷

In the space of two months, the D.C. District Court had overturned two pillars of the Nixon OEO defunding strategy. While President Nixon would recall the period of 1973 as exemplifying a ‘strong president’ who had ‘moved into the vacuum’ created by Congress and asserted a ‘strong policy-making role’, in reality, the judiciary was readily able to constrain his policy-making powers.²²⁸ The morale of the conservative appointees to the bureaucracy was decimated and they were left feeling like the District Court had ‘pulled the rug out’ from under them.²²⁹

By halting the termination of the OEO and ousting its key opponent, Judge William B. Jones made perhaps the greatest individual impact on America’s anti-poverty policy during 1973. Jones had a long association with Democratic politics, having served in President Franklin D. Roosevelt’s Justice Department as an attorney before being appointed to the District Court by President Kennedy in 1962.²³⁰ Was this the New Dealer saving the Great Society? While scholars have debated the extent to which we can witness the antecedents of the War on Poverty in Kennedy’s presidency, perhaps one lasting legacy to the programme was the appointment of Jones.²³¹ In fact, while Phillips is now remembered by anti-poverty advocates as the enemy from this narrative, they consider Jones to be the ‘hero’.²³²

²²⁷ Cole to Nixon, 1 June 1973, *Papers of the Nixon White House*, Part 6A, fiche 6A-289-07.

²²⁸ Nixon, RN, p. 771.

²²⁹ Teague to Alvin Arnett, July 26, Book II, Teague Papers. This point was emphasised in author’s interview with Randal Teague.

²³⁰ White House Press Release, 19 March 1962, Macy Papers, Box 293, LBJL. Jones’ Democratic Party bona fides were attested to by Majority Leader Mike Mansfield, see Mansfield to R. Kennedy, 26 April 1961, Macy Papers, Box 298, LBJL.

²³¹ Martha J. Bailey and Sheldon Danziger, ‘Legacies of the War on Poverty,’ in M. Bailey and S. Danziger (eds.), *Legacies of the War on Poverty* (New York, 2013), p. 5.

²³² Interview with Hulett H. Askew, 22 July 2002.

The Corporation

The shift towards the Corporation was hastened by the District Court decisions and developing Watergate scandal. The resignation of John Dean strengthened the hand of Leonard Garment, who was elevated to the position of Counsellor to the President.²³³ The American Conservative Union believed Garment was the 'deciding influence' on the President's reintroduction of the 1971 bill.²³⁴ The rise of Garment dovetailed with the increasing importance of the organised bar after the emergence of the Watergate scandal. As Garment wrote to his deputy Bradley Patterson, the President could 'ill-afford right now to get the leaders of the nation's law community coming out against him'.²³⁵ The President himself acknowledged that he was 'concerned' about losing the support of the organised bar.²³⁶ As evidence of this, the President sent a copy of the Administration's draft bill to the ABA for its 'views'.²³⁷ While the President had agreed to the 'approach' to the Corporation in early April 1973, the key decisions on the wording of the policy and the restrictions (or non-restrictions) would be made after this period, across the latter half of 1973 when Phillips was removed from his post and therefore unable to lobby for a more conservative approach.²³⁸

The Congressional math was a little trickier for advocates of the Corporation. Wounded by Watergate, and fearing impeachment proceedings, many in the White House believed it necessary to shore up the President's right flank. Assistant to the President for Legislative Affairs

²³³ Garment, *Crazy Rhythm*, p. 194; Dom Bonafede, 'Haldeman, Ehrlichman Departures Bring Major Changes in Administration,' *National Journal*, Vol. 5, No. 18 (1973), p. 635.

²³⁴ 'Why Legal Services Must Go,' *Battleline*, Vol. 7, No. 5 (1973), p.1.

²³⁵ Garment to Cavanaugh, n.d., Patterson Papers, Box 47, RNPL. The phrase 'right now' was added in the drafting stage.

²³⁶ Oval, 895-008, 13 April 1973, White House Tapes, RNPL.

²³⁷ Garment to Robert Meserve, 6 May 1973, Patterson Papers, Box 47, RNPL.

²³⁸ For the continued lobbying of the organised bar, see Garment to Cole, 9 June 1973, FG999 Files, Box 15, RNPL; William Steiger to Garment, 27 April 1973, Garment Papers, Box 121, LOC.

Bill Timmons advocated jettisoning the Corporation legislation because conservatives such as Arizona's Barry Goldwater were 'important to our legislative agenda'.²³⁹ Thirty-four of the 44 newly-elected Republicans in Congress wrote to the President and asked him to withdraw the Corporation bill, noting that a 'majority favor no federal funding for legal services' at all.²⁴⁰ The Administration was seemingly determined to create a bill 'which our conservative friends in the Congress can live with' in order to ensure that 'our conservative friends stick with us'.²⁴¹

The White House's approach was complicated by three factors. First, it could not afford to lose the support of liberal Republicans like Javits and Steiger, both of whom were determined supporters of the Corporation.²⁴² Second, there was a broad spectrum of support within the Congress for the enactment of the Legal Services Corporation that existed in 1971 and continued through 1973 and 1974.²⁴³ A third, and important factor, for some within the Administration was that it was actually *because* conservatives were frustrated by Legal Services that they were so keen to be rid of it.²⁴⁴ The thinking was that conservatives would direct their ire not at the White House, but at the Corporation itself in future suits against the government.²⁴⁵

Conclusion

²³⁹ William Timmons to Cavanaugh, 31 May 1973, Cavanaugh Papers, Box 47, RNPL. Goldwater was a strident opponent of the Arizonan Legal Services Program which assisted the Navajo, see Goldwater to Bernard Segal, 23 May 1973, Cavanaugh Papers, Box 47.

²⁴⁰ John Conlan to Nixon, 17 April 1973 and 'Skip' Bafalis *et. al.* to Nixon, 17 April, both in FG999 Files, Box 15, RNPL.

²⁴¹ Cole to Nixon, 23 April 1973.

²⁴² Javits to Melvin Laird, 10 Oct. 1973, FG999 Files, Box 15, RNPL.

²⁴³ Kantor to 'All Directors,' 6 July 1971, Rhudy Papers, Box 1, NEJL; 'Legal Aid Needed,' *Grand Rapids Press*, 10 June 1974, p. A14.

²⁴⁴ Laird to Robert Taft Jr., 4 Oct. 1973, FG999 Files, Box 15, RNPL.

²⁴⁵ Legal Services Corporation Act, House Report No. 93-247, located in RG233, House Education and Labor Bill Files, Box 26, NARA I.

With a stroke of the President's pen on 25 July 1974, the Legal Services Corporation, the long-held dream of legal services advocates and the long-opposed enemy of its detractors, finally became law. This was the last bill that President Nixon would sign. In the euphoria of the post-72 election haze, conservatives in the White House had written 'Great Society R.I.P'; now one of its most controversial experimental programs was now made permanent.²⁴⁶ On the face of it, the effect of 'Howie Phillips and his wrecking crew' was at best minimal and at worst counter-productive.²⁴⁷ Though Phillips and his 'new cadre' of Republican officials had arrived at OEO with much fanfare, evidence of their impact on policy is much harder to find. Their attempts to defund OEO failed. Their attempt to de-fund back-up centres failed. Their attempts to significantly alter the Legal Services Program failed. The impact of the courts must be remembered here as it was their two decisions in April and June of 1973 which first removed the Nixon's Administration's plan for zero-funding the OEO and then removed their vehicle, Howard Phillips.

In the period following the removal of Phillips, the policy decisions of the Nixon Administration were almost always shaped by liberal legal services advocates rather than conservatives. Though conservatives – in Congress and in *Human Events* – were loud in their public condemnation of the Program and the proposed Corporation, it was not matched by the insider lobbying which legal services advocates, and in particular the organised bar, used to much greater effect. Given the survival of the entire Office of Economic Opportunity and, in particular, the creation of the Legal Services Corporation, the experiment of 'Howie Phillips and his wrecking crew' can be declared an abject failure. As such, it gives us pause to reconsider the actual policy consequences, or lack thereof, of Nixon's second-term shift to the right.

²⁴⁶ Buchanan to Nixon, 10 Nov. 1972, Buchanan Papers, Box 11, RNPL.

²⁴⁷ Kovach, 'Judge Halts Move to Disband OEO,' p. 1.

Chapter V

‘If it does not help poor people... it is useless’: The battle for VISTA’s soul

Action, the federal agency created in 1971 to oversee the nation’s volunteer programs, was one of many which warranted prompt attention after the 1972 election. From the White House’s perspective, Action, like so many domestic agencies, was adrift. After a meeting in December 1972, the President told aide Leonard Garment that Action was a ‘boondoggle’ and there ‘should be no further funding’ for the agency.¹ He curtly told Garment to ‘see that it’s ended’.² The President did not relent and continued to express his disdain for the agency. Four days before the second Inauguration, Haldeman noted in his diary that the President was ‘even more convinced’ that ‘we should dump VISTA’.³ This command was relayed to the Office of Management and Budget who, in the Director’s Review for the upcoming financial year, noted that ‘domestic volunteer programs’ were to be ‘phased out’.⁴ The President’s desire to quickly eliminate Action was emblematic of his desire to institute an aggressive reset of the domestic policy agencies.

This chapter will argue that the changes that the Nixon Administration attempted to wreak on the Action agency, and in particular the VISTA programme, were of little effect. While there was some attention paid to Action by the Administration, it was punctuated by ‘months of inaction’.⁵ While the political appointees at Action believed it had become ‘a different agency’ and ‘changed considerably’ across 1973, this chapter will argue that this interpretation was incorrect. Despite

¹ Garment to Ehrlichman, 12 Dec. 1972, *Papers of the Nixon White House*, Part 7, fiche 72-12-10: A05.

² *Ibid.*

³ Diary Entry: 16 Jan. 1973, H.R. Haldeman Diaries Collection, RNPL.

⁴ Paul O’Neill to Weinberger, 8 Dec. 1972, Weinberger Papers, Box 231, LOC.

⁵ Notes on Meeting 27 Feb. 1973, *Papers of the Nixon White House*, part 3, fiche 61, 3-61-C11.

some changes in policy and personnel, VISTA retained essentially the same complexion as it had during the Administration's first-term in office. VISTA anti-poverty message was staunchly defended by allies in Congress and the Volunteers themselves, who believed that if VISTA did not 'help poor people... it [was] useless'.⁶ Testament to the Administration's failure to kill radicalism within the programme was that it continued to receive exasperated letters from conservative Oregon Congresswoman Edith Green in 1974, just as it had throughout the first-term.⁷ It would continue to confound and outrage members of the Administration and the broader conservative movement.⁸

This chapter will explore the substantive and substantial changes that the Nixon Administration sought to make to the composition of the bureaucracy at Action.⁹ Rather than the 'Administrative Presidency' approach adopted with many other domestic agencies (such as OEO in the last chapter), for Action, the White House chose to install representatives of the 'New Majority' in key appointments.¹⁰ While the New Majority appointment strategy was similar to the

⁶ Domestic Volunteer Service Act of 1973, Hearings before the Subcommittee on Equal Opportunities of the Committee on Education and Labor, House, 93rd Congress 142 (1973).

⁷ Edith Green to James Cavanaugh, 1 April 1974, FG325 Files, Box 1, RNPL. Such was Green's reputation for trouble on activism within anti-poverty programmes that Bertrand Harding, Lyndon Johnson's outgoing Director of OEO, wrote in his farewell letter to one of his programme heads that he wished his future would 'be bright and free of Edith Green', Bertrand Harding to Thomas Billings, 22 April 1969, Harding Papers, Box 36, LBJL.

⁸ Howard Phillips, 'Liberals Receive Campaign Cash from AAPR Boss,' *Human Events*, Vol. 34, Issue 46 (16 Nov. 1974), p. 16.

⁹ VISTA, Action, and the Domestic Volunteer Service Act are absent from the main literature on the Nixon Presidency and the broader historical literature from this period. For example, see Small, *Presidency of Richard Nixon*; Farrell, *Nixon: A Life*, Schulman, *The Seventies*. The exceptions are Reeves, *The Politics of the Peace Corps and VISTA* though this is more concerned with 'organizational culture' than the broader politics and Bass, *The Politics and Civics of National Service* which is more directed at the longer history of national service rather than its relationship to the politics of the Nixon White House.

¹⁰ Balzano, the main protagonist of this chapter, only appears for one paragraph in Mason's work on the 'New Majority' and that is in the context of his role during the 1972 campaign, see Mason, *Richard Nixon and the Quest for a New Majority*. Balzano's Directorship of Action is also absent from Merton's work on Balzano, see Joe Merton, "'An Ethnic Presence in the White House': Ethnicity, Identity Politics, and the Presidency in the 1970s,' *Presidential Studies Quarterly*, Aug. 2019, DOI: 10.1111/psq.12580 and Joe Merton, 'Rethinking the Politics of White Ethnicity in 1970s America,' *The Historical Journal*, Vol. 55, No. 3 (2012), pp. 731-56.

Administrative Presidency in that it involved the appointment of loyal foot soldiers, the New Majority strategy was principally a PR tactic and one which was not attuned to the finer details of policy. This balance between policy effectiveness and the optics of appealing to the New Majority would be a constant tension. This weakening of effectiveness in Executive Branch management would provide significant opportunity for other actors, notably the lower-tier bureaucracy and the Congress, to shape the programmes of the Action agency.¹¹

The second half of the chapter will explore the impact – or lack thereof – of these appointments in the legislative battle over the passage of the Domestic Volunteer Service Act of 1973. While the Administration had side-stepped a legislative fight in 1971 by choosing the executive reorganisation route to create Action, Congress would now finally get to substantively weigh in on how Action's programs operated. By focusing on the passage of this legislation, this chapter will explore the battle for control between Congress and the White House.

The conflict between the White House and Congress forms a key theme of this chapter. While the fight over OEO would play out in the Courts, the battle for Action would take place on Capitol Hill. As evidenced in earlier chapters, Nixon was intensely frustrated that the domestic programme agencies were not responsive to his direction – a sentiment which was shared by many who had previously sat behind the Resolute Desk.¹² The issue for the President, as this chapter will demonstrate, was that these domestic programme agencies were much more

¹¹ David Lewis, 'Revisiting the Administrative Presidency: Policy, Patronage, and Agency Competence,' *Presidential Studies Quarterly*, Vol. 39, No. 1 (2009), pp. 60-73 has shown elsewhere how patronage appointments 'can make it harder for Presidents to control the bureaucracy' (p. 60).

¹² Ehrlichman described his vision of 'management' as 'management in the get-the-secretary-to-do-what-the-President-needs-and-wants-him-to-do-whether-he-likes-it-or-not sense,' see Michael Koncewicz, *They Said No to Nixon: Republicans Who Stood Up to the President's Abuses of Power* (Oakland, 2018), p. 84; David Lewis, *Presidents and the Politics of Agency Design: Political Insulation in the United States Government Bureaucracy, 1946-1997* (Palo Alto, 2003), p. 37.

responsive to Congress than they were to the Executive Branch. While the White House was responsible for the naming of key posts within Action, it was Congress that was responsible for outlining the 'parameters' under which the agency operated.¹³ This has been well-understood by political scientists including Hugh Heclo, but has often been ignored in the historical literature which has instead portrayed the agencies as rebelling against the White House rather than as responsive to Congress.¹⁴ In reality, as James Q. Wilson has noted, bureaucracies must 'serve two masters' and are often 'caught in the middle' of these battles between Congress and the White House.¹⁵ The depiction of the Congressional relationship will also demonstrate that far from being independent of Congress, Presidents are in fact 'heavily dependent on Congress'.¹⁶

In highlighting the clash between the White House and the Congress, this chapter will emphasise the pivotal role played by Congressional staffers, in particular those on the Senate Labor and Public Welfare Committee. As Richard Pious has noted, during the Great Society era, Congressional committees would 'engage in substantive policy making'.¹⁷ Once again, the role of Congressional staffers is accounted for in the political science literature much better than in the historical literature.¹⁸ This chapter will demonstrate the power that the Congressional staffers had, particularly in writing the actual authorising legislation. As described contemporaneously, Congressional staffs were truly the 'invisible force in American lawmaking' during this period.¹⁹

¹³ Nomination of Marjorie W. Lynch: Hearing before the Committee on Labor and Public Welfare, Senate, 93rd 31 (1973).

¹⁴ Heclo, 'One Branch or Many?', p. 39; Godfrey Hodgson, *All Things to All Men: The False Promise of the American Presidency* (London, 1984), p. 107.

¹⁵ Wilson, *Bureaucracy*, p. 258.

¹⁶ Anthony King, 'A Mile and a Half is a Long Way,' in A. King (ed.), *Both Ends of the Avenue: The Presidency, the Executive Branch, and Congress in the 1980s* (Washington D.C., 1983), p. 247.

¹⁷ Pious, 'Sources of Domestic Policy Initiatives,' p. 106.

¹⁸ Notable exceptions are Edward Berkowitz, *Disabled Policy: America's Programs for the Handicapped* (Cambridge, 1989), p. 144; Paul Charles Milazzo, *Unlikely Environmentalists: Congress and Clean Water, 1954-1972* (Lawrence, 2006), p. 10-12; Davies, *See Government Grow*, p. 234.

¹⁹ Harrison Fox and Susan Hammond, *Congressional Staffs: The Invisible Force in American Lawmaking* (New York, 1977).

While political science scholars have argued that ‘some staffs play a key role in policy initiation’, this chapter will demonstrate it using the example of the Domestic Volunteer Service Act.²⁰

The chapter will conclude with the argument that throughout the turbulence witnessed in the period, the broader Action bureaucracy remained largely unchanged. It will demonstrate this using survey data from the ‘Action Institutes’, which were gatherings of Action bureaucrats convened across the county in late 1973. While others have used these ‘Action Institutes’ as an example of how the political appointees sought to control the bureaucracy, this chapter will use the survey data to reveal a durable liberal tendency within the Action bureaucracy.²¹ Far from unquestioningly complying with directives to orientate Action towards ‘New Majority’ ends, its officials remained committed to the anti-poverty emphasis, and in particular, to the VISTA programme.

This chapter also contributes to the literature of policymaking in the Nixon White House in 1973. With a few notable exceptions for foreign policy, scholars of the second Nixon term have largely ignored any substantial policy matters from this year. Historians have failed to account for how the scandals of Watergate impacted on the policy-making process within the White House, largely accepting Presidential Counsellor Casper Weinberger interpretation that Watergate ‘pushed ... policy to the shadows’.²² That may be true from the White House’s perspective, but

²⁰ Pious, ‘Domestic Policy Initiatives,’ p. 107; Michael Malbin, *Unelected Representatives: Congressional Staff and the Future of Representative Government* (New York, 1980).

²¹ T. Zane Reeves, ‘Administrative Discretion and the Action Agency’s War on Poverty,’ in D. Shumavon and H. Hibbeln (eds.), *Administrative Discretion and Public Policy Implementation* (New York, 1986), pp. 115-26; Daniel Drezner, ‘Ideas, Bureaucratic Politics, and the Crafting of Foreign Policy,’ *American Journal of Political Science*, Vol. 44, No. 4 (2000), p. 743.

²² Weinberger, *In the Arena*, p. 246.

Congress continued to debate and pass legislation during this period. This chapter will explore how the Nixon White House dealt with domestic policy in this new environment.

A New Director and a New Direction

While President Nixon had wanted to immediately terminate Action in early 1973, he was unable to do so as Congress had already appropriated money for the following financial year. It could not be eliminated until that period had elapsed, and so a new Director was required to oversee its phase-out. The task of finding a new Director was assigned to Fred Malek, the OMB Deputy Director ultimately responsible for the Administration's staffing strategy. Malek noted that there was an imperative for a new Director to 'take firm control of the agency'.²³ For the previous two years, Malek believed, it had foundered under the direction of Joseph Blatchford. According to a scathing assessment conducted by Malek, Blatchford 'never really supported the merger [into the Action agency] nor understood the President's dream'.²⁴ In his analysis of the requirements for the Action Directorship, Malek wrote that the most important qualities for Blatchford's replacement were 'loyalty and management ability'.²⁵ 'International experience, familiarity with the programs, ability as a public spokesman and a favourable image... would be pluses in a Director,' Malek wrote, 'but they are not as important as loyalty and management ability'.²⁶ The President emphasised the point, telling Malek that 'more important than ability is loyalty' and that 'it's better to have a dumb loyalty than a bright neuter'.²⁷ It is worth noting that unlike at

²³ Malek to Haldeman, 12 Dec. 1972, Malek Papers, Box 7, Hoover. For material on Malek's prior involvement with Action, see 11 folders of material relating to Action in Malek Papers, Box 12, RNPL.

²⁴ 'Nixon and the Program,' n.d, Laird Papers, Box A144, GFPL.

²⁵ Malek to Haldeman, 12 Dec. 1972.

²⁶ *Ibid.* 'Loyalty' was also a more useful metric as Nixon's policy agenda was vague as to make it hard to compare with a proposed candidate's policy views, see Interview with E. Pendleton James, 3 Nov. 2003, *Miller Centre Presidential Oral Histories*, <https://millercenter.org/the-presidency/presidential-oral-histories/e-pendleton-james-oral-history-director-office> (16 April 2020).

²⁷ Diary Entry: 9 Jan. 1973, H.R. Haldeman Diaries Collection, RNPL.

OEO, Malek did not advocate for an attack-dog like Howard Phillips and his proposed candidates were all politically-experienced, moderate Republicans.²⁸

The candidate first identified to replace Blatchford as Action Director was Patricia Hitt. A long-time Nixon supporter, Hitt had served as the Assistant Secretary at HEW and was the highest-ranking woman in the Administration.²⁹ Her approach was to maintain the agency but with strong revisions, urging the President not to ‘throw out the baby with the bathwater’.³⁰ Hitt was strongly supported inside the Administration by John Ehrlichman and by former HEW Secretary (and then Counsellor to the President) Secretary Robert Finch, who had even gone so far as to announce that Hitt had been appointed, even though the President had not yet decided. An article in the *Washington Post* on 15 February declared her the appointee, even though the Administration was actively vetting further candidates.³¹ Hitt’s appointment was noted in the *Post* as indicative of the President’s ‘unstated but privately expressed desire ... to appoint more women to high government posts during his second term’.³² Accusations of sexism had dogged the Administration throughout his first-term and the President’s team were eager to make appointments commensurate with ‘the dramatic changes in American society’s concept of appropriate roles for women’.³³ With the push to appoint Hitt gaining steam, a ‘palace revolt’ was brewing in the White House.³⁴

²⁸ Malek to Haldeman, 12 Dec. 1972.

²⁹ Lou Cannon, ‘Woman to Head Action Agency,’ *Washington Post*, 15 Feb. 1973, p. D12. Hitt served as one of the co-chairs of Nixon’s 1968 Presidential campaign.

³⁰ Oval Office, Tape 864-9, 27 Feb. 1973, White House Tapes, RNPL.

³¹ Cannon, ‘Woman to Head Action Agency,’ p. D12.

³² *Ibid.*

³³ Brenda Fasteau and Bonnie Lobel, ‘Rating the Candidates: Feminists Vote the Rascals In or Out,’ *New York Magazine*, 20 Dec. 1971, p. 82; John Ehrlichman, ‘The Legacy of the Nixon Years: Planning for the Second Term,’ July 1972, Harper Papers, Box 55, RNPL.

³⁴ Balzano, *Building a New Majority*, p. 94.

Malek Meets the New Majority

Though key to his re-election campaign, certain representatives of the 'New Majority' had grown frustrated that they had not received the proper spoils for their effort. Such a backlash had been anticipated by the Administration but had not been given a high-priority.³⁵ By January, Malek was already making references to 'pent up pressures' from New Majority groups.³⁶ The following month, Colson was warned by one of his assistants that 'ethnic leaders' were 'quite disturbed' at the lack of 'ethnic representation' in the Cabinet that the President had announced. It was 'essential', the advice warned, that New Majority figures not be shunted to 'bureaucratic level jobs' and that 'the agency directorships [must] be given to [white] ethnics'.³⁷

As a response, the Administration turned to its master staffer, Fred Malek. Malek had earlier been instructed that 'as standard procedure' he was 'not to submit any recommendations for any positions at all without indicating how the individual fits into the "New Majority" categories'.³⁸ Malek was asked to pay explicit attention the candidates' 'political affiliation, ethnic background, [and] religion'.³⁹ Loyalty was still paramount. Haldeman aide Larry Higby told Malek to audit the potential candidates' 'activity in the 1972 campaign'.⁴⁰ While the operation should be keen to recruit Democrats, Higby warned that Malek 'should not even bother' putting forward 'Democrats who didn't vote for the President'.⁴¹ Higby's direction was reinforced with a memo to Malek's team asserting that the Administration wanted to give 'members of the New Majority ... visible high-level government positions'.⁴² This concept of visibility was integral to the

³⁵ Safire to Nixon, 25 Oct. 1972, Safire Papers, Box 96, LOC.

³⁶ Malek to Nixon, 22 Jan. 1973, Malek Papers, Box 6, Hoover.

³⁷ Balzano to Charles Colson, 8 Dec. 1972, cited in Michael Balzano, *Building a New Majority* (Bloomington, 2016), p. 82.

³⁸ Larry Higby to Malek, 15 Nov. 1972, Malek Papers, Box 6, Hoover.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² Colson to Malek et. al, 2 Jan. 1973, cited in Balzano, *Building a New Majority*, p. 88.

Administration's approach. It was not about believing the New Majority candidates would bring something different to government but rather was a cynical system of patronage. It marked appreciation for efforts received so far and a promise that future work would earn further spoils.

In this context, Action was a prime gift to be proffered to the New Majority. The agency was to be re-purposed, rather than eliminated, and would be used for 'developing new programs aimed at the new majority constituency'.⁴³ In addition, the promotion of a New Majority candidate to the Directorship would be another token reward for support in the 1972 campaign. The ideal candidate presented himself to Charles Colson, Nixon's 'master of dirty tricks' who was also responsible for staffing.⁴⁴ Colson did not have to look out of his own office to find the perfect candidate: Michael Balzano. Balzano had entered the White House in 1971 as the 'chief liaison with ethnic groups'.⁴⁵ Balzano, a registered Democrat of Italian American heritage, had started his working life as a garbage man before enrolling in a PhD programme in Political Science at Georgetown University. It was there that he wrote a dissertation on Volunteers in Service to America.⁴⁶ Because of this relationship to VISTA, he had been in the orbit of discussion about the programme in 1971 and 1972.⁴⁷ Balzano was a diehard Nixon loyalist, telling the President in June 1972 that he 'would not sleep until after the election' and threatening to move to Canada if McGovern won.⁴⁸ Balzano matched his deeds to his actions and played an important role in the campaign, performing outreach to ethnic communities.⁴⁹

⁴³ Jones to Nixon, 15 Feb. 1973, Malek Papers, Box 7, Hoover.

⁴⁴ Tom Braden, 'Nixon's Man of the Sword,' *New York Times*, 28 July 1972, p. A15.

⁴⁵ 'Action Beat,' *Transition: A Magazine for Former ACTION Volunteers*, Vol. 2, No. 3 (March 1973), p. 32.

⁴⁶ Michael Balzano, *The Political and Social Ramifications of the VISTA Program: A Question of Means and End*, PhD diss., Georgetown University, 1971, ProQuest Dissertation N. 7202283.

⁴⁷ Nancy Gulick to Blatchford, 29 June 1971, Blatchford Papers, Box 2, RNPL.

⁴⁸ Memorandum for the President's File, 12 June 1972, *Papers of the Nixon White House*, part 2, fiche 72,-6-11: A03.

⁴⁹ Joe Merton, 'The Politics of Symbolism: Richard Nixon's Appeal to White Ethnics and the Frustration of Realignment 1969-72,' *European Journal of American Culture*, Vol. 26, No. 3 (2007), pp. 189-92.

Balzano's candidacy for the Action Directorship was not accidental. Balzano had been positioning himself throughout late January and early February 1973 as a candidate. Contrary to the views of some historians, the New Majority 'strategy' was largely ad-hoc and lacked a coherent plan.⁵⁰ Colson had merely charged his underling with staffing Action. In a 5 February memo, Balzano listed proposed candidates for various positions. When it came to the Directorship, Balzano nominated himself.⁵¹ He persisted four days later, writing again that 'there may be a need to convince the President that my going to Action is really in his interest'.⁵² Balzano pitched his nomination in the most Nixonian terms. The advantage of nominating him would be that it 'gags the Senate, screws the liberals, and telegraphs a message to the ethnics that the President has kept his promise'.⁵³

The White House's consideration of the Balzano nomination lays bare the tension between the New Majority strategy and the Administrative Presidency strategy. Balzano's nomination made sense in New Majority terms. As Jerry Jones, Malek's replacement as head of the Office of Personnel wrote to the President, 'if anyone is capable of creating and selling programs for the New Majority constituency, it is Balzano'.⁵⁴ But in order to select Balzano, they had to overlook significant weaknesses. An Ehrlichman staffer described Balzano as 'an accident looking for a place to happen'.⁵⁵ The respected Malek found Balzano 'so far below the mark as to not be an acceptable choice' as he was 'so lacking in management talent'.⁵⁶ Even the President believed

⁵⁰ Mason, *Richard Nixon and the Quest for a New Majority*, p. 235.

⁵¹ Balzano to Colson, 5 Feb. 1973, Baroody Papers, Box 39, GFPL.

⁵² Balzano to Colson, 9 Feb. 1973, Baroody Papers, Box 39, GFPL.

⁵³ *Ibid.*

⁵⁴ Jones to Nixon, 15 Feb. 1973.

⁵⁵ Staff Memo to Ken Cole, 5 Jan. 1973, cited in Balzano, *Building a New Majority*, p. 96.

⁵⁶ Malek quoted in Jones to Nixon, 15 Feb. 1973.

Balzano more suited to something at the 'Assistant Secretary level'.⁵⁷ Overlooking an alternative candidate who was a 'first rate manager' whose 'appointment would do us no political good', the White House selected Balzano as the Action Director.⁵⁸ The decision was made as a 'signal to the entire new majority constituency that the Administration has not forgotten the job that was done in November'.⁵⁹ This was ensured when the President confirmed privately that he would 'substantially change' rather than eliminate Action.⁶⁰ Action was to become the New Majority agency.

Now that the Administration had nominated a Director who pledged to retain the Congressionally-supported agency, Balzano's Senate confirmation in March was a breeze. His nomination was shepherded through the Senate's Committee on Foreign Relations by Lowell Weicker, a liberal Republican from Connecticut.⁶¹ Weicker lauded his fellow Connecticuter as a 'fine young man' whose commitment to government service the Committee could be 'absolutely convinced' of.⁶² In policy terms, Balzano strongly supported the mission of the Action agency in his hearings. He declared that he had 'absolutely no intent whatsoever' of 'de-escalating' Action. Balzano's views on VISTA were more nuanced. He described the programme as exhibiting 'a series of goals and objectives of the highest humanitarian nature'. When pressed by Senator Charles Percy of Illinois on his support for VISTA, Balzano concurred enthusiastically with

⁵⁷ Old Executive Office Building, 410-033, White House Tapes, RNPL.

⁵⁸ Jones to Nixon, 15 Feb. 1973.

⁵⁹ *Ibid.* Diary Entry: 20 Feb. 1973, H.R. Haldeman Diaries Collection, RNPL. With this decision, the Administration was still stuck with the 'Patt Hitt problem'. She was offered a State Department job instead.

⁶⁰ Oval Office, Tape 864-9. The President's change of tack can also be attributed to blowback over the OEO decisions. While Balzano welcomed the 'attempt to dismantle OEO', he warned Nixon that it was necessary for his Administration to 'indicate that you intend to take positive steps... to solve some of our social problems', see Balzano to Nixon, 9 Feb. 1973, FG6-7 Files, Box 2, RNPL.

⁶¹ Balzano also received a hearing from the Senate Labor and Public Welfare Committee, see Nomination on Michael P. Balzano to be Director of Action: Hearing before the Committee on Labor and Public Welfare, Senate, 93rd Cong. (1973).

⁶² Nomination of Michael P. Balzano to be Director of Action, Committee on Foreign Relations, Senate, 93rd Cong. 58 (1973).

Percy's assertion that there should be a 'real role' for VISTA in society.⁶³ He stressed that his dissertation on VISTA was 'not critical of the program' yet equally emphasised his suspicion of Volunteers who often brought 'their own goals which sometimes conflicted with the goal of the community... [and] Congress'.⁶⁴ This, however, was based upon Balzano's own interpretation of 'goals' and Congressional intent rather than any objective truths about the programme.⁶⁵ Many VISTA supporters within Congress believed it had been operating exactly as intended.⁶⁶

Balzano's swearing-in ceremony underscored how the Administration sought to exploit New Majority appointments. Special Assistant William Baroody strongly advocated a Presidential role in the swearing-in. For contrast, the previous Action Director was sworn in by the agency's Director of Personnel and would lament the lack of White House interest in a proper swearing-in ceremony.⁶⁷ Baroody wrote to David Parker, the President's appointment secretary, that it was 'extremely important for New Majority reasons' that Nixon swear Balzano in personally. Baroody also suggested inviting 'key ethnic leaders from around the country'.⁶⁸ Showing how unfamiliar they were with Catholic culture, the original date of the ceremony had to be re-scheduled after Balzano pointed out that it was not ideal to hold it on Good Friday.⁶⁹ The President agreed to participate and Balzano was sworn in by Nicholas S. Nunzio, an Italian-American Catholic whom Nixon had appointed to the DC Superior Court.⁷⁰ Also in attendance

⁶³ Percy's interest in VISTA appeared to stem from the fact that a former aide of his, Carol Khosorvi, had previously also served as VISTA Director, see *ibid.*, p. 60.

⁶⁴ *Ibid.*

⁶⁵ It was not just conservatives. Senator Warren Magnuson lamented that he wished VISTA would 'just stick to what it's supposed to do instead of getting into a lot of things', Supplemental Appropriations for Fiscal Year 1973, Hearing before the Subcommittees of the Committees on Appropriations, Senate, 92nd Cong. 861 (1972).

⁶⁶ Reorganization Plan No. 1 of 1971 Hearings, p. 90.

⁶⁷ Alan May to Malek, 29 Nov. 1971, Malek Papers, Box 14, RNPL.

⁶⁸ William Baroody to Parker, 17 Apr. 1973, FG325 Files Box, RNPL.

⁶⁹ *Ibid.* The changing attitudes of Catholics to Nixon was remarkable. He had received 22% of the Catholic vote in 1960, 33% in 1968, and 52% in 1972, see Safire, *Before the Fall*, p. 562. For more on Nixon's relationship with Catholics, see *ibid.*, pp. 553-564.

⁷⁰ 'Ex-Trashman Sworn in as Agency Head,' *Albuquerque Journal*, 11 May 1973, p. F6.

was Aloysius Mazewski, President of the Polish National Alliance, Frank Scumaci from the Steel Workers Union, and Michael Revisto, listed by the Administration as a ‘prominent Italian leader’.⁷¹ Key members of the ‘ethnic press’ attended including Fortune Pope, the editor of the Italian-language *Il Progresso*.⁷² These guests were invited by the Administration’s to ‘further emphasise the symbolism in appointing a blue-collar ethnic as Director’.⁷³

The Broader Reorganisation

In his quest to overhaul Action, Balzano was not content with mere minor staff changes. He set about instituting a ‘high-level personnel reorganisation plan’.⁷⁴ The purpose of this was to wrest ‘control’ from the ‘Washington bureaucrats and regional anti-poverty social workers’ whom the Administration blamed for their inability to control the domestic volunteer programs.⁷⁵ Critics in the Administration placed the blame on the bureaucrats who were ‘still dedicated to anti-establishment causes of the 60’s’.⁷⁶ Balzano’s assault was specifically targeted at three positions: Action Deputy Director, Director of Domestic Operations, and Director of VISTA.⁷⁷ It was not a coincidence that these positions were the ones most responsible for controlling what the White House saw as the agency’s radical excesses. One incident which had incensed the Administration during the recent presidential campaign was the letter sent to current and former VISTA Volunteers by Democratic nominee George McGovern. What particularly aggrieved the Administration was that the letter had been sent using an official Action mailing list.⁷⁸ When the

⁷¹ Tom Hart to Nixon, 10 May 1973, FG325 Files, Box 2, RNPL.

⁷² *Il Progresso* was staunchly anti-Communist, see Alessandro Brogi, *Confronting America: The Cold War Between the United States and the Communists in France and Italy* (Chapel Hill, 2011), p. 103.

⁷³ ‘Schedule Proposal,’ 13 April 1973, FG325 Files, Box 2, RNPL.

⁷⁴ Jerry Jones to Haig, n.d., FG325 Files, Box 1, RNPL.

⁷⁵ ‘Domestic Volunteer Programs,’ n.d., Laird Papers, Box A144, GFPL.

⁷⁶ *Ibid.*

⁷⁷ Jones to Nixon, 15 Feb 1973.

⁷⁸ ‘Action Eyes Possible Demo Mailing List Abuse,’ *Lawton Constitution*, 8 Sep. 1972, p. 18.

President discovered this, he asked ‘how in the hell’ the mailing list was obtained and declared it ‘time to clean all the holdovers’ out of the agencies.⁷⁹

VISTA

VISTA and Action’s leadership and appointments during the second term were made almost exclusively in relation to the New Majority, a pattern that was likely especially pronounced for agencies whose programmes the White House did not truly care about. At the beginning of the second term, the Directorship of VISTA was presently held by Constance Newman, an African American woman who had been a career bureaucrat. Newman’s appointment had been trumpeted by the Republican National Committee in 1972, and was used as part of outreach to black voters.⁸⁰ Newman had entered government service as an advisor to the Kerner Commission and, prior to joining VISTA, had been a Special Assistant in HEW.⁸¹ Like all political appointees, she had been asked to tender her resignation in the wake of the 1972 victory. In keeping with ‘New Majority’ thinking, the initial suggestion for Newman’s replacement was Myron Kurogas, a native of Chicago and a leader within the Ukrainian community, who was then Director of Action’s Region V.⁸² It is unclear why Balzano chose to bypass Kurogas, though it was known within the Administration that Joseph Blatchford, the former Action Director, had made a ‘promise’ to ‘the Hill’ to appoint another African American as VISTA Director.⁸³

⁷⁹ ‘Daily News Summary,’ 19 Sept. 1972, *Papers of the Nixon White House*, Part 6B, fiche 6B-159-03.

⁸⁰ Edwin Sexton to ‘Fellow Citizen,’ 6 Jan. 1972, NAACP Papers, Part 30, Series A, *ProQuest History Vault*. The Kerner Commission was convened by President Lyndon Johnson after the ‘long hot summer’ of civil unrest in 1967. The report found that America was ‘moving towards two societies – one black, one white – separate and unequal,’ see Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge 2016), p. 124.

⁸¹ Jo Murray, ‘She Found a Tough Road to the Top of VISTA,’ *Oakland Tribune*, 24 Aug. 1972, p. 58.

⁸² ‘VISTA Review Set for Wednesday,’ *The Decatur Daily Review*, 9 Feb. 1973, p. 54.

⁸³ Jones to Nixon, 15 Feb. 1973.

Balzano instead proposed Frank Williams, who had been Director of Atlanta's Regional Action Office since 1972.⁸⁴ In recommending Williams, Balzano referred to him as 'Harry Dent's black', a reference to the former Special Counsellor Harry Dent who had initially recruited Williams to Action.⁸⁵ Balzano said that this would create a 'miniature UN operation' at Action 'whose membership position in rank corresponds precisely to voter turnout... the Italian at the top, and all the way down at the bottom the black'.⁸⁶ That he would put this in writing justifies the concerns that some staffers had about Balzano. The Administration accepted the recommendation of Williams, with Jerry Jones from the White House Office of Personnel acknowledging Williams as a 'politically savvy and extremely loyal black supporter of the Administration' who was endorsed by key Southern Republican leaders.⁸⁷ Despite Balzano's racist cynicism, he went for experience and competence (with the necessary Republican pedigree, naturally), rather than making a token New Majority appointment. Williams had significant experience with community-based programme. Holding a Doctorate in Education, Williams had taught in Titusville, Florida, for over twenty years.⁸⁸ He expanded from this to issues of school desegregation and rural disadvantage.⁸⁹ Williams was a strong supporter of the program, and pledged that he would 'not preside over the demise of VISTA'.⁹⁰ The appointment of Williams rather than a New Majority candidate demonstrates a continuity with the Administration's first-term staffing policy of appointing traditionally-loyal Republicans.

⁸⁴ 'Frank Williams Named Action Regional Director,' *Atlanta Voice*, 15 Jan. 1972, p. 1.

⁸⁵ Dent was a former aide to segregationist Senator Strom Thurmond and 'a leading advocate and executor of the Southern strategy', see Kabaservice, *Rule and Ruin*, p. 255.

⁸⁶ Balzano to Colson, 5 Feb. 1973.

⁸⁷ Jones to Nixon, 15 Feb. 1973.

⁸⁸ 'Frank Williams Named Action Regional Director,' p. 1.

⁸⁹ *Ibid.*

⁹⁰ 'VISTA, Despite Travail, Is Optimistic,' *New York Times*, 12 June 1973, p. 24.

Director of Domestic Operations

Another critical post was the Directorship of Domestic Operations, which had been held since the agency's inception by Christopher Mould. Mould was a Democrat who had been one of the progenitors of the controversial Model Cities program.⁹¹ In his evaluation for this role in 1971, described in Chapter Three, he was described as 'exceptionally bright, articulate, politically sophisticated, and committed to the concept of volunteerism'.⁹² Though he was 'effective', his time was up, in the words of one Administration official, because he had 'not been aggressively looking for opportunities to help the Administration politically'.⁹³ In line with the revitalisation of the Action bureaucracy, there was a strong sense within the White House that 'Chris Mould must go'.⁹⁴

Jerry Jones, from the White House Personnel Office, proposed Alex Amendaris for the position. Amendaris was a life-long Republican who had been the Director of Spanish Speaking Operations for the 1972 Presidential Campaign.⁹⁵ Though acknowledging that Amendaris was 'not a first-rate manager nor an outstanding spokesman', Colson and Ehrlichman both endorsed him due to his 'other qualities', namely that his appointment 'would signal continued interest in the Spanish speaking'.⁹⁶ This was at the explicit direction of the President. The 'commitment' to Amendaris was obtained by Presidential Counsellor Anne Armstrong after a direction by the President to increase the number of 'Spanish-Speaking appointments'.⁹⁷ In line with the

⁹¹ Jones to Nixon, 15 Feb 1973; 'Deaths,' *University of Chicago Magazine*, Vol. 108, No. 1 (2015), p. 82. For Nixon's disdain for Model Cities, see Rowland Evans and Robert Novak, *Nixon in the White House: The Frustrations of Power* (New York, 1972), p. 40.

⁹² 'United States Office of Voluntary Action,' n.d., RG362, Director's Files, Box 1, NARA II.

⁹³ Jones to Nixon, 15 Feb. 1973.

⁹⁴ Oval Office, Tape 864-9, 27 Feb. 1973.

⁹⁵ Dom Bonafede, 'GOP Aims Campaign at Key Voter Blocs in Effort to Build Winning Coalition,' *National Journal*, Vol. 4, No. 35 (1972), p. 1351.

⁹⁶ Jones to Nixon, 15 Feb. 1973.

⁹⁷ Anne Armstrong to Nixon, 8 March 1973, *Papers of the Nixon White House*, Part 6A, fiche 6A-274-43.

Administration's pattern of indecisiveness, though, no decision was made and Mould continued to serve through June 1973.⁹⁸

Balzano was strategic in his reshuffle. As laid out in a blueprint to Colson, he needed to be 'calculating about those we want to eliminate, lest we help create a backlash'.⁹⁹ Balzano specifically cited the case of OEO where he observed the 'undesirable' attention paid by Congress and the media and fretted about drawing the attention of 'the liberals'.¹⁰⁰

The best case for this was the retention of Walter C. Howe as Deputy Director. Howe, a Republican, maintained a cordial relationship with the Action bureaucrats, who viewed him 'as an efficient manager and an ideological neutral'.¹⁰¹ He had also served as Acting Director between Blatchford's resignation and Balzano's assumption of the Directorship.¹⁰² For Balzano, it was best to retain someone who could be 'controlled' rather than moving him on and 'spread[ing] terror and fear throughout the bureaucracy'.¹⁰³

Legislation

An implicit assumption of the White House's position in trying to turn Action into the New Majority agency was that the agency should be entirely responsive to the White House. As political scientists have noted, however, executive agencies must serve two masters, both the

⁹⁸ Jones to Haig, n.d, FG325 Files, Box 1, RNPL.

⁹⁹ Balzano to Colson, 5 Feb. 1973.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² Walter Howe to Tod Hullin, 14 Feb. 1973, FG325 Files, Box 1, RNPL.

¹⁰³ Balzano to Colson, 5 Feb. 1973.

Executive and Legislative Branches.¹⁰⁴ Congress continued to take an active interest in the Action agency, and in particular the Nixon Administration appointments.¹⁰⁵ Of particular interest to Congress, both as an institution but also to individual members of Congress such as Californian Democratic Senator Alan Cranston, was to provide a legislative undergirding to the Action agency. During 1972, with the Administration demonstrating little interest in Action, Congress had considered the *Action Act of 1972*.¹⁰⁶ As discussed in Chapter Three, the Nixon Administration had chosen to create the agency using Executive Reorganisation, rather than passing legislation through Congress. While it succeeded in creating the agency quickly, all sides agreed that the resulting agency was ‘a patchwork quilt, with little regard for organisational symmetry’ while Congressional leaders decried the ‘unresolved issues’ which had ‘hindered the agency’.¹⁰⁷ The most glaring inefficiency was in Action’s funding structure, where the composite programs of Action were still funded under their originating legislation. For example, VISTA was still funded through the Title VIII of the Economic Opportunity Amendments of 1972, the funding basis for the Office of Economic Opportunity programs.¹⁰⁸ This also created organisational chaos for the Congress, with almost every individual programme run by Action being monitored by a different Congressional committee.¹⁰⁹

While the Administration was focussed on staffing, Congress took the lead on introducing legislation for the Action agency. Balzano conceded that ‘prompt enactment of organic legislation did not appear until recently to be a possibility for which we should plan’,

¹⁰⁴ Daniel Carpenter, ‘The Evolution of National Bureaucracy in the United States,’ in J. Aberbach and M. Peterson (eds.), *The Executive Branch* (New York, 2005), p. 62.

¹⁰⁵ 93 Cong. Rec. 16821 (1973).

¹⁰⁶ Action Act of 1972 and Action Domestic Programs: Hearings before the Special Subcommittee on Human Resources of the Committee on Labor and Public Welfare, 92nd Congress, 2nd Session (1972)

¹⁰⁷ Balzano, *Reorganizing the Federal Bureaucracy*, p. 9; 93 Cong. Record 6945 (1973).

¹⁰⁸ Supplemental Appropriations for FY1973, Senate, p. 810.

¹⁰⁹ 93 Cong. Record 6945 (1973).

demonstrating some of the lack of legislative nous that his doubters had criticised.¹¹⁰ Being outmanoeuvred by Congress was a common theme of the Administration's first-term, and despite their resolve to rein in Congress, control continued to elude them in the second. The initial proposal for legislation was introduced by Senator Cranston in March 1973. Cranston had a strong affinity for the Federally-sponsored volunteer programmes, in particular the Peace Corps, described as his 'first love'.¹¹¹ His first job in Washington had been as an adviser to Peace Corps Director Sargent Shriver during the Kennedy Administration.¹¹² Cranston's Bill, the Domestic Volunteer Service Act (S. 1148) was introduced to the Senate on March 8, 1973. Cranston was joined in sponsorship by four Democratic Senators, and later, two Republicans.¹¹³ The bill called for an increase in the appropriations ceiling for the Action agent, and in particular for VISTA.¹¹⁴ Contrary to Nixon's earlier desires to 'dump VISTA' Cranston advocated a near-doubling of funds over the following three years. The bill was unashamedly 'modelled after the programs of the 1960's' and showed the determination of liberals not to meekly fold to the Administration's agenda of dismantling anti-poverty programs, witnessed in the antagonising appointment of Howard Phillips.¹¹⁵ Not bowing at the altar of Nixon's electoral victory, Cranston pledged to move 'very rapidly' in Congress' consideration of the bill.¹¹⁶

White House and Action were caught off-guard by Cranston's proposal. This was a common occurrence for the Nixon White House, but now it was accentuated by the unfolding Watergate

¹¹⁰ Domestic Volunteer Service Act of 1973, Hearings before the Subcommittee on Equal Opportunities, House, 93rd Congress 26 (1973).

¹¹¹ Memorial Tributes and Addresses ... in Eulogy of Alan Cranston, 107th Congress, US Congressional Serial Number 14681 91 (2001).

¹¹² *Ibid.* For more on Cranston's relationship with the Peace Corps, see Stanley Mesiler, *When the World Calls: The Inside Story of the Peace Corps and its First Fifty Years* (Boston, 2011), pp. 151-2.

¹¹³ 93 *Cong. Record* 6945 (1973).

¹¹⁴ *Ibid.*, p. 6950.

¹¹⁵ Author unknown, 'The Problem: Legislation for Action,' n.d., Laird Papers, Box A144, GFPL. Another, more cynical, interpretation is that they just like the funding for their own districts.

¹¹⁶ 93 *Cong. Record* 6945 (1973).

crisis, which saw the resignations of the ‘high command’ of Ehrlichman and Haldeman in April.¹¹⁷ Ehrlichman in particular had been the pivotal figure in domestic policy formulation, so his loss was particularly felt in the Administration’s lack of response to Cranston’s Bill. Ehrlichman’s replacement as chief domestic advisor was former eight-term Congressman Melvin Laird. Laird declared to the *National Journal* that he ‘lov[ed] Congress’, a stark contrast to his predecessor who had believed them to be ‘foot-dragging obstructionists’.¹¹⁸ Gerald Ford and Hugh Scott, the Republican leaders in the House and Senate respectively, were now invited to Cabinet meetings.¹¹⁹ Haldeman was replaced by Alexander Haig as Chief of Staff, but Haig lacked the authority of his predecessor.¹²⁰ The President’s all-consuming focus on Watergate also prevented effective liaison with Congress, which even previously was done more for PR than substance.¹²¹ Arizona Senator Barry Goldwater warned the President in 1973 that by June he had ‘not started to get acquainted with the Congress’.¹²² It is important here to remember that many in the White House and Nixon’s orbit believed that the Watergate troubles were temporary and the White House continued to act as if it would see out the term, rather than a palliative operation.¹²³

As late as mid-May 1973, two months after Cranston introduced the bill in Senate, and after an accompanying bill was introduced in the House, the Administration was still not prepared to release its own Action proposal.¹²⁴ Instead, they preferred to keep it ‘absolutely White House

¹¹⁷ Stern and Johnson, ‘3 Top Nixon Aides, Kleindienst Out,’ p. A1.

¹¹⁸ Dom Bonafede, ‘Staff, Style Changes Slow in Coming Despite President’s Post-Watergate Reforms,’ *National Journal*, Vol. 5, No. 29 (1973) p. 1060. Evidence of Laird’s fondness for his time in Congress – and his understanding for how much of its important business is conducted – is the fact that he still got his haircut at the House barber shop, see p. 1059.

¹¹⁹ Bonafede, ‘Staff, Style Changes,’ p. 1059. According to the *Washington Post*, Ford and Scott had suggested Laird for the role, see Richard, ‘Laird’s Appointment..,’ p. A1.

¹²⁰ Burns, diary entry for June 9 1973.

¹²¹ Nixon to Stephen Bull, 10 March 1973 in B. Oudes (ed), *From: The President*, p. 582-3.

¹²² Barry Goldwater to Nixon, 20 June 1973, Haig Papers, Box 10, LOC.

¹²³ Dean, *The Nixon Defense*, p. 556.

¹²⁴ 93 Cong. Record 16821-3 (1973).

property'.¹²⁵ This was partially due to paranoia but more so to the fact that they truly lacked a 'legislative strategy'.¹²⁶ The White House was still reeling from the *Local 2677* decision, which had ended its OEO strategy and caused a broader re-think of its approach to its domestic agenda.¹²⁷ It did not want to defer to Democrats in Congress but were too distracted by Watergate and the unfolding chaos to develop a proper strategy. A request from OMB's Paul O'Neill for a copy of the proposal turned Balzano apoplectic. O'Neill's request, Balzano believed, had 'tipped off' others within OMB about the existence of an Administration proposal.¹²⁸ Balzano was particularly irate about Naomi Sweeney, who worked in the Legislative Affairs division of OMB. He raged that Sweeney 'talk[ed] to Cranston's people regularly' and that 'if the cat is not out of the bag already [it] will be ... in minutes'.¹²⁹ Balzano believed that OMB's intent had been to 'delay us long enough to screw the President', though he was not sure whether O'Neill was 'doing it intentionally' or 'just being his normal bureaucratic self'.¹³⁰ Balzano and OMB had also clashed over defining the goals for the agency.¹³¹ Balzano's questioning of O'Neill, a loyal servant of the Administration, testified to his conspiratorial disposition; one which hindered his development of a productive working relationship with a critical agency like OMB.¹³²

Balzano's objections to Cranston were both ideological and pugilistic. Balzano opposed Cranston's return to the ethos of Johnson-era poverty programs and bemoaned the 'chance' to remodel the programmes slipping through his fingers.¹³³ He also had a combative relationship

¹²⁵ Balzano to Baroody, 9 May 1973, Baroody Papers, Box 39, GFPL.

¹²⁶ *Ibid.*

¹²⁷ Roy Ash to Nixon, 27 June 1973, *Papers of the Nixon White House*, Part 6A, fiche 6A-291-32.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ Joel Havemann, 'OMB Begins Major Program to Identify and Attain Presidential Goals,' *National Journal*, Vol. 5, No. 22 (2 June 1973), p. 792.

¹³² O'Neill worked 364 days of the year, only taking Christmas Day off. Author's interview with ex-OMB official Jeffrey Weinberg, 24 Nov. 2019; Hugh Heclo, 'OMB and the Presidency: The Problem of "Neutral Competence",' *The Public Interest*, Vol. 38 (Winter 1975), p. 89.

¹³³ Balzano to Baroody, 9 May 1973.

with the California Senator.¹³⁴ Balzano was determined to act decisively because he believed that Action 'simply cannot have Cranston's people get the best of the President now'.¹³⁵ True to his reputation as a political fighter, Balzano declared his desire to 'screw Cranston and his people'.¹³⁶ The zeal was a predictable outcome of Nixon staffing the agencies with political cronies, with more loyalty to the President than management competence.

Balzano decided not to release a novel proposal to rival Cranston's, preferring instead to sabotage Cranston's bill with amendments. Balzano drafted a series of fifteen amendments to the bill. He then elicited the aid of moderate Minnesotan Congressman Albert Quie to submit the amendments to Congress.¹³⁷ Quie, the ranking Republican on the House Education and Labor Committee, had emerged as 'one of the sharpest critics of Great Society liberalism'.¹³⁸ The intended effect of these proposed amendments was to 'totally convert' Cranston's proposal to meet the Administration's requirements.¹³⁹ Balzano then personally worked extensively with the Hill to enact the legislation.¹⁴⁰

Quie told the House on 17 September 1973 that there was 'no difference between the desire of the Administration and the Committee'.¹⁴¹ Pennsylvanian Representative Edwin Eshelman

¹³⁴ As far back as February, Balzano had believed that Cranston would 'make as much trouble for us as possible,' see Balzano to Colson, 5 Feb. 1973,

¹³⁵ Balzano to Baroody, 9 May 1973.

¹³⁶ *Ibid.*

¹³⁷ For the 'moderate' designation, see Evans and Novak, *Nixon in the White House*, p. 116.

¹³⁸ 'House Assigns Committees for 93rd Congress,' *National Journal*, Vol. 5, No. 6 (10 Feb. 1973), p. 207; Davies, *See Government Grow*, p. 61. In 1966, Richard Nixon applauded Quie's response to the War on Poverty, see Richard Nixon, 'Can We Still Win the War on Poverty?' 3 April 1966, Speech Files (PPS 208), Box 89, RNPL.

¹³⁹ Author unknown, 'The Problem: Legislation for Action,' n.d., Laird Papers, Box A144, GFPL.

¹⁴⁰ 93 Cong. Record 29932 (1973).

¹⁴¹ *Ibid.*

declared that the bill was ‘truly the President’s’.¹⁴² To this end, the Administration believed it had won a legislative victory. Reporting to the President on the final stages of the bill, Wilfred Rommel, the Assistant Director for Legislative Reference, told Nixon that ‘numerous compromises were achieved and the most undesirable provisions were deleted’.¹⁴³ Rommel described the amended House bill as ‘the best possible bill with respect to doing what the Administration wants to do with the Agency’. Or as he more neatly summarised it for the President: ‘This bill is now Nixon’s bill’.¹⁴⁴

Nixon’s Bill?

But to what extent was it truly Nixon’s Bill? A close reading of the act’s provisions relating to VISTA tell a different story. Title I, which describes the nature and function of VISTA, was largely unchanged from Cranston’s original bill. In some instances, however, VISTA’s remit had actually been liberalised. Whereas the description of VISTA’s remit applied only to ‘poverty’, it now applied to ‘poverty-related human, social, and environmental problems’.¹⁴⁵ The changes in Title I were of little significance.

Change was evident in Sec. 104 (d) of the bill, relating to VISTA Volunteer grievances. Installing a proper process for VISTA Volunteers to air their grievances had been one of the primary campaigns of the National VISTA Alliance.¹⁴⁶ Cranston had included strong language to this effect in his initial bill, agreeing to the NVA recommendation for a mechanism for Volunteers to

¹⁴² "Action Domestic Programs." *CQ Almanac 1973*, 29th ed., pp. 564-65. <http://ezproxy-prd.bodleian.ox.ac.uk:2274/cqalmanac/cqal73-1227179> (1 Feb 2020).

¹⁴³ Wilfred Rommel to Nixon, 29 Sep. 1973, Baroody Papers, Box 39, GFPL.

¹⁴⁴ *Ibid.*

¹⁴⁵ Domestic Volunteer Service Act of 1973, Pub. L. No. 93-113, 87 Stat. 396 (1973). In particular, see section 101 and 104 a).

¹⁴⁶ DVSA Hearings, Subcommittee on Equal Opportunities, pp. 383-6; ‘NVA Platform,’ n.d., RG362, Director’s Files, Box 1, NARAI II.

‘obtain resolution of grievances’ which was to include representatives of the Volunteers.¹⁴⁷ This language was altered, but the final bill still mandated the Director to ‘establish a procedure, including notice and opportunity to be heard, for volunteers... to obtain resolution of grievances’. Hitherto, no grievance process had been specified, so whilst the final language was narrower, it still marked what the President of the Action Employees Union declared ‘a giant step forward’.¹⁴⁸

The National VISTA Alliance also raised concerns about Section 106 of Cranston’s bill pertaining to the ‘participation of beneficiaries’ in the VISTA program. Robert Litchfield, a New York VISTA Volunteer and NVA representative, had told Congress of his concern over the ‘ambiguity’ in the wording that would exclude the poor from the decision-making process. Litchfield testified that present stipulations were not ‘sufficient to insure meaningful participation’. In the final bill, language was added mandating VISTA programs to ‘establish... a continuing mechanism for the meaningful participation of the poor’. This change, a near verbatim redress of his grievance, was a significant victory for the NVA and also their effective lobbying.

To sell Nixon on the bill, OMB told the President that there was strong wording ensuring Gubernatorial vetoes over VISTA projects ‘as recommended by the Administration’.¹⁴⁹ In reality, though, this section of the bill, 102 (d) was identical to Cranston’s initial bill and constituted another significant liberalisation. Since 1967, Governors had been required to give their express

¹⁴⁷ Domestic Volunteer Service Act of 1973. In particular, see section 104 (d), (e), and (f).

¹⁴⁸ Domestic Volunteer Service Act of 1973, Hearings before the Committee on Labor and Public Welfare, Senate, 93rd Cong. 383, 391 (1973).

¹⁴⁹ Rommel to Nixon, 29 Sept. 1973.

permission for VISTA programs to operate in their state.¹⁵⁰ This had meant that states such as Mississippi had a blanket ban on VISTA volunteers.¹⁵¹ Cranston's language subtly – but critically – reversed the onus. Now Governors had to actively veto a VISTA program, and only had 45 days to do so. Between 1973 and 1977 this gubernatorial power was never used.¹⁵²

Similarly, Title IV, which described the 'Administration and Coordination' of the Action Agency remained largely unchanged. Of the 22 sections of Title IV, two were modified, one was added, and one was deleted. Even these changes were minor. For example, the differing Sections 401, which described the structure of Action, changed the number of Associate Directors from four to two. This change, though, cemented the anti-poverty nature of the Agency. The change in wording specifically demanded an 'Associate Director for Domestic and Anti-Poverty Operations'.¹⁵³ As witnessed in chapter three, this position's creation was due to the lobbying efforts of New York Senator Jacob Javits to allay his concerns that the agency would not retain a significant anti-poverty emphasis.¹⁵⁴ This was a concession that the White House was unwilling to make in 1971, but after its adopted had come a permanent feature, emblematic of how changes in policies 'put down roots' and become embedded.¹⁵⁵

'Senator Cranberg'

¹⁵⁰ Domestic Volunteer Service Act Extension, Hearings before the Subcommittee on Child and Human Development of the Committee on Human Resources, Senate, 95th Cong. 243 (1978).

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*, p. 244

¹⁵³ Domestic Volunteer Service Act of 1973. This change would be agreed to by the Senate on a 'voice vote', demonstrating their lack of interest in the matter, see "Action Domestic Programs" *CQ Almanac 1973*, <http://library.cqpress.com/cqalmanac/document.php?id=cqal73-1227179> (1 Feb 2020).

¹⁵⁴ George Shultz to Jacob Javits, 19 May 1971.

¹⁵⁵ The concept of social programmes 'putting down roots' is drawn from Davies, *See Government Grow*, p. 2.

Rather than being ‘Nixon’s bill’ that Rommel described, it was Cranston’s bill. To give full credit to the Senator, however, would ignore a fundamental fact about the operation of the Senate during this period, namely the outsized and under-appreciated role played by Congressional staff. The growth of Congressional staffs was an important consequences of the rapid expansion of Federal government responsibilities in the Great Society era.¹⁵⁶ The number of Congressional staff members more than doubled in the decade between 1965 and 1975.¹⁵⁷ This growth was a necessary response to the burgeoning demands on Members of Congress’ time. It was reported that Alan Cranston received over 12,000 pieces of mail each week, while the volume of mail sent from Capitol Hill increased five-fold between 1954 and 1970.¹⁵⁸ Nelson Polsby has attributed some of the growth to Democrats on the Hill who were ‘suspicious’ of what President Nixon was doing, and whose reaction to their loss of trust in the executive branch was to increase legislative branch staff.¹⁵⁹ This rapid growth contributed to the rise of what was termed a ‘growing Congressional bureaucracy’.¹⁶⁰

The influence of one particular staffer, Johnathan R. Steinberg, on Senator Cranston and on the DVSA bill was particularly noteworthy. The Steinberg-Cranston relationship was described in the 1970s as ‘a civics lesson in how the government is run and how the laws are written these days’.¹⁶¹ The rise of Congressional staffers was part of the ‘dispersion of authority in Congress’ evident in the early 1970s.¹⁶² Steinberg, ‘one of the Senate’s most influential staffers’ was the

¹⁵⁶ Juan Cameron, ‘The Shadow Congress the Public Doesn’t Know,’ *Fortune*, 15 Jan. 1979, p. 40

¹⁵⁷ Harold Relyea, *Government at the Dawn of the 21st Century* (Huntington, 2001), p. 6.

¹⁵⁸ Fox and Hammond, *Congressional Staffs*, p. 120; Patterson, ‘The Semi-Sovereign Congress,’ p. 149.

¹⁵⁹ Nelson Polsby, ‘Some Landmarks in Modern Presidential-Congressional Relations,’ in A. King (ed), *Both Ends of the Avenue: The Presidency, the Executive Branch, and Congress in the 1980s* (Washington D.C., 1983), p. 13.

¹⁶⁰ Fox and Hammond, ‘The Growth of Congressional Staffs,’ p. 112.

¹⁶¹ Charles Bartlett, ‘The Senate’s High-Flying, Powerful Aides,’ *Washington Star*, 26 May 1975, p. 11.

¹⁶² Harvey C. Mansfield Sr., ‘The Dispersion of Authority in Congress,’ *Proceedings of the Academy of Political Science*, Vol. 32, No. 1, p.1.

Counsel of the Special Subcommittee on Human Resources which had oversight over Action.¹⁶³

Steinberg had a long association with the Subcommittee Chairman Alan Cranston, having previously worked under his chairmanship at Veterans Affairs.¹⁶⁴ Steinberg described their relationship as ‘very unusual’ whereby the California Senator ‘gives me a lot of latitude because we think alike’.¹⁶⁵ A *Fortune* profile of Steinberg described him as ‘a surrogate Senator’ and noted how, such was his influence, that lobbyists would refer to ‘Senator Cranberg’.¹⁶⁶ In a more withering assessment of their relationship, the author wrote that ‘Steinberg’s whispered words are often repeated by Cranston as if he were a ventriloquist’s dummy’.¹⁶⁷ Steinberg influenced the passage of notable legislation associated with Cranston during the Nixon years including the Emergency Employment Act, the Comprehensive Employment and Training Act, and the Legal Services Corporation Act.¹⁶⁸

Steinberg had a particular interest in the Action agency. Like his boss, he had a deep attachment to the Peace Corps. Steinberg had previously served as Attorney Advisor at the Peace Corps from 1964 to 1968 before being promoted to Deputy General Counsel in 1968.¹⁶⁹ Steinberg did not take a backseat role on Action. He was, as one critic described, ‘almost a classic example of the activist entrepreneur’.¹⁷⁰ A caustic article by Charles Bartlett in the *Washington Star* decried

¹⁶³ DVSA Hearings, Subcommittee on Equal Opportunities, p. ii; Bill McCallister, ‘An \$89,500 Move Up and Out?’ *Washington Post*, 10 Jul. 1989, p. A9.

¹⁶⁴ Thomas Lindsay, *History of the Committee on Labor and Human Resources, United States Senate, 1869-1979* (Washington D.C., 1981), p. 336; Interview with Stewart E. McClure, Interview 8, 3 May 1983, Senate Historical Office Oral History Collection, <https://www.senate.gov/artandhistory/history/resources/pdf/McClure8.pdf> (6 June 2018).

¹⁶⁵ Malbin, *Unelected Representatives*, p. 86.

¹⁶⁶ Cameron, ‘The Shadow Congress the Public Doesn’t Know’, p. 40.

¹⁶⁷ *Ibid.*

¹⁶⁸ Nominations of Donald L. Ivers and Jonathan R. Steinberg, Hearing before the Committee on Veterans Affairs, Senate, 101st, 114 (1990); Kantor to Cranston and Mondale, 13 Jan. 1972, Rhudy Papers, Box 1, NEJL.

¹⁶⁹ Pete Earley, ‘Skilled ‘Shadow Player’ Targets Veterans’ Issues,’ *Washington Post*, 24 Dec. 1984, p. A13; Malbin, *Unelected Representatives*, p. 84.

¹⁷⁰ *Ibid.*

Steinberg as ‘bent on dominating Action like a czar’ and that Cranston had delegated ‘control’ of the subcommittee to Steinberg.¹⁷¹ Bartlett was dismayed that Senators ‘turn[ed] big bags of power over to callow young lawyers’ and ‘pass the laws these young employees write because they are too busy to look closely at the issues themselves’. He felt that this was symptomatic of ‘what [was] awry in government’.¹⁷² Bartlett’s view exhibited a naivety about the modern legislative process, as Steinberg’s actions were quite in line with regular procedures on the Hill. Bartlett’s charges were also strongly rejected by Action’s Counsel Eric Silberstein who insisted that Steinberg’s efforts ‘represent[ed] the finest virtue of our democratic system – the system of checks and balances’.¹⁷³ It was this Congressional oversight, Silberstein believed, that prevented Action becoming ‘a tool to foment prejudice across the land’.¹⁷⁴

This was the case with Steinberg and the Domestic Volunteer Service Act of 1973, a piece of legislation that went from his mind to President Nixon’s desk largely without amendment.¹⁷⁵ In Washington, knowledge is power. And Steinberg simply outsmarted and outmanoeuvred the White House and its representatives.¹⁷⁶ What Balzano would describe as a mysterious ‘whirlpool of Washington’ was actually entirely predictable for old hands like Steinberg.¹⁷⁷ Balzano would later concede that ‘considerable portions of Action’s problems... in changing the program’s

¹⁷¹ Bartlett, ‘The Senate’s High-Flying, Powerful Aides,’ p. 11.

¹⁷² *Ibid.*

¹⁷³ Eric C. Silberstein, ‘Bartlett’s Column on Action Decried,’ *Washington Evening Star*, 11 June 1975, p. 14.

¹⁷⁴ *Ibid.*

¹⁷⁵ This phenomenon is also discussed in Berkowitz, *Disabled Policy* p. 144; Milazzo, *Unlikely Environmentalists*, p. 10-12.

¹⁷⁶ During the hearings before the House Subcommittee on Equal Opportunities, Balzano conceded that he was ‘embarrassed that I don’t know as much about the programs as I would like to know’, DVSA Hearings, Subcommittee on Equal Opportunities, p. 24.

¹⁷⁷ Michael Balzano, *Reorganizing the Federal Bureaucracy: The Rhetoric and the Reality* (Washington D.C., 1977), p. 31.

philosophical thrust' were due to 'interference by Congressional aides'.¹⁷⁸ It was fitting, then, that Steinberg was present when Nixon signed the bill into law on 1 October.¹⁷⁹

There are two reasons why the President signed the bill. First, the President needed a win. As a White House memo recorded, 'the President [needed] a piece of legislation for which he can get some credit'.¹⁸⁰ This was to partly stem the bleeding from the Watergate scandal which extended long into the summer. In July, Presidential aide Alexander Butterfield had disclosed to the Senate the existence of a White House recording system, which triggered an ugly legal and political dispute over whether the President should release the tapes.¹⁸¹ The Administration needed to be seen to be proactive and still governing, and the passage of compromise legislation served that objective.¹⁸² Second, the focus on Watergate caused the Administration's mind to slip on other domestic issues. On the day of the President's ceremonial signing of the bill, which included over a dozen invited guests, the White House had still not confirmed whether it would, in fact, sign the bill.¹⁸³

Action Institutes

To consolidate his leadership of the agency, Balzano convened a series of five gatherings of Action employees to gauge their opinions on the agency's future direction. At least this was the stated purpose of these 'Action Institutes', held in five different cities across America between July and September 1973.¹⁸⁴ In reality, they were convened, as their official Report indicated, to

¹⁷⁸ *Ibid.*, p. 30.

¹⁷⁹ Presidential Daily Diary, 1 October 1973, Appendix B, RNPL.

¹⁸⁰ The Problem: Legislation for Action,'

¹⁸¹ Stanley Kutler, *Abuse of Power: The New Nixon Tapes* (New York, 1998), p. 638.

¹⁸² 'Possible Signing Statement for Action,' 1 Oct. 1973, Gergen Papers, Box 58, RNPL.

¹⁸³ Kathy Jensen to Laird, 1 Oct. 1973, Baroody Papers, Box 39, GFPL.

¹⁸⁴ Center for Action Research 'Action Institutes – Summary of the Report: July 1973 – January 1974,' Center for Action Research Records, Box 23, Boulder.

‘reiterate the original intent that the Action programme utilise a strategy of cooperative non-political language’.¹⁸⁵ The report explained that these Institutes were designed to investigate the ‘historical deviations of the VISTA programme from the conception Congress had of the program’.¹⁸⁶ This wording was similar to that used in Balzano’s Senate confirmation. Though he would claim to Action employees at the time that the Institutes were ‘a major attempt to allay employee fears and build morale’, he would later concede that their purpose was to ‘encourage the agency’s staff to favour less volatile means for achieving social change’.¹⁸⁷

Despite the aggressive reset that had occurred within Action’s leadership in the first half of 1973, the results of these Action Institutes demonstrate the covert radicalism of the Action bureaucracy. The report found a direct correlation between an employees’ length of service and their agreement with ‘the notion that militancy had been important in civil rights achievements in the 1960s’.¹⁸⁸ These longer-term employees were also more likely to oppose the notion that problems should be tackled ‘in isolation’ rather than ‘as symptoms of more serious conditions – poverty or racism’.¹⁸⁹ Particularly in relation to VISTA, they objected to the statement that the original conception of VISTA was ‘prohibited from being involved in efforts towards racial integration and in political affairs’, and they rejected a ‘return to this concept of volunteerism’.¹⁹⁰ Their views would place them strongly at odds with Balzano.

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ Michael Balzano, ‘Growing Stronger... Growing Better,’ *interAction*, July 1974, Laird Papers, Box A144, GFPL; Balzano, *Reorganizing the Federal Bureaucracy*, p. 28.

¹⁸⁸ ‘Action Institutes – Summary of the Report’

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

The findings of the Action Institutes also demonstrate the affinity for VISTA among Action bureaucrats. As part of the Institutes, Action employees were asked to draft a vignette of what their day-to-day work might involve. VISTA was ‘by far’ the most mentioned program, with 63 per cent of the vignettes specifically referring to VISTA.¹⁹¹ This was double the second-most mentioned program, and more than thirty times the number of mentions of the Peace Corps.¹⁹² So integral was VISTA to Action’s missions in the eyes of the bureaucrats that the Action Institute report noted that ‘Action and VISTA frequently were viewed as synonyms’.¹⁹³ While the White House may have wanted to turn Action into the ‘New Majority agency’ it was clear that the bureaucrats still viewed it primarily as an anti-poverty agency.

Staffing after the Domestic Volunteer Service Act

As discussed earlier in the chapter, while the Administration had identified problems with the agency’s Associate Director for Anti-Poverty Operations, Christopher Mould, they had not yet identified a replacement. The ultimate nomination of Marjorie Lynch demonstrates the constraints to which Balzano was subject after the passage of the Domestic Volunteer Service Act. Lynch, the first – and only – female Action Regional Director, had previously served five terms in the Washington state legislature as a Republican.¹⁹⁴ A former member of the Women’s Auxiliary Air Force, Lynch, aged 50, had flown twice the speed of sound in 1969 at McCord Air Force Base. Balzano described Lynch as ‘the best of the ten [Action Regional Directors]’ and said she was ‘the logical’ choice for the role.¹⁹⁵ Due to Action’s dithering, though, Lynch’s

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ White House Press Release, 21 Aug. 1973, FG325 Files, Box 2, RNPL.

¹⁹⁵ Balzano quoted in Jones to Haig, n.d.

nomination was not considered by the Senate until October 1973, eight months after Balzano had taken the reins.

Prior to Lynch's Senate confirmation, Balzano had told the *Washington Evening Star* that he did not want Action volunteers to 'rock any boats in a community' and told communities that if they did not 'like what any of our people are doing, they can fire them there, on the spot. They won't have to clear it with Washington'.¹⁹⁶ During Lynch's confirmation hearings, Cranston peppered Lynch with questions to gauge her support for this statement. While trying to steer clear of unequivocally defending or supporting her boss's statements, Lynch conceded that the scenario that Balzano laid out about firing Action volunteers 'on the spot' would 'not happen under the law'.¹⁹⁷ Lynch confirmed that she would be 'committed' to ensuring that she would 'operate within the parameters of the law and be sensitive and responsive to congressional intent as established in legislative history'.¹⁹⁸ Cranston followed up, noting that the 'grievances procedures' provided for under the DVSA would not permit what Balzano was threatening. This demonstrates the importance of Congress in setting the operational environment for the agency. For all of Balzano's verbose rhetoric, the underlying legislation provided significant protection for the Volunteers. These protections were important as they provided insulation to politically sensitive activities or, to put it another way, enabled VISTA Volunteers to 'rock boats'.

Recruitment

There were other areas, though, where the Action leadership, under Balzano's direction, could seek to change the agency without the need for Congressional approval. The most critical

¹⁹⁶ Isabelle Shelton, 'Streamlining "Action"', *Washington Evening Star*, 14 Sept. 1973, p. 63.

¹⁹⁷ Nomination of Marjorie Lynch, p. 32.

¹⁹⁸ *Ibid.*, p. 33.

concerned changes to recruiting procedures, which were not specified in the legislation.

Recruiting was something which Republicans had become obsessed with as the solution to VISTA's troublesome nature, as witnessed with Volunteers' strong support for the McGovern campaign in 1972.¹⁹⁹ There was a belief within the Administration that if they could change the complexion of the Volunteers then the programme would create less political blowback. To do this, they sought to make the average Volunteer older, recruited at the local level, and more representative of the New Majority.

The first attempted change was an attempt to increase the average age of the VISTA Volunteers. Elements within the Nixon Administration, and conservatives more broadly, held the young VISTAs in deep disdain, describing them as 'young, middle-class BA, social science majors on draft deferments... or on furlough from their suburban existence'.²⁰⁰ These young volunteers, the Administration believed, had 'rained havoc upon federal, state, and local communities by polarising people along the lines of race, income, national origin, and occupation'.²⁰¹ As one Nixon-era Action official recalled, there was a belief within the Nixon Administration that the problems at VISTA were caused by 'kids' and that this could be ameliorated by bringing in adults'.²⁰²

Though dressed up as an innovation by Balzano, the shift towards older recruitment was hardly a radical departure.²⁰³ Even during the Johnson Administration there was significant enthusiasm to recruit older Americans to VISTA.²⁰⁴ The early years of the Nixon Administration had also

¹⁹⁹ Action Eyes Possible Demo Mailing List Abuse,' *Lawton Constitution*, 8 Sep. 1972, p. 18.

²⁰⁰ 'Domestic Volunteer Programs'.

²⁰¹ *Ibid.*

²⁰² Author's interview with Charles Ervin.

²⁰³ 'Nixon and the Program'.

²⁰⁴ Crook to Harding, 19 June 1967, Harding Papers, Box 50, LBJL.

witnessed attempts in VISTA to recruit older professionals, though with little success.²⁰⁵ When Balzano assumed the Directorship, 75 per cent of volunteers were aged under 30.²⁰⁶ These numbers barely shifted in Balzano's first year, when nearly half were younger than 24.²⁰⁷ Nor was there greater success at the upper end of the age range. After a year of Balzano's tenure, only 15 per cent of volunteers were over 45, fewer than in 1967.²⁰⁸

The second front was to regionalise the recruitment process. In the past, Volunteers were recruited on a national level and then assigned to a particular state. This led, according to the Administration, to Volunteers being 'outsiders in the community' and 'totally out of step with community desires'.²⁰⁹ Balzano announced a push to recruit volunteers at the local level who would hold 'special understanding of the problems of the community'.²¹⁰

Local recruitment can hardly be considered a novel step, however. Local recruitment was supported by 'the left, the right, and the technocratic centre'.²¹¹ The push for it began during the Johnson Administration and had continued during the early years of the Nixon Administration.²¹² In addition to being supported at the political level, local recruitment had support at the bureaucratic level as well.²¹³ In 1972, VISTA published its *Criteria for Projects Utilizing VISTA Volunteers* guidance which recommended that 'low-income individuals from the

²⁰⁵ 'Volunteer Profile,' Oct. 1969, in RG362, Director's Files, Box 1, NARA II.

²⁰⁶ Walter Howe, 'Briefing for the President on Action,' 14 Feb. 1973, FG325 Files, Box 1, RNPL.

²⁰⁷ *Action Annual Report (1974)*, p. 11. Frustratingly, Action did not use the same age-range categorisation, hence the discrepancies between references to 'under 30' and 'under 24'.

²⁰⁸ *Ibid.* William Crook to Bertrand Harding, 19 July 1967.

²⁰⁹ Balzano, *Reorganising the Federal Bureaucracy*, p. 8; 'Nixon and the Program'.

²¹⁰ Departments of Labor and Health, Education and Welfare and Related Agencies for FY1974, Subcommittee of the Committee on Appropriations, Senate, 93rd Cong. 3932 (1973).

²¹¹ Bass, *The Politics and Civics of National Service*, p. 121.

²¹² *Ibid.*, Joan McKinney, 'A New Look in Volunteers,' *Oakland Tribune*, 26 Feb. 1971, p. 27.

²¹³ 'Issues to Be Considered,' 14 Apr. 1971, RG362, Office of Administration and Finance Files, Box 4, NARA II.

target community' should be 'actively' involved in 'program planning, formation, development, and implementation'.²¹⁴ By the time Balzano came to power, the push for local recruitment was already well established.

However, it was not entirely successful. When Balzano inherited VISTA in 1973, 48 per cent of volunteers were recruited locally.²¹⁵ By the end of his first year, this had increased only to 56 per cent.²¹⁶ Balzano conceded in February 1974 that local recruitment would not 'replace' efforts to recruit nationally and that VISTA would 'continue our efforts to recruit nationally'.²¹⁷ The tension between nationally and locally recruited volunteers reflected a tension between policy effectiveness and the Administration's (and conservatives in Congress') political goals for the program. As early as 1969, VISTA had pivoted towards trying to recruit Volunteers with experience in graduate school, with a particular focus on business, law, and architecture.²¹⁸ These wealthy young professionals were, unsurprisingly, often clustered in the more affluent states. For example, California provided 409 Volunteers but received only 193 whereas South Carolina provided only 20 yet received 55.²¹⁹ VISTA Volunteers themselves also recognised the importance of this national recruitment. This was demonstrated in the testimony given by Joe Pegnato from the Arizona VISTA Coalition to the Subcommittee on Equal Opportunities. Pegnato defended as critically important the need for 'outside resources' in his training programme for an impoverished Native American community.²²⁰ Pegnato told the Subcommittee how these nationally-recruited Volunteers usually possessed 'unusual skills' that

²¹⁴ Departments of Labor and Health, Education and Welfare and Related Agencies for FY1974, Subcommittee of the Committee on Appropriations, Senate, 93rd Cong. 4406 (1973).

²¹⁵ Howe, 'Briefing for the President on Action'.

²¹⁶ *Action Annual Report (1974)*, p. 11.

²¹⁷ FY1974 Labor and Health, Education and Welfare Senate Appropriations, p. 4406.

²¹⁸ 'VISTA – Oct. 1969,' in RG362, Director's Files, Box 1, NARA II.

²¹⁹ Action, *VISTA Fact Book 1972*, 31 Dec. 1972, p. 13.

²²⁰ Oversight Hearings on Action Agency: Hearings before the Subcommittee on Equal Opportunities, House, 94th Con. 103 (1975).

were not available in the community, as well as a disposition to view things more ‘objectively’ than an involved member of the community.²²¹

The third pillar of Balzano’s recruitment strategy was to draw more volunteers from “‘New Majority’” constituencies’. This is a much more difficult metric to test -- the sources used in the preceding paragraphs do not delineate volunteers by race or ethnicity. When testifying to Congress, Balzano conceded that the ethnic breakdown of VISTA volunteers was only an ‘estimate’.²²² The inconsistency in terminology also makes this very difficult, with estimates or data about VISTA volunteers not being sorted into categories any more defined than ‘white’. The difficulties were accentuated when even official Action literature would include ‘American Indian’ and ‘Black’ within the ‘ethnic’ categorisation alongside ‘white ethnic’ groups like ‘Polish’.²²³ These factors united to make it essentially impossible to assess the extent to which VISTA’s recruitment patterns altered to target ‘white ethnic’ groups.

Changes were evident, however, in the degree to which New Majority communities were the target of novel VISTA programs. Such action was, as Jones acknowledged to the President, a quid pro quo for their support of the President during the 1972 election.²²⁴ An example of a New Majority-centric VISTA programme was Project Senior Ethnic Find (PSEF). This programme employed ‘bilingual older community volunteers’ to assist ‘ethnic Americans whose lack of facility in the English language walled them off from needed services’.²²⁵ This was the kind of non-political, non-activist programme that conservatives wanted for the Action agency.

²²¹ *Ibid.*

²²² DVSA Hearings, Subcommittee on Equal Opportunities, p. 46.

²²³ Action, ‘Volunteers in Action: Peace Corps, VISTA,’ Pamphlet 4000-8, July 1973, p. 43.

²²⁴ Jones to Nixon, 15 Feb. 1973.

²²⁵ ‘Older Volunteers Shine During Senior Citizens Month,’ *New Castle News*, 2 May 1973, p. 24.

There were 22 PSEF programs spread across four cities (Chicago, Gary, Detroit, and Cleveland) by the end of 1973.²²⁶ Even this program, though, predated Balzano.²²⁷

VISTA on the Ground

The Nixon Administration's focus on Action across 1973, and VISTA in particular, caused a sense of dark foreboding amongst the Volunteers on the ground. Even though their programme survived, many were distressed at how the Administration was instructing Volunteers 'working harmoniously with the Establishment' rather than encouraging more activist methods.²²⁸ As Don Wright, a VISTA from this period, recalled, the sense was that VISTA 'weren't offering sexy assignment. They were offering the Montana Highway Department'.²²⁹ For example, VISTA volunteers were marshalled for the clean-up in the wake of Hurricane Agnes, which hit the east coast of America in June 1972.²³⁰ Action proudly claimed that VISTA Volunteers were 'quietly going about the business of helping others help themselves'.²³¹

It would be incorrect, however, to claim that the entire anti-poverty emphasis was extinguished from VISTA during this period. While Balzano and the Administration trumpeted the Domestic Service and Volunteer Act (DVSA) as something which constrained some elements of the Action agency the 'anti-poverty mission' of VISTA was re-enforced by the Act's Title I. As the House Committee on Education and Labor Report on the DVSA noted, Title I of the Act 'emphasised' the 'anti-poverty mission of Action... particularly through the well-established

²²⁶ *Action Annual Report (1973)*, p. 39. See also Merton, 'Rethinking the Politics of White Ethnicity in 1970s America,' p. 744.

²²⁷ 'Tapes Interview for VOA,' *Svoboda*, 9 Nov. 1974, p. 2; Sen. Report No. 93-311 51 (1973).

²²⁸ Balzano, *Reorganizing the Federal Bureaucracy*, p. 28.

²²⁹ Hank Klibanoff, 'VISTA: 15 Years of On-the-brink Existence,' *Boston Globe*, reprinted in *Action Update*, 8 Sept. 1980, pp. 6-8.

²³⁰ *Action Annual Report (1974)*, p. 19.

²³¹ *Ibid.*

Volunteers in Service to America'.²³² Indeed, as described earlier in the chapter, its remit was expanded from 'combating poverty' to 'combating poverty and poverty-related human, social, and environmental problems'.²³³ The bill had been approved by the President even though he was told it would mean that VISTA would 'retain [its] anti-poverty focus'.²³⁴ The language of the bill actually protected VISTA in some of its more controversial areas, including working on issues relating to migrant farmers and on Native American land.²³⁵ The Senate Committee reiterated its 'intention' that VISTA Volunteers still act as 'catalysts for change' in the community.²³⁶

Marjorie Lynch, Action's Deputy Director for Domestic Operations, testified before Congress that there was 'a similar profile of volunteer activities' between April 1973 and April 1974 as there had been prior to passage of the DVSA.²³⁷ One example of the persisting radicalism of the VISTA programme through 1973 and 1974 was their agitation on behalf of victims of 'Black Lung', a debilitating lung affliction caused by the inhalation of coal dust, also known as pneumoconiosis. VISTA volunteers had a long history of working with Black Lung advocacy groups, and they were instrumental in the founding of the leading periodical *Black Lung Bulletin*.²³⁸ VISTA's work with the victims of Black Lung was even heralded during the Nixon years in VISTA's publication *VISTA Volunteer*.²³⁹ This action was 'radical' in the sense that it was

²³² H. R. Rep No. 93-405 1 (1973).

²³³ Domestic Volunteer Service Act of 1973.

²³⁴ Rommel to Nixon, 29 Sep. 1973.

²³⁵ Gary Allen, 'War on Poverty: Billions to Finance Revolution,' *American Opinion*, Feb. 1968 in Allderdice Papers, Box 98, Hoover.

²³⁶ Sen. Report No. 93-311 92 (1973).

²³⁷ FY1974 Labor and Health, Education and Welfare Senate Appropriations, p. 4045.

²³⁸ K. W. Lee, 'Catalyst of the Black Lung Movement,' in D. Walls and J. Stephenson (eds.) *Appalachia in the Sixties: Decade of Reawakening* (Lexington, 1972), p. 201. In his speech to the inaugural National VISTA Alliance conference in 1970, Sargent Shriver had asked rhetorically, 'Who would have helped organize white people of Appalachia against... the terrors of Black Lung if it hadn't been for the patriotic young Americans in VISTA?' 'The Politics of Life and Death,' 29 July 1970, Shriver Papers, Box 112, JFKL.

²³⁹ Philip Trupp, 'Black Lung,' *VISTA Volunteer*, April 1969, pp. 24-9.

costly – in both financial terms as well as to the companies’ reputations – to the mining companies, who applied pressure on Congress to shut down the Volunteers’ activities.²⁴⁰ In part due to VISTA Volunteers’ activism, such a change had occurred by July 1973 that Senator James Allen (D-AL) declared that ‘the Federal Government has recognized a moral responsibility to compensate victims’.²⁴¹ This radical activism on the Black Lung issue continued throughout Balzano’s Directorship.

While Balzano had tried to make VISTA Volunteers older, conservative, and more representative of New Majority constituencies, the programme continued to be a home for radicals like Terri West. West was almost an archetype of the VISTA Volunteers that the Administration detested. During the election year of 1972 she had served as the President of her county’s Young Democrats branch.²⁴² West enrolled as a VISTA volunteer in 1973, after Balzano had become Director of Action and implemented his supposed recruiting restrictions. In association with the Raleigh County Community Action Association (RCCAA), West organised weekly meetings for ‘appeal hearing procedures for persons who have been denied black lung claims or who have a hearing pending’.²⁴³ West annoyed powerful local interests. A local lawyer, Brown Hugo Payne, launched injunction proceedings against West and the RCCAA.²⁴⁴ Three VISTA volunteers associated with the RCCAA were also integral to reinvigorating the Black Lung Association by expanding its chapter structure and ‘reviving’ previously defunct chapters.²⁴⁵ This support for activism, particularly when it resulted in claims against the Federal Government, was exactly the kind of radicalism that the Nixon Administration was unable to extinguish.

²⁴⁰ Gene L. Mason, ‘The “Subversive” Poor,’ *The Nation*, 30 Dec. 1968, p. 721.

²⁴¹ 93rd Cong. Rec. 25151 (1973).

²⁴² Charles Ryan, ‘Young Dem Leaders Seeking to Oust Terri West,’ *Beckley Post-Herald*, 6 Dec. 1972, p. 5.

²⁴³ ‘Black Lung Claimants Training Session Held,’ *Beckley Post-Herald*, 28 Aug. 1973, p. 8.

²⁴⁴ ‘Black Lung Association to Discuss Lawyer’s Charges,’ *Raleigh Register*, 9 Oct. 1973, p. 9.

²⁴⁵ ‘Revival of Black Lung Chapters is Proposed,’ *Beckley Post-Herald*, 19 May 1973, p. 9; ‘Legislative Chairman of OVWC Discusses Support, Bill Proposals,’ *Beckley Post-Herald*, 3 Feb. 1973, p. 5.

West was not narrowly focussed on Black Lung. She also served as a member of the steering committee for the Raleigh County Citizens Review Board (RCCRB). This was a new body set up in February of 1973.²⁴⁶ The RCCRB was vocal in agitating for reform of local and national laws, including law reform of the treatment of alcoholism and workers' compensation.²⁴⁷

The Board held forums where members of the community could lodge incidents of abuse by local law officials.²⁴⁸ West was also instrumental in setting up the Women's Resource Center. (WRC) in Beckley.²⁴⁹ The WRC was, according to West, 'a clearing house for all things pertaining to women'. This had a radical bent for the mid-70s, with information on 'anything from menopause to Black women in history to wife abuse to dealing with a drinking spouse'.²⁵⁰

Balzano's disciplined leadership also failed to quench the radicalism of the National VISTA Alliance (NVA), the fierce opponent of all Administration-led changes since 1971. The NVA had been a strong lobbyist of Congress, as discussed earlier in the chapter, while also acting as funnel for grievances of the VISTA volunteers to elected representatives. A particular grievance of the NVA, and a focus of much of their Congressional lobbying, was that VISTA Volunteers were not provided with sufficient transportation to meet the needs of their communities. As Joanne Walrath, a VISTA Volunteer from Washington D.C. had told the House, 'the problem of transportation cannot be overstated'.²⁵¹ Cranston's DVSA bill had attempted to rectify some of those concerns but did not totally eliminate the problem.

²⁴⁶ 'Citizens Review Board Meets Today,' *Beckley Post-Herald*, 29 Jan. 1973, p. 7.

²⁴⁷ 'Review Board Hears Reform Proposals,' *Raleigh Register*, 2 March 1972, p. 13.

²⁴⁸ 'Complaints Against Law Officers to Be Aired at Citizens' Meeting,' *Raleigh Register*, 9 March 1973, p. 2.

²⁴⁹ 'Obituary: Terri West,' *Pittsburgh Post-Gazette*, 24 Sep. 2010, p. 13.

²⁵⁰ Linda Cornett, 'Martha Redstocking Meets Big Bopper,' *Raleigh Register*, 17 Nov. 1976, p. 14.

²⁵¹ DVSA Hearings, Subcommittee on Equal Opportunities, p. 134.

In a mood representative of a common theme of this dissertation, when the Volunteers did not have their grievances redressed through the Executive or Legislative Branch, they took to the courts. The National VISTA Alliance, on behalf of VISTA Volunteers in Virginia and West Virginia, sued Action Director Michael Balzano in the D.C. Circuit Court.²⁵² The NVA alleged that Action's 'failure to provide transportation expenses and supportive services was illegal and unconstitutional'.²⁵³ The District Court found in favour of the NVA in yet another demonstration of District Courts' willingness to liberalise programme rules beyond what the Congress or the Executive Branch had intended.

Conclusion

The June 12 1973 edition of the *New York Times* captured the three major political stories of that year: Watergate, peace talks to end the War in Vietnam, and a growing awareness of environmental damage.²⁵⁴ Readers of that day's edition of the 'Gray Lady' would have had to turn to page 24 to find an article on VISTA, sandwiched between ads for a portable cassette recorder and pyjamas. According to the article, 'in some ways the future of [VISTA] has never looked brighter'.²⁵⁵ The article was very prescient. Though slated for abolition by the President in 1972, the programme was injected with a new lease of life in 1973. While supporters of the poverty programme had feared the appointment of Nixon ally Michael Balzano as Director of Action, his apparently radical agenda had reaped little real-world impact on the VISTA volunteers on the ground. Just as VISTA had weathered the stasis of inaction between 1971 and

²⁵² Access to these records has been prevented by the Covid-19 shutdown of the NARA I facilities.

²⁵³ 'Settlement Reached on Provision of Transportation Expenses and Supportive Services to VISTAs,' *Clearinghouse Review*, May 1974, p. 209.

²⁵⁴ *New York Times*, 12 June 1973, p. 1.

²⁵⁵ 'VISTA, Despite Travail, Is Optimistic in 9th Year,' p. 24.

1973, it had withstood a concerted effort to re-orient the Action Agency to New Majority ends. VISTA was a survivor. This survival was not simply a freak accident or the result of happenstance. It was, in many ways, a logical outcome of the dynamics of American political power during this period. Though Nixon's 1972 victory portended a strong hand in domestic policy, in reality he was always constrained by Congress. Capitol Hill, and in particular the Senate Labor and Public Welfare Committee, provided stringent oversight of the Action agency and would not allow it to be re-directed by the White House. While the White House had a large degree of control over appointments, it was the Congress that would be responsible for its chartering legislation. The creation of the Domestic Volunteer Service Act also highlighted important dynamics evident in Congress, in particular the rise of Congressional staffers and the significant amount of autonomy offered by the Congress' committee system. These features were all accentuated by a White House that prioritised tokenism and partisanship over competence, to the detriment of its policy aims and achievements.

Chapter VI

Controlling the Uncontrollable: The losing battle to control Food Stamps

On 28 February 1973, Edward J. Hekman made his annual pilgrimage down the National Mall from the Department of Agriculture offices to the Rayburn House Office building for the Department's yearly budget review. Awaiting him was the imposing Jamie Whitten, 16-term arch-segregationist from Mississippi and chair of the influential House Appropriations Subcommittee on Agriculture. Hekman, the Director of the Food and Nutrition Service for its entire four-year history, was a businessman and not well versed in the rhythms of politics. Hekman began his statement by noting the 'very, very substantial growth' in federal food programmes since the creation of his agency in 1969, but went on to suggest that this period 'appears to have ended.'¹ That period, though, Hekman told the committee that he anticipated a 'net decline in participation' and a reduction in expenditure.² The erstwhile Director may have felt sheepish, then, when he returned to the Subcommittee the following year. Far from shrinking, the Food Stamp Program had grown by 18.7 per cent, or over \$300 million.³ Enrolment had grown nearly 10 per cent and the Food Stamp Program now reached more than 12 million Americans.⁴

Dealing with the strong growth of the programme caused headaches for the bureaucracy, the White House, and the Congress. President Nixon, captured on the Oval Office recording system that would cause him so much bother in 1973, railed against the growth of the Food Stamp

¹ Agriculture – Environmental and Consumer Protection Appropriations for FY1974, Pt. 2: Hearings before the Subcommittee of the Committee on Appropriations, House, 93rd Cong. 528 (1973).

² *Ibid.*, p. 636, p. 584.

³ Agriculture – Environmental and Consumer Protection Appropriations for FY1975, Pt. 3: Hearings before the Subcommittee of the Committee on Appropriations, House, 93rd Cong. 706 (1974).

⁴ *Ibid.*

Program. He was ‘ashamed’ of the FSP, he told Republicans Congressional leaders, and complained that the Federal Government had ‘gone too far already’ on its ‘greatest handout’.⁵ He vowed to ‘never sign anything that increases those god-damned things’.⁶ Whitten, the appropriations committee chair, similarly lamented that Food Stamps were ‘so plentiful... that they are traded around like chalk marbles,’ and likened their growth to Soviet-style communism.⁷ The Department of Agriculture did not want the programme either. The Secretary, Earl Butz, believed the stamps to be ‘primarily... a welfare program’ while Director Hekman told the Agriculture Appropriations committee that the Stamps bore ‘only a remote relationship to the USDA’s traditional mission’.⁸ This chapter will investigate why, despite all this opposition amongst the White House, the Congress, and the bureaucracy, the Food Stamp Program continued to grow during the 1974 Fiscal Year.⁹ Assistant Secretary Clayton Yeutter told Congress that ‘he who has the money controls the decision’ on the Food Stamp Program.¹⁰ The problem for the Executive Branch was that they were not in control. This was especially true regarding agency budgets.

⁵ Oval Office, Tape 947-004, 10 July 1973, White House Tapes, RNPL.

⁶ *Ibid.*

⁷ Agriculture – Environmental and Consumer Protection Appropriations for FY1974, Pt. 2: Hearings before the Subcommittee of the Committee on Appropriations, House, 93rd Cong. 527 (1973).

⁸ Oral Interview with Earl Butz, 13 April 2007, RNPL.

<https://www.nixonlibrary.gov/sites/default/files/forresearchers/find/histories/butz-2007-04-13.pdf> (19 May 2020); Agriculture – Environmental and Consumer Protection Appropriations for FY1975, Pt. 3: Hearings before the Subcommittee of the Committee on Appropriations, House, 93rd Cong. 645-6 (1974).

⁹ As with nearly all domestic policy in Nixon’s second term, it had not garnered significant attention in the literature. For example, Berry, *Feeding Hungry People*, p. 77 described 1973 as one of the ‘quiet years’ in FSP’s history. Ferejohn, ‘Log-rolling in an Institutional Context,’ pp. 239-45 and Rosenfeld, ‘Fed by Reform’ pp. 474-507 are more focused on the ‘congressional struggles’ which are secondary to this chapter’s core focus. Melnick, *Between the Lines*, deals incisively with the FSP and the impact of judicial decisions however Melnick does not address the broader impact that this shift in policymaking had specifically on the Nixon White House and the consequences for the institution of the presidency. This chapter will build on Melnick’s analysis through the addition of a diverse range of archival research, which Melnick’s work does not have.

¹⁰ Agriculture – Environmental and Consumer Protection Appropriations for FY1975, Pt. 3: Hearings before the Subcommittee of the Committee on Appropriations, House, 93rd Cong. 715 (1974).

The growth of the Food Stamp Program, and associated anti-hunger programmes, occurred against the backdrop of a White House that desired to rein in the Federal budget more generally. While the previous two chapters looked specifically at staffing, this chapter will investigate how the Administration sought to use budgetary constraints to change social programmes. This chapter will demonstrate that this approach was flawed because it failed to recognise that the President was not solely in charge of controlling spending. The Administration's approach was based on the myopic pretence that they alone could control the expenditure of the Food Stamp Program. This was understood as flawed by the bureaucracy, which recognised that 'pressure' to expand the scope of the FSP, came 'from a number of sources' that the Administration could not control.¹¹ This chapter will investigate those sources, which USDA Assistant Secretary Richard Lyng enumerated to include the Congress and Governors, but, most importantly this chapter will argue, Federal Court action brought by public interest legal groups. The courts were the true masters of the FSP purse strings.

This chapter will emphasise the extraordinary impact that public interest lawyers had on Federal anti-hunger policy across 1973 and 1974. Ronald Pollack, a key figure from Chapter One, returns to make an even larger impact on policy. As in the first chapter, Pollack and his team launched a series of high-profile lawsuits which confounded attempts by the Nixon Administration and the USDA bureaucracy to limit programme participation and its associated costs. In the highest court in the land, Pollack was successful in eliminating regulations designed to limit the participation of students and hippies in the Food Stamp Program. Another decision by the District Court for the District of Columbia placed the costs for previously denied benefits directly in the hands of the Federal Government. Demonstrating that the judicially-directed expansion of the FSP was not purely limited to the US District Court for the District of

¹¹ Richard Lyng to John Whitaker, 5 Jan. 1972, Whitaker Papers, Box 20, RNPL.

Columbia, a judgement of a Federal District Court in Minnesota saw the 'Economy Food Diet' expanded, mandated programme outreach at the Federal expense, and compelled the USDA to spend \$250 million which had been impounded.¹² The second section will consider another FRAC suit which compelled the Federal Government to institute a novel feeding programme, demonstrating that judicially-mandated spending was a wider phenomenon in domestic policy-making in the 1970s, rather than being confined to the Food Stamp Program.

The successful cases brought by Pollack underscores the importance of the Courts in domestic policy formulation during 1973 and 1974. As legal scholar Jeremy Rabkin has noted, this period was characterised by the 'extraordinary activism of the federal courts'.¹³ This phenomenon was also keenly observed by R. Shep Melnick.¹⁴ Aside from the notable impoundment cases, however, the intervention of the Federal Courts on the Nixon Administration's second-term attempt to trim the Federal Budget has been underappreciated by historians. This chapter will demonstrate how these cases confounded the Nixon Administration as it sought to constrain the budget. It will also emphasise how the Federal District Court were an active player in domestic policy formulation and implementation, something long recognised by law review journals and political scientists, but that has been largely unnoticed by historians.¹⁵

The irony of the White House's full-frontal assault on the budgetary powers of Congress was that they wholly backfired, with Congress exiting the Nixon years with more power than before.

¹² Linda Picone, 'Food Stamp "Surplus" Ordered Returned,' *Star Tribune*, 12 Oct. 1974, p. 1.

¹³ Rabkin, 'The Judiciary in the Administrative State,' p. 62.

¹⁴ Melnick, *Between the Lines*, pp. 206-234.

¹⁵ *Ibid.*, pp. 183-234; Robert A. Katzmann, 'Making Sense of Congressional Intent: Statutory Interpretation and Welfare Policy,' *Yale Law Journal*, Vol. 104 (1995), pp. 2345-2367; Martin Shapiro, 'The Supreme Court: From Warren to Burger,' in A. King (ed.), *The New American Political System* (Washington D.C., 1978), p. 179 also emphasises the role of the Supreme Court as 'a major domestic policy maker'.

Institutionally, the return of Congress was most evident in the passage of the ‘revolutionary’ Congressional Budget and Impoundment Control Act of 1974.¹⁶ This act marked the Congress ‘recapturing the power of the purse from the White House’.¹⁷ As a *Washington Post* editorial observed, Nixon deserved ‘backhanded... credit’ for these institutional changes because without his vetoes and ‘imperious impoundment policies’ Congress would have been unlikely to act.¹⁸ Integral to the re-assertion of Congressional authority was the role of the District Courts, who resoundingly rejected the Administration’s policies of impoundment. In the final section of this chapter, the massive growth of a new anti-hunger programme will demonstrate how this power shift affected programmes on the ground.

Throughout all of the travails described here, the absence and weakness of the White House is striking, though perhaps not surprising. 1973 was, according to one Congressman, ‘probably the worst year of [Richard Nixon’s] life’.¹⁹ 1974 was scarcely an improvement. In the scandal-ridden end to his presidency, the White House turned insular, desperate to protect the cover-up and unable to govern. Far more consideration was given to the fate of *United States v. Nixon* than any of the policy-related judicial decisions discussed herein.²⁰ Institutionally, this manifested itself in the shift in power to Congress outlined above, as well seeing ‘the great authority of the Presidency ultimately bowed to the courts’.²¹ The President’s weakness and distraction led Secretary of State Henry Kissinger to remark to Federal Reserve Chair Arthur Burns in July 1974

¹⁶ Spencer Rich, ‘Budget Reform Advances,’ *Washington Post*, 23 March 1974, p. A1.

¹⁷ *Ibid.*

¹⁸ ‘Managing the Budget on Capitol Hill,’ *Washington Post*, 20 June 1974, p. A14. For more, see James L. Sundquist, ‘Congress and the President: Enemies or Partners?’ in L. Dodd and B. Oppenheimer (eds.), *Congress Reconsidered* (New York, 1977), pp. 222-46.

¹⁹ Samuel Young to Nixon, 26 Dec. 1973, Haig Papers, Box 9, LOC.

²⁰ In *United States v. Nixon*, the Supreme Court ruled that President Nixon’s executive privilege did not permit him to withhold audio recordings or other subpoenaed material, see Leon Friedman (ed.), *United States v. Nixon: The President Before the Supreme Court* (New York, 1974).

²¹ *Ibid.*, p. ix.

that ‘we have no government at present’.²² This chapter demonstrates, however, that while America may have had a ‘drifting and leaderless’ *Administration* it did continue to have a government.²³ This ‘permanent government’, comprised of the bureaucracy, the courts, and Congressional staff, actually thrived in the ‘administrative jungle’ of 1970s domestic policy increasingly untroubled by White House interference.²⁴

The Nixon Administration

Central to the Administration’s lack of focus on Food Stamps in the second term was the continued tenure of Earl Butz as Secretary of Agriculture. Butz had replaced his fellow Indianan Clifford Hardin in 1971 in a move seen as emblematic of the rise of ‘agribusiness’ and remained Secretary into the Ford presidency.²⁵ Butz was one of the few Secretaries to escape Fred Malek’s hatchet in 1972. Malek saw that Butz had ‘done an excellent political job for the President’ while at the same time conceding that Butz had ‘not really dug into the management of the Department’.²⁶ This was particularly true with regards to the Department’s anti-hunger programmes. The White House readily conceded that Secretary Butz held ‘little interest in administering “welfare” programs’.²⁷

This gave the Administration’s critics free rein. In June 1972, George McGovern assailed the Administration for withholding money from the Food Stamp Program, affecting some 11 million Americans.²⁸ Ehrlichman aide Ken Cole tasked John Whitaker, the Deputy Assistant for

²² Burns, diary entry for 25 July 1974.

²³ Matusow, *Nixon’s Economy: Booms, Busts, Dollars, and Votes*, p. 277.

²⁴ Graham, *The Civil Rights Era*, p. 7; ‘Nation’s Poor Still Hungry,’ *Washington Evening Star*, 27 Oct. 1972, p. F15. This point is also made in Hugh Heclo, *A Government of Strangers*, p. 8.

²⁵ Nick Kotz, ‘Agribusiness – A Grim Reaper?’ *Lansing State Journal*, 30 Nov. 1971, p. 1.

²⁶ Fred Malek to Haldeman, 28 Sept. 1972, Malek Papers, Box 6, Hoover.

²⁷ Roy Ash to Haig, 27 March 1974, Malek Papers, Box 9, Hoover.

²⁸ Cole to Whitaker, 20 June 1972, Whitaker Papers, Box 20, RNPL.

Domestic Affairs, with the assignment to ‘get out the Administration’s side of the story’.

Whitaker asked Butz to put out a statement, which he failed to do.²⁹ Given anti-hunger advocates’ skill at harnessing the media with their emotive appeals, the Administration was attuned to being seen as ‘insensitive to feeding the poor’ but Butz’s failure to respond to such charges only weakened the Administration’s position further.³⁰

The Food and Nutrition Services, the unit within USDA responsible for anti-hunger programmes, was viewed with suspicion by anti-hunger advocates during this period. While this thesis has shown how often advocates of anti-poverty programs saw the bureaucracy as their ally, this was not the case with regard to Food Stamps. Isabelle Kelley and Howard Davis, two of the leading USDA advocates for programme liberalisation, had retired early in 1973.³¹ They were not replaced by Nixonite apparatchiks but USDA was under much stricter instructions relating to ‘tightening administration’, particularly relating to expenditure.³² Donald Juneau from the Colorado Legal Services described USDA as ‘intransigent, narrow-minded, and stingy’.³³ Arthur Schiff, from the Community Service Society in New York, told Congress that ‘the Federal Government does not want the program run very well’ and ‘they do everything in their power to inhibit any kind of efficient, reasonable, humane, meaningful Food Stamp Program’.³⁴ Continuing on from this nuanced critique of service delivery, Schiff continued that ‘there ought to be some Nuremberg types of trials for crimes against humanity for the people who run the U.S. Department of Agriculture’.³⁵

²⁹ Whitaker to Cole, 23 June 1972, Whitaker Papers, Box 20, RNPL.

³⁰ Whitaker to Nixon, 17 Jan. 1972, Whitaker Papers, Box 20, RNPL.

³¹ Berry, *Feeding Hungry People*, p. 78.

³² Ash to Butz, 6 Feb. 1974, Ash Papers, Box 3, RNPL.

³³ Donald Juneau to McGovern, 19 Mar. 1973, McGovern Papers, Series 4, Box 623, Princeton.

³⁴ National Nutrition Policy Study – 1974: Hearings before the Select Committee on Nutrition and Human Needs, Senate, 93rd Cong. 1113 (1974).

³⁵ *Ibid.*

This period also witnessed the White House ramp up its policies of impoundment.

Impoundment is defined as the act of the White House directing its agencies not to spend the money appropriated by Congress. Due to the different ways that Federal expenditure can be accounted for, the total funds impounded cannot be specified with precision but appear to have amounted to billions of dollars.³⁶ Impoundment was a common tool in the Presidential arsenal, but Nixon's use was unusual in its 'magnitude, severity, and belligerence'.³⁷ As of January 1973, the President had impounded \$1.5 billion from the Agriculture budget, including over \$300 million from the Food Stamp Program.³⁸

FNS to HEW?

One of the White House's main priorities for the Food and Nutrition Service in the second term was to move the anti-hunger programs out of USDA and into the Department of Health, Education, and Welfare (HEW). This proposed shift had been planned since the first-term, as recommended by the White House Conference on Food and Nutrition.³⁹ The reason for the transfer, as Hekman had told House Appropriations Subcommittee on Agriculture, was that the food programs bore 'only a remote relationship to the USDA's traditional mission of

³⁶ For the difficulty in calculating an impoundment figure, see Richard D. Lyons, 'Nixon's Impoundment of Billions in Federal Money is Complicated Issue, Abounding in Misconceptions,' *New York Times*, 7 Oct. 1973, p. 63. Allen Schick estimated the final value at \$18 billion, see Allen Schick, *Congress and Money: Budgeting, Spending, and Taxing* (Washington D.C., 1980), p. 47.

³⁷ Cited in Joshua Chafetz, *Congress's Constitution: Legislative Authority and the Separation of Powers* (New Haven, 2017), p. 343. Aides grumbled that Nixon's use of impoundment was overstated, see James Falk to Kenneth Cole, 21 Aug. 1974, FG2-36 Files, Box 16, GFPL.

³⁸ Statement of Information, Book XII: Impoundment of Funds, Committee on the Judiciary, House, 93rd Cong. 4 (1974).

³⁹ See extract from final report in McGovern Papers, Series 4, Box 623. The WHCFN recommended that this action be undertaken by 'executive authority' but all later action suggests this would need to occur with Congressional authorisation. For first term intentions, see Mary Olmstead to Thomas Glennan, 27 Jan. 1970.

maintaining farm income’.⁴⁰ The push was led by Assistant Secretary of Agriculture Clayton Yeutter. Yeutter bluntly told Congress that having USDA manage the Food Stamp Program was ‘extremely inefficient government’ and was ‘not a situation that [USDA] can tolerate in the long run.’⁴¹ The USDA bureaucracy deemed such a move a ‘high priority’.⁴² The move was also supported by the House Appropriation Committee’s Agriculture Subcommittee, with Chairman Whitten believing the FSP to be a ‘relief program’ and not an agricultural one.⁴³ For its part, the White House treated the decision as a *fait accompli* and its internal documents refer to the matter as a case of when, not if.⁴⁴ The push was also supported by liberals in Congress, such as Senator George McGovern, who initiated legislation in Congress to effect the move.⁴⁵ The move, to all of these parties, seemed ‘logical’.⁴⁶

While the USDA bureaucracy was on board with the move, there was stiff resistance from FNS’s proposed future home in HEW.⁴⁷ HEW’s objections were two-fold. First, they believed that the transfer of agencies should not occur independent of the President’s broader strategy to reorganise and streamline the domestic agencies, as outlined in the previous chapter. Discussing the reasons for HEW’s rebuff, USDA bureaucrats wrote that their HEW counterparts were ‘very sensitive’ about any discussions of moving programs around, believing that it could draw the

⁴⁰ Agriculture – Environmental and Consumer Protection Appropriations for FY1975, Pt. 3: Hearings before the Subcommittee of the Committee on Appropriations, House, 93rd Cong. 645-6 (1974).

⁴¹ *Ibid.*, p. 710.

⁴² *Ibid.*

⁴³ *Ibid.*, p. 708. Whitten, however, believed that it would be a ‘serious mistake’ to transfer USDA’s Commodity Distribution Program to HEW as well.

⁴⁴ Ash to Butz, 6 Feb. 1974.

⁴⁵ See Marshall Matz to Hugh Evans, 16 Mar. 1973, and undated drafted bill to transfer FNS to HEW in McGovern Papers, Series 4, Box 623, Princeton.

⁴⁶ USDA, ‘Issue Paper - Transfer of Food and Nutrition Service,’ 14 Dec. 1973, Malek Papers, Box 9, Hoover.

⁴⁷ HEW and the President had clashed frequently in the first term, see Diary Entry: 24 May, H.R. Haldeman Diaries Collection, RNPL; Nixon to Ehrlichman and Cole, 28 Dec. 1972, President’s Office Files, Box 4, RNPL. For the clash with HEW over desegregation, see Gareth Davies, ‘Richard Nixon and the Desegregation of Southern Schools,’ *Journal of Policy History*, Vol. 19, No. 4 (2007), pp. 367-94.

unwanted attention of Congress.⁴⁸ Congressional committees are often wary of reorganisations that threaten comfortable institutional relationships. Such was HEW's worry, the bureaucrat wrote, they felt 'that any discussions at all, at this time, might scuttle their entire plans'.⁴⁹ USDA heeded this advice, and pledged 'not [to] have any discussions with Congress relating to the transfer of FNS until the dust settles on the broader issue'.⁵⁰ The dust never settled on the broader 'Super Departments' reorganisation and, as a result, the move of the FNS to HEW became another micro-level policy which was sacrificed to the broader lost cause of reorganisation.

The second reason for HEW's reticence was a more classic study of bureaucratic agency behaviour. As Roy Ash told the President, HEW was for 'status quo'.⁵¹ The move was widely supported within the White House, with Secretary Butz joining with key White House domestic aides Ken Cole, Roy Ash, and William Timmons in recommending the 'urgent' transfer.⁵² But the HEW Secretary, Caspar Weinberger, was having none of it. Weinberger told the President that he 'strongly opposed' the transfer believing it would 'simply make our Department, already too big, even bigger'.⁵³ This was a period in which Federal agencies felt overwhelmed by the workloads placed upon them by Congress and were reluctant to take on further work.⁵⁴ It also illustrates an observation made by James Q. Wilson: bureaucracies are not always 'imperialistic', he observes, and are often 'reluctant... cautious, [and] skeptical' about taking on an increased work load.⁵⁵ Wilson's work, based on the research of one of his graduate students, challenged the

⁴⁸ Jim Lake to Clayton Yeutter, 24 Sept. 1973, RG16, Secretary's Correspondence, Box 5750, NARA II.

⁴⁹ *Ibid.*

⁵⁰ Yeutter to Butz, 1 Oct. 1973, RG16, Secretary's Correspondence, Box 5750, NARA II.

⁵¹ *Ibid.*

⁵² Nixon to Weinberger, 28 Feb. 1974, WE Files, Box 60, RNPL.

⁵³ Weinberger to Nixon, 25 Jan. 1974, WE Files Box 60, RNPL.

⁵⁴ For example, see Richard Nathan, *The Plot That Failed: Nixon and the Administrative Presidency* (New York, 1975), p. 88; John W. Gardner, 'The Godkin Lectures - Lecture II,' 26 March 1969, HUC5432.69, Harvard.

⁵⁵ James Q. Wilson, *Bureaucracy*, pp. 180-1.

theory of 'budget maximand' which stated that bureaucratic agencies would always seek to grow as much as possible.⁵⁶ Wilson wrote that the ideal operating environment for a bureaucratic agency was where the 'goals are popular, its tasks simple... [and its] constraints minimal'.⁵⁷ That none of these criteria were met by the Food Stamp Program contributed to HEW's reluctance to assume responsibility for it.⁵⁸

The Courts

While the political world had spent 1972 intensely following the Nixon-McGovern presidential race, Ronald Pollack remained singularly focussed on making his organisation, the Food Research and Action Center (FRAC), 'the national legal arm of the anti-hunger movement'.⁵⁹ FRAC was born in 1970 after an approach from the Office of Economic Opportunity to Pollack to convene a conference for anti-hunger lawyers.⁶⁰ Pollack turned down the initial OEO offer, instead suggesting the creation of FRAC to provide 'ongoing capacity' rather than a 'one-shot deal'.⁶¹ OEO agreed and financed the organisation to the tune of \$250,000.⁶² FRAC had a three-pronged approach to anti-hunger issues: legislative advocacy, administrative advocacy, and litigation.⁶³ FRAC's specific focus was on the two-largest Federal anti-hunger programs, the Food Stamp Program and the National School Lunch Program.

⁵⁶ Marc Tipermas, 'Jurisdictionalism: The Politics of Executive Reorganization,' PhD Diss. Harvard University, 1976; Tiperman's work was particularly a corrective to William Niskanen, *Bureaucracy & Representative Government* (Chicago, 1971), pp. 39-42.

⁵⁷ Wilson, *Bureaucracy*, p. 181.

⁵⁸ The goal of feeding people may have been 'popular' but the programme was a target of both the left (for being too parsimonious) and from the right (plenteous).

⁵⁹ Ronald Pollack to Robert Scrivener, 1 Feb. 1973, Javits Papers, Box 55, Stonybrook.

⁶⁰ Berry, *Feeding Hungry People*, p. 91-2.

⁶¹ Author's interview with Ronald Pollack, 4 May 2020.

⁶² Jud Sommer to Javits, 21 Dec. 1972, Javits Papers, Box 58, Stonybrook.

⁶³ Author's interview with Ronald Pollack. For an example of FRAC's advocacy work on the School Lunch Program, see Suzanne Vaupel to 'Friend', Jan. 1973; FRAC, 'Every School Has a Legal Right to The Revised School Breakfast Program,' n.d.; 'Sample Presentation to School Board,' all found in Council of Southern Mountains Records, Series 3, Box 119, Berea.

It was the litigation element that most outraged the Nixon Administration. A memorandum from USDA Deputy Assistant Secretary Philip Olsson to Secretary Butz during the second-term transition had highlighted 50 pending lawsuits against the Department.⁶⁴ Twenty-one of them were ‘initiated by OEO funded attorneys’, with most relating to the Food Stamp Program.⁶⁵ The concern over the Federal Government financing suits against itself was emblematic of the activism within government that the White House had unsuccessfully attempted to stamp out in its first-term. Olsson’s memorandum caused Butz to send an angry memo to John Ehrlichman and Caspar Weinberger, the then-Director of OMB. Butz vented that he had ‘grow[n] weary of seeing government money used to finance some jack-leg lawyers who initiate nuisance suits of this kind’.⁶⁶ In each of the lawsuits, Butz wrote, ‘federally funded attorneys are working to overturn Administration policy’.⁶⁷ Butz expressed frustration at how OEO-funded lawyers were ‘essentially... seek[ing] “social action through the courts” rather than “social reform through Congress”’.⁶⁸ It was an accusation that the lawyers themselves would not have denied.

It would be incorrect, however, to paint FRAC having an entirely antagonistic relationship to the Federal Government for it forged productive working relationships with anti-hunger advocates in Congress, especially Senator George McGovern and staffers from his Hunger Subcommittee.⁶⁹ Testifying that this was not a neat partisan arrangement, FRAC also formed a strong relationship with Republican Senator Jacob Javits. There was a noticeable warmth

⁶⁴ Philip Olsson to Butz, 27 Nov. 1972, JL Files, Box 8, RNPL.

⁶⁵ ‘Lawsuits funded by OEO Funded Attorneys,’ nd., JL Files, Box 8, RNPL. FRAC was OEO-funded but was not funded through the Legal Services Program.

⁶⁶ Butz to Weinberger et al., 6 Dec. 1972, JL Files, Box 8, RNPL.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ Author’s interview with Ronald Pollack.

between FRAC staffers and Javits staffers.⁷⁰ The importance of this relationship was apparent after a cut in FRAC's OEO funding. This required FRAC to 'rely on private support' in order to continue.⁷¹ At FRAC's request, Javits sent letters to over a dozen philanthropic associations, including the Ford and Rockefeller Foundations, seeking financial support for FRAC.⁷² In his letters, Javits endorsed how FRAC had 'worked diligently to increase rightful participation in nutrition programs', especially throughout its court action against 'strict interpretation' of anti-hunger legislation.⁷³

FRAC Goes to Court

This next section will address four legal cases brought by FRAC between 1972 and 1974. These suits challenged the regulations promulgated by USDA in response to the *Food Stamp Act Amendments of 1971*. While the regulations were in response to Congress's bill, the Department considered the regulations to be 'substantially in the form of the Administration's legislative proposal in mid-1969'.⁷⁴ The Nixon Administration trumpeted the bill as initiating 'major reforms' within the FSP which would 'help... eliminate hunger and malnutrition'.⁷⁵

Operationally, this meant providing free stamps to the poorest Americans, the introduction of uniform national eligibility standards, and redefinition of participating households.⁷⁶

Administration sceptics such as Pollack viewed them in a different light. Testifying before the

⁷⁰ For example, see Meg Read to Steve McDonald, 5 Jan. 1973, Javits Papers, Box 58., Stonybrook. Pollock's letters to Margaret Reed, a Javits staffer, are signed 'Ronny', Pollack to Reed, 29 June 1973, Javits Papers, Box 58, Stonybrook.

⁷¹ Sommer to Javits, 21 Dec. 1972.

⁷² A list of the letters sent is visible in Sommer, 're: FRAC,' 26 Jan. 1973, Javits Papers, Box 58, Stonybrook. Throughout 1973, FRAC obtained at least \$100,000 from this fundraising, see Read to Sommer, 17 July 1973, Javits Papers, Box 58, Stonybrook.

⁷³ Javits to Michael McIntosh, 20 Dec. 1972, Javits Papers, Box 58, Stonybrook.

⁷⁴ Lyng to Whitaker, 5 Jan. 1972.

⁷⁵ 'Fact Sheet on Food Stamp Reform,' Jan. 1971, WE Files, Box 60, RNPL.

⁷⁶ *Ibid*; James E. Springfield, 'Food Stamp Changes Go Into Effect,' *Food and Nutrition*, Vol. 1, No. 3 (Oct. 1971), p. 18. The 'household definition' point is important as, in the Food Stamp Program, the unit of participation is the household, rather than individuals.

McGovern hunger subcommittee in 1971, he said that the changes ‘tragically portend the end of Federal anti-hunger programs in numerous place’ and that ‘the Food Stamp Program will essentially be eliminated in many areas’.⁷⁷ While blaming USDA, which he said ‘refused’ to provide projected participation figures, Pollack ‘estimated’ that 340,000 Americans would lose entitlements to food stamp entirely, with the benefits of another 1.7 million reduced.⁷⁸ Inside USDA, bureaucrats acknowledged that while there would be increases in the level of benefits provided for many, they noted that 60,000 participants would ‘lose eligibility entirely’ while ‘about 2 million’ would see some form of reduction in the benefits.⁷⁹ The loss of benefits was a deliberate ploy by the Administration who sought to ‘considerably tighten administration’ of the FSP.⁸⁰ After the lobbying efforts of ‘private groups’ and members of the McGovern hunger subcommittee had failed, FRAC launched a ‘litigative counter-attack’.⁸¹ The Administration saw these FRAC legal challenges as a test of their authority to control domestic policy while for the anti-hunger advocates, the fates of millions of hungry people were on the line.

Four suits will be considered together as there are strong similarities between them, each decided in FRAC’s favour. These include the types of plaintiffs that Pollack and FRAC chose as, as well as the particular courts in which their challenges were launched. There was also a similarity in the arguments made by Pollack, particularly the centring of Due Process and Equal Protection arguments, as well as an expansive definition of congressional intent. The cases also saw the dismissal of Nixon Administration arguments which were primarily centred on their right to

⁷⁷ Food Stamp Regulations: Hearings before the Select Committee on Nutrition and Human Needs, Senate, 92nd Cong. 759-60 (1971).

⁷⁸ *Ibid.*, 760. This would have meant approximately 20 per cent of participants would have been affected.

⁷⁹ Lyng to Whitaker, 5 Jan. 1972.

⁸⁰ Nathan to Weinberger, n.d., Weinberger Papers, Box 232, LOC.

⁸¹ Hope Eastman to Robert Aitken, 19 Oct. 1971, ACLU Papers, Series 4, Box 1555, Princeton.

dictate social policy and to simplify programmes for administrative purposes. After consideration of the cases, the subsequent section will describe the broader consequences of the verdicts.

Moreno

The first FRAC case to be examined is *Moreno v. the United States Department of Agriculture*. This lawsuit challenged the provision in the 1971 amendments which sought to bar ‘hippies’ from the program.⁸² This regulation was in response to the request of the conference committee on the 1971 food stamps bill to specifically bar ‘hippy communes’ from participating.⁸³ This change was endorsed by the Nixon Administration, with a memo acknowledging that ‘most... hippies’ would no longer ‘be eligible’.⁸⁴ Hippies were targeted by conservatives in the Congress and the Administration due to the animus they provoked. This can be largely attributed, at least within the political establishment, to their opposition to the Vietnam War.⁸⁵ The President himself was personally disdainful of hippies, and vowed that he was ‘not going to be pushed around’ by them.⁸⁶ Hippies receiving food stamps was a common negative trope in the media.⁸⁷ Disdain for the group more broadly is evidenced in the mail opposing ‘hippies’ that the President received. One such letter, from Dr. William Breene, a nutritionist at the University of Minnesota, labelled hippies as ‘good-for-nothing[s]’ who were ‘eligible for food stamps at my expense’.⁸⁸ Such

⁸² Second Supplemental Appropriations Bill, 1971: Hearings Before the Subcommittee of the Committee on Appropriations, House, 92nd Cong. 1489 (1971). Historian William Rorabaugh described hippies as ‘hostile to the norms that the establishment tried to impose through public opinion and legal sanctions ... particularly ... pressure to conform concerning hair, dress, sex, drugs, and work,’ see W. J. Rorabaugh, *American Hippies* (New York, 2015), p. 3, though this is a normative judgement that self-described ‘hippies’ themselves may not agree with.

⁸³ ‘Explanation of Food Stamp Conference Report (H.R. 18582), 29 Dec. 1970, RG46, Senate Agriculture Committee Bill Files, Box 8, NARA I.

⁸⁴ Nathan to Weinberger, n.d.

⁸⁵ Penny Lewis, *Hardbats, Hippies, and Hawks: The Vietnam Antiwar Movement as Myth and Memory* (Ithaca, 2013), p. 169.

⁸⁶ *Ibid.*

⁸⁷ For example, see Dorothy Lewis, ‘Hippies Eligible for Food Stamps,’ in WE Files, Box 60, RNPL; Stephen Clapp, ‘Welfare Chiselers,’ *P.I.C. News*, Vol. 1, No. 6 (1970), p. 1 in Houseman Papers, Box 22, NEJL.

⁸⁸ William Breene to Nixon, 26 July 1970, WE Files, Box 60, RNPL.

actions proved, Breene argued, that hippies were ‘able-bodied parasites who are sucking the sap out of their hosts (we saps the taxpayers)’. A report into the FSP commissioned by the White House found that the FSP Supervisors in Mendocino County, California, had a ‘nearly paranoid fear’ of its programmes ‘attracting “hippies”’.⁸⁹ This fear was evidenced in letters sent by David Kelley, from California’s Humboldt County Department of Welfare, to the Secretary of Agriculture and Kelley’s Congressman. Kelley claimed that ‘food stamps [were] fast becoming a way of life’ for the ‘dishevelled, often emotionally disturbed society drop-outs who may live in huts, communal housing, or even an old Volkswagen bus’.⁹⁰ At the time the regulations were being enacted, polling indicated the low opinion most Americans held of hippies, making them an easy target politically.⁹¹

Murry

The second case, *Murry v. Department of Agriculture*, was the legal challenge to the regulation which excluded college students from the Food Stamp Program. Like hippies, college students were the frequent target of conservative wrath, not least in relation to the Food Stamp Program. Congressman Gillespie ‘Sonny’ Montgomery from Mississippi argued before Congress that it was ‘common knowledge that some college students go around bragging about how they receive food stamps even when they did not need them’.⁹² This proved the point made by a poverty lawyer during this period that there was ‘no great love lost on students in Congress’.⁹³ Charles

⁸⁹ Terry Goggin and Cliff Hendrix, ‘Food Assistance Programs: A View from the Field,’ Jan. 1970, Price Papers, Box 16, RNPL.

⁹⁰ Isabelle Kelley to Clifford Hardin, 30 Sep. 1969, RG16, Records of the Secretary, General Correspondence, Box 5012, NARA II.

⁹¹ *Ibid.*

⁹² Harris Poll, Jan. 1971, USHARRIS.71JAN.R62, iPoll. 22% of respondents said that hippies were a ‘real danger to society’ while 53% of them believed that they were ‘more harmful to themselves than society’.

⁹³ Establishment of a Quarantine Station, Hearings before the Committee on Agriculture, House, 91st Cong. 764 (1969).

⁹⁴ Steven Fleisher to Marshall Matz, 5 Feb. 1973, McGovern Papers, Series 4, Box 623, Princeton.

Percy, the Republican Senator from Illinois who was generally a friend of anti-hunger programs, labelled students receiving food stamps as 'fraud' arguing that they were 'simply being used as a means of livelihood and maintenance'.⁹⁴ David C. Kelley, the California welfare administrator who was quoted earlier for his opposition to hippies, was also critical of student participation. Providing food stamps to students, he argued, was akin to 'a scholarship fund for advanced education'.⁹⁵ Opposition to students was something that the Administration sought to use for political gain, as evidenced when Attorney General John Mitchell believed that there would be an 'anti-student backlash' that they could exploit.⁹⁶

The full-frontal assault on the rights of students and hippies was part of the Administration's broader outreach to what was then being termed the 'real majority'.⁹⁷ This was the theory, popularised by Ben Wattenberg and Richard M. Scammon in their 1970 work, which advocated for the Democratic party to focus on centrist ideas in order to gain electoral success, most famously coalescing in their claim that the median voter was 'the 47-year-old wife of a machinist living in suburban Dayton, Ohio'.⁹⁸ The book caused a sensation when it was published and was widely read in political circles. Though the Democratic authors intended their work to be a 'handbook for liberals' it was keenly digested in the Nixon White House, who believed that they could use the tactics to capture middle America voters.⁹⁹ Wattenberg and Scammon declared the

⁹⁴ 1971 FSP Senate Hearings, p. 771. Percy was a close ally of fellow Republican Jacob Javits who saw the issue very differently, stating that he could 'not see any reason why a college student's stomach is any different from that of a fellow not going to college,' see General Farm Program and Food Stamp Program, Part 2: Hearings before the Committee on Agriculture, House, 91st Cong. 797 (1969).

⁹⁵ Kelley to Hardin, 30 Sep. 1969.

⁹⁶ 'Democrats Play Pocketbook Politics as Republicans Assail Crime and Violence,' *National Journal*, Vol. 2, No. 43 (24 Oct. 1970), p. 2317.

⁹⁷ Richard M. Scammon and Ben J. Wattenberg, *The Real Majority: An Extraordinary Examination of the American Electorate* (New York, 1970).

⁹⁸ *Ibid.*, p. 46.

⁹⁹ 'Democrats Play Pocketbook Politics as Republicans Assail Crime and Violence,' p. 2317; Haldeman to Colson, 26 Sept. 1970, Nofziger Papers, Box 7, Hoover; Ehrlichman to Krogh et. al., 26 Oct. 1970, FG6-7 Files, Box 5, RNPL; Oval Office, Tape 490-016, 4 May 1971, White House Tapes, RNPL.

‘elite long-haired students’ to be the antithesis of ‘the social order’ prized by this ‘real American majority’.¹⁰⁰ It was these social cleavages that the Nixon Administration was seeking to exploit by targeting hippies and college students.

Bermudez

The final two cases concerned the attempt to constrict programme cost rather than a desire to exclude politically unpopular individuals. The third case, *Bermudez v. USDA* concerned the Department’s liability for retroactive payment to incorrectly excluded FSP applicants. Prior to 1971, if a prospective (or disbarred) participant in the FSP was found to have been ‘improperly denied benefits subsequently gained at a hearing’ then they would be credited with the difference.¹⁰¹ This was changed as part of the 1971 amendments, with Director of the Food Stamp Division James Springfield citing the ‘overwhelming’ sense within USDA that this regulation was ‘impossible to administer’ due to the involvement of various state governments.¹⁰² This change would manifest in FNS Instruction 732-14 IV-D, which stated that ‘retroactive adjustments in favour of the household shall not be permitted’.¹⁰³

Bennett

The final FRAC Food Stamp Program challenge to be discussed is *Bennett v. Butz*. This case has a tripartite importance. The first concerned what constituted a ‘nutritionally adequate diet’ under the terms of the Food Stamp Act.¹⁰⁴ Pollack and FRAC charged that USDA’s ‘Economy Food Plan’ did not meet its standard ‘nutritionally adequate diet’ and it was only set at a level so as to avoid starvation.¹⁰⁵ This led to Pollack’s second claim, which was that even if the Economy

¹⁰⁰ Scammon and Wattenberg, *The Real Majority*, p. 162.

¹⁰¹ Springfield, ‘Food Stamp Changes Go Into Effect,’ p. 18.

¹⁰² *Ibid.*

¹⁰³ *Bermudez v. United States Department of Agriculture*, 490 F.2d 718 (D.C. Cir. 1973),

¹⁰⁴ John Knebel to Phillip Buchen, 12 Mar. 1975, Buchen Files, Box 1, GFPL.

¹⁰⁵ Lyng to Ellender, 17 March 1969; ‘Fact Sheet on Food Stamp Reform,’ Jan. 1971.

Food Plan was sufficient, the bonus levels (the extra value participants received by buying coupons) were too low to achieve this standard.¹⁰⁶ The third was that USDA had been derelict in its Congressional mandate to ensure that the states effectively promoted the program.¹⁰⁷ This was the most consequential point as it related to the Administration's use of impoundment as the main method to curb spending on the Food Stamp Program. That year, it had returned over \$350 million dollars to the United States Treasury.¹⁰⁸ This money was returned as an 'unobligated balance', with the Department in effect saying that too much money had been appropriated for the FSP and it did not need it.¹⁰⁹ The USDA was doing the same for the 1973 fiscal year, with the Food and Nutrition Service's Budget Director projecting that approximately \$250 million dollars would be returned.¹¹⁰ Pollack argued that there was only money left to return to the Treasury because the Federal Government had failed to adequately promote the program.

DC Circuit Court

The first three cases (*Moreno*, *Murry*, *Bermudez*) were launched in the District Court for the District of Columbia while the fourth (*Bennett*) was brought before the Minnesota District Court. Both courts had strong liberal and activist leanings.¹¹¹ It was the DC District Court which blocked the dismantlement of the Office of Economic Opportunity and prevented Howard Phillips from serving as Acting Director. Targeting the US Federal District Court of the District

¹⁰⁶ Knebel to Buchen, 12 Mar. 1975.

¹⁰⁷ *Bennett v. Butz*, 386 F. Supp. 1059 (D. Minn. 1974).

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ Howard Phillips referred to Judge Miles Lord as 'an old-time Democrat activist, and bench apologist for the Red-lining American Indian Movement, see Howard Phillips, 'Notes on News Items You Might Have Missed,' *Human Events*, Vol. 34, No. 45 (9 Nov. 1974), p. 14. For a more holistic treatment, see Roberta Walburn, *Miles Lord: The Maverick Judge Who Brought Corporate America to Justice* (Minneapolis, 2017), pp. 210-22.

of Columbia was a deliberate strategy deployed by Pollack and FRAC. During the 1960s, the DC Circuit Court, with its ‘solid voting bloc’ of liberals had become a ‘bulwark for liberal criminal justice policy’ as evidenced by their rulings in favour of bail reform, rights of the accused, and juvenile rights.¹¹² This compounded during the 1970s when the District Courts, led by the DC Circuit, aggressively moved into ushering in ‘a new era in the long and fruitful collaboration of administrative agencies and reviewing courts’.¹¹³ This was understood by liberals and conservatives alike, with *Human Events* blasting the ‘extremely liberal’ DC courts.¹¹⁴ The fourth case, *Bennett v. Butz*, was brought before the Minnesota District Court, which was also known for its liberal bent.

Plaintiff Selection

Integral to FRAC’s successful strategy was finding ‘the right type of plaintiff’ for its suits.¹¹⁵ This was best evidenced in plaintiff selection for the challenge barring hippies from participating in the FSP. Pollack chose not to select a member of this sub-culture as the lead plaintiff, which, as per Wattenberg and Scammon’s research, had the possibility of backfiring. Instead, Pollack teamed up with the American Civil Liberties Union to seek out ‘minority group members, or non counter-culture people’ affected by the regulations to act as the lead plaintiff.¹¹⁶ This occurred after Pollack had realised that the new regulations significantly hurt ‘the poorest of the poor’ rather than the more ‘middle class’ hippies.¹¹⁷ The chosen plaintiff was Jacinta Moreno,

¹¹² Christopher Banks, *Judicial Politics in the D.C. Circuit Court* (Baltimore, 1999), p. 15.

¹¹³ R. Shep Melnick, ‘Risky Business: Government and the Environment After Earth Day,’ in M. Keller and R. S. Melnick (eds.), *Taking Stock: American Government in the Twentieth Century* (New York, 1999, pp. 172-3.

¹¹⁴ ‘How The White House Bungled BIA Incident,’ *Human Events*, Vol. 32, No. 51 (16 Dec. 1971), p. 3.

¹¹⁵ Melnick, *Between the Lines*, p. 206.

¹¹⁶ Sanford Rosen to Affiliates, 8 Dec. 1971, ACLU Papers, Series 4, Box 1555, Princeton.

¹¹⁷ Author’s interview with Ronald Pollack. Prior to this case, Pollack had testified that ‘Every impoverished family that is charitable enough to take a friend or former neighbour out of the streets and provide such a person with a roof over his or her head will, by virtue of such admirable deed, be taken off the food stamp program’, see 1971 FSP Senate Hearings, p. 772.

who was ‘definitely not a hippy’.¹¹⁸ Instead, Moreno was a 56 year old diabetic who had been forced to move in with her friend Ermina Sanchez and Sanchez’s three children.¹¹⁹ Moreno was a sympathetic character to the court, as her sole source of monthly income was \$75 and, even when she shared her accommodation and utilities expenses with Sanchez, she was left with \$10 for food. Moreno had been blocked from participating in the Food Stamp Program as she shared food preparation facilities with Sanchez, which made her fall afoul of the regulation banning communal (hippy) households. The fact that the key details of Moreno’s plight caught the attention of the news media attests to the success of Pollack’s tactic.¹²⁰ This was part of a broader strategy predicated on the belief that the plight of his plaintiffs would engender sympathy from both the justices and the broader public.¹²¹

Pollack repeated this tactic in the *Murry* case concerning student participation in the Food Stamp Program. Rather than a college student as the lead plaintiff, which again risked alienating the ‘real majority’, Pollack selected Lulu Mae Murry. As with the *Moreno* case, Pollack realised the tax dependency claims were not made by ‘millionaire’ parents, who could afford not to use the provision, but rather the poorest of the poor. Murry was a divorcee who lived with her four children. Her sole source of income was child support paid by the children’s father, which amounted to only \$57.50 per month.¹²² Once her rent (\$25) and utilities (\$18.50) were deducted it left Murry with only 9 cents per day for ‘clothing, medical expenses, school supplies, transportation, household supplies, [and] hygienic items’.¹²³ This evocative, sympathetic, and

¹¹⁸ Peter Irons, *Brennan v. Rehnquist: The Battle for the Constitution* (New York, 1994), p. 6.

¹¹⁹ *Moreno v. United States Department of Agriculture*, 345 F. Supp. 310 (D.D.C. 1972).

¹²⁰ ‘Food Stamp Suit Filed, ‘Poorest’ Said Hit Hard,’ *Athens Messenger* (Athens, Ohio), 30 March 1972, p. 4; ‘Food Stamp Rule Attacked in Lawsuit,’ *Portsmouth Times* (Portsmouth, Ohio), 31 March 1972, p. 14; ‘Rule Protested on Food Stamps,’ *Maryville Daily Forum* (Maryville, Missouri), 30 March 1972, p. 1. These articles were all of varying length, but each mentioned that Moreno was a diabetic ‘in poor health’.

¹²¹ Melnick, *Between the Lines*, p. 206.

¹²² *United States Department of Agriculture et. al. v. Lula Mae Murry et. al.*, Supreme Court, No 72-848, 23 April 1973, https://www.supremecourt.gov/pdfs/transcripts/1972/72-848_04-23-1973.pdf (1 Dec. 2019).

¹²³ *Ibid.*

humanising depiction was repeated in the courtroom. Previously, Murry could spend \$11 to get \$128 worth of food for her family.¹²⁴ Due to the poverty experienced by her ex-husband, who had two other children with his new wife on ‘small labourer’s wages’, he had claimed (‘appropriately’, in Pollack’s words) one of their children as a tax dependant, thus preventing Murry (and her children) from accessing the food stamp program.¹²⁵ A similarly sympathetic appellee was presented in the form of Kristi Schultz, who received ‘no income whatsoever’ yet had been denied access to the FSP due to this provision.¹²⁶ Without access to Food Stamps, Schultz was forced to exist on ‘wild sweet potatoes and water’ which caused her to be hospitalised for four months due to ‘malnutrition’.¹²⁷ The plight of the plaintiffs in the *Murry* case drew the attention of the District Court justices, who noted that they were clearly ‘in dire need’.¹²⁸

Judicious selection of plaintiffs was also important in the final two cases, which challenged more administrative features of the Food Stamp Program. Plaintiffs humanised what could otherwise be quite abstract concepts. For the case on administrative errors, Pollack selected New Yorker Mercedes Bermudez. Bermudez spent \$94 per month to purchase food stamps, which entitled her to \$126 worth of benefits.¹²⁹ In January of 1972, she was deemed ineligible for the FSP ‘because of administrative error’.¹³⁰ Through dogged effort, she was reinstated to the programme on 16 April of that year, but USDA denied that they had to pay her for those mistakenly denied benefits.¹³¹

¹²⁴ *Ibid*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ *United States Department of Agriculture et. al v. Murry et al.*, No. 72-848, in *Cases Adjudged in the Supreme Court at October Term 1972*, United States Reports, Vol. 413.

¹²⁹ *Bermudez v. U.S. Department of Agriculture*, 348 F. Supp. 1279 (D.D.C. 1972).

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

The final case, *Bennett v. Butz*, was brought on behalf of Joseph Bennett, a disabled father of six children from Minnesota. Bennett's sole source of income was Social Security and 'public assistance grants'.¹³² Bennett was a recipient of food stamps, though as he told the court, his allocation was so modest that they 'never last to the end of the month'.¹³³ Pollack's humanising figure was a different approach than most impoundment cases. For example, the first legal challenge to impoundment was brought by the much less sympathetic sounding San Francisco Redevelopment Agency.¹³⁴ In challenging the miserliness of the Food Stamp Program, what better face could the court have than that of a father who could not afford to provide milk for his children?

Pollack's Courtroom Strategy

Pollack centred his argument in the *Moreno* and *Murry* cases on the equal protection clause of the U.S. Constitution. The equal protection clause had undergone what legal historian Alice Perlin termed a 'dramatic metamorphosis' during the previous two decades.¹³⁵ Previously 'limited to very narrow and precisely defined situations' its use had grown following the success of the NAACP's school desegregation suits.¹³⁶ As Harvie Wilkinson has observed, the Warren Court oversaw equal protection 'evolv[ing] from a largely moribund constitutional provision to a potent egalitarian instrument'.¹³⁷ Dovetailing with the Civil Rights Act of 1964, the Warren Court's expansive definition of equal protection swelled to include protection from racial and

¹³² Consumer Redress: Hearings before the Committee on Commerce, House, 93rd Cong. 316 (1973).

¹³³ *Ibid.*

¹³⁴ Report, Presidential Impoundment of Congressionally Appropriated Funds: An Analysis of Recent Federal Court Decisions, Committee on Government Operations, Aug. 1974, p. 45.

¹³⁵ Alice S. Perlin, 'United States Department of Agriculture v. Moreno – The "Red Herring" of Social Welfare,' *DePaul Law Review*, Vol. 23, No. 4 (Summer, 1974), p. 1488.

¹³⁶ *Ibid.*, Graham, 'Legacies of the 1960s,' p. 271.

¹³⁷ J. Harvie Wilkinson, 'The Supreme Court, the Equal Protection Clause, and the Three Faces of Constitutional Equality,' *Virginia Law Review*, Vol. 61, No. 5 (1975), p. 945.

gender discrimination, protection of voting rights, and access to birth control.¹³⁸ One of the Court's most significant Equal Protection rulings was *Shapiro v. Thompson*, which invalidated residency requirements for state welfare..¹³⁹ The court's expansion of equal protection, as well as due process, led the *Washington Post* to declare that these cases had 'changed the social fabric of America'.¹⁴⁰ No longer the 'last resort of constitutional argument, as Justice Oliver Wendell Holmes had described it, the equal protection clause was becoming a powerful legal instrument.'¹⁴¹

As they had in the Food Stamps suits discussed in Chapter One, equal protection claims formed the cornerstone of Pollack's argument in the *Moreno* and *Murry* decisions.¹⁴² Pollack believed that equal protection was his 'strongest argument' in the *Moreno* case.¹⁴³ The three-judge panel of the District Court agreed that the 'statutory classification (households of related persons versus households with one or more unrelated persons)' was 'not relevant to the stated purposes of the act' and, as such, violated the equal protection clause.¹⁴⁴ This line of reasoning was upheld by the Supreme Court. Justice William Brennan, the Eisenhower appointee who led the Court's liberal wing, wrote the majority opinion which agreed that the regulation treated hippies as an 'irrational classification' under the law.¹⁴⁵ 'If the constitutional conception of 'equal protection of the laws' means anything,' Brennan wrote, 'it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest'.¹⁴⁶

¹³⁸ Graham, 'Legacies of the 1960s,' p. 271.

¹³⁹ Theodore Tetzlaff to Phillip Sanchez, 19 Sep. 1972.

¹⁴⁰ Nick Kotz, 'Justice – An Elusive Jewel,' *Washington Post*, 14 April 1973, p. A1.

¹⁴¹ Melvin Urofsky, 'William O. Douglas as Common-Law Judge,' in Mark Tushnet (ed.), *The Warren Court in Historical and Political Perspective* (Charlottesville, 1993) p. 75.

¹⁴² *United States Department of Agriculture et. al. v. Jacinto Moreno et. al.*, Supreme Court, No 72-534, 23 April 1973, https://www.supremecourt.gov/pdfs/transcripts/1972/72-534_04-23-1973.pdf

¹⁴³ Pollack to Norman Dorsen, 30 March 1972, ACLU Papers, Series 4, Box 1555, Princeton;

¹⁴⁴ *Moreno v. United States Department of Agriculture*, 345 F. Supp. 310 (D.D.C. 1972)

¹⁴⁵ *United States Department of Agriculture et. al v. Moreno et. al.*, No. 72-534, in *Cases Adjudged in the Supreme Court at October Term 1972*, United States Reports, Vol. 413.

¹⁴⁶ *Ibid.*

Similarly the District and Supreme Courts' decisions in the *Murry* case were based on equal protection grounds.¹⁴⁷

The Supreme Court Food Stamps decisions also emphasised the 'due process revolution' which had occurred in welfare cases in the early 1970s.¹⁴⁸ As discussed in Chapter Two, this was directly attributable to the Supreme Court's decision in *Goldberg v. Kelly*. Unjustifiably understudied, Justice William Brennan recalled that this was his most important decision on the bench.¹⁴⁹ This was a case, brought by Legal Services Program lawyers, in which the Supreme Court ruled that hearings must be held before welfare recipients could be stripped of their payments. The decision drew inspiration from Charles Reich's concept of 'the new property' which stated that rights to participation in government programs were akin to property rights.¹⁵⁰ The *Goldberg* decision led to a 350 per cent increase in due process complaints between the 1960s and the 1970s.¹⁵¹ The use of due process arguments exemplifies the effect of 'precedence' whereby 'activist' judicial decisions begat further 'activist' judicial decisions and where disjunctive decisions became precedents to further judicial intervention and innovation.¹⁵²

This trend inspired Pollack in his Supreme Court cases. In the *Murry* decision, the District Court ruled that there was 'no rational basis' for Congress's decision to exclude households of

¹⁴⁷ Agriculture – Environmental and Consumer Protection Appropriations for FY1974, Pt. 2: Hearings before the Subcommittee of the Committee on Appropriations, House, 93rd Cong. 640 (1973); Mark S. Coven and Robert J. Ferst, 'Equal Protection, Social Welfare Litigation, the Burger Court,' *Notre Dame Law Review*, Vol. 51, No. 5 (1976), p. 885-6.

¹⁴⁸ A. C. Pritchard, 'Government Promises and Due Process: An Economic Analysis of the 'New Property',' *Virginia Law Review*, Vol. 77, No. 5 (1991), p. 1053.

¹⁴⁹ David Frum, *How We Got Here*, p. 228.

¹⁵⁰ Merrill, 'Jerry L. Mashaw, The Due Process Revolution, and the Limits of Judicial Power,' p. 40; Charles A. Reich, 'The New Property,' *Yale Law Journal*, Vol. 73, No. 5 (1964), pp. 733-87.

¹⁵¹ Jerry L. Mashaw, *Due Process in the Administrative State* (New Haven, 1985), p. 9.

¹⁵² For more, see Advisory Commission on Intergovernmental Relations, *Regulatory Federalism: Policy, Process, Impact, and Reform*, February 1984, p. 5.

unrelated persons from the FSP.¹⁵³ This decision was upheld by the Supreme Court with Justice William Douglas declaring that it 'lack[ed] critical ingredients of due process' and that the regulations went 'far beyond' Congress' stated goal of preventing 'college students, [and] children of welfare parents' from participating.¹⁵⁴ In his concurrence, Justice Potter Stewart agreed that the 'conclusive presumption' excluded participants from the programme which denied them 'any opportunity to prove present need' and therefore lacked 'due process'.¹⁵⁵ Similarly, the Supreme Court upheld the District Court's verdict in the *Moreno* case when they ruled that the attempts to carve out hippies from the FSP 'create[d] an irrational classification in violation of ... Due Process'.¹⁵⁶ Due process grounding was also integral to the *Bermudez* decision in which the District Court found that USDA's appeals process for retroactive benefits was a 'sham' and fell 'far short of fifth amendment requirements'.¹⁵⁷

The judicial decisions in the final two cases, *Bermudez* and *Bennett* involved expansive interpretations of congressional intent. The idea of 'congressional intent' was something that flummoxed many agencies during this period. Sidney Baldwin wrote in 1969 that Congressional intent was 'neither clearly manifest nor static', a view endorsed by an OEO bureaucrat during this period.¹⁵⁸ 'The agency has a legal obligation to seek out and follow Congressional intent,' the bureaucrat wrote, 'the problem lies in determining... what that intent was'.¹⁵⁹ This was made more problematic by the fact that legislation was often 'a collection of ambiguous and

¹⁵³ *Murry v. U.S. Department of Agriculture*, 348 F. Supp. 242 (D.D.C. 1972).

¹⁵⁴ *United States Department of Agriculture et. al v. Murry et al.*, No. 72-848, in *Cases Adjudged in the Supreme Court at October Term 1972*, United States Reports, Vol. 413.

¹⁵⁵ *Ibid.*

¹⁵⁶ *United States Department of Agriculture et. al v. Moreno et. al.*, No. 72-534, in *Cases Adjudged in the Supreme Court at October Term 1972*, United States Reports, Vol. 413.

¹⁵⁷ D.D.C. *Bermudez v. US Department of Agriculture*, 348 F. Supp. 1279 (D.D.C. 1972).

¹⁵⁸ Sidney Baldwin, *Poverty and Politics: The Rise and Decline of the Farm Security Administration* (Chapel Hill, 1969), p. 409.

¹⁵⁹ Jule Sugarman to Sargent Shriver et. al., n.d., RG381, Green Amendment Files, Box 2, NARA II.

contradictory statements'.¹⁶⁰ This ambiguity would open the door for the Courts to interpret legislation expansively.

In the *Bermudez* decision, Justice John Lewis Smith found a 'clear congressional intent to have.... a portion of the administrative expenses paid by the states'.¹⁶¹ Smith ruled that there was 'little merit to the argument that retrospective stamps [were] an administrative cost' and therefore their cost should be borne fully by the Federal Government.¹⁶² Judge Smith's ruling here was based on a very broad interpretation of the thrust of the Food Stamp Act, rather than citing any specific wording of the Act which matched his ruling. That the word 'retrospective' does not appear in the Act attests to the degree to which Smith needed an expansive interpretation.¹⁶³ This interpretation was upheld by the Court of Appeals with Judge Van Pelt finding that there was 'clearly... congressional intent to hold the Federal Government liable for all of the benefit costs of the Food Stamp Program'.¹⁶⁴ This was not the interpretation of USDA bureaucrats who believed that they should not be liable for the mistakes of the state administrative process.¹⁶⁵

An even more striking example of judicial expansion of Congressional intent was witnessed in the *Bennett* decision. In this case, District Judge Miles Lord ruled that the 'intent of Congress to expand the coverage and effectiveness of the Food Stamp Program was clearly evidenced'.¹⁶⁶ In making this claim, the three Senate speeches that Lord cited were all delivered by Democrats.¹⁶⁷ Lord also cited materials provided by the liberal-leaning McGovern Senate Nutrition Committee

¹⁶⁰ Robert A. Katzmann, *Courts and Congress* (Washington D.C., 1997), p. 51.

¹⁶¹ *Bermudez v. US Department of Agriculture*, 348 F. Supp. 1279 (D.D.C. 1972).

¹⁶² *Ibid.*

¹⁶³ P.L. 91-671, 84 Stat. 2048.

¹⁶⁴ *Bermudez v. United States Department of Agriculture*, 490 F.2d 718 (D.C. Cir. 1973).

¹⁶⁵ 'USDA Issues New Regulations for Food Stamp Program,' 22 July 1971, McCaw Papers, Box 1, Hoover.

¹⁶⁶ *Bennett v. Butz*, 386 F. Supp. 1059 (D. Minn. 1974).

¹⁶⁷ *Ibid.*

staffers.¹⁶⁸ Lord found that the ‘principal basis’ for the Senate’s increase in the FY1973 appropriation for the FSP from \$2.341 to \$2.5 billion was ‘the need for outreach’.¹⁶⁹ The 1971 Food Stamp Act specified that ‘state agency’ was charged with taking ‘effective action... to inform low-income households concerning availability and benefits of the Food Stamp Program and ensure participation’.¹⁷⁰ In his judgment, Lord omitted the words ‘the State agency’ and interpreted that requirement as applying to the Secretary of Agriculture because authority to approve the ‘plan of operation’ was his.¹⁷¹ While Lord chastised the states for their laggardness in developing outreach plans, he ruled that it was the ‘Secretary of Agriculture and his subordinates’ who bore ‘considerable responsibility for the failure of the states to develop outreach plans’. This also was contrary to USDA belief, with Director of the Food Stamp Program, Jim Springfield, having previously publicly expressed the view that the outreach requirements were a state requirement.¹⁷²

As well as considering the arguments that the courts found persuasive during this period, it is also important to consider what they found unpersuasive. At the heart of the Federal Government’s response to these challenges was a defence of the prerogative powers of the Administration and the Congress to set the rules of the Food Stamp Program. In the *Moreno* case, Assistant Solicitor General A. Raymond Randolph argued that as long as Congress had a ‘rational basis’ for excluding hippies, that the due process clause ‘required no more’ and he did not believe hippies to be a ‘protected category’.¹⁷³ Similarly, in the *Murry* case the government asserted that Congress had the right to create eligibility guidelines for its social programs and that

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ Report, Nutrition and Special Groups, Part 1 – Food Stamps, of the Senate Select Committee on Nutrition and Human Needs, March 1975, p. 102.

¹⁷¹ *Bennett v. Butz*, 386 F. Supp. 1059 (D. Minn. 1974).

¹⁷² Springfield, ‘Food Stamp Changes Go Into Effect,’ p. 18.

¹⁷³ *United States Department of Agriculture et. al. v. Jacinto Moreno et. al.*, Supreme Court, No 72-534, 23 April 1973, https://www.supremecourt.gov/pdfs/transcripts/1972/72-534_04-23-1973.pdf (1 Dec. 2019).

the District Court decision was ‘really just a broad claim that Congress may not establish eligibility criteria’.¹⁷⁴ The failure of these arguments established new limits on the authority of Congress and the Executive Branch to set their own rules.

Consequences of FRAC’s Victories

All of these verdicts increased costs and coverage of the Food Stamp Program. The inability of the Federal Government to limit programme participation ran counter to their stated aim of reducing the cost of the FSP. During the litigation, Pollack estimated that up to one million people would become eligible with the elimination of the anti-hippy provision.¹⁷⁵ After the legal victories, the Department of Agriculture conceded that the changes ‘would effect some increase in budgetary participation’.¹⁷⁶ The issue for the Department was that they lacked the capacity to assess the impact properly. As Hekman told the appropriations committee, it was not ‘practical or even possible... to calculate dollar estimates’ for the costs to be incurred from these cases.¹⁷⁷ Regardless of the final dollar cost, these decisions would be a significant blow to the Federal government’s attempts at cost containment.

The biggest blow to the Federal Government’s cost containment strategy was in the *Bennett* case. In that case, Lord had ‘ordered’ Secretary Butz to use the Congressionally-appropriated funds for fiscal year 1973 to ‘provide for expansion through effective outreach’ of the Food Stamp Program.¹⁷⁸ Butz was given just 60 days to develop a plan to spend the \$278 million that USDA

¹⁷⁴ *United States Department of Agriculture et. al v. Murry et al.*, No. 72-848, in *Cases Adjudged in the Supreme Court at October Term 1972*, United States Reports, Vol. 413.

¹⁷⁵ ‘Hippies Due Stamps For Food, Says Suit,’ *Lubbock Avalanche-Journal* (Lubbock, Texas), 30 March 1972, p. 50.

¹⁷⁶ Agriculture – Environmental and Consumer Protection Appropriations for FY1974, Pt. 2: Hearings before the Subcommittee of the Committee on Appropriations, House, 93rd Cong. 640 (1973)..

¹⁷⁷ *Ibid.*

¹⁷⁸ *Bennett v. Butz*, 386 F. Supp. 1059 (D. Minn. 1974).

had impounded..¹⁷⁹ Lord found that Congressional appropriation of funds for the Food Stamp Program ‘constitute[d] documentary evidence of an obligation’.¹⁸⁰ Specifically, Lord found that there was only a surplus of funds to impound because USDA had not fulfilled its legislative mandate to actively promote the program.¹⁸¹ In addition to this particular \$278 million, Lord’s decision in the *Bennett* case was another blow to the Administration’s impoundment strategy.

These judicial rulings contributed to the broader shifting of welfare burdens from the states to the Federal Government during this period. This was part of a broader pattern during this period of shifting burdens from the states to the national government, as has been documented by scholars such as Martha Derthick and Gary Gerstle.¹⁸² The most significant example of this was in *Bermudez* where the courts ruled that there was clear ‘congressional intent to hold the federal government liable for all the benefit costs of the Food Stamp Program’.¹⁸³ Similarly, prior to the *Bennett* verdict, USDA had believed that programme outreach was a state responsibility. Now the District Court had made it unequivocal that it was a Federal responsibility. That these were decisions that would continue to shape the USDA Food Stamp policy for years to come highlights the limited discretion that the Nixon White House often had to pursue its social policy preferences, in a Constitutional system of shared and separated powers, and against a backdrop of insurgent socio-legal activism.¹⁸⁴

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

¹⁸² Derthick, ‘Crossing Thresholds,’ pp. 64-80, Gerstle, *Liberty and Coercion*, pp. 299-313.

¹⁸³ McWilliams, ‘Retroactive Relief in Food Stamp Litigation’, p. 115.

¹⁸⁴ President Ford’s Food Stamp Reform Act of 1975 would incorporate the retroactive benefits ‘prescribed by the courts’, see ‘Fact Sheet on National Food Stamp Reform Act of 1975,’ n.d., Cannon Papers, Box 52, GFPL.

The *Bennett* decision was responsible for what a contemporary law review article described as ‘a graphic illustration of the expansion of judicial control over administrative and executive actions through intense examination of the officials' actions’.¹⁸⁵ As Lord bluntly put it, his decision made clear that ‘administrators of Congressionally established programs,’ such as the FSP, had ‘the authority to do only what the Congress directs or permits’ and that such administrators ‘lack the authority’ to defy Congressional direction.¹⁸⁶ Lord’s idea that a Cabinet Secretary was only meant to ‘do what Congress ... intended him to do’ was a world away from the Nixon Administration’s concept of the Secretaries as the Administration’s representatives in the agencies.¹⁸⁷ Lord’s ruling had another implication. While acknowledging that the states had been sluggish in developing implementation plans, Lord ruled that it was the Secretary who bore the ‘responsibility’ for the states’ ‘failure... to develop outreach plans’.¹⁸⁸ The Secretary was now mandated to not only follow the guidance of Congress, but to monitor and ensure the states were compliant with their responsibilities. And all of this under the watchful eyes of the District Court.

Taken together, these four decisions were disastrous for the Nixon Administration. More important than immediate consequences were the significant blows that were struck towards their broader plan for governance of domestic programs. While they had tried to wrest legislative control away from Congress, District Courts had stepped in and interpreted the desires of Congress in the broadest ways possible. While the White House wanted its Secretaries to act as their representatives, Butz was now under judicial direction to do ‘what Congress intended him to do’.¹⁸⁹ The decisions also marked a strong blow against the broader thrust of their New

¹⁸⁵ French, ‘The Frontiers of the Federal Mandamus Statute,’ p. 650.

¹⁸⁶ *Bennett v. Butz*, 386 F. Supp. 1059 (D. Minn. 1974).

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

Federalism agenda, with responsibilities stripped from the states and returned to the Federal Government.

Implementing WIC

This chapter has shown how Federal court decisions expanded the size, scope, and operation of existing anti-hunger programs. Additionally, the District Courts were instrumental in the creation of entirely *new* domestic programs during this period. This was exemplified with Court-mandated operation of the Special Supplemental Food Program for Women, Infants, and Children (WIC). Though distinct in some ways from the Food Stamp Program – primarily in that it involved the provision of commodities rather than coupons and was provided to individuals rather than households – the story of WIC is an example of the broader growth of Federal anti-hunger programs during this period. It also highlights another flaw in the Administration’s approach to reducing Federal spending. Prior to the election, Nixon had avowed privately that he did not want to ‘reduce spending’ in hunger programs just to see ‘new programs’ take their place.¹⁹⁰ As it happened, the Administration both failed to ‘reduce spending’ and yet were forced to find money for ‘new programs’.

As with so many of the advances made by the anti-poverty movements in the early 1970s, the creation of WIC owed its genesis to OEO-funded programs. WIC was spearheaded by the Community Nutrition Institute (CNI). Demonstrating the small circles in which these actors operated, Rodney Leonard was heavily involved with the CNI. Leonard had previously served as the Administrator of the Department’s Consumer and Marketing Service, where he was responsible for USDA’s child nutrition programs and strongly advocated for liberalisations

¹⁹⁰ Oval Office, Tape 777-002, 14 Sept. 1972, White House Tapes, RNPL.

within the programme..¹⁹¹ After leaving USDA, Leonard edited the CNI's weekly newsletter, the *CNI Weekly Report*.¹⁹² The newsletter 'sought to enlighten readers about news and issues related to hunger and malnutrition'.¹⁹³ Though federally funded, the *CNI Weekly Report* was frequently a critic of the Federal Government's inaction on hunger. By 1973, however, OEO were heavily clamping down on editorial independence of the *CNI Weekly Report*. The *Washington Post* editorialised that the new powers-that-be were 'slashing and chopping articles' in attempting to censor any criticism of the Administration in the *CNI Weekly Report*.¹⁹⁴ Howard Phillips had assigned one his staff members to 'monitor' the Institute's work.¹⁹⁵ The Community Nutrition Institute also collaborated with other members of the 'hunger lobby' including FRAC.¹⁹⁶

Leonard's concern that Congress had 'begun to find hunger boring' was not borne out by its treatment of the WIC issue. In 1972, the Congress passed legislation to extend the Child Nutrition Act of 1966.¹⁹⁷ The bill, which was spearheaded by Minnesota Democrat Hubert H. Humphrey, included funding for a 'little known program' called the Special Supplemental Food Program for Women, Infants, and Children (WIC).¹⁹⁸ The House Committee on Education and Labor report attributed the genesis of WIC to Congress's work in this field since 1968, demonstrating the longer, non-presidential time cycles that Congress operates under.¹⁹⁹ Humphrey's legislation called for a two-year pilot programme, at a cost of \$20 million per year.

¹⁹¹ Review of the National School Lunch Act, Select Committee on Nutrition and Human Needs, Senate, 91st Cong. 2117 (1970); Berry, *Feeding Hungry People*, p. 51.

¹⁹² *Ibid.*

¹⁹³ 'The Pencil Work of Hatchetmen,' *Washington Post*, 8 Apr. 1973, p. C6.

¹⁹⁴ *Ibid.*

¹⁹⁵ Howard Phillips to Alan MacKay, 29 March 1972, Gergen Papers, Box 100, RNPL.

¹⁹⁶ Extension of Nutrition Programs for the Elderly, Hearings before the Subcommittee on Aging, Senate, 93rd Cong. 102 (1974); Berry, *Feeding Hungry People*, p. 72.

¹⁹⁷ FRAC, 'WIC: A Success Story,' 1983, Dole Senate-Legislative Relations Papers, Box 161, Dole Archives, Kansas.

¹⁹⁸ Richard Feltner to Nelson Rockefeller, 7 Mar. 1975, RG462: Policy and Program Development Subject Files 1976-7, Box 3, NARA II; quote drawn from 'Nutrition: The WIC Program,' *Women's Equity Action League Washington Report*, Vol. 4, No. 2 (1975), p 5.

¹⁹⁹ H. Rep. 92-1170 1 (1972).

The drafting of the WIC language was authored by the CNP's Rodney Leonard, working with Humphrey staffer Jim Thornton.²⁰⁰ The bill was passed by the Senate without a dissenting vote, a clear demonstration of the strong constituency that anti-hunger programs maintained in the legislative branch.²⁰¹ The passage of the act can also be attributed to the series of images of malnourished children that Senator Humphrey used on the Senate floor to articulate the necessity for the program.²⁰²

Nixon signed the bill into law in September 1972.²⁰³ The Administration noted the passage of the bill's WIC language but incorrectly believed that they were 'authorizations only', as opposed to appropriations, and staff member John Whitaker therefore noted that there was 'no sentiment' that the bill was a 'veto candidate'.²⁰⁴ The bill was unquestioningly signed into law by a President whose mind was far more focussed on campaign matters than governance.²⁰⁵ Only a fortnight earlier, he had labelled anti-hunger programs 'that damned thing' regretted his Administration's inability to rein in the Food Stamp Program, and pledged a 'very hard re-examination of the existing [anti-hunger] programs' operating if re-elected.²⁰⁶ Now, and largely unintentionally, he signed a further extension of the dramatically enlarged hunger programmes that had developed on his watch.

²⁰⁰ Steven G. Livingston, *Student's Guide to Landmark Congressional Laws on Social Security and Welfare* (Westport, 2002), p. 181.

²⁰¹ The legislation was co-sponsored by critic of the poverty Rep. Albert Quie. Edith Green, another Congressional opponent of the poverty programme was a member of the 'Coalition to Help Malnourished Americans,' see Press Release, Coalition to Help Malnourished Americans, 8 May 1968, Ford Congressional Papers, Box D101, GFPL.

²⁰² 'Saving the Children: The History of WIC,' 2014, <https://www.youtube.com/watch?v=6PI9SzFx7rE&> (accessed online 12 May 2020).

²⁰³ 'Senate Votes,' *National Journal*, Vol. 4, No. 38, p. 1482.

²⁰⁴ Whitaker to Cole, 18 Sept. 1972.

²⁰⁵ Nixon had spent the afternoon campaigning in New York and New Jersey, see President's Daily Diary, 25 Sept. 1972, RNPL.

²⁰⁶ Oval Office, Tape 777-002, 14 Sept. 1972, White House Tapes, RNPL.

Throughout 1973, the Department of Agriculture obstinately resisted Congress's mandate to implement the WIC program, brazenly telling the Congress that they did not intend to spend any of the appropriated funds that year.²⁰⁷ As was true of the Food Stamp Program, USDA did not believe that it was the agency best responsible for implementing the program. Believing that WIC was primarily a welfare program, USDA claimed not to be in a position to conduct the necessary medical evaluation and attempted to pass the buck to HEW.²⁰⁸ This was despite McGovern's staff making it 'very clear in the law that the USDA had the federal responsibility' for this program.²⁰⁹ The failure of HEW and USDA to align on WIC was symptomatic of what the White House termed the agencies' 'almost total lack of coordination'.²¹⁰ Despite the additional 37 staff that WIC caused USDA to employ, the WIC 'question' was one which 'puzzled' USDA.²¹¹

Someone who was not puzzled was, unsurprisingly, Ronald Pollack and his team at FRAC. Pollack closely watched the intransigence of USDA and when it became clear that they had no intention of complying with Congress's mandate, launched legal proceedings against USDA. Pollack's suit challenging the impoundment of WIC funds bears all of the hallmarks of his previous successful suits relating to the Food Stamp Program. First, plaintiffs. Once again, Pollack and FRAC teamed up with other anti-poverty activists to find sympathetic candidates. In this case, FRAC allied with Nevada's Clark County Welfare Rights Organisation, with which Pollack had a long association.²¹² The selected lead plaintiff was Judy Jo Dotson. Dotson was a

²⁰⁷ To Save the Children – Nutritional Intervention Through Supplemental Feedings, Prepared by the Staff of the Select Committee on Nutrition and Human Needs, p. 31.

²⁰⁸ Agriculture – Environmental and Consumer Protection Appropriations for FY1974, Pt. 2: Hearings before the Subcommittee of the Committee on Appropriations, House, 93rd Cong. 631 (1973).

²⁰⁹ To Save the Children, p. 31.

²¹⁰ Ash to Nixon, 21 Feb. 1974, *Papers of the Nixon White House*, Part 6A, fiche 6A-329-22.

²¹¹ Agriculture – Environmental and Consumer Protection Appropriations for FY1974, Pt. 2: Hearings before the Subcommittee of the Committee on Appropriations, House, 93rd Cong. 632 (1973).

²¹² Orleck, *Storming Caesar's Palace*, p. 132, 142, 155, 255; Tom Wicker, 'The Price of Reform,' *New York Times*, 4 July 1971, p. E11.

visible face of the threats of malnutrition. Pregnant, Dotson had previously suffered two miscarriages and her previous child was born underweight at just four pounds.²¹³ Dotson's husband was unemployed and the family of five were totally dependent on a \$108 a month welfare check. This choice of plaintiff cut through in the media, with the *Washington Star* reporting that 'life's grim realities transcend bureaucratic red tape for people at the bottom of the economic ladder like ... the Dotsons'.²¹⁴ Like the majority of Pollack's anti-hunger cases, it was filed in the District Court for the District of Columbia, which was hoped to be favourable.

The verdict was another remarkable victory for Pollack and his team of anti-hunger lawyers. On 3 August 1973, Judge Oliver Gasch issued his initial ruling in the case. Gasch, a Johnson appointee, had been a thorn in the Administration's side all summer, issuing a series of rulings against impoundment, notably concerning the Environmental Protection Agency and the Department of Health, Education, and Welfare.²¹⁵ In this particular ruling, he renewed his fight with the President, and issued an 'action to compel the expenditure of appropriated funds' against USDA.²¹⁶ Gasch ruled that the legislation's wording ('the Secretary shall') 'directed' Secretary Butz to spend the money appropriated by Congress.²¹⁷ The use of the language 'the Secretary shall' was no stroke of good fortune. Rather, the wording had been carefully inserted by the author of the legislation, Jim Thornton, the aide to Senator Humphrey, who crafted legislative language to provide 'a way around' the President's proclivity to impound funds.²¹⁸ A combination of Congressional staffers, public interest lawyers, and District Court judges had again combined to undermine the President.

²¹³ Ruth Dean, 'Where is the Money?', *Washington Evening Star*, 21 June 1973, p. 28.

²¹⁴ *Ibid.*

²¹⁵ Roberta Horning, 'Judge Orders Release of Clean Water Funds,' *Washington Evening Star*, 9 May 1973, p. A10; 'Executive Actions,' *National Journal*, Vol. 5, No. 31 (4 Aug. 1973), p. 1148.

²¹⁶ Opinion, *Dotson et al. v. Butz et al.*, Civil Action No. 1230-73 in *To Save The Children*, pp. 32-8.

²¹⁷ *Ibid.*

²¹⁸ 'Saving the Children: The History of WIC,'

Of perhaps greater importance was the second part of Gasch's ruling. The bill passed by Congress had appropriated \$40 million for the pilot WIC programme – \$20 million for FY1973 and \$20 million for FY1974.²¹⁹ Gasch's ruling was handed down in August 1973, already one month in to the 1974 financial year. Gasch declared that 'Congress intended to make forty million dollars available... until its expiration on June 30, 1974' and ruled that 'this intent cannot be frustrated by delay in implementation'.²²⁰ As such, Gasch ordered USDA to spend the \$40 million in the current financial year, essentially doubling the appropriation of the programme. The Nixon Administration, and USDA's, plans for fiscal restraint were in tatters and the hopes of advocates for the poor were raised.

Butz and USDA still steadfastly refused to accede to Gasch's order, continuing to drag their heels. This 'disturbing situation' was noted by Republican Senator Charles Percy who observed that despite the court order 'not one single project [was] yet in operation'.²²¹ When Congressional pressure proved futile, FRAC returned to the District Court in November to ask the Court to issue an order of contempt against Secretary Butz and his Department. Under the watchful eye of a 'skeptical' Gasch, who joked about not citing Butz for contempt due to the 'crowded conditions at the D.C. jail,' FRAC and attorneys for USDA agreed to a timetable for implementation.²²² Within six weeks of this final court hearing, the first WIC programme opened in Pineville, Kentucky, with plans afoot to open another 215 centres across 44 states.

²¹⁹ Prior to the passage of the Budget Control and Impoundment Act of 1974, to be discussed later in this chapter, the Federal Government's financial year ran from 1 July to 30 June.

²²⁰ Opinion, *Dotson et al. v. Butz et al.*

²²¹ 93rd Cong. Rec. 36559.

²²² David Pike, 'Mothers to Get Food Program,' *Washington Evening Star*, 1 Dec. 1973, p. 12. See also Pollack to Jud Sommer, 17 Dec. 1973, Javits papers, Box 101, Stonybrook.

As Pollack would later recall, the WIC court action illustrated that ‘recalcitrance can backfire’.²²³ Under the watchful eye of Oliver Gasch and the anti-poverty community, USDA was compelled to spend \$40 million dollars on the WIC programme between January and June 1974. This meant an even increased drive to spend money than if they had complied with the order in August. In order to spend this money in such a short period of time, USDA’s hastily put-together WIC programme had a ‘participation rate’ which far outpaced what was expected for the pilot programme.²²⁴ In order to return to anywhere near the expenditure of \$40 million over two years the programme would have required ‘drastic cutbacks’ in participation numbers.²²⁵ As this thesis has demonstrated, it is a lot harder to close programmes that start them. When the appropriations expired in June 1974, legislation to renew was brought before Congress. The estimation to retain the participation rates across FY1975 that was experienced in January to June 1974 was \$100 million.²²⁶ This amount which approved by Congress in June 1974 and which President Nixon duly signed it into law.²²⁷ A \$40 million pilot programme had been turned, thanks to the recalcitrance of Butz and USDA and the willingness of the District Courts, into a new \$100 million a year programme.²²⁸

Richard Nixon not only lost the battle with Congress over WIC, he lost the institutional war. Decision after decision after decision of District Courts around the country wholeheartedly rejected the policies of impoundment. In fact, the Administration lost every single impoundment case that made its way to the courts.²²⁹ That outcome, coupled with the President’s diminishing

²²³ Author’s interview with Ronald Pollack.

²²⁴ S. Report No. 93-S30, p. 4.

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ ‘New Legislation for Food Programs,’ *Food and Nutrition*, 23 July 1974, p. 1; ‘Roll Call Votes,’ *National Journal*, Vol. 6, No. 23 (8 June 1974), p. 870.

²²⁸ The cost of the WIC programme in the FY2019 year was \$3 billion, see Food and Nutrition Service, ‘WIC Data Tables,’ <https://fns-prod.azureedge.net/sites/default/files/resource-files/wisummary-5.pdf> (19 May 2020).

²²⁹ Statement of Information, Impoundment of Funds, p. 15.

influence as a result of the Watergate crisis, saw Congress reasserting itself as a fiscal actor, as was vividly apparent in the passage of the Congressional Budget and Impoundment Control Act in July 1974. The purpose of the CBIC, as political scientist Allen Schick noted at the time, was to ‘ensure Congressional determination of national budget policies and priorities’.²³⁰ One example of this was the creation of the Congressional Budget Office as the ‘informational and analytical arm of Congress’.²³¹ The CBO would provide greater transparency of budgetary information to Congress – weakening both the President’s hand, but also the Appropriations committee members, whose exclusive information was the source of much of their power. Caspar Weinberger, Nixon’s Director of OMB, later wrote that Nixon ‘sign[ed] away his authority’, and that of later presidents, to control the budgetary process.²³² Evidence of the institutional unity of Congress is seen in the voting tallies. The bill passed the House 406-1 and the Senate 75-0.²³³ The Nixon Administration sought to put the best spin possible on the act, believing it was merely the ‘first volley in our strategy to fight for a balanced 1976 budget’. But the President knew that his power had withered. As he wrote on a draft of a speech on the economy, to be delivered in July 1974, a fortnight before he left office: ‘The President alone cannot cut the cost of government’.²³⁴

* * *

The story of the Food Stamp Program in 1973 and 1974 cannot be understood if one thinks that the White House or the President totally dictates domestic policy. The programme cost more, more people participated, and there was greater Federal responsibility than the Nixon Administration wanted. The changes occurred because the Administration was not really in

²³⁰ Allen Schick, ‘The Battle of the Budget,’ *Proceedings of the Academy of Political Science*, Vol. 32, No. 1 (1975), p. 64.

²³¹ *Ibid.*, 66.

²³² Weinberger, *In the Arena*, p. 210.

²³³ C. Lawrence Evans, ‘Politics of Congressional Reform,’ in P. Quirk and S. Binder (eds), *The Legislative Branch* (New York, 2005), p. 512.

²³⁴ ‘L.A. Economic Speech – Fifth Draft,’ 24 July 1974, *Papers of the Nixon White House*, Part 7, fiche 545-13.

control – they had misunderstood the shifting sands of governance in the 1970s. As Roy Ash conceded to the President regarding the impoundment cases, ‘the volume and variety of the legal challenges were clearly unanticipated at the time the budgetary decisions were made.’²³⁵ Rather than mere ‘nuisance suits’ the lawsuits instituted by Ronald Pollack and the Food and Research Action Center dramatically altered the Food Stamps Program. Pollack was a quintessential example of Hugh Davis Graham’s ‘policy entrepreneurs’, who understood more clearly than other political actors the ‘arcane workings of federal regulations’.²³⁶ Pollack and FRAC challenges the idea of Washington D.C. in 1973 and 1974 being a place of ‘paralysis’.²³⁷ It was actually a hive of activity in some places – notably the District Courts and the offices of public interest lawyers. One just needs to be looking in the right places.

²³⁵ Ash to Nixon, 27 June 1973, *Papers of the Nixon White House*, Part 6A, fiche 6A-292-28.

²³⁶ Graham, ‘Since 1964,’ p. 196.

²³⁷ Andrew J. Glass, ‘Watergate Diminished Nixon’s Leverage, Forces Services of Legislative Compromises,’ *National Journal*, Vol. 5, No. 29, p. 1051.

Conclusion

Mid-August 1974 was a busy time for the Federal Government. On August 8 a Subcommittee of the Committee on Labor and Public Welfare held hearings on future anti-poverty legislation.¹ The following day, Presidential Counsellor Leonard Garment told Chief of Staff Al Haig that the composition of the Legal Services Corporation board required his ‘prompt attention’.² On 13 August, the President was presented by an aide with four options for how to respond to Congressional proposals to move the remnant OEO programs to the Department of Health, Education, and Welfare.³ Three days later, the Food and Nutrition Division of the Department of Agriculture announced eleven additional WIC programmes at a cost of \$8.6 million.⁴ That same week, Richard Nixon resigned the presidency of the United States.

The fervour of domestic policy formulation and implementation outlined above strikes at the analytical heart of *The Afterlife of the Great Society*. The examination of these three Great Society programmes demonstrates the fundamental weakness of President Nixon in domestic affairs, a finding which can be applied to the institution of the presidency more broadly. When looking at the reason for the surprising survival of these programmes, this dissertation shows that it was not the result of any Presidential change of heart but rather that survival is owed to elements of the ‘permanent government’. In particular, this dissertation has shown how bureaucrats, Congressional staffers, District Court judges, and public interest lawyers, confounded the President and played a significant role in domestic policy formulation and implementation. It is

¹ Economic Opportunity Legislation, 1974: Hearings before the Subcommittee on Employment, Poverty and Migratory Labor, Senate, 93rd Cong. (1974).

² Leonard Garment to Al Haig, 9 Aug. 1974, Haig Files, Box 1, GFPL.

³ Jim Cavanaugh to Gerald Ford, 13 Aug. 1974, FG6-7 Files, Box 23, GFPL.

⁴ ‘Implementation and Status of the Special Supplemental Food Program for Women, Infants and Children,’ Report prepared by the Food and Nutrition Service for the Select Committee on Nutrition and Human Needs, October 1974.

the political actors represented in Iron Diamond, this thesis has demonstrated, that are far more responsible for policy outcomes than the occupant of the White House.

* * *

During the course of the Nixon Administration, the bureaucracy shaped domestic policy in a number of striking ways. In the first chapter, Department of Agriculture bureaucrats in the newly formed Food and Nutrition Service significantly liberalised the Food Stamp Program - reducing the purchase requirement, establishing the 'economy diet' standard, and providing free stamps to the poorest Americans. In the second chapter, OEO bureaucrats lobbied Capitol Hill on behalf of their agency's extension. Terry Lenzner, the Nixon-appointed head of the Legal Services Program, personally drafted elements of the LSP's authorising legislation, fatally undermining Senator George Murphy's amendment. Chapter Three detailed the remarkable act of Nixon-appointee Carol Khosrovi arranging lobbying assistance to the rebelling National VISTA Alliance, while the OEO bureaucracy recognised the NVA as the representatives of the VISTA Volunteers and used their input to shape policy. In Chapter Four, the onslaught of Howard Phillips' 'wrecking crew' of political appointees was able to be subverted by 'old hands' in OEO's bureaucracy, as evidenced most vividly in their protection of the LSP's back-up centres.

District Court judges played a crucial role in domestic policy formulation and implementation during this period. This was most notable in the Food Stamps cases. In Chapter One, decisions by District Courts in California and Texas dramatically expanded the size and scope of the FSP. Not only did these decisions expand the participation rates and cost of the Program, they accelerated the shift in financial responsibility from states to the Federal Government. In Chapter Four, District Court Judge William Jones issued two rulings which blocked the Administration's proposed elimination of OEO and dismissed its Acting Director Howard

Phillips. In the final chapter, the Food Stamp Program was further liberalised by decisions of the Supreme Court as well as multiple District Courts. These decisions eliminated eligibility requirements, expanded Food Stamp benefits, and mandated programme outreach as a federally-financed activity. The judicial branch's overwhelming rejection of the White House's impoundment policies shifted budgetary power to the Congress, directly contravening the Executive Branch's desire to centralise control over the budgetary process.

The origins of the cases upon which these decisions were rendered is important. The Food Stamp cases described in Chapters One and Six were all brought by public interest lawyer Ronald Pollack. Pollack was first associated with the Columbia Center of Social Welfare Policy and Law and then with the Food Research and Action Center (FRAC). Crucially, both of these organisations were Federally-financed through the Office of Economic Opportunity.⁵ The cases regarding OEO presented in Chapter Four, were brought by non-government public interest lawyers, demonstrating the public interest law movement was part of a broader zeal within the legal profession at the time and not solely a government-sponsored venture. This serves to demonstrate how non-governmental actors can shape public policy.⁶

While this dissertation has focused primarily on the bureaucracies of the Executive Departments, the 'congressional bureaucracy' of Committee staffers and legislative aides were critical to the Iron Diamond. The most vivid illustration of this phenomenon was Jonathan Steinberg, the influential staffer of the Senate Labor and Public Welfare Committee. It was Steinberg who authored the Domestic Volunteer Service Act as well as other important domestic legislation during this period. Congressional committee staff were also responsible for orchestrating the

⁵ For a brief period in 1973, FRAC was privately financed until OEO financing was restored.

⁶ For more, Brian Balogh, 'Making Pluralism "Great" Again,' pp. 159.

House and Senate hearings which often were critical turning points in policy formulation. As a staffer for the McGovern Hunger Committee recalled, these carefully managed ‘stage shows’ caught the Administration unaware, as seen with the embarrassing leaking of the Wilson-Carlucci memo in Chapter Two.⁷ The Nixon Administration had long identified bureaucrats as being responsible for undermining their domestic agenda, but it was only later in the second term that it seemed to grasp the influence of these committee staffers.⁸

While these *individual* actors and actions are important, it is how they operated together – as the Iron Diamond – that is most important. Interventions made by the District Court for the District of Columbia, which decisively shaped the Food Stamp Program and the Office of Economic Opportunity, were in response to cases brought by public-interest lawyers. The Food Research and Action Center worked closely with staffers of both Democrat and Republican Committee members. Reports generated by staffers of the McGovern Senate Hunger Committee were cited by Minnesota District Court Judge Miles Lord in his ruling overturning the Administration’s impoundment of Food Stamp funds. The Iron Diamond was perhaps most vividly demonstrated in the creation of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The District Court ordered the operation of WIC, against the desires of the White House, on the basis of statutory language written by a Congressional staffer in response to a case brought by a public interest lawyer.

The President’s fundamental weakness in domestic affairs is an equally important corollary to the Iron Diamond. The Richard Nixon depicted in this dissertation is far more imperilled than

⁷ This is a quote from a McGovern aide quoted in Robert Kaiser, *So Much Damn Money: The Triumph of Lobbying and the Corrosion of American Government* (New York, 2009), pp. 49-50.

⁸ For example, see Pete Flanagan to Peter Peterson, 16 April 1974, HE Files, Box 13, RNPL.

imperial.⁹ Nixon wanted – and repeatedly tried – to eliminate the Office of Economic Opportunity, and failed. He wanted to eliminate VISTA and yet was unable to. He found Legal Services Program’s class-action lawsuits to be ‘absolutely repugnant’ yet failed to tamper these tendencies and indeed signed a bill ensuring their permanence as part of a Legal Services Corporation. He tried desperately to rein in spending on Food Stamps as part of broader impoundment efforts, which were struck down by the Federal District Courts . The fundamental inability of the President to control the domestic bureaucracy was not unique to Nixon, as David Truman has demonstrated with the Army Corps of Engineers which operated ‘virtually independent’ of Franklin Roosevelt, arguably one of the most powerful Presidents.¹⁰ But recognition of the weakness of the President is an important corrective to a presidential synthesis view of history which myopically depicts the President as the only important actor.

* * *

The enduring consequences of the Great Society political regime, as reflected in the Iron Diamond, were not unique to America’s 37th President and did not end with Nixon’s resignation. From the start of his unexpected presidency, Gerald Ford was forced to confront the same domestic challenges that his predecessor had failed to deal with.¹¹ Ford was considered at the time to be a ‘conservative on almost everything’ and his House record indicated his strong opposition to Great Society reforms.¹² Yet he too made little headway with eliminating these national programmes. One achievement was the elimination of the Office of Economic Opportunity, though in reality this was merely a name change to the Community Services Administration. Ford used impoundment to try to eliminate VISTA only to see the Democratic Congress increase its appropriation.¹³ He ordered his Agricultural Secretary to develop ‘a plan for

⁹ For more on this idea, see David K. Nicholls, *The Myth of the Modern Presidency* (University Park, 1994), p. 7.

¹⁰ David Truman, *The Governmental Process: Political Interests and Public Opinion* (New York, 1971), pp. 410-5.

¹¹ Roy Ash to Ford, 15 Aug. 1974, Presidential Handwriting File, Box 28, GFPL.

¹² Fred Barnes, ‘President in Spite of Himself,’ *Washington Evening Star*, 9 Aug. 1974, p. 17.

¹³ S. Doc. No. 94-243 (1976).

controlling the spiraling cost' of Food Stamps, only to see participation increase by five million participants in 1975.¹⁴ Ford nominated conservative appointees to the Legal Services Corporation board but buckled under pressure from Congress and the organised bar.¹⁵ The LSC Chairman confirmed by the Senate was an outspoken Nixon critic who had been fired from the Nixon Justice Department.¹⁶ More broadly, Ford inherited a presidency weaker than the one Nixon did. As Stanley Ebner wrote to the President in September of 1974, the Congressional efforts to limit Presidential authority had become 'more pronounced and more successful'.¹⁷

The Restoration?

The election of Georgia Governor Jimmy Carter to the White House – the first Democrat to hold the office since Johnson – buoyed the hopes of anti-poverty activists.¹⁸ The *Washington Post's* Joseph Kraft wrote during the transition that the new President's domestic advisors 'dream dreams of the Great Society'.¹⁹ Bureaucrats referred optimistically to the return of a Democrat to the White House as 'the restoration'.²⁰ Hopes that the former Georgia Governor would throw his political capital behind an LBJ-esque War on Poverty were soon dashed. Carter believed, as he publicly stated, that 'government cannot solve our problems' and believed that 'government

¹⁴ Mike Duval to Norm Ross, 10 Sept. 1974, WE10-4 Files, Box 26, GFPL; Department of Agriculture, 'SNAP - National Level Annual Summary: Participation and Costs, 1969-2019,' <https://www.fns.usda.gov/sites/default/files/resource-files/SNAPsummary-6.xls> (28 June 2020).

¹⁵ Ford's proposed board included Congresswoman Edith Green, a strident opponent of the War on Poverty, see White House Press Release, 14 Feb. 1975, Presidential Handwriting File, Box 14, GFPL. For the example of the lobbying, see 'A Poor Start,' *ABA Journal*, Vol. 61 (Feb, 1975), p. 228; 'Washington Report,' Action for Legal Rights, 28 April 1974, Gossett Papers, Box 12, BHL.

¹⁶ This was Roger Cramton, the Former Dean of Cornell Law School. Cramton had previously served in Nixon Justice Department's Office of Legal Counsel until he was fired see 'Jaworski Warns Hill Unit on Delay on Watergate,' *Washington Evening Star*, 8 Nov. 1973, p. 12.

¹⁷ Ebner to Ford, 23 Sep. 1974, Presidential Handwriting Files, Box 28, GFPL.

¹⁸ Early optimistic signs included selection of Head Start founder Jules Sugarman as the Deputy head of the Carter transition, see Laurence Stern, 'Transition Unit at Work for Carter,' *Washington Post*, 9 Aug. 1976, p. A1.

¹⁹ Joseph Kraft, 'They Remember the Future,' *Washington Post*, 28 Dec. 1976, p. A15.

²⁰ Hank Klibanoff, 'VISTA: 15 Years of On-the-brink Existence,' *Boston Globe*, reprinted in *Action Update*, 8 Sept. 1980, pp. 6-8.

cannot eliminate poverty’.²¹ In this sense, Carter was emblematic of the ‘suspicion of liberalism’ that many Democrats exhibited during this period with historian Lawrence Glickman observing that this was the period when Democrats ‘lost their philosophical verve for large government initiatives’.²²

Despite his ‘anti-Washington campaign rhetoric’, and reluctance to embrace the terminology of the Great Society or War on Poverty, the Carter Administration provided strong White House support for existing anti-poverty programs.²³ The Legal Services Corporation was now operational for the first time under a Democratic President. Carter nominated the first female head of the Corporation, Hillary Rodham. Rodham was an forceful advocate for Legal Services who sought to ensure that the agency was fully ‘institutionalized’ as a legitimate function of government.²⁴ Evidence of her success was seen in an article by conservative James Kilpatrick who observed that the Corporation had tempered from its ‘hot-eyed’ days in OEO and called on his fellow conservatives to ‘let... go’ of their antagonism and let the Corporation ‘get on with the job’.²⁵ With the Corporation applying its effective lobbying on Congress in conjunction with the organised bar, the budget of the Legal Services Corporation rapidly expanded over the Carter Years, from \$92 million in FY1976 to \$300 million in FY1980, the largest sum to that point in the Corporation’s history.²⁶

²¹ Arthur Schlesinger, *The Cycles of American History* (Boston, 1986), p. 241.

²² Thomas J. Sugrue, ‘Carter’s Urban Policy Crisis,’ in G. Fink and H. D. Graham (eds.), *The Carter Presidency: Policy Choices in the Post-New Deal Era* (Lawrence, 1998), pp. 139-40; Lawrence Glickman, ‘The Liberal Who Told Reagan’s Favorite Joke,’ *Boston Review*, 6 Aug. 2019, <http://bostonreview.net/politics/lawrence-glickman-ronald-reagan-edmund-muskie-here-from-government> (24 June 2020).

²³ For more, see James Patterson, ‘Jimmy Carter and Welfare Reform,’ in G. Fink and H. D. Graham (eds.), *The Carter Presidency: Policy Choices in the Post-New Deal Era* (Lawrence, 1998), pp. 117-37. Quote from p. 123.

²⁴ Interview with Hillary Rodham Clinton, 21 July 1991, National Equal Justice Library Oral History Collection.

²⁵ James J. Kilpatrick, ‘Of Justice For All,’ *Washington Evening Star*, 10 June 1980, p. 11.

²⁶ Congressional Research Service report, ‘Legal Services Corporation: Background and Funding,’ 27 Oct. 2016.

A similar story of rejuvenation was evident with VISTA. Carter appointed Sam Brown, the ‘prime mover’ responsible for the Vietnam Moratorium movement, as Director of Action.²⁷ For Director of VISTA, Carter nominated Margery Tabankin, another anti-Vietnam war activist who was a student of Saul Alinsky.²⁸ As one historian noted, ‘the type of people Nixon had tried to keep from becoming VISTA Volunteers were now running the program’.²⁹ Change was evident too in the philosophy guiding the programme. While the Nixon Administration had specifically sought to eliminate community organisation, the Carter-era VISTA embraced it. Instructions given to VISTA Volunteers in 1978 told them that ‘community organization [was] one of the building blocks of anti-poverty efforts’.³⁰ White House support was also financial, seeking to ‘vastly increase’ support for VISTA, including a 45 per cent request for extra funding in FY1979.³¹

The Food Stamp Program also continued to expand under the Carter Administration. Like Nixon before him, Carter had hoped for a united welfare reform legislation which would have eventually eliminated Food Stamps.³² But just like Nixon, Carter’s initiatives failed and he was

https://www.everycrsreport.com/files/20161027_RL34016_afd390e9d40937172e36a78cc4b61395319d46b2.pdf (23 June 2020). This marked a three-fold increase — in real terms — compared to the programme’s funding when Johnson left office, see ‘Office of Legal Services – Funding Statistics,’ n.d., Corbett Papers, Box 1, NEJL.

²⁷ David Rosenbaum, ‘Moratorium Organizer: Samuel Winfred Brown Jr.’ *New York Times*, 16 Oct. 1969, p. 18.

²⁸ Barbara Gamarekian, ‘VISTA’s Chief: An Old “New Leftist” Settles Down,’ *New York Times*, 8 Aug. 1978, p. C2.

²⁹ Bass, *The Politics and Civics of National Service*, p. 94.

³⁰ Volunteers in Service to America, VISTA: A Louder Voice for the Nation’s Poor, Pamphlet 4300.6 (1978).

³¹ Departments of Labor and Health, Education and Welfare and Related Agencies Appropriations for Fiscal Year 1979: Hearings before the Subcommittee of the Committee on Appropriations, House, 95th Cong. 616 (1978).

³² Steensland, *The Failed Welfare Revolution*, p. 196.

left to reform the individual programmes.³³ Carter nominated Bob Bergland, a Democratic Congressman described as a ‘liberal’ by Sam Rosenfeld, as Agriculture Secretary to oversee the Food Stamp Program.³⁴ Robert Greenstein was appointed as the Administrator of the Food and Nutrition Service. Unlike past FNS Directors, Greenstein came from an explicitly anti-hunger background, having previously worked for the OEO-funded Community Nutrition Institute.³⁵ Unlike the adversarial relationship during the Nixon years, the Carter-era FNS pro-actively engaged with members of the hunger lobby, including the Food Research and Action Center, as well as staffers of the McGovern Hunger Committee.³⁶ This change in tenor was matched with action, as seen in the passage of the Food Stamp Act of 1977. This bill, with the endorsement of Carter, finally eliminated the purchase price requirement for Food Stamps.³⁷

The Reagan Revolution?

The optimism that anti-poverty activists had during the Carter presidency evaporated with the landslide victory of Republican Ronald Reagan in 1980. Since his gubernatorial days, Reagan had been a strident critic of the ‘unbroken parade of failures’ of the Great Society.³⁸ Reagan continued these rhetorical attacks on the ‘so-called Great Society’ throughout his presidency.³⁹ Reagan’s critique of the Great Society was part of a broader critique of the efficacy and legitimacy of Federal government action – a position neatly encapsulated by his Inauguration

³³ ‘Welfare Reform Memoranda: Executive Summary,’ 29 Nov. 1978, Staff Secretary Presidential Files, Box 101, JCPL.

³⁴ Rosenfeld, ‘Fed by Reform,’ p. 496. Two-thirds of the USDA budget was ‘domestic food assistance,’ see Congressional Budget Office, *U.S. Food and Agricultural Policy in the World Economy*, 26 April 1976.

³⁵ Maney, *Still Hungry After All These Years*, p. 130.

³⁶ *Ibid.*

³⁷ Nancy Hicks, ‘Carter Asks End to Requirement That Poor Pay for Food Stamps,’ *New York Times*, 6 April 1977, p. 1.

³⁸ Ronald Reagan Speech Transcript, 30 Sept. 1974, Gubernatorial Papers – Press Unit, Box P20, RRPL.

³⁹ For example, see Ronald Reagan, Address to the Nation on the Federal Budget and Deficit Reduction, 24 April 1985, <https://www.reaganlibrary.gov/research/speeches/42485b> (24 June 2020). Reagan’s most famous line was that in the War on Poverty ‘poverty won’ see Ronald Reagan, Presidential Radio Talk: Welfare, 15 Feb. 1986, Roberts Files, Box 39, RRPL.

declaration ‘government is not the solution to our problem; government is the problem’.⁴⁰ This attitude deeply troubled anti-poverty crusaders who thought the Reagan White House’s philosophy abrogated Federal responsibility to solve ‘systematic poverty’ and instead left ‘care of the poor’ as an ‘act of charity’.⁴¹ Just as they had during the Nixon presidency, anti-poverty activists would be forced to fight to preserve the programmes they valued so deeply.

Unsurprising given the hostility between Governor Reagan and the Legal Services Program, President Reagan launched a large-scale assault on the Legal Services Corporation. Upon assuming office, Reagan called for the immediate abolition of the Corporation.⁴² The ‘undying adversaries’ suited up for another battle.⁴³ Reagan’s proposed abolition was strongly resisted by Democratic-controlled Congress. Opposition was led by Chairman of the Legal Services Corporation, Dan Bradley, a holdover from the Carter Administration.⁴⁴ Congressman Robert Kastenmeir recalled that the White House would have ‘eliminated every dime’ were it not for Bradley.⁴⁵ Bradley was a former Regional Director of the Legal Services Program who had been considered as a replacement to Lenzner until the White House rejected him for being too ‘anti-Nixon’. The loudest advocate for abolishing the Corporation during the Reagan presidency was Howard Phillips, the Nixon-era OEO Director.⁴⁶ As *Congressional Quarterly* correctly observed, the Legal Services Corporation owed its survival from the assault by the Reagan Administration to ‘the strong opposition from LSC supporters in Congress, legal aid lawyers and the influential

⁴⁰ First Inaugural Address of Ronald Reagan, 20 Jan. 1981, *Avalon Project*, https://avalon.law.yale.edu/20th_century/reagan1.asp (20 June 2020).

⁴¹ James R. Crumley Jr to Jay Moorhead, 29 April 1982, Blackwell Files, Box 1, RRPL.

⁴² Jonathan Alter, ‘Reagan’s Budget “Revolution”: Less and More of the Same Old Thing,’ *Washington Monthly*, July 1981, p. 33; Stuart Taylor, ‘Legal Aid for the Poor: Reagan’s Longest Brawl,’ *New York Times*, 8 June 1984, p. A16.

⁴³ Bennett, ‘One More Narrow Escape’.

⁴⁴ Taylor, ‘House Action Near in Fight Over Legal Aid,’ p. B10.

⁴⁵ ‘Dan J. Bradley, 47, Died of AIDS,’ *New York Times*, 9 Jan. 1988, p. 34.

⁴⁶ Taylor, ‘House Action Near in Fight Over Legal Aid,’ p. B10.

American Bar Association'.⁴⁷ These were precisely the forces which had protected it from abolition during the Nixon presidency. Reagan then sought to stack the LSC board with ideological conservatives but this was again strongly resisted by these forces.⁴⁸ The power of these groups, who protected the programme during the Nixon years, remained potent.

Reagan's hostility to Legal Services was emblematic of his treatment of Federal anti-poverty programs more generally. Much as with Legal Services, soon after the election he moved swiftly to defund VISTA.⁴⁹ To achieve this goal, Reagan nominated James Burnley, described by the *New York Times* as an 'archetype' of a Reagan appointee as VISTA Director.⁵⁰ Akin to the glee exhibited by Howard Phillips about his role at OEO, Burnley exhibited 'certain enthusiasm' for his mission and proudly declared his desire to be the 'last VISTA Director'.⁵¹ Again like Phillips, Burnley used any opportunity to badmouth his agency's 'political approach' which was marked by 'confrontation, alienation, [and] division'.⁵² Alongside these rhetorical attacks, the Reagan administration also sought to deploy the financial weapons at its disposal to destroy VISTA by using impoundment, Reagan attempted to reduce VISTA's appropriation from \$1.5 million dollars to just \$200,000.⁵³

⁴⁷ 'Legal Services Corp. Kept Alive Temporarily,' *CQ Almanac*, 1981, <http://library.cqpress.com/cqalmanac/document.php?id=cqal81-1173042> (20 June 2020).

⁴⁸ Reagan withdrew the nominations under legal action by the Carter appointees and after being warned that the behavior of this nominees was an 'embarrassment' to the President that could quickly become 'a political liability', see Harold Sawyer to Ronald Reagan, 17 Dec. 1982, Roberts Files, Box 31, RRPL; Mary Thornton, 'Recess Board Set to Hold Its Final Session,' *Washington Post*, 12 Dec. 1982, p. A13.

⁴⁹ Alter, 'Reagan's Budget "Revolution",' p. 33.

⁵⁰ Frances Clines and Bernard Weinraub, 'Briefing,' *New York Times*, 16 Dec. 1981, p. A28. Like Nixon, Reagan sought to use the techniques of the 'Administrative Presidency' to control the government, see Joel Aberbach, 'Transforming the Presidency: The Administration of Ronald Reagan,' in C. Hudson and G. Davies (eds.), *Ronald Reagan and the 1980s: Perception, Policies, Legacies* (New York, 2008), p. 191; Nathan, *The Administrative Presidency*, pp. 57-69.

⁵¹ *Ibid*; Marjorie Hunter, 'Follow-Up,' *New York Times*, 29 March 1982, p. B8.

⁵² Clines and Weinraub, 'Briefing,' p. A28.

⁵³ 'Proposed Rescission of Budget Authority,' R81-103A, c. April 1981, SP281-14 Files, RRPL.

But as in the Nixon Administration, protection for VISTA came from the bureaucracy and the Congress.⁵⁴ A new group called Friends of VISTA (FOV), the spiritual successor to the National VISTA Alliance, was formed to oppose Reagan's retrenchment.⁵⁵ FOV was strongly supported by the bureaucracy, whose loyalty to VISTA outweighed their loyalty to the Administration.⁵⁶ While initially overseeing funding cuts, Congress came strongly to VISTA's rescue. Despite conservative advocacy there was a 'settled consensus' within Congress supporting VISTA.⁵⁷ Unable to secure Congressional and bureaucratic cooperation, the Reagan Administration was forced to scale back its plans to dismantle VISTA. Not only did a programme that appeared 'doomed' in 198 survive, its budget continued to grow over the Reagan years.⁵⁸

The Reagan Administration also sought to slash the Food Stamp Program. Food Stamps was a particularly ripe target for the anti-government President due to years of media reports of 'scandals' and with polling indicated that it was the least popular welfare programme.⁵⁹ Reagan initially sought 'major surgery' to the Program which would result in cuts totaling \$1.5 billion per year.⁶⁰ In the face of significant lobbying, including by the Food Research and Action Center, Congress only instituted 'modest' cuts of less than \$700,000 to the Food Stamp Program.⁶¹ The

⁵⁴ Bass, *The Politics and Civics of National Service*, p. 112.

⁵⁵ Colman McCarthy, 'VISTA Needs Help From Its Friends,' *Washington Post*, 26 Sept. 1987, p. A21.

⁵⁶ Bass, *Politics and Civics of National Service*, p. 113.

⁵⁷ *Ibid.*

⁵⁸ Jack Anderson, 'VISTA Doomed, At Time When It's Needed Most,' *Washington Post*, 18 Dec. 1981, p. E7; Departments of Labor, Health, Education and Human Services, Education, and Related Agencies Appropriations for 1989: Hearings before the Subcommittee of the Committee on Appropriations, House, 100th Cong. 130 (1988).

⁵⁹ Steven Roberts, 'Food Stamps Program: How It Grew and How Reagan Wants to Cut It Back,' *New York Times*, 4 April 1981, p. 11.

⁶⁰ *Ibid.*

⁶¹ Pear, 'Reagan Hunger Call,' *New York Times*, 5 Aug. 1983, p. A8.

most significant Reagan legacy on Food Stamps, though, was his use of the bully pulpit, to racialise and demonise the FSP.⁶²

In macroeconomic policy there may have been a ‘Reagan revolution’ in 1981, but there certainly was not an instant or sustained revolution within domestic policy. Even during his presidency, Ronald Reagan’s ‘inability ... to tame the bureaucracy’ was commented upon by movement conservatives, while New Right lobby groups chastened Reagan for his inability to rein in ‘subsidized advocacy’.⁶³ While Reagan used the bully pulpit of the White House, the political regime of the Great Society retained remarkable strength through the Iron Diamond.⁶⁴ As scholars such as Hugh Davis Graham have found, the Reagan years evidenced little policy change among a host of areas, including immigration reform, affirmative action, and smoking reform.⁶⁵

An overview of the Administration’s treatment of poverty programmes witnesses little evidence of important change. The Administration had tried to defund the Legal Services Corporation and failed. It had tried to defund the Volunteers in Service to America programme and failed. It had tried to curb spending on the Food Stamp Program and failed. This is by no means to claim that Reagan was a ‘War on Poverty’ President and the poverty rate in America was higher on the

⁶² Peter Bourne, “‘Just Say No’: Drug Abuse Policy in the Reagan Administration,” in C. Hudson and G. Davies (eds.), *Ronald Reagan and the 1980s: Perception, Policies, Legacies* (New York, 2008), p. 54; James Combs, *The Reagan Range: The Nostalgic Myth in American Politics* (Bowling Green, 1993), p. 80.

⁶³ Martin Wooster, ‘Hostile Congress May Scuttle President’s New Budget,’ *Conservative Digest*, April 1982, p. 18 and Howard Phillips, ‘Let’s De-Fund The Left,’ *Conservative Digest*, April 1982, p. 50 in Blackwell Files, Box 6, RRPL.

⁶⁴ Dennis Riley, *Controlling the Federal Bureaucracy* (Philadelphia, 1987), p. 163-4; Marissa Martino, *What Motivates Bureaucrats? Politics and Administration During the Reagan Years* (New York, 2000).

⁶⁵ Hugh Davis Graham, ‘The Politics of Clientele Capture: Civil Rights Policy and the Reagan Administration,’ in N. Devins and D. Douglas (eds.), *Redefining Equality* (New York, 1998), pp. 103-19; Julian Zelizer, ‘The Unexpected Endurance of the New Deal Order: Liberalism in the Age of Reagan,’ in G. Gerstle et al. (eds.), *Beyond the New Deal Order: U.S. Politics from the Great Depression to the Great Recession* (Philadelphia, 2019), pp. 71-92.

day left office than the day he entered it, despite significant economic growth.⁶⁶ Reagan's rhetoric also fatally undermined Federal anti-poverty efforts. As Edward Berkowitz has written, Reagan deftly succeeded at 'making the Great Society a metaphor for the federal government's inability to manage social problems and its inferiority to the private market'.⁶⁷ This would have consequences that would far outlast Reagan's presidency.

'The Man Who Broke Politics'⁶⁸

The most significant challenge to the Great Society political regime was not the election of Ronald Reagan but rather the 'political revolution' of the 1994 mid-term elections. These delivered a Republican majority in the House of Representatives for the first time in four decades. Emblematic of this new breed of Republicans was their leader, and future House Speaker, Newt Gingrich. The G.O.P.'s success would make Gingrich the first Republican Speaker of the House of Representatives since 1955.⁶⁹ 1994 also ushered in Republican success in the Senate, where they picked up fourteen new seats to ensure a 52-48 majority – the first time since the Eisenhower presidency that Republicans had controlled both chambers.⁷⁰ Like Reagan, central to Gingrich's critique of America's post-New Deal politics was that the Great Society was

⁶⁶ This was particularly accentuated for African Americans, see Robert Plotnick, 'Changes in Poverty, Income Inequality and the Standard of Living During the Reagan Years,' *Journal of Sociology and Social Welfare*, Vol. 19, No. 1 (1992), pp. 29-44; John Ehrman and Michael Flamm, *Debating the Reagan Presidency* (Lanham, 2009), p. 50.

⁶⁷ Edward Berkowitz, 'Losing Ground? The Great Society in Historical Perspective,' in D. Farber and B. Bailey (eds.), *The Columbia Guide to America in the 1960s* (New York, 2010), p. 99.

⁶⁸ McKay Coppins, 'The Man Who Broke Politics,' *The Atlantic*, November 2018 <https://www.theatlantic.com/magazine/archive/2018/11/newt-gingrich-says-youre-welcome/570832/> (20 June 2020).

⁶⁹ Adam Clymer, 'Committee Chairmanships Are Sure Spoils of Victory,' *New York Times*, 10 Nov. 1994, p. A1. No member of the House had previously served a day under a Republican Speaker.

⁷⁰ Benjamin Ginsberg, 'The 1994 National Elections: A Debacle for the Democrats,' in B. Ginsberg and A. Stone (eds.), *Do Elections Matter?*, third edition, (New York, 1996), p. 5. After the defection of two Democratic Senators, the Republicans held a 54-46 majority.

when things started to go ‘profound[ly] ... wrong’.⁷¹ Unlike Reagan, however, Gingrich was committed to destroy the political regime that had developed and protected the Great Society.

Gingrich sought to destroy the Iron Diamond through reforming Congress.⁷² While there was a weakening of Federal resolve to fight poverty under the three presidential administrations that followed Nixon, it was the structural changes wrought by the Republicans in Congress in 1994 which would fatally undermine future anti-poverty efforts. Included in the House Republicans’ *Contract with America* manifesto was a promise to ‘transform the way Congress works’.⁷³ Gingrich promised to fix government, but in reality, he broke it. This was the intention.

The first change was the elimination of the seniority rule for House Committee Chairs. For years, as documented in this thesis, Democratic committee chairs had exercised significant authority over domestic policy. This was particularly accentuated when Democratic chairs protected the programmes from Republican Presidential attack. The seniority rule ‘assure[d] that leaders [were] unusually familiar and experienced with the subject matter, budgets, and agency personnel associated with the committee’s jurisdiction’.⁷⁴ Under the new Republican rules, the Committee Chairs were to be determined not by seniority but by the Republican Steering Committee. As Ronald Peters has observed, this body was nominally independent but in reality was ‘dominated’ by Gingrich.⁷⁵ Gingrich also instituted a six-year term limit on Committee

⁷¹ Maureen Dowd, ‘G.O.P.’s Rising Star Pledges To Right Wrongs of the Left,’ *New York Times*, 10 Nov. 1994, p. A1; Berkowitz, ‘Losing Ground?’, p. 98.

⁷² Sidney Milkis, *The Presidents and the Parties: The Transformation of the American Party System Since the New Deal* (New York, 1993), p. 269.

⁷³ Anne Cammisa and Paul Manuel, *The Path of American Public Policy: Comparative Perspectives* (Plymouth, 2014), p. 95.

⁷⁴ Glenn Parker, *Congress and the Rent-Seeking Society* (Ann Arbor, 1996), p. 142.

⁷⁵ Ronald Peters, *The American Speakership: The Office in Historical Perspective*, second edition (Baltimore, 1997), p. 293.

chairs.⁷⁶ This was a dramatic reduction given that the House Education and Labor Committee had seen only four chairs in the previous four decades. In practice it also limited the power of Committee chairs – their previous longevity allowed them to familiarise themselves with the intricacies of the programmes and develop productive relationships with interested parties.

The second significant reform was the stiff reductions in Congressional staff. This was referred to by *Washington Monthly* as ‘the big lobotomy’.⁷⁷ One third of all Congressional staff were terminated. This included members of House and Senate staffs, House and Senate committee staffs, as well as members of the General Accounting Office, Congressional Budget Office, and Congressional Research Staff.⁷⁸ The ‘lobotomy’ of Congress crippled its ability to act as a legislative body and hastened its transition to an oversight body.⁷⁹ There were fewer Congressional committee staff, and employees of the Congressional Budget Office, in 1995 than there were in 1979, despite the dramatic increase in Federal responsibility.⁸⁰ Whereas Committee staffers had been critical in the formulation of rigorous and thorough policy in the Nixon year, during the Gingrich years the paucity of staffers would result in the outsourcing of much policy work to paid lobbyists.⁸¹ As former Congressman Bill Pascrell depicted it, the reduction in

⁷⁶ John Bresnahan, ‘The Demise of One of the Best Gigs in Congress,’ *Politico*, 30 Jan. 2018, <https://www.politico.com/story/2018/01/30/congress-republican-committee-chairs-377078> (20 June 2020); Michael Foley and John Owens, *Congress and the Presidency: Institutional Politics in a Separated System* (Manchester, 1996), p. 122.

⁷⁷ Paul Glastis and Haley Sweetland Edwards, ‘The Big Lobotomy: How Republicans Made Congress Stupid,’ *Washington Monthly*, June 2014, <https://washingtonmonthly.com/magazine/junejulyaug-2014/the-big-lobotomy/> (20 June 2020).

⁷⁸ *Ibid.*

⁷⁹ Sidney Milkis, ‘How Great Was the Great Society?’ in M. Lerner (ed.), *A Companion to Lyndon B. Johnson* (Oxford, 2012), p. 484. That is not to say that Congress is actually good at oversight, see Thomas Mann and Norm Ornstein, *The Broken Branch: How Congress is Failing America and How to Get it Back on Track* (New York, 2006), p. 215.

⁸⁰ Brookings Institution, ‘Vital Statistics on Congress,’ 11 July 2013, https://www.brookings.edu/wp-content/uploads/2016/06/Vital-Statistics-Chapter-5-Congressional-Staff-and-Operating-Expenses_UPDATE.pdf (25 June 2020).

⁸¹ Shawn Zeller, ‘Congress Is Good at Shrinking One Part of Government,’ *Roll Call*, 20 Jan. 2015, <https://www.rollcall.com/2015/01/20/congress-is-good-at-shrinking-one-part-of-government/> (20 June 2020); Lee Drutman and Steven Teles, ‘Why Congress Relies on Lobbyists Instead of Thinking for Itself,’

staffing ‘depleted... [the] brains of Congress’ to the point where the body could no longer ‘do [its] jobs properly’.⁸²

The political regime described in this dissertation is largely unrecognisable compared with the modern political landscape. Some elements still ring true – the bureaucracy remains a powerful force largely untameable by any President – Nixon’s ‘little bastards’ are Trump’s ‘Deep State’.⁸³ Other elements of the Iron Diamond, however, have buckled considerably under conservative attack. Congress in particular, has been torn asunder.⁸⁴ Its Committee structure has been significantly weakened, and it lacks the staff to engage in rigorous policy formulation.⁸⁵ The judiciary, so long the creator and protector of the liberal regulatory state, has been captured by a conservative movement that has begun to pay attention to that branch of government.⁸⁶ A similar story is true of the public interest law movement, in which conservative groups now outnumber, outspend, and outmanoeuvre their liberal counterparts.⁸⁷

While this dissertation described the *afterlife* of the Great Society programmes, this post-1994 regime perhaps marks the *purgatory* of the Great Society. The power of the bureaucracy remains

The Atlantic, 10 March 2015, <https://www.theatlantic.com/politics/archive/2015/03/when-congress-cant-think-for-itself-it-turns-to-lobbyists/387295/> (20 June 2020).

⁸² Bill Pascrell Jr., ‘Why is Congress So Dumb?’ *Washington Post*, 11 Jan. 2019, <https://www.washingtonpost.com/news/posteverything/wp/2019/01/11/feature/why-is-congress-so-dumb/> (20 June 2020).

⁸³ For the still-potent power of the bureaucracy, see Rachel Potter, *Bending the Rules: Procedural Politicking in the Bureaucracy* (Chicago, 2019).

⁸⁴ Julian Zelizer, *On Capitol Hill: The Struggle to Reform Congress and its Consequences, 1948-2000* (New York, 2006), p.260; Julian Zelizer, ‘Winds of Congressional Change,’ *The Forum*, Vol. 7, No. 4 (2010), pp. 1-8.

⁸⁵ Kathryn Wagner Hill, ‘The Legislative Process: The Rise of the New Order in Congress,’ in B. Ginsberg (ed.), *Congress: The First Branch* (New Haven, 2020), pp. 152-182.

⁸⁶ Steve Teles, ‘Conservative Mobilization Against Entrenched Liberalism,’ in P. Pierson and T. Skocpol (eds.), *The Transformation of American Politics: Activist Government and the Rise of Conservatism* (Princeton, 2007), pp. 160-188.

⁸⁷ Jefferson Decker, *The Other Rights Revolution: Conservative Lawyers and the Remaking of American Government* (New York, 2016).

sufficient to protect Federal anti-poverty programmes from purposeful Presidential elimination, but the changed elements of the Iron Diamond (Congressional staffers, liberal District Court judges, and public interest lawyers) have eliminated the cooperative dynamic which allowed them to flourish.

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