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LEGAL SERVICES CORPORATION: INQUIRY INTO THE ACTIVITIES OF THE CALIFORNIA RURAL LEGAL ASSISTANCE PROGRAM AND TESTIMONY RELATING TO THE MERITS OF CLIENT CO-PAY

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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LEGAL SERVICES CORPORATION: INQUIRY INTO THE ACTIVITIES OF THE CALIFORNIA RURAL LEGAL ASSISTANCE PROGRAM AND TESTIMONY RELATING TO THE MERITS OF CLIENT CO-PAY

WEDNESDAY, MARCH 31, 2004

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:03 p.m., in Room 2141, Rayburn House Office Building, Hon. Chris Cannon (Chair of the Subcommittee) presiding.

Mr. CANNON. The Subcommittee will come to order.

The Subcommittee on Commercial and Administrative Law is meeting this afternoon to receive testimony from various sources as part of its continuing oversight of Legal Services Corporation and the activities of its grantees. The focus of today's hearing is on the potential benefits of a co-pay system whereby clients partially subsidize the cost of their legal representation. In addition, the hearing will focus on certain recent complaints brought against the California Rural Legal Association and the efforts undertaken to resolve and hopefully prevent the recurrence of these problems.

The Legal Services Corporation was formed by Congress to distribute Federal money to provide legal services for civil legal assistance to those who otherwise may not be able to afford legal representation. LSC does not provide services directly but, instead, acts as the funding source to various grantees organized across the country who in turn provide the actual legal services.

Congress relies on the LSC to effectively oversee the activities of its grantees by ensuring they act in accordance with the scope and purpose of restrictions that Congress has periodically imposed upon their activities. This is intended to maximize the efficient delivery of services with the highest degree of client representation and professionalism in the discharge of legal representation. Congressionally mandated restrictions specify which cases a grantee may undertake.

In our discussions today, we hope to obtain a better appreciation of the potential benefits that may be derived from requiring LSC clients to pay some portion of the cost of legal services they receive. Such a co-pay system that can be applied to LSC grantees could have several positive results. First and foremost, the client, by pay-

ing a portion of the cost of representation, might expect and demand a higher level of professionalism and performance from his or her attorney, thus causing the grantee to provide better service. In addition, more funds could be available to serve eligible clients. Finally, such a system may make grantees less dependent on fluctuating Federal appropriations and help stabilize the LSC funding process.

Additionally, we hope to gain insight into the activities of the California Rural Legal Association, or CRLA, since the restrictions were enacted pursuant to the 1996 Appropriations Act. LSC grantees are partnered with groups active in restricted activities under a so-called community justice program.

The partnership approach requires strict scrutiny by LSC and Congress to ensure that congressionally mandated restrictions are not being circumvented. Based upon the report filed by LSC's Inspector General, CRLA has been, in spirit if not in fact, failed to comply with certain of these restrictions. Issues are presented as to whether this is the cause of willful disobedience, negligent management, or a breakdown in communication and understanding between LSC and its grantees.

I now turn to my colleague Mr. Watt, the distinguished Ranking Member of the Subcommittee, and ask him if he has any opening remarks.

Mr. WATT. Thank you, Mr. Chairman, and thank you for convening this hearing.

The Legal Services Corporation is an important part of our legal system, providing free, quality representation for the poor and assisting in expanding the number of lawyers with the appropriate understanding and expertise to serve the needs of the poor and underprivileged. And for that, I'm always grateful to have a hearing so that we can highlight the wonderful things that the Legal Services Corporation and legal services lawyers throughout the country are doing for poor people who cannot afford to have representation otherwise.

I have a longstanding association with Legal Services going all the way back to working in the Hill community in New Haven, Connecticut, when I was in law school, and then going to the board of directors of our local Legal Services Corporation in Charlotte, North Carolina, Mecklenburg County Legal Services. So I know the value that the Legal Services Corporation and its lawyers and other legal services lawyers play in the administration of justice in our system.

I do, however, have two concerns about today's hearing that are somewhat troubling to me. First, I'm concerned about the decision to call one of the witnesses, Mr. Padilla. He is the executive director of the California Rural Legal Assistance program, CRLA, as it is called. It is a legal services grantee and, as such, is subject to various restrictions imposed by Congress on its activities. And last fall, the Office of Inspector General issued a report of its investigation into whether California Rural Legal Assistance violated some of those restrictions.

CRLA has responded and the process is ongoing, and I believe that bringing Mr. Padilla before this Committee to respond to inquiries about the allegations is inappropriate and threatens to in-

fluence the outcome of an ongoing investigation. It would be tantamount to calling witnesses in a trial that is going on before a court.

So I think we could be very counterproductive in what we are doing. I believe that Legal Services Corporation governing body is perfectly capable of monitoring compliance with the regulations and that we should tread lightly as we proceed with this hearing so as not to prejudice or influence the outcome of the investigation, which, as I have indicated, is ongoing.

Second, if we are going to tread on these waters, it seems to me that we should tread with a degree of balance that may not—we may not be able to have. When I learned that we were going into this inquiry, we sought the testimony of a former Legal Services Corporation president, Mr. John McKay, who has substantial knowledge of the CRLA and this process for investigating complaints. Mr. McKay would have provided valuable testimony about the internal machinery of the Legal Services Corporation and how it has effectively resolved concerns about compliance with the law and regulations governing the Legal Services Corporation up to and including defunding those grantees who refuse to take corrective action when they are found to be in violation.

We have here today on the panel the current Chair of the Legal Services Corporation, Ms. Barnett, whom I admire and respect greatly, and in the audience, Mr. Frank Strickland, who I also have utmost confidence in. Unfortunately, they are new to this process and would not be able to give the kind of testimony that Mr. McKay would have been able to give on this important subject.

And it's unfortunate that Mr. McKay, who is now the U.S. Attorney for the Western District of Washington, was denied clearance to testify by the Department of Justice. This Administration seems to be not real sure whether it wants anybody in the Administration to testify about anything, apparently. Perhaps if we had had a little bit more time, we could have gotten this resolved. But they refused to allow him to come to testify, and I know, Mr. Chairman, that you share our concern about establishing and maintaining cooperation among our co-equal branch of Government. And I know you are also disappointed that this witness could not be here to testify. But I think it leaves us—leaves open the possibility that we could not get the entire picture of what we are here to inquire about, even if it is an appropriate inquiry.

Finally, Mr. Chairman, I would just say one thing on whether we should be consider—whether we should consider imposing a co-pay structure on the Legal Services Corporation. I am a firm opponent of that and believe that instituting a system of co-pay, even on a voluntary basis, might lead to the end of a comprehensive free legal services system in this country. And I know that there are people who are being served by legal services lawyers who simply don't have the capacity to do it. It's not because they don't want to pay for their legal services. They simply don't have the wherewithal to do so.

I look forward to hearing the testimony of the witnesses and hope that we will tread lightly and not do damage to an ongoing investigation as we proceed. And I yield back Mr. Chairman.

Mr. CANNON. I thank the gentleman.

Without objection, the gentleman's entire statement will be placed in the record. Also, without objection, all Members may place their statements in the record at this point. Any objection?

Hearing none, so ordered.

And without objection, the Chair will be authorized to declare recesses of the Subcommittee today at any point.

Hearing none, so ordered.

I ask unanimous consent that Members have 5 legislative days to submit written statements for inclusion into the hearing record. So ordered.

I now am pleased to introduce the witnesses for today's hearing.

Our first witness is Helaine Barnett, the newly appointed president of Legal Services Corporation. Ms. Barnett has devoted her life to providing legal services to the indigent. For 27 years, she has served as an advocate and manager for the Legal Aid Society of New York City, which is the oldest and largest legal aid organization in the country. Ms. Barnett is a graduate of Barnard College and received her law degree from New York University School of Law.

Our next witness is Jose Padilla, executive director of the California Rural Legal Assistance program. Mr. Padilla has been the executive director of CRLA since 1984 and worked as a staff attorney prior to that, resulting in a total of 25 years of affiliation with CRLA. Mr. Padilla has received numerous awards and honors, including being listed as one of the 100 most influential lawyers in California—a nation unto itself, I might point out.

A child of migrant workers in California's Imperial Valley, Mr. Padilla has maintained a deep commitment to representing the interests of migrant workers. Mr. Padilla received his undergraduate degree from Stanford University and his law degree from the University of California at Berkeley, Boalt Hall School of Law.

I might just interject that Mr. Padilla and I spent some time speaking yesterday. We had a very pleasant discussion and have agreed that the purpose of America and of Government is to give people opportunity, and education is a core concept there. And so we look forward to Mr. Padilla's testimony today.

Our last witness is Jeanne Charn. She is the director of the Hale and Dorr Legal Services Center as well as the director of the Bellows-Sachs Access to Civil Legal Services Project, both of which are located at Harvard Law School. These programs were conceived by Ms. Charn and her late husband, Mr. Gary Bellows, appointed assistant dean for clinical programs at Harvard Law School in 1973. Ms. Charn has been part of the Harvard Law tradition for nearly 30 years. In addition, Ms. Charn has served as a consultant to the Legal Services Corporation. A native of Illinois, Ms. Charn obtained her undergraduate degree from the University of Michigan and her law degree from the Harvard Law School.

I would also like to take this opportunity to note the attendance of Mr. Frank Strickland, Chairman of LSC's Board of Directors. Mr. Strickland, we appreciate your taking the time from your active law practice to make this trip from Atlanta to monitor this hearing. We appreciate your being there. I personally had the pleasure to meet with you and to discuss the work of LSC. You've made yourself available to my staff. We very much appreciate your

cooperation and efforts on behalf of LSC. Again, thank you for your attendance.

In addition, I would like to note that there is no minority witness at today's hearing. This late-breaking development appears to have resulted from the Department of Justice's confusion as to the propriety of the requested witness testifying. I can assure you that I intend to follow up on this matter with my colleague, Mr. Watt, to ensure that such problems do not occur in the future.

We have a prerogative in Congress. We on a bipartisan basis tend to assert that prerogative with great clarity. Every Administration has its confusions about this, which we tend to be able to clarify and to regularly do so. And so we will work together to do that, and I apologize for the fact that we don't have a minority witness. I agree with the Ranking Member that that would have made this hearing more beneficial, and we shall try other ways to include some of the ideas that we may have missed by not having him here today.

I extend to each of you my warm regards and appreciation for your willingness to participate in today's hearing. In light of the fact that your written statements will be included in the record, I request that you limit your oral remarks to about 5 minutes. So, accordingly, feel free to summarize your most salient points in your testimony. We do have a lighting system, and it is green for 4 minutes and then turns yellow for a minute, then turns red. That doesn't mean you have to stop, if you'll just sort of wrap at that point. I have a tendency to tap, not to stop you, but to just remind you that it's moving on. I think that we're all benefited by a hearing that moves fairly quickly today.

After all the witnesses have presented their remarks, the Subcommittee Members in the order they arrived will be permitted to ask questions of the witnesses subject to the 5-minute limit.

Ms. Barnett, would you now proceed with your testimony?

STATEMENT OF HELAINE M. BARNETT, PRESIDENT, LEGAL SERVICES CORPORATION

Ms. BARNETT. Thank you, Mr. Chairman, Congressman Watt, and Members of the Subcommittee. I am pleased to be here today, along with Frank Strickland, Chairman of the Legal Service Corporation Board of Directors. I want to thank you for this opportunity to appear before you on behalf of the Legal Services Corporation to discuss LSC's ongoing efforts to promote equal access to civil justice in America and to answer, to the best of my abilities, any questions that Members may have about LSC.

I assumed the presidency of LSC on January 20th, after 37 years of providing legal services to the indigent in New York City. Having spent my entire professional career helping low-income people in times of legal crisis and having seen the critical difference that legal service attorneys make in the individual lives of poor clients facing homelessness, hunger, unemployment, and threats to their health and safety, I can say unconditionally that the support of Congress, this Subcommittee, and the Administration is crucial.

LSC grantees assist victims of domestic violence to achieve liberty and self-sufficiency in a safe environment. They help seniors preserve maximum independence. They help uninsured individuals

access health care. They help persons with disabilities obtain disability benefits that dramatically improve the quality of their lives. They preserve housing of families with children and prevent homelessness and shelter stays. Their clients include parents who seek custody arrangements to protect their children from abuse; children who are in foster care seeking adoption by a loving and supportive family; elderly consumers seeking protection from fraudulent loan and collection practices; small family farmers in financial difficulties; veterans seeking Government benefits to which they're entitled; victims of natural disaster.

Without question, the Federal Government remains the single largest and most important funding source for civil legal services nationally. Yet even with Congress' support, only an estimate one in five eligible low-income persons across this country is receiving assistance when confronted with these pressing civil legal problems, leaving 80 percent of our poor with unmet legal needs.

Moreover, the 2000 U.S. Census reported an increase in the number of Americans living in poverty. More than 43 million people are now eligible for Federal legal assistance, yet fewer than 3,700 LSC-funded attorneys nationwide are charged with providing that critical help to those most vulnerable and in need.

Because of insufficient resources, LSC-funded programs are forced to turn away annually tens of thousands of eligible individuals with urgent civil legal problems. In 1996, Congress passed a series of reforms requiring recipients of LSC funds to focus on the basic day-to-day legal problems of America's poor. I strongly support Congress' decision to focus Federal dollars in this way. The LSC board and staff share a deep commitment to the mission of promoting equal access to our system of justice for low eligible—for low-income eligible Americans in unequivocal conformity with the mandates of Congress.

As LSC president, I am committed to ensuring full and faithful compliance with all congressional requirements and restrictions. LSC is proud of its strong record on grantee oversight and compliance. By and large, our grantees are very diligent and careful in complying with congressional requirements and restrictions. Nevertheless, LSC will continue to devote very considerable staff resources to these activities in order to ensure that Federal recipients abide by the 1996 restrictions, as well as all other laws and rules governing thoroughly funded legal aid entities.

Working with our Inspector General, LSC will closely monitor our programs and take strong corrective action whenever a grantee fails to comply with the law or LSC regulations.

LSC will also continue to devote considerable attention and energy to devising strategies that promote the best and most efficient use of Federal funds in every State. Congressional funding of innovative technology grants has been extremely successful in this regard. The Corporation has awarded grants that have made possible expanded access through hotlines, increased access to information through an array of self-help and community education materials to help clients help themselves, as well as more efficient intake structures and case management system.

LSC grantees close nearly 1 million cases a year as well as approximately 4 million matters, such as community legal education

sessions. Only about 10 percent of LSC-funded cases are resolved through a court decision, while nearly 75 percent are resolved through advice, counsel, or brief service. Oftentimes a letter or a phone call from a legal services attorney can resolve a problem at the outset, saving a substantial number of hours and dollars. We seek to provide meaningful assistance to individual clients while serving as an efficient, problem-solving program and as a model of efficient dispute resolution.

This year, LSC is exploring how to better and more effectively promote quality in the delivery of legal services to the poor. We are examining how to define and measure quality and how we transmit the learning of this generation of leaders to the next.

In conclusion, I believe there are fewer responsibilities more important in a democracy than ensuring equal justice under law. I know from personal experience that legal services programs are often the last line of defense for hard-working poor men and women and their families who desperately need our help and who seek some degree of self-sufficiency and a measure of fairness in our society. I am proud to play a role in this vital effort, and I look forward to working closely with Congress in the future and welcome your thoughts and suggestions with respect to the work of LSC as we pursue the goal of equal justice for the poor in America.

Thank you.

[The prepared statement of Ms. Barnett follows:]

PREPARED STATEMENT OF HELAINE M. BARNETT

INTRODUCTION

Mr. Chairman, Congressman Watt, and Members of the Subcommittee, thank you very much for the opportunity to testify before the House Judiciary Subcommittee on Commercial and Administrative Law. On behalf of the Board of Directors and Legal Services Corporation's (LSC) management, we are pleased to report on LSC's accomplishments since we last testified before the Subcommittee in 2002 and to answer any questions Committee Members might have.

Legal Services Corporation is a private, nonprofit corporation created by Congress with bipartisan support in 1974. LSC's charge is to ensure equal access to justice by supporting the provision of civil legal assistance to those who otherwise would not be able to afford it. For Fiscal Year 2004, Congress appropriated $338,848 million to LSC, $322,948 million of which has been allocated in grants to fund 143 legal services programs serving every U.S. county and territory.[1] LSC spends less than 4 percent of its total appropriation for the management and administration of the national program.

The LSC Board and staff are committed to our mission, as defined by the LSC Act, to promote equal access to our system of justice for low-income people throughout the United States. Given funding realities, LSC has focused in recent years on devising and implementing strategies that promote the highest and best use of federal funds in every state and territory. We continue to devote considerable LSC staff resources to compliance and enforcement activities, in order to ensure that federal recipients abide by congressional requirements and restrictions enacted in 1996, as well as all other laws and regulations governing federally-funded legal aid entities.

ADMINISTRATION

LSC is governed by an 11-member Board of Directors appointed by the President of the United States with the advice and consent of the Senate. By law, the Board must be bipartisan; no more than six members may be of the same political party. The Board appoints LSC's President, who serves as LSC's chief executive officer, subject to general policies established by the Board. The 1988 Amendments to the Inspector General Act (the IG Act) required LSC to establish an Office of Inspector General (OIG) and extended specific provisions of the IG Act to LSC. Accordingly,

[1] Pre-rescission figures are used throughout this testimony.

such an office was established by and for LSC. The Inspector General is appointed by, reports to, and serves under the general supervision of LSC's Board of Directors.

Submitting written testimony are LSC President Helaine M. Barnett and LSC Chairman Frank B. Strickland. Ms. Barnett assumed her position as President of LSC on January 20, 2004. She has been a legal services attorney for 37 years, employed throughout that time at the Legal Aid Society of New York City, the country's oldest and largest legal services organization. For nearly three decades prior to assuming the LSC presidency, Ms. Barnett was involved in the management of the Legal Aid's Society's multi-office civil division, heading it since 1994. In that capacity, she oversaw the provision of legal services covering the full range of civil legal problems of the poor, established a major initiative for homeless families with children, created citywide health law and domestic violence projects, and mobilized the organization's 911 Disaster Assistant Initiative. Ms. Barnett also assumed many additional leadership responsibilities within the legal community at the national, state, and local levels. She is a co-chair of the New York State Commission to Promote Public Confidence in Judicial Elections; Treasurer of the Association of the Bar of the City of New York; a member of the American Bar Association Governance Commission and House of Delegates and a past member of the ABA Board of Governors, where Ms. Barnett was the first and only legal services attorney to serve. Ms. Barnett was also a member of the ABA Executive Committee.

Mr. Strickland is a partner in the Atlanta law firm of Strickland Brockington Lewis, LLP. He served for seven years on the board of the LSC-funded Georgia Legal Services Program and for four on the board of LSC-funded Atlanta Legal Aid Society. President George W. Bush nominated him to the LSC Board in 2002, and he was sworn in as a member and elected Chairman in 2003. Mr. Strickland has been a member of the Board of Governors of the State Bar of Georgia since 1985 and is a former member and chairman of the Georgia State Ethics Commission. He has been general counsel of the Georgia Republican Party and is a member of the Board of Governors of the Republican National Lawyers Association. In addition, he is Chairman of the Atlanta Lawyers Chapter of the Federalist Society. When Mr. Strickland was President of the Atlanta Bar Association (1985–1986), he received the American Bar Association's Harrison Tweed Award for coordinating the year's outstanding pro bono project in America—mobilizing more than 400 volunteer lawyers to provide representation to more than 800 Cuban detainees in administrative parole proceedings.

ENSURING COMPLIANCE

LSC's Office of Compliance and Enforcement (OCE) was established to ensure that congressionally-mandated restrictions and other regulations are adhered to by LSC grantees. OCE's responsibilities include reviewing compliance by grantees with the LSC Act and regulations; responding to public complaints; approving major expenditures by LSC recipients; conducting accountability training; and providing follow-up to certain findings and recommendations contained in grantees' audited financial statements. The FY04 budget for OCE is $2.47 million, which supports a 17-member staff comprised of a Vice President of Compliance and Enforcement, a Director of Compliance, a dozen attorneys, two fiscal analysts, two support staff and a management analyst.

New restrictions enacted by Congress in 1996 prohibit grantees who accept LSC funding from, among other things, filing or litigating class action lawsuits, engaging in most types of lobbying, seeking or receiving attorneys' fees, litigating on behalf of prisoners, or representing undocumented aliens. LSC has implemented these restrictions by regulation and monitors its grantees closely to ensure strict adherence. The LSC Board and management have not hesitated to take strong and decisive action when grantees fail to comply with the law or LSC regulations. Fiscal sanctions have and will be imposed where necessary and appropriate, up to and including termination of the program's LSC grant.

In 2003, OCE performed 39 on-site reviews, surpassing its ambitious goal of 32 annually. OCE investigates public concerns, closely reviews mandatory annual audits filed by each LSC grantee, and performs on-site reviews to ensure that all congressional restrictions on LSC-funded programs are enforced. OCE selects programs for on-site review based on a combination of a number of criteria, including complaints of non-compliance, referrals from the Office of the Inspector General, a considerable change from one year to the next in Case Services Reports, and other indicators. Since 2001, LSC has had the authority to conduct random compliance reviews as well. Finally, if OCE uncovers a serious violation of the restrictions, or if a grantee implements a corrective action plan to resolve a compliance problem, OCE

will perform a follow-up review within one year of the last review and provide technical assistance to ensure effective implementation of the corrective action plan.

LSC feels confident in the effectiveness of its compliance efforts. Because we use indicators such as complaints from Congress and the public to determine which programs to review, we give especially close attention to those grantees against which serious allegations have been made. In addition, the possibility of random audits occurring at any time is an effective safeguard against non-compliance. Finally, Independent Public Accountants (IPAs) perform an annual review of the compliance of each LSC grantee with LSC regulations and congressional restrictions. IPAs report any evidence of non-compliance to the Inspector General, who in turn refers the findings to LSC management for follow-up and resolution.

Since October 1997, LSC management and the Inspector General have instituted an official audit follow-up process with its grantees known as the A–50 Follow-up Process. This process is based on Office of Management and Budget (OMB) Circular A–50 for agency follow-up of OIG reports. The process sets out a general timeline for handling OIG findings and resolving any differences between the OIG and LSC management regarding such findings. OCE receives approximately fifty A–50 referrals a year. The overwhelming majority of issues are resolved in less than 30 days to the satisfaction of both management and the OIG. If OCE substantially agrees with the OIG that a grantee is not in compliance and that a satisfactory plan has not been submitted by the grantee to bring it into compliance, LSC may impose a number of sanctions. LSC may put the grantee on a short-term funding schedule; it may suspend part or all of a grantee's funding for up to 30 days; and it may terminate funding if the grantee engages in continued serious violations.

IMPLEMENTING COMPETITION

The central role of LSC is to manage and oversee the use of federal funds that support the direct provision of legal services by 143 LSC-funded legal services providers. Since 1996, LSC has used a system of competition for grants to promote the economical and effective delivery of services, as required by the LSC Act. This system supplanted the previous system of presumptive refunding of LSC grantees.

We encourage non-incumbent legal services providers to compete for available grants by broadly circulating information on the availability of grant funds and by providing outreach and technical support to potential applicants. LSC announces the grants competition each year in national and local newspapers, on the LSC website, in the Federal Register, and in bar journals.

During the competition process, LSC evaluates applications according to established quality standards and awards grants to those providers best able to efficiently provide high-quality legal services in accordance with all applicable legal requirements. LSC provides three channels through which competitive grant applicants, including non-incumbents, can raise questions, issues, and complaints about the grants process. LSC surveys all applicants who file a notice of intent to compete but fail to subsequently file a grant application. LSC has an applicant service desk that responds to applicant questions and concerns throughout the grants competition period. Additionally, LSC hosts an "Applicant Information Session," which is a free telephonic conference used to inform potential applicants about how to file a viable grant application. It also provides a formal vehicle for LSC to respond to questions and issues regarding its grants competition process.

LSC has held a grants competition each year since 1996 and recently completed the grants competition for calendar year 2004 funding. During the past eight years, there have been three competitions in which an incumbent LSC grantee lost to an applicant that had never previously received a grant from LSC. Whether or not there are multiple applicants for an LSC service area contract, every entity seeking LSC funds must submit a comprehensive application for LSC funding for a term not to exceed three years, and each grantee must submit an annual application for a renewal of LSC funding.

Over time, we have examined the competition process to learn how it can be improved and how to potentially attract more applicants. However, many factors help explain the lack of emergence of competitors for LSC funds. There are many situations across the country in which the legal community believes that the current LSC provider is performing well, and there simply has been no expressed interest by another entity seeking to become a legal services grantee. In our experience, law firms with an initial interest in offering one type of free service to low-income clients, such as representation in custody and divorce, are not interested in providing a full array of legal services, including housing, family, consumer and income maintenance work. Offering such services also requires establishing costly intake structures, emergency access, and other core capacities. Potential applicants also have reported

that extensive reporting requirements attached to LSC funding are a deterrent to applying for LSC funds. Some firms have made the economic determination that the limited LSC funding does not compensate for the time-consuming extra administrative tasks they would be required to perform. Congressionally mandated restrictions on LSC grantees also make it somewhat more difficult to attract qualified applicants able to compete with incumbent programs. In particular, some applicants have noted that the restriction on accepting attorneys' fees makes it difficult to stay financially competitive as a potential LSC service provider.

CASELOADS AND STAFFING

LSC grantees close approximately 1 million cases a year on behalf of low-income clients and handle an additional estimated 4 million "matters"—assistance that falls short of the official definition of a case (i.e., pro se assistance, dissemination of community legal education materials, referrals, mediation assistance, etc.). To serve the individuals and families these cases represent, LSC programs employ 8,277 full-time staff, of whom 3,652 are attorneys. The average starting salary for a staff attorney is $33,489, making legal services lawyers among the lowest-paid members of the legal profession.[2]

Well over 50 percent of our clients are served through the advice and counsel efforts of our programs. Almost another 20 percent are assisted by brief service efforts. Fewer than ten percent of LSC grantee cases are resolved through a court decision. About three-quarters of LSC's client population are women, many with young children. Almost 11 percent are elderly. About one-quarter of the client population is African-American; about 20 percent is Hispanic; and approximately two percent are Native American and another two percent are Asian or Pacific Islander in origin.

IMPLEMENTING STRATEGIC PLANNING

LSC has used its State Planning Initiative to help grantees address emerging client populations, diminishing resources and important new technological advances that are revolutionizing the practice of law and helping legal services practitioners reach underserved client populations. State Planning requires that grantees supplement and enhance technology structures to improve client services and access. It requires grantees to coordinate functions with local and state stakeholders, including other LSC grantees, so more eligible clients who need legal assistance can receive it. State Planning also stresses local resource development and instructs grantees to undertake efforts to leverage their federal dollars with non-federal resources.

State Planning, in combination with federally mandated competition for LSC grants, is fully in accord with strategies set forth in President Bush's *Management Agenda*. In 2001, all federal agencies were instructed to leverage resources to maximize the use of limited government funds. The most enduring legacy of LSC's State Planning Initiative may be its success in achieving that directive. Through State Planning, LSC spawned partnerships with judges, state legislators and private bar members to help increase state funding and private contributions for legal services.

PROMOTING EFFICIENCIES THROUGH TECHNOLOGY

LSC's Technology Initiative Grant (TIG) program supports projects to develop, test and replicate technologies that enable programs to improve program efficiency and enhance client access to high-quality assistance in the full range of legal services. Initiated with a special appropriation in FY00 and funded by Congress every year since, the TIG program awards grants to LSC grantees through a competitive grant process. LSC awarded 51 TIG grants in 2003. In FY05, LSC plans to allocate $4 million to the TIG program. Since the program's inception, LSC has funded a range of pioneering and effective technology projects. *Pro se* initiatives have equipped clients with the tools and support to protect their legal interests on their own while increasing the efficiency of the courts. Web-based systems, video-conferencing and related approaches have increased access to justice for clients living in remote areas. Newly designed case management and intake systems, as well as other infrastructure investments, offer increased efficiencies that enable programs to save time and money and ultimately serve more clients. Finally, client-centered statewide legal services web sites provide legal information in 49 states and territories, thanks in part to TIG grants and ongoing technical assistance funded with

[2] Legal Services Corporation 2002 Summary of Average Salaries by Job Classification for Full Time Staff. (www.rin.lsc.gov)

TIG monies. Using these tools, clients can more easily obtain legal information through computers in their homes or at public venues such as libraries.

The TIG program has increased access to legal information, self-help resources and other legal assistance for low-income Americans. It has also given traditionally hard-to-reach clients living in isolated areas a new avenue to pursue and obtain legal aid. TIG awards have allowed many LSC grantees to leverage matching funds from other sources. For instance, our program in Alaska received matching funds from the Alaska Court System to install and configure workstations in each of the six state courthouses. These provide access to public legal education and self-help materials in both English and in *Yup'ik*, a traditional Alaskan language.

Another replicable TIG innovation is our Montana pilot project on teleconferencing, which has enabled the Sixteenth Judicial District (200 miles in diameter) to hold trials in county courthouses throughout the area by utilizing video conferencing technology to hear from witnesses who live far from the actual courthouse. Many judges throughout the state now hold trials via teleconferencing. Sheriffs no longer have to bring in witnesses and litigants who lack transportation and judges can make better assessments of witnesses' and litigants' mental capacities when they are in familiar surroundings. Overall, court proceedings take far less time.

A further innovative example of a TIP project is California's I-CAN! project, a web-based legal services kiosk that offers convenient, effective access to vital legal services. Developed by the Legal Aid Society of Orange County, in partnership with the courts, local government agencies, libraries and legal services organizations, I-CAN! creates properly formatted pleadings, provides court tours, and educates users on the law and how to pursue their matter. I-CAN! software facilitates completion and filing of forms on complaints regarding parental obligations, domestic violence restraining orders, orders to show cause, earned income tax credits, fee waivers, license denial reviews; paternity petitions, small claims matters and unlawful detainers. Users can access the program for free on any computer connected to the Internet and through kiosks in courthouses, legal aid offices, community centers, women's shelters, and libraries. It serves hard to reach groups such as rural communities and individuals with limited or no English proficiency as some modules can be accessed in Spanish and Vietnamese.

IMPROVING QUALITY

LSC management and the Board's Committee for the Provision of Legal Services launched a Quality Initiative in 2004 to study ways to enhance and promote the delivery of high-quality assistance by federal grantees. LSC is committed to identifying and subsequently spurring the development of certain core quality standards in its grantees. LSC will work with the American Bar Association and others to revise performance standards developed by the ABA's Standing Committee on Legal Aid and Indigent Defendants as well as those from other professions. Consensus has already been reached on certain quality benchmarks: streamlined case management systems, competent staff, peer review, resource development, consistently strong client outcomes and high client satisfaction. Other standards under examination include client involvement, workforce diversity, client accessibility, strategic use of scarce resources, and dissemination of best practices among providers. LSC will continue to examine how our most successful programs have achieved high quality and what is required to maintain it. We are providing a forum for experts to discuss the development of these qualities and showcasing grantees whose work demonstrates that they have given consistent attention to quality in staff work product, client concerns, and community relations.

It is essential that LSC have a strong presence in the national legal services community and be visible among its grantees as we assist them with their profoundly important mission. Our experience has shown that the more readily available we are to programs, the quicker they are to call us with questions and report problems. We have found that programs are eager to learn about ways in which they can improve performance and conform to LSC requirements. Teaching programs how to succeed yields far stronger outcomes for clients and lessens compliance problems. Recently, we increased our quality site visits to grantees. Sites were selected because they showed indications of weakness in one or more aspects of program activity or exemplified some of the best qualities found in legal services organizations. Although current LSC resource levels permitted fewer than a dozen trips in 2003, we have already realized significant rewards from the effort. LSC has been able to give guidance on improvements and to provide mentoring, partnership, and assistance in ways that allow grantees to deliver quality legal aid. LSC has also learned how strong programs achieve their success and has been able to share that information with others.

ENSURING ACCURACY OF STATISTICS

The Office of Information Management (OIM) is responsible for collecting data reported by our grantees or affecting them. Using 2000 census data, OIM determined the appropriation funding amounts for grantees based on a per capita calculation of the number of eligible poor people in each LSC service area. OIM is also responsible for managing the Case Service Reports (CSR) grantees file annually. In 1999, two U.S. Government Accounting Office (GAO) reports raised questions about the accuracy and validity of the CSRs. Problems reported by GAO stemmed in part from a lack of clarity found in past LSC reporting guidelines and, more generally, from insufficient attention by grantees to the existing reporting and documentation requirements.

LSC promptly took up the issue and instituted the necessary measures to correct the problem. LSC developed and issued to all grantees more detailed guidance on CSR reporting and on improving their case management systems to comply fully with LSC's operational standards. Then LSC provided additional training to those grantees most in need of it. LSC also established a system for sampling CSR data so that grantees can diagnose and correct reporting problems and LSC can track the error rate both grantee-by-grantee and nationally. As a result, accuracy greatly improved from an 11 percent sample error rate for 1999 CSRs to a 4.9 percent rate for 2000 CSRs. We continued to improve with a 4.3 percent sample error rate for 2002 CSRs. We expect a projected sample error rate between 4.2 and 4.3 percent in 2003.[3] We are confident that the goal of "substantial accuracy" has been achieved. LSC will continue to pay close attention to the quality of CSR reporting to ensure the integrity of CSR figures, which are our strongest hard numerical indicator of services delivered, both on a national and individual program basis.

2005 BUDGET REQUEST

For FY05, LSC requests an appropriation of $352.4 million to provide funding for civil legal assistance to eligible low-income persons throughout the United States. This represents a modest four percent increase over LSC's FY04 appropriation and only partially accounts for the increased number of eligible poor clients living in many LSC service areas. More than 43 million low-income Americans are currently eligible for federally funded assistance—a record high. In addition, LSC's funding over the years has been dramatically outpaced by inflationary increases at a rate of more than 2 to 1. Current funding, in 1980 real dollars, equals just $149.17 million.

LSC's FY05 budget request is structured to allow LSC to meet three key goals:

- To modestly increase the availability of legal services to eligible persons;
- To ensure legal services clients are receiving high-quality legal assistance; and
- To ensure that legal services programs fully comply with all legal requirements.

The FY05 request eliminates funding for the census adjustment line item that had been included in LSC's budget during the previous two fiscal years. In FY03 and FY04, as a transitional measure, extra funding was set aside to assist LSC-funded programs facing significant federal losses due to poverty population shifts. The census funding adjustments enabled grantees to gradually adjust to lower funding levels and gave program leaders an opportunity to reallocate scarce resources and devise strategies to raise additional non-federal funds. For FY05, LSC asks that its funding be distributed proportionally among all grantees based on *per capita* determinations of the eligible poor living in each service area.

Federal funding is the single largest and most critical funding component for legal aid and low-income Americans seeking access to critical civil legal assistance. The federal investment has become even more important in recent years, which have seen a variety of non-federal funding sources stagnate or shrink. Many LSC-funded programs are forced to turn away thousands of qualified individuals with urgent civil legal problems. These include victims of domestic violence seeking protective orders, parents seeking custody arrangements to protect their children from abuse, elderly consumers seeking protection from fraudulent loan and collection practices, tenants seeking to keep their families off the streets, and veterans and seniors seeking vital government benefits. Over 3,600 legal aid attorneys throughout the country

[3] For 2002 cases, one more adjustment was made, excluding Title III Administration on Aging cases where collection of financial eligibility data is restricted by law. This adjustment reduced reported case closures by about another 35,000.

are charged with providing civil legal assistance to the more than 43 million financially eligible Americans-individuals with annual incomes of $11,638 or less, which is 125 percent of the federal poverty threshold. Despite the hard work and dedication of this skeletal workforce, studies show that approximately 80 percent of eligible clients do not have access to legal services when they have serious civil legal concerns.

HELPING CLIENTS

LSC is best understood in terms of the clients our programs assist. They are all poor individuals and families who face overwhelming legal challenges. We have selected several client histories that are indicative of the range of cases that our grantees across the nation handle where the provision of civil legal assistance has made a critical difference in their lives.

Ms. K. came to the Legal Aid Society of Orange County (LASOC) when she was 20 years old and the mother of a young son. She and her boyfriend began dating when she was 17 years old, and the severe physical abuse began two weeks later. He beat and kicked her repeatedly, hit her in the stomach when she was pregnant, isolated her from her family and friends, was verbally abusive, and refused to allow her to go out without him. He took her to and from her job and forced her to turn over her paycheck to him. She finally was fired because she was so stressed on the job from the situation at home. Despite her best efforts to please him, Ms. K was beaten because she did not keep a clean enough house or prepare meals her boyfriend liked. She finally left when he told her that she would be beaten when he returned home from work for failing to iron his shirt. LASOC assisted her in applying for restraining orders and custody and visitation orders. The judge indicated that she was the textbook domestic violence victim and granted the orders as requested.

In New York, Legal Services of New York (LSNY) represented Ms. S. who was widowed when her husband, the primary breadwinner of the family and an employee of the World Trade Center, was killed on September 11, 2001. Shortly after the tragedy, while she was still in shock and grieving her loss, a finance company began eviction proceedings against her despite the fact that she had paid her rent. She learned that a foreclosure proceeding against her landlord had resulted in the landlord's loss of the house. LSNY successfully negotiated a settlement with the finance company and Ms. S. was given enough time to find another affordable place to live.

When Ms. A. was in junior high school she was assaulted so viciously that she could no longer walk. As a young adult she lived in her own apartment but required twenty-four hour a day living assistance. The state decided to decrease her home health care hours to save costs. Since Ms. A. was dependent on the availability of health care and assisted living on a twenty-four hour a day basis, the potential loss of her home health care benefits would give the young woman little choice but to enter a nursing home. With the assistance of Legal Aid of Western Missouri (LAWMO), Ms. A. was able to retain her home health care assistance and graduated from college. She now plans a career as a legal service attorney.

Ms. P acquired a ten-acre parcel of property in rural Idaho prior to her marriage. With the help of friends and neighbors she constructed a small home on the property. Eventually she married. Within a week of the marriage, her new husband, taking advantage of her disabilities, convinced her to sign a quitclaim deed giving him a one-half interest in her property. Over time he acquired complete control of their finances and incurred $85,000 in debt. He grew abusive and was arrested for domestic violence. Upon his release from jail he filed for divorce and asked that "their" land and home be sold to cover the credit card debt. Idaho Legal Aid Services represented her in a multi-day trial. The court revoked the quitclaim deed and assigned the vast majority of the credit card debt to Ms. P's ex-husband.

CONGRESS HAS CONSIDERED AND REJECTED CO-PAY

At the Committee's request, the LSC is addressing the adaptability of a co-pay system for LSC-funded grantees. Although the question of charging clients a fee for legal assistance is not specifically addressed in the LSC Act, the legislative history of the Act strongly indicates that federally funded legal assistance provided pursuant to the Act is to be free of charge. Both the House and Senate reports note that "It is in the Nation's interest to encourage and promote the use of our institutions for the orderly redress of grievances . . . and that the program of providing *free legal assistance* to those unable to afford such counsel should receive continued support." The House Report goes on to state that "regulations promulgated by the cor-

poration will assure that . . . no person or group will be charged *any fee* for legal services provided by recipients under this bill."

LSC has followed this very clear legislative intent, and it has been the policy of LSC that our grantees may not charge fees for LSC-funded legal assistance. Our clients represent the poorest of the poor and most vulnerable individuals in the country and are desperately seeking civil legal assistance to make a critical difference in our lives.

Moreover, in the mid-1990s co-pay was considered and rejected by Congress. Reauthorization bills introduced in both the House and the Senate contained provisions that would have required LSC to undertake a demonstration project to study co-pays, and would have permitted—but not required—LSC to establish a system of co-pay for some or all of its programs. Neither reauthorization bill passed. However, a number of the provisions from the reauthorization bills were ultimately included in the 1996 Appropriations Act. The co-pay demonstration project was not included.

The legislative history of the 1996 Appropriations Act also makes clear that Congress intended for legal services to be provided free of charge. In justifying the attorneys' fees restriction, the House Report states, "Further, the Committee notes that Corporation grantees are supported by public resources to provide free legal aid to their clients. Therefore, the Committee believes it is inappropriate for attorneys' fees to be collected for *free* legal aid." We believe Congress was right when it indicated that federally funded legal services should be provided free of charge to those in our society most in need. (Emphasis added.)

STATUS OF LSC REVIEW OF OIG REPORT

In response to the Committee's request to consider current alleged infractions committed by California Rural Legal Assistance, LSC will report on the status of LSC's review of the OIG's and the possible sanctions that might be imposed on any program that has been referred to LSC by the OIG.

On September 30, 2003, the OIG provided CRLA with a draft audit report. As is standard procedure, CRLA was given an opportunity to respond. On November 14, 2003, CRLA submitted comments in response to the OIG's report. CRLA disputed the OIG's draft findings. On December 11, 2003, the OIG issued its final report. The OIG accepted some minor corrections from CRLA and dropped one finding. Otherwise, the OIG reiterated its previous findings. The OIG gave CRLA two months to provide a corrective action plan (CAP), which CRLA submitted in February of this year. OIG reviewed it and, on March 5, 2004, after deciding that CRLA's proposed CAP inadequately addressed the problems outlined in the report, the OIG referred the matter to LSC's Office of Compliance and Enforcement (OCE) through what is known as the A–50 referral process.

We take our responsibilities under the A–50 process very seriously. The A–50 process stems from a requirement in the 1996 Appropriations Act that LSC was to "develop procedures to ensure effective follow-up that meet at a minimum the requirements of Office of Management and Budget Circular Number A–50." A–50 provides for general federal agency follow up procedures for IG findings.

Following the procedures outlined in that process, OCE, in conjunction with LSC's Office of Legal Affairs and management, is currently reviewing the facts and the law presented in this case. We hope to conclude this review of whether or not we agree with the OIG's report by May 1, 2004. We will, however, conclude our work on this case in as short a time frame as we reasonably can.

There are a number of possible scenarios that could arise after LSC completes its review of an OIG report. If we concur with the OIG's findings that a program violated LSC regulations, and we agree that a program's proposed CAP will not adequately remedy the situation, we would try to work with the program to develop a CAP that will bring them into compliance.

If working with the program does not bring them into compliance, we will consider the imposition of any and all sanctions necessary to promptly bring the program into compliance. LSC may suspend part or all of the grantee's funding for up to thirty days; we could put the grantee on a short-term funding schedule at the end of the calendar year; and, if the grantee continued to engage in serious violations of congressional will as codified in LSC Act, appropriations acts and regulations, we could terminate the grantee's LSC funding.

Another sanction available to LSC is to cease to fund the program during the next competitive grant cycle. LSC always takes a grantee's compliance history into account during the competition process.

If after review of the OIG's report, LSC management disagrees with the OIG's conclusions, then as part of the A–50 process, an Audit Follow up Official (AFO),

designated by the LSC president, tries to work out an agreement. If an agreement cannot be reached between the OIG and LSC management, then the AFO issues a decision that will be final.

CONCLUSION

Civil legal services programs play a critical role in helping poor individuals and families achieve independence and self-sufficiency and in obtaining critical relief. Annually, the LSC cases fall into traditional poverty law categories. Grantees close almost 40 percent of their cases in family law each year, primarily representing custodial parents and victims of domestic abuse seeking divorces and orders of protection. More than ten percent of our closed cases involve efforts to help elderly clients with income maintenance issues, veterans' benefits, disability claims, and other relief under benefits programs designed for older Americans. Almost one-quarter of our grantees' litigation is devoted to housing law issues—preventing family homelessness by challenging evictions, preventing foreclosures, improving living conditions, helping with Section 8 and other federal housing subsidies or through community activities to improve neighborhoods and develop affordable housing. Our programs' lawyers keep children in school by representing them in expulsion hearings and helping students with disabilities learn in effective and appropriate settings. LSC grantees make sure that the working poor have access to fair employment and the wages to which they are entitled. Our grantees also assist consumers with bankruptcy and other debt relief, including that caused by predatory lenders.

In conclusion, we at LSC are proud of our partnership with Congress and enormously grateful for the bipartisan support we have earned over the past decade. We also deeply appreciate the support the Bush Administration has shown for our efforts to provide equal access to justice for low-income Americans in the most efficient and effective manner possible. The LSC Board and staff will continue in this collaborative effort and will build upon these important relationships in the future as we endeavor to give meaning to the goal of equal access to all Americans. Thank you.

Mr. CANNON. Thank you, Ms. Barnett.

Mr. Padilla?

STATEMENT OF JOSE R. PADILLA, EXECUTIVE DIRECTOR, CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

Mr. PADILLA. Mr. Chairman, Congressman Watt, Congressman Delahunt, my name is Jose Padilla. I'm the executive director of CRLA. I am proud to say I've been a legal aid lawyer with CRLA for more than 25 years, almost 20 of those years as its director. I am always honored to speak on its behalf and on behalf of the more than 85 committed advocates in our program, and especially on behalf of the more than half a million rural poor and farm workers to whom we minister legal aid, who honor us by allowing us to be their lawyers.

CRLA is considered one of the more effective legal aid programs in the country. We are proud of that legacy of high-quality, ethical, and effective litigation. Congress wants to give poor access to courts. We bring cases to courts. Courts decide.

Recent examples of our work: We enabled three wheelchair-bound high school students to secure district-wide building modifications that brought schools in compliance with the Americans with Disabilities Act. These students had been unable to navigate their campuses, use bathrooms, or participate in academic programs that physically accessible—that were physically accessible only to the able-bodied.

We obtained a fair housing discrimination case settlement against a predator landlord who sought out women residing at a local homeless shelter and offered rental discounts in return for sex.

We secured improvement to a farm labor camp housing hundreds of asparagus pickers which had no functioning toilets or showers, with a filth-laden kitchen, and recovered months of unpaid back wages for some 400 workers residing there.

I provided Congressman Watt with pictures of that labor camp going—pictures that show housing going from filth to decency.

And we provided thousands of K–3 English learners access to Reading First grants under No Child Left Behind, enjoining the State Department of Education from enforcing a ban that kept these funds from reaching hundreds of English-learner classrooms.

But it has been a repeated fact of our history, Congressmen, that effective advocacy invites controversy. So we have come to answer any questions that you may have about recent audits of our program. So I briefly speak to three things: the first two, compliance and cooperation.

About compliance, CRLA has always realized that we will be able to provide diligent and effective advocacy on behalf of the most vulnerable only through administering efficiently and effectively all aspects of financial accounting, local office operation, and staff activities. Protection of the Federal resource is the most critical responsibility that a program director will assume. Indeed, for someone born in a rural community and raised by parents who were themselves migrants, this obligation to protect at all cost the Federal rural legal service dollar weighs heavier.

About cooperation, the recent IG audit presented many more issues and many requests for information than any previous audit that we had gone through. We cooperated fully. No inquiries remained unaddressed. No pending issues remained open. When questions arose concerning client privacy and CRLA ethical responsibility to its clients, those were discussed, as lawyers should, and resolved.

During the 30-month audit period that extended from notice to final report, we expended significant resources responding to the OIG demands. Although CRLA has no final estimate, after 16 of the 30 months of the audit, CRLA had expended 4,479 staff hours in audit-related work, at a cost of more than $113,000.

Of course, under the LSC Act, it is the LSC board, its president, and management staff that make the rules and policies for LSC. Under the IG Act, the LSC Inspector General assures that the Federal dollar is protected by auditing for compliance with restrictions. The IG investigates, inspects, recommends.

In our case, after the extensive review by the IG of hundreds of case files, hundreds of financial transactions, numerous staff interviews, and weeks of on-site field office visits, there was good news. No financial irregularities, no violation of LSC rules were found that required any form of penalty, nor any form of formal Federal intervention.

The IG found that CRLA, Inc., and CRLA Foundation were independent entities. It found there were no improper fund transfers between the two. And after intensive review of CRLA's 17200 litigation, complex cases that are brought to recover hundreds of thousands of dollars of unpaid wages, the IG found this to be a proper use of resource. Our clients, Congressmen, are working people, by and large. We do use legal resources to get wages after they've

worked and employers think that they can get away without paying them. We do that work. That's basic access.

Nevertheless, the IG did make findings in the audit that raise questions regarding 1610. We responded in full in writing. Where we could, Congressmen, we agreed. We have changed policies and practices. Where there was fair disagreement with what LSC requires, we will be looking to LSC for clarity regarding the findings.

About three findings, subsidy. The IG found that when tenants paid rents late, although we collected the rent, we didn't charge a penalty; we didn't charge interest. And when we did, Congressmen, it was about $511. It should be noted that the issue of subsidy amounts to $511 in an $18 million period of operation.

A second issue about client identity. We also disagreed where the IG findings and recommendations conflict with the black letter of the law regarding client identity required to be revealed to the public. Where clients have explicitly chosen not to be plaintiffs in litigation for fear of landlord or employer retribution, the choice must be honored. The IG's position appears to be inconsistent with the requirements of the LSC regulation, statutory language, and with our own ethical responsibilities.

And, finally, Congressmen, about shared staff, we also disagree with the findings about shared staff and about co-counseling. We rigorously followed the guidelines set by LSC regarding shared staff. Specifically, we complied with the LSC guidance for 10 percent of our staff to be shared with an entity doing restricted work. In fact, Congressmen, during this period, CRLA only shared 2 percent of its staff with CRLA Foundation, and we have even offered to the IG that we would set upon ourselves a 5-percent standard even though the LSC standard would be 10 percent.

So, finally, we disagree with the recommendation by the IG that we co-counsel in the future with this foundation with junior lawyers. This will create bigger supervisory and regulatory problems that we believe that LSC would want to avoid.

Congressmen, our written testimony discusses all of these issues, and I am here to respond to these and any other questions you or Members of this Committee may have concerning any of that audit that we just finished.

Thank you very much.

[The prepared statement of Mr. Padilla follows:]

PREPARED STATEMENT OF JOSE R. PADILLA

I. INTRODUCTION

It is a distinct honor to submit testimony on behalf of the organization I have now directed for almost 20 years. This hearing presents inopportunity to make people aware of the work CRLA performs serving the legal needs of the poor. It is also an opportunity to speak on behalf of the almost 555,000 rural poor persons and more than 463,000 farm workers and dependents who are the client constituents of CRLA. Their poverty status and the challenges facing them makes evident the need for CRLA's daily presence in rural communities of California.

CRLA has a proud legacy of effective, ethical and high-quality representation on behalf of its rural clients, and adopts as a core value the democratic principle that the poor deserve legal representation as much as those economically better off. In recent examples, CRLA:

- enabled 3 wheel-chair-bound high-school students to secure district-wide building-modifications that brought schools in compliance with the Americans with Disabilities Act; these students had been unable to navigate their cam-

puses, use bathrooms, or participate in academic programs physically accessible only to the able-bodied *(Mitchum* v. *Santa Barbara School District,)*;

- obtained a fair housing discrimination case settlement against a predator landlord who sought out women residing at a local homeless shelter and offered rental discounts in return for sex *(Project Sentinel [Cordero]* v. *Lal)*;
- secured improvement to a farm labor camp housing hundreds of asparagus pickers which had no functioning toilets or showers, a filth-laden kitchen with inadequate refrigeration, and unscreened, unsecured doorways and window openings, and recovered months of unpaid back wages for some 400 workers residing there *(Ramirez* v. *JB Farm Labor Contractor)*;
- worked with HUD to secure a fair housing enforcement agreement with a rural county that made available grants and loans of up to $30,000 per family to enable thousands of farm worker families living in substandard trailer parks to move their homes or secure new homes in newly developed mobile home parks(Hernandez v. Riverside County);
- provided thousands of K–3 English-learners access to Reading First grants under *No Child Left Behind*; and enjoined the California Department of Education from enforcing a ban that kept these funds from reaching hundreds of English-learner class rooms *(Pazmino* v. *State Board of Education).*

In describing the foregoing cases, I wanted to share with the Committee the significant work that CRLA performs in the rural areas of California. More importantly, these few examples typify the egregious and shocking situations which poor rural persons, particularly farmworkers and mostly Latino face day in, day out.

I recognize, however, that the invitation to testify before this Committee was not due to a keen interest in how a particular legal services agency discharges its responsibilities. Rather, the Committee's invitation to testify referred to allegations of violations of the regulations of the Legal Services Corporation. I want to address those issues as follows.

I have managed CRLA as its Executive Director for almost 20 of CRLA's 38 years of service.[1] During my tenure alone, CRLA has gone through five extensive Federal audits and a number of investigations. The recent OIG audit has been the longest ever, with the most extensive on-site review by an audit team—7 weeks on-site in four visits stretched over a 2-year period. Two audits in the 1980's were of 2-weeks duration each with larger teams of 10–15 members. During my tenure—and indeed since the Legal Services Corporation Act was enacted in 1974. no program review, audit nor investigation has found any instance of material non-compliance by CRLA with the Act and its implementing regulations.

Regarding that auditing history, I make two observations: First, CRLA has always realized that we will be able to provide diligent and effective advocacy on behalf of the most vulnerable rural communities only through administering efficiently and effectively all aspects of financial accounting, local office operation and staff activities. CRLA must run efficiently; otherwise, effective advocacy cannot follow. Second, we have always sought to protect the public dollar by creating internal oversight mechanisms that guarantee full compliance with Congress' and the Corporation's legal strictures. Our funds are not only public—which necessarily require protection as taxpayer money—but represent hours of daily public service, of daily *legal* service, that the poor themselves pay for with both taxes and lack of representation. CRLA fully understands that survival of national legal services today is a bipartisan responsibility that has required agreement to a *restricted* legal practice. Protection of the Federal resource *is* the most critical responsibility that a program Director assumes.

Indeed, for someone born in a rural community and raised by parents who were themselves migrant farm workers, this obligation to protect—at all costs—the Federal rural-legal-service dollar weighs heavier. CRLA institutionally, and I personally, take pride in knowing that our understanding of, and strict adherence to, the laws and regulations governing national legal services—overseeing millions of Federal funds to one of the 10 largest programs in the nation—has protected this precious rural resource for the last 30 years.

In turning now to current substantive concerns, I begin by noting that CRLA has not been advised regarding the specific questions we should address before the Subcommittee. Accordingly, I take the liberty of anticipating the Subcommittee's concerns, and will initially address two matters. First is the question of CRLA's "cooperation" with LSC's Office of the Inspector General and the process of our "accept-

[1] CRLA Inc. was incorporated March 3, 1966, and received its first grant from the Office of Economic Opportunity (OEO) on May 24, 1966.

ance" of certain OIG findings and recommendations. Second, is the issues regarding the substantive findings in the two subsequent reviews by OCE and by the OIG of the relationship between CRLA and a non-LSC-funded entity, the California Rural Legal Assistance Foundation—and our compliance with the "program integrity" requirements of LSC Regulation 1610.

A. CRLA COOPERATION WITH THE OFFICE OF INSPECTOR GENERAL

Both the Committee on the Judiciary and this Subcommittee have communicated concerns to the Legal Services Corporation (hereafter, "LSC") questioning whether LSC's Office of Inspector General (hereafter, "OIG") "requests [to CRLA] for information . . . are met with resistance from the grantee."[2] In fact, CRLA has provided the OIG with all requested information; there were discussions regarding client rights arising from the attorney-client relationship, but those were resolved early in the audit. There are NO open issues whatsoever concerning requested information. Throughout the course of reviews by both oversight entities—LSC's Office of Compliance and Enforcement (hereafter, "OCE") and the OIG—CRLA has acted in good faith and in full cooperation.

Audits occur in the midst of the dynamic of daily legal assistance and representation, and a law firm must always act fully consistent with its ethical and professional responsibilities owed its clients. The recent OIG audit presented many more issues and more requests for information than any previous audit. We cooperated fully. During the 30-month audit period that extended from June 11, 2001 through the issuance of the final report on December 11, 2003, CRLA expended significant resources responding to the OIG demands from both the on-site audit team and Washington headquarters to: retrieve, review hundreds of closed and open client files and transmit relevant documents from our 22 service-office network to our central headquarters; review and compile client and case-related data which no LSC nor professional requirements obliged us to assemble or report; produce and review financial documentation for the 2-year audited period. Although CRLA has not estimated the total resources expended for the entire audit, at least through October, 2002 (after 16 months of the 30 months of audit), CRLA had expended 4479 staff hours in audit-related work, at a cost of $113,091.[3]

Throughout the audit, CRLA has understood that the OIG's findings are to be in the form of recommendations to LSC for the latter's final consideration and review. That understanding is consistent with both the Legal Services Corporation Act and the Inspector General Act. LSC's Board implements the LSC Act through adopting regulations and periodically providing other written guidance to its grantees. The OIG audits recipients' compliance with the Act, LSC's regulations and policies, under OMB and other federal standards. OIG transmits its findings and recommendations to LSC in a public report, and has done so with regard to CRLA; we understand that report has been reviewed by the Subcommittee's staff. The OIG has also requested CRLA to submit a "corrective action plan" corresponding to its recommendations.

Before describing our response to the OIG's request for the "corrective action plan", we reiterate a position we articulated earlier in our comments to the OIG: we believe the OIG's extensive review has overwhelmingly confirmed the propriety and regularity of CRLA's operations; we note that in no instance did OIG recommendations include imposition of any LSC penalty, as the OIG can—and does from time to time—recommend.

As to the OIG's request for a CRLA "corrective action plan", with respect to the majority of recommendations, CRLA either accepted the OIG view or had already eliminated or "corrected" the situation of concern before issuance of the final report. As more fully discussed below, CRLA believes some OIG recommendations are inconsistent with provisions of the LSC Act and/or LSC formal regulations and/or LSC policy guidances issued to recipients. In some instances we are left with the conclusion that OIG recommendations flatly and facially contradict provisions of the Act or LSC regulations.

CRLA formally advised the OIG on February 9 regarding both our acceptance of the majority of recommendations and of those few issues where we believe their recommendations need to be reviewed by LSC. We understand our response has been made available to the Subcommittee and reviewed by your staff. Since February 9, neither the OIG nor any other unit of LSC has responded to CRLA.

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[2] Letter dated November 20, 2003, to LSC Chairperson Frank Strickland, from Hon. James Sensenbrenner, Chairman, Committee on the Judiciary; and Hon. Chris Cannon, Chairman, Subcommittee on Commercial and Administrative Law, p. 2. The issue of "office-sharing" was also mentioned there.

[3] These estimates were provided to both LSC and OIG by letter of October 24, 2002.

Typically, in a situation like this, the LSC Board will determine whether CRLA or the OIG is correct in its view; that process has yet to be completed. It was thus surprising for CRLA to be asked to testify about issues that have yet to be finally determined. While normally CRLA would prefer to have that process before the LSC Board concluded, being respectful of the Committee's invitation to testify, we provide detailed information below on the outstanding issues.

II. REVIEW OF THE TWO 1610 AUDITS

Background.

The OIG audit is the second of two 1610 audits conducted by the Federal government over the last 3½ years. It is our understanding that both audits were initiated by complaints to members of Congress from the Western United Dairymen (WUD), a trade association in California whose mission is to look after the "general welfare and longevity of dairy producers." Both audits asked whether Federal funds were being provided to the California Rural Legal Assistance Foundation[4] to, ostensibly, fund the Center on Race, Poverty and the Environment (CRPE). The second was more succinct: "whether CRLA and interrelated agencies CRPE and CRLAF have engaged in restricted activities with federal monies."

While I describe below in detail each of the audits, it is important to note at the outset the most telling result of these audits after the significant amount of Federal and recipient resources spent. Neither report mentions a word of the Center on Race Poverty and the Environment, the alleged relationship driving both reviews.

A. 2000 AUDIT REQUESTED OF THE LEGAL SERVICES CORPORATION

The first audit was requested on September 11, 2000, by Congressman William Thomas (R-Bakersfield) and was requested of LSC's Office of Compliance and Enforcement (OCE) (hereafter "the LSC audit"). That audit was undertaken over 4 days by LSC's OCE on October 30-November 2, 2000. Findings were issued December 18, 2000, in the name of then LSC President John McKay. For all practical purposes, LSC exonerated CRLA regarding compliance with the 1610 regulation.

> **"A review of the totality of circumstances (the threshold of our review) has demonstrated that CRLA did not act in violation of the applicable restrictions and that CRLA maintained program integrity with the Foundation."**

B. 2001 AUDIT REQUESTED OF THE OFFICE of INSPECTOR GENERAL

The second audit requested by Congressman Calvin Dooley (D-Fresno) went to LSC's Office of Inspector General (OIG). The OIG's review began with notice to CRLA on June 11, 2001, and extended 30 months, ending with the December 11 report. The OIG process included: on-site fieldwork involving four separate audit-team field visits totaling nearly seven weeks; production of hundreds of case files; CRLA's transmission to Washington of thousands of pages of case and advocacy materials plus hundreds of pages of specially-prepared legal memoranda between and after visits and literally thousands of hours of CRLA staff time in responding to OIG's document and other information requests.

1. GENERAL FINDINGS REGARDING AUDIT OF CRLA

Despite the extensive review of hundreds of case files, hundreds of financial transactions, numerous staff interviews and weeks of on-site field office visits, no financial irregularities, no violation of LSC rules were found that required any form of penalty nor any form of formal Federal intervention. The OIG found that CRLA Inc. and California Rural Legal Assistance Foundation were independent entities. It found that there were no improper fund transfers between the two. After extensive and intensive review of CRLA 17200 litigation—complex cases that, in large part, are brought to recover hundreds of thousands of dollars of unpaid wages—the OIG found this to be a proper use of resources. Nevertheless, the OIG did make findings in the audit that raised questions regarding 1610.

The application of 1610 involves the examination of 5 broad criteria to determine the existence of "program integrity". Those are" (1) legally separate entity (2) transfer of program funds (3) subsidies (4) physical and financial separation and 5) certification of program integrity. After a 2-year examination, issues arose regarding two criteria. A summary of those findings were:

(1) **Legally separate entity—**CRLA and the Foundation are separate legal entities and have been separate for 24 years (since 1981). There are no overlap-

[4] Since 1982, the relationship between CRLA Inc. and CRLAF has been reviewed during 5 Federal audits—in 1986, 1988, 1991, 2000 and 2002.

ping board members. They have separate executive and deputy directors. They are headquartered in cities 90 miles apart.

(2) **Transfer of program funds—**CRLA transferred no LSC funds to the Foundation.

(3) **Subsidies—**The OIG determined that CRLA had failed to charge late rents, i.e., an *indirect* subsidy for not charging interest for late rent all of which was collected. The total involved in and interest on late rent payments was $511.00. CRLA's policy was uniform for all tenants. No favoritism was found regarding any tenant. CRLA sublets space to reduce rent or mortgage obligations. The $511.00 was collected. *Given that the OIG's period of review was 2-years of operation, amounting to nearly $18 million of expended funds, the indirect subsidy appears of immaterial value.*

CRLA's experience indicates that the issue of *subsidy* has been treated inconsistently by OIG and LSC. In its December 2000 report, LSC found an "indirect subsidy, which was the equivalent of a short-term, interest free loan". It treated the matter in a manner consistent with a lack of materiality. LSC stated that:

> **". . . CRLA and the Foundation have entered into a number of agreements for the benefit of each party, and that these agreements are at fair market value. Nonetheless, there were minor lapses in CRLA billing."**

On the other hand, without explanation, the OIG report of December 11, treated the exact same "indirect subsidy" with more seriousness, by using it as one of 4 key factors that lead to the 1610 violation. The OIG stated that

> **". . . The grantee subsidized the Foundation by routinely allowing late payment of rent over a long period of time. Between June 2001 and May 2002 the Foundation seldom paid its rent for three offices on time."**

It concluded that

> **"[b]y allowing the interest free use of these funds the grantee subsidized the Foundation activities."**

Respectfully, presence or absence of minor penalties for late rental payments is no ground for a finding of any material violation of the law.

(4) *Physical and financial separation*—This criterion has 3 aspects: financial separation, shared space, and shared staffing.

- *Financial accounting* for the two organizations was found to be entirely separate.
- Regarding *physical separation*, CRLA was found to have complied with the articulated LSC criteria regarding "physical separation"—separate signage, market value rent, separate entry, separate institutional identification. In one instance, the OIG questioned the fact that both tenants could access a shared lunchroom and concluded it was impermissible. But that situation, even if shared access to a lunchroom can be said to be a problem, has been rendered moot because the rental space is no longer shared.
- *Shared staff arrangements* are a separate sub-criteria examined in the audit. CRLA has separate time keeping from all other organizations it works with. LSC's guidelines suggest that recipients that are as large as CRLA, should not allow more than 10 % of advocacy staff to be shared with an organization that undertakes restricted activities, and that doing so will call into question the organizations' separation.[5] Under the guideline, CRLA could have had up to 8 such shared employees before it would be questioned. During the period at issue, CRLA had 1 attorney and 1 paralegal—only 2%. Nonetheless, ignoring the established LSC guideline, the OIG questioned the involvement of the 1 attorney and 1 *volunteer* attorney.

(5) **Certification of program integrity—**Recipients are required to file a Board-approved annual certification of 1610 compliance. CRLA has filed these in all years required, to the present.

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[5] This guideline is found in *GUIDANCE IN APPLYING THE PROGRAM INTEGRITY STANDARDS*, attachment to LSC Memorandum to All LSC Program Directors, Board Chairs re "Certification of Program Integrity", October 30, 1997, from John A. Tull, Director, Office of Program Operations.

2. CO-COUNSELING: A NON-1610 CRITERION

We begin by noting that co-counseling of litigation does not appear as a 1610 factor under the statute, regulations or LSC guidance; the OIG's extensive evaluation of this practice has inserted a new program integrity factor of which neither CRLA nor other recipients had any prior notice. The *Compliance Supplement For Audits of LSC Recipients (December 1998)* used by LSC, the OIG and Independent recipient auditors for auditing programs does not identify co-counseling as a factor for assessing 1610 compliance. Recipients use this manual in preparing for LSC and OIG reviews. Nonetheless both LSC and the OIG have analyzed co-counseling in assessing compliance with 1610.

Co-counseling is, of course, common in litigation and other types of legal practice, and is consistent with the Act and Regulations. CRLA undertakes co-counseling to satisfy our obligation under LSC Regulations to expend 12½% of our annualized basic field award to involve private attorneys in delivery of legal services. ("Private Attorney Involvement" or "PAI", 45 C.F.R., § 1614.) CRLA attempts to secure "private", *i.e.*, non-LSC-funded, attorneys to co-counsel with our staff attorneys in significant litigation, but in rural California this is one of the very few effective ways that programs both leverage such resources and meet the LSC obligation.

CRLA engages in extensive co-counseling with non-LSC-funded attorneys and law firms in order to: (1) satisfy our obligation under LSC Regulations to expend 12½% of our annualized basic field award to involve private attorneys; (2) obtain the benefit of experienced litigators who can enable a local office staffed by limited-experience staff to undertake representation that we could not otherwise provide; (3) obtain added staffing and physical resources to pursue litigation for which we would not otherwise have sufficient professional and support personnel to undertake; (4) acquaint and train members of the private bar in specialized areas of poverty law with the goal of expanding the availability of private-bar representation to low-income clients including the vast number of non-LSC-eligible poor people in rural California.

CRLA implements litigation co-counseling arrangements through written co-counseling agreements, generally based upon a 9-page "model" agreement that is tailored in individual cases as appropriate to the particular circumstances of the case and/or the needs and resources of outside counsel. Upon request, we identified agreements in 42 separate cases including six in which the Foundation co-counseled, and made forty-one agreements available for review. In these 42 cases (including some cases in which we co-counseled with more than one firm), CRLA co-counseled with at least 26 different law firms one of which was the Foundation.[6] We co-counseled on more than one case with at least 9 of these firms.

CRLA implements and monitors our co-counseling relationships through a series of rigorous review steps including collective review and approval of detailed Litigation Assessment Plans and draft complaints by the four Directors of Litigation, Advocacy and Training in conjunction with the Deputy Director; through review and approval of detailed, lengthy written co-counseling agreements, and through similar collective review of semi-annual written reports submitted by advocacy staff for all significant advocacy including co-counseled litigation.

CRLA does not differentiate among firms with whom we co-counsel in our pursuit of the above-described goals, practices and compliance with professional responsibility and LSC requirements. We maintain these goals, practices and compliance equally with the Foundation as with all other co-counsel.

The OIG recommended that CRLA staff any cases co-counseled with the Foundation only with its most junior attorneys. Co-counseled cases are generally the largest and most difficult litigation with the most complex issues both substantively and procedurally. The Inspector General's recommendations that only junior counsel participate in cases with the Foundation are completely counter-intuitive to his concern that this co-counseling results in loss of objective integrity and independence. Independence and CRLA institutional integrity are far more likely to be maintained by senior counsel who are sufficiently experienced in litigation and administration to confidently exercise the independent judgment that an inexperienced advocate simply has not acquired.

CRLA informed the OIG in its Response of February 9, 2004 that it would strengthen certain aspects of its personnel policy, and would otherwise comply with Parts 1610 (and 1604 and 1635) through adherence to a number of policies to be incorporated into its CASE HANDLING AND OFFICE PROCEDURES MANUAL

[6] These firms included both traditional, for-profit, private law offices and other non-profit entities that provide legal representation.

and/or our PERSONNEL MANUAL and/or our OPERATIONS MANUAL, as appropriate, and authorized as appropriate by Board actions.

3. MISINTERPRETATION OF LSC REGULATION 1636: CLIENT IDENTITY

The OIG's Final Report directs CRLA to turn over to the employer, landlord or other defendant in a lawsuit of this kind the names of *every* individual who may have consulted with CRLA about their rights—even those who have *not* authorized CRLA to bring lawsuits and who are *not* plaintiffs in a pending or contemplated action, and even though revealing the identities of these *non-plaintiff* employees or tenants who considered and rejected the pursuit of formal legal remedies regarding their employment or housing is very likely to jeopardize that employment or housing, and to profoundly deter potential clients from consulting a lawyer to determine if they have been treated illegally in the future. The Inspector General's position would effectively penalize the consultation with legal services attorneys that the Legal Services Corporation Act and implementing regulations are supposed to guarantee.

The OIG's position is inconsistent with LSC's regulations in Part 1636, and contrary to the professional responsibilities that CRLA attorneys owe their clients and potential clients under state and federal law. Part 1636 requires CRLA to identify to adversaries and obtain written factual statements from plaintiffs that we represent in all litigation (including that brought under California's Business & Professions Code Sections 17200 *et seq.*). CRLA has complied fully with those requirements. Our compliance is implemented through formal policy incorporated in our CASE HANDLING MANUAL and through specific confirmation in each Litigation Assessment Plan reviewed jointly by our Directors of Litigation, Advocacy and Training (as described previously, p. 8).

The OIG found no instance in which CRLA had failed to comply with these requirements. Instead, the Final Report directed CRLA to implement procedures by which it would obtain statements of fact from and identify to adversaries' clients who have consulted with CRLA attorneys but who have refused to become plaintiffs in litigation. The OIG's position is inconsistent with Part 1636 and would require CRLA attorneys to violate their own professional obligations under governing law. Part 1636 is not ambiguous. Sub-part 1636.1 provides in relevant part that,

> **[t]he purpose of this rule is to ensure that, when an LSC recipient files a complaint in a court of law or otherwise . . . the recipient identifies the *plaintiff* it represents to the defendant and ensures that the *plaintiff* has a colorable claim.**

Sub-part 1636.2(a) further provides,

> **When a recipient files a complaint in a court of law or otherwise . . . participates in litigation against a defendant . . . on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, it shall:**
>
> > **Identify each *plaintiff* it represents by name in any complaint it files . . . ; and**
> >
> > **Prepare a dated written statement signed by each *plaintiff* it represents, enumerating the particular facts . . . (Emphases added)** [7]

Eligible persons often enter into attorney-client relationships with CRLA for assistance in investigating and evaluating their potential rights or liabilities *vis a vis* an opposing interest, or for advice and counseling in dealing with an opposing interest by means other than litigation. Many such persons never authorize CRLA to file suit on their behalf, often because they have no desire to have their concerns publicly revealed for fear of retribution. Absent publicly filed litigation in which they are parties, their desire for privacy is recognized and respected by federal and state law. As just described, Part 1636 limits recipients' obligations to identify clients to their adversaries to the circumstances when those clients have specifically authorized the recipient to name them as plaintiffs in pending or anticipated litigation, but not when those clients are only counseled rather than named as parties to litigation.

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[7] The dictionary definition of a "plaintiff" is, unsurprisingly, consistent with the assumption underlying these regulations: "A person who brings an action; the party who complains or sues in a civil action and is so named on the record . . ." (BLACK'S LAW DITIONARY (5th ed., 1979); "1. one who commences a personal action or lawsuit to obtain a remedy for an injury to his rights . . . 2. the complaining party in any litigation . . ." (WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1986).)

The American Bar Association's Model Rules of Professional and LSC's own rules that require recipients' attorneys to adhere to their professional duties in serving their clients and potential clients, support CRLA's position. The Statement of Findings in the LSC Act indicates that,

> **attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession.**

(42 U.S.C., § 2996, subd. (6) .) In furtherance of this mandate, Congress expressly required that the Legal Services Corporation

> **shall not . . . interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association . . . or abrogate as to attorneys in programs assisted under this subchapter the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction.**

For these reasons, CRLA expects that upon review of this position regarding 45 CFR1636 and the applicable professional rules, LSC will accept CRLA's position.

III. INVESTIGATION REQUESTED BY CONGRESSMAN JOHN DOOLITTLE: 45 CFR 1617

On January 7, 2004, Congressman John Doolittle (R-CA) filed a complaint with the Office of Inspector General on behalf of former California state legislator Dean Andal. He charged that CRLA had violated "prohibitions against desegregation and class action lawsuits". The OIG audited CRLA for 4 days, January 20–23. On March 12, 2004, the OIG issued its findings which contend that although it was permissible for CRLA to have continued working on the case *Hernandez* v. *Stockton Unified* since 1977, CRLA violated the 1996 prohibition against participation in class actions because it had engaged in negotiations with the Stockton Unified School District (at its request) to bring the case to closure.

The Inspector General correctly notes that in 1977, LSC's Office of the General Counsel approved continued CRLA representation of the plaintiff class. (LSC letter dated May 31, 1977, from Alice Daniel, General Counsel, to Hon. M. Caldwell Butler, U.S. House of Representatives.). That letter recognized, in part, that CRLA's participation was to negotiate stating: "Negotiations with respect to the court's findings and conclusions of law are now in progress".

The *Hernandez* litigation was filed in 1970 and resulted in a judgment in 1974 finding the district guilty of *de jure* segregation of Latino and African American students. The court granted a traditional desegregation remedy to the petitioner parents, including busing and an implementation plan approved in 1977 that established phased integration in District schools. In 1991 the judgment was amended by further order to eliminate busing and substitute remedial funding for those schools in poor neighborhoods that had earlier suffered the imposition of segregation. All this activity preceded Congress' 1996 adoption of the class-action prohibition; all was appropriate LSC-funded activity, and indeed, constituted recipient's Private Attorney Involvement activity through co-counseling.

In 2002, the District approached CRLA and petitioners requesting that CRLA and co-counsel facilitate final resolution of the case. CRLA's *presence* during the 2002–2003 meetings between the defendant District and petitioner's counsel was requested by the District and expected by the court which had overseen this case for years. The parties assumed that a negotiated agreement was far more efficient and less costly than litigating the issue before the court which would be more time consuming. Agreement was reached in early 2003 providing for the termination of the consent decree (because its purpose had been met) and a 2-year transition thereafter during which the schools that had received state desegregation funds would receive a reduced percentage of those funds until they would be split evenly with low-achieving schools or as the district otherwise saw fit. CRLA's role in these meetings and negotiations subsequent to the 1996 class-action prohibition did not represent either a new case nor new intervention in an existing case but rather undertaking our ethical duties to existing clients arising from the long-standing, still-open lawsuit.

CRLA's role during those meetings and negotiations was beneficial to the parties' abilities to resolve and finally settle this three-plus-decades old litigation, and thus was in the public's interest and in the interest of its client community. Although reasonable minds could differ, CRLA understood that its presence during the nego-

tiations did not constitute participation in "adversarial proceedings" as that term is used in the statute and regulations. CRLA went on record with the court and the opposing party about the nature of the prohibition,[8] and neither was concerned that CRLA was acting outside the scope of permitted activity. The client community was similarly informed.

SUMMARY

- But for the district court's request that CRLA assist in bringing the case to closure, the case would have continued as a virtually "inactive" case under the existing consent decree; the current class action regulation allows recipients to "remain informed about, or to explain, clarify, educate or advise others about the terms of an order granting relief".
- CRLA, petitioners, defendants and the Court expressed the belief that the presence of CRLA, who had been counsel in the case since its inception in 1970, would be beneficial to putting to bed this over-3-decades-old case. The availability of CRLA's knowledge served their—and the public's—interests. In sum, CRLA believes that its role in the proceedings at issue was not "adversarial" and was desired by the parties and the court, benefited the public interest in enabling the parties and the court to finally resolve lengthy litigation, and was undertaken in the good-faith belief that we were complying with the spirit and language of the class-action and desegregation prohibition.
- The court dismissed the primary case on June 18, 2003, at which time CRLA ceased to be a part of the case in any capacity.[9] CRLA closed its case file in the *Hernandez* matter effective December 31, 2003.
- CRLA filed its withdrawal with the Stockton Superior Court for the County of San Joaquin on March 26, 2004.

CONCLUSION

CRLA has been privileged for some 38 years to provide the rural poor of California with full access to the state's civil courts and, thereby, to provide some semblance of justice to those not accustomed to such civil representation. This is what CRLA believes to be the simple mission of the Legal Services Corporation Act of 1974. In meeting this purpose, CRLA has carefully and rigorously adhered to the law, regulations and guidelines set by Congress and LSC. CRLA will continue to do so.

Mr. CANNON. Thank you, Mr. Padilla.

Ms. Charn?

STATEMENT OF JEANNE CHARN, DIRECTOR, BELLOW-SACHS ACCESS TO LEGAL SERVICES PROJECT, HARVARD LAW SCHOOL

Ms. CHARN. Chairman Cannon, Mr. Watt, Mr. Delahunt, and Members of the Committee, it's a pleasure to speak to you today about the work that we've undertaken over the years at Harvard Law School. For 25 years, I've directed the major civil clinic at Harvard Law School, now known as the Hale and Dorr Legal Services Center. It's our belief that our students, as we introduce them to the practical aspects and skill dimensions of lawyering, will learn best in a fully operational law office.

The center has a staff at any time of about 20 attorneys, fellows, and paralegals, and we're very pleased that part of our students'

[8] In a February 24, 2003 letter to the District's counsel prepared before the present OIG investigation, we confirmed that CRLA was making no claim for past or present attorney fees or costs and reiterated that although we had at one time been counsel, Mr. Roos "of META is the sole counsel for the Petitioners and has full authority to settle the case . . . or otherwise represent the Petitioners." Shortly thereafter, still prior to the present investigation, Mr. Roos submitted a declaration executed March 3, 2003, to the court also asserting that he was "the sole attorney of record, as CRLA is barred by federal law from participating in class actions . . ."

[9] The case was appealed by a group of intervenors who seek to deny the court the 2-year transitional jurisdiction the court sought to maintain by its June, 2003, order. CRLA is no longer receiving any judicial or party notices or any other notices related to the appeal.

education, our students often have opportunities to work for the finest Government, private, and other law firms. We think it's also very important that students from Harvard Law School have some understanding of the needs of low-income people and how the law and the justice system works for those who have little and who otherwise could not afford the services of the fine lawyers that most of these students will become.

Our office is in Boston. It's not on campus in Cambridge. It serves a quite racially and income-diverse area. It serves the lowest-income areas of the city of Boston.

In addition to our student education mission, we have a mission of providing the highest quality service and functioning as a laboratory to experiment with cost- and quality-effective approaches to delivering services to low- and moderate-income people.

Over time, we came to make a decision to serve moderate- as well as low-income people. This year, in Boston, the area median income is $82,000, in excess of $82,000. We are a high-cost-of-living area, and many individuals above the poverty line share the same problems. They need assistance in domestic matters, around credit problems, around threatened foreclosure of their homes, as very low income people do. So we serve a population that goes up to about three times the poverty rate.

We do—much of the work that we do is similar to work that an LSC office might do. We represent tenants. We represent people on benefits issues. We represent people on family issues. We had a practice going back 15 years that focuses on families impacted by HIV and AIDS, one of the first programs in the country to do so.

But particularly since the time that we were fortunate enough to form a partnership, really, with a major Boston corporate firm, Hale and Dorr offered money to purchase a permanent home for the center but, more important, began to volunteer large numbers of hours to assist with our learning and service program.

We decided that it would be useful to see if we might provide assistance to small businesses, particularly minority business owners in previously disinvested areas, to people seeking to make purchase of a home, to not-for-profits, and to other institutions and entities that form the basic fabric of a low-income community and who may generate jobs and resources that benefit large numbers of low-income communities.

We began to do this, and Hale and Dorr assisted us by providing a lot of the expertise in business and other matters that are typically not present in a legal aid office.

We are predominantly funded by Harvard Law School, and generously funded by Harvard Law School, and the school is very proud of the amount of service that our office provides. We close between 700 and 900 full representation cases a year, and we advise and assist in more limited ways as many as a thousand clients each year.

We have always sought and obtained statutory fees where appropriate in our ordinary service cases. Our mission is not particularly law reform or statutory change. Our mission is direct service to individuals around the everyday problems that people face.

As part of our experimentation, particularly when we began representing small businesses and other entities, we introduced a co-

payment system in that part of our practice. When we found that it was working and that it was accepted by clients, we expanded it to other areas of our practice. The reasons we did it were largely those mentioned by the Chair in his opening remarks. We thought we might gain income. We thought that it might empower clients to feel more entitled to diligent and high-quality service; that it might help them in deciding if there was a small or modest co-payment if they really wanted to take on legal action in an area. And we wanted our students to understand that there is a business dimension to law practice.

We have no co-payment in emergencies. Clients who are in need-based benefit programs do not make co-payment, and many clients at or below poverty do not make clients. The vast majority of clients who participate in the co-payment system or whom we ask to make co-payments are above the poverty line.

We do know that we've been effective in increasing resources available to the office, that our students have learned about business practice, and that clients have been accepting of this project. We have not studied, but we intend to within the next year and a half, the extent to which the co-payment system is received and perceived by clients in ways that we had hoped.

My last comment would be that, in addition to running this teaching, learning, and service center in the Jamaica Plain area of Boston, we are—I'm also involved with an ongoing policy study on ways of making legal services more widely available. This has been my life's work for my career, making legal services available, and I remain hopeful as I approach 60 that at some point in this country legal services will be widely and freely available, not only to the very poor but to all those low-income and working people above the poverty line who also are in desperate need of services and who cannot afford quality service at the market. And in such a system, I think it is most reasonable and appropriate that, as we—particularly as we move up the income scale, that clients make a contribution to cost of service.

Thank you so much for your attention.

[The prepared statement of Ms. Charn follows:]

PREPARED STATEMENT OF JEANNE CHARN

Good afternoon, and thank you for the privilege of speaking to the Subcommittee on Commercial and Administrative Law. I have been asked to provide information on aspects of the client service program of the Hale and Dorr Legal Services Center of Harvard Law School, particularly information on client co-payments that we have instituted for some of the services that we provide. I begin with some background on the Hale and Dorr Legal Services Center of Harvard Law School and conclude with a brief mention of the Bellow-Sacks Access to Civil Legal Services Project, both of which provide important context for our experiment with client co-payments.

I. THE HALE AND DORR LEGAL SERVICES CENTER OF HARVARD LAW SCHOOL

The Hale and Dorr Center, (the Center), was founded by my late husband Gary Bellow and me in 1979. At that time, the office was known as the Legal Services Institute. Until 1982, the program was a legal services practice center in which twenty-four third year law students spent the entire year in courses and casework preparing for careers in LSC legal services programs around the country. Eight of the twenty-four students were from Harvard Law School but up to sixteen students were from Northeastern University Law School in Boston and from other law schools in the country. The Legal Services Corporation, through a partnership between Harvard Law School and Greater Boston Legal Services, was the primary funder of the program.

Beginning in 1982, Harvard Law School became the primary sponsor and funder of the Center, though we have always retained a tie to Boston area legal services providers. The goals of the Center since 1982 have been:

- *To introduce students to law practice*—Our experience suggests that students learn best in a realistic setting. Under the supervision of experienced lawyers, students represent clients and, in companion courses, discuss and analyze the judgments, ethics, responsibilities, tasks and relationships of law practice. We have developed the concept of a "Teaching Law Office" similar to a teaching hospital in the medical profession.
- *To provide high quality service to clients*—The teaching and learning methods that best meet our students needs also produce a great deal of service to clients who cannot afford to pay for good quality legal assistance. Harvard Law School and its clinical program is very proud of the contribution we make to meeting the every day legal needs of thousands of Boston households and individuals. On an annual basis, the Center typically provides extended representation to over 700 clients and brief service and advice to as many more.
- *To be a laboratory for experimenting with approaches to delivery of high quality legal services*—The Center deliberately experiments with ways of providing excellent and cost-effective service to as many clients as possible. We are committed to documenting, validating and reporting on the results of these efforts. Our service experiments have included: (i) extensive use of telephone advice beginning in the mid 1980s; (ii) development of regular clinics where staff and students assist clients appearing pro se—we have conducted a pro se divorce clinic for twenty years; (iii) in the late 1980s, offering legal services to individuals and families affected by AIDS and HIV; (iv) early in the 1980s, focusing on service to victims of domestic violence in our family practice and collaborating with shelters and other social service providers as the seriousness of this problem came to be more widely recognized and understood; (v) collaboration with area medical providers to offer preventive law services and benefits check ups to low-income patients on site in clinics and hospitals; (vi) expansion of assistance to individuals and households up to four times the poverty level because these clients legal needs are similar to those of the very poor;[1] (vii) providing service to first time home-buyers, community not-for profits, affordable housing developers, and small businesses; (viii) development of a comprehensive quality assurance program that, among other things, tracks outcomes for all clients, sets annual performance goals for advocates and practice units, and evaluates every advocate and practice unit in terms of these annual goals;[2] and (ix) development of a system of client co-payments for some areas of service, which I describe below.

In 1992, Hale and Dorr, LLP a major Boston law firm, donated funds to provide a permanent home for the Center. Perhaps more important than the generous gift of funds for a building, Hale and Dorr began a partnership with the Center in which firm lawyers volunteer thousands of hours to serve clients and mentor students. For the past five years, Hale and Dorr has assigned a senior partner half time, year round to supervise students and to practice with staff at the Center. The first "partner in residence" retired this spring and a second partner has now joined us. The Center and the Hale and Dorr firm recently celebrated the tenth anniversary of our collaboration and we are developing a strategic plan for joint work in the coming years.

The Center now has twenty or more lawyers, fellows and paralegals and as many as seventy students practicing and learning together each semester. During the summer we accept volunteer students. For the summer 2004, we received over a hundred applications from students in many law schools, volunteering for fewer than fifty internships. The demand for our summer program has grown as past summer interns have spread the word about the quality of service and learning at the Center.

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[1] Boston is a very high cost of living area. In 2004, the area median income for a family of four is $82,600. Housing subsidy programs consider 80% of area median as low income and 50% of area median income as very low income.

[2] The quality assurance program is described in more detail in Jeanne Charn, *Quality Assurance at the Provider Level: Integrating Law Office Approaches with Funder Needs*, available at *www.lsc.gov*; and Jeanne Charn and Randi Youells, *A Question of Quality*, LSC EQUAL JUSTICE MAGAZINE, Winter 2004

II. CO-PAYMENTS FOR CLIENT SERVICE

As the brief description of the Center's history and program indicates, while we share with LSC and its grantees a commitment to providing high quality service to households and individuals in their every day legal problems, we serve a broader clientele and we offer service in areas that are not typical of LSC grantees.

Law school support for the Center's annual operating program in fiscal 2004–2005 (Harvard's fiscal year runs from July 1 through June 30) is projected to be approximately $1,995,000. For the same period, the Center projects earnings from statutory attorney's fees, client reimbursement of costs of service (e.g. filing fees, depositions, experts) and income from client co-payments to be between $135,000–$140,000. We project to spend between $45,000 and $50,000 in out of pocket case related expenses. These figures are consistent with year-end projections for 2003–2004.

We have always sought attorney fees where authorized by statute and, in the past, this was our main source of service generated income. We began a co-payment system in the mid-1990s, when we began to offer service to entities (not for profits and small businesses) and first time home buyers. As we found clients accepting of the co-payment concept in these areas of practice, we expanded to other areas. We do not charge co-payments to clients whose only income is need based benefits or to clients below the poverty line unless our representation produces funds from which the co-payment could be made, for example, settlement of a claim or receipt of back benefits due to an approved application. We do seek reimbursement of out of pocket costs of representation from clients of all income levels, with provision for waiver in cases of hardship. In many instances, for very low-income clients, costs of representation may be waived by courts or paid for under statues, so the Center does not incur out of pocket costs.

We do not charge co-payments in emergency matters, such as clients who need immediate assistance in obtaining domestic violence restraining orders, because we do not want to impose even the smallest impediment to access for clients in crisis. Also, there are no co-payments for any client for preliminary consultations related to whether or not we will be able to provide advice or assistance beyond any limited advice that may be offered in a first meeting.

As we have institutionalized the co-payment system, we are finding that while attorneys fees claimed under statutes has in the past accounted for most of the service generated income to the Center, we are now approaching about a third of ordinary service generated income from client co-payments mostly in the range of $100 to $300. We occasionally are awarded and paid a single large fee, which would skew ratios significantly towards statutory fees, but excluding the occasional larger fee, we are beginning to see a regular flow from co-payments for the services that we routinely provide.

We decided to experiment with a system of client co-payments for a number of reasons. First, we hoped to increase resources to serve more clients. Second we hoped that clients who made even a small payment for service would have a greater sense of entitlement to diligent, responsive service. Third, we thought that it was possible that a small co-payment would play some role in helping clients decide if they really wanted to pursue legal action. Fourth, we wanted our students to have a realistic experience of dealing with the business aspects of law practice.

The increase in resources is measurable, and we see our students learning how to discuss fees and costs with clients. We have found most clients accepting of a modest co-payment system, but we have not systematically surveyed or tested our goals in terms of client perception and attitudes. We hope to do this within the next two years, and will have better information at that time. We plan to continue the system we have in place, modifying it based on experience, and to conduct a careful and full review by the end of academic 2005–2006.

Any system of co-payments requires strong fiscal systems and fiscal controls, and attention to safety issues in terms of funds on hand, even for very short times, in the office. Fortunately, Harvard Law School is our fiscal agent, with well-established systems and controls, and we have not had any safety incidents.

III. THE BELLOW-SACKS ACCESS TO CIVIL LEGAL SERVICES PROJECT

In 1999, a number of the faculty at Harvard Law School, including my late husband, met to plan a project that would look broadly at ways of greatly expanding access to civil legal assistance for low and moderate-income people. Twenty years of experience at the Hale and Dorr Center suggested approaches that might work on a larger scale. When my husband died in the spring of 2000, his classmates from the Class of 1960 along with others who admired his life-long dedication to improving access to justice, generously donated funds to support a policy research project, which I was asked to direct. The Bellow-Sacks Project is entirely supported by Har-

vard Law School and its alumni who share a dedication to making access to justice available to all whom the market cannot serve. The Project has no bias towards any existing or future system or stakeholder. We have invited, and been fortunate to have the participation of leadership from the Legal Services Corporation at a number of Bellow-Sacks sponsored events in the past three years.

We expect to have a preliminary report and findings by next fall. One important area of study has been the much larger government supported and led legal services programs in other countries. These programs serve moderate as well as very low-income clients through private bar involvement as well as staffed offices. Most involve client contributions to the cost of service at higher levels of income eligibility. In this sense, our client co-payment experiment should be understood not only as part of the program at the Hale and Dorr Center, but also as informing the possible contours of a larger and more comprehensive U. S. legal aid program that, drawing on present LSC efforts, will be well managed, cost-effective, and highly valued by the much larger number of clients it serves.

Mr. CANNON. Thank you, Ms. Charn.

We appreciate all of your testimony, and may I just ask you, Ms. Charn, to follow up on what you were just saying, do you think there's a place for co-payment then in the Legal Services Corporation system?

Ms. CHARN. There may be. I would say in our case, we focused on other areas before we moved to co-payments. We were very interested in having a very high quality and efficient program that was both diligent, turned over cases, did it in a way that was client centered and met their needs; and that only when we were satisfied that we were making good progress on that front did we try any experiment with co-payments. And we were cautious as we went forward with it.

There are clients in our office who would be similar to Legal Services-eligible clients who are involved in the co-payment system primarily when our representation produces for them resources out of which a modest co-payment might be made.

There are many clients who are Legal Services eligible where we haven't yet implemented this program, and we always have hardship exceptions. But I think we'll know more when we critically study what the client view is.

One wants to be careful not to create barriers, but I do think there may be gains of the sort that you mentioned around client ownership and sense of pride and dignity that could be involved with such a system. We'd like to test that out and get some more information on it.

Mr. CANNON. Great. Thank you very much.

Mr. Padilla, in the case of the office manager in your Oceanside office, this individual's working as a full-time employee for CRLA, in addition, as the head of the office and in a supervisory role. I assume that this individual had direct oversight from one of your DLATs as well as yourself. Generally speaking, how much interaction do you have with the foundation? And considering your views on the importance of immigration issues, were you not aware that this employee was holding a director position within the foundation dealing with these specific issues?

Mr. PADILLA. Congressman, I'm aware of—oh, I'm sorry. It says "talk."

In our Oceanside office, I think you're referring to an employee that left CRLA 3, 4 years ago. And the issue there arose in the context of the LSC guidelines. It was about shared staff. And when the IG came to us, they came in asking about a number of shared staff.

And at the end of all of that, even though we could have had seven or eight, we had two. One of those two, according to the IG, was a volunteer attorney. And you're making reference to a volunteer attorney that, as far as we understand the regulation, is not covered by the 1610 regulation.

So the 1610 regulation covers part-time attorneys when folks go part-time, but it also does not cover full-time employees. The director of that office, who I am sort of fully aware of the work and the litigation, the IG brought the information to my attention. We reviewed that. As a matter of fact, they served me with a number of newspaper articles involving this particular attorney. But when it came down to it, we told the IG that this person on their own volunteer time could—could do what they could do. We cannot regulate what our employees do on volunteer time.

And so it just happened that in that particular regulation which you were asking about is that person is not a shared staff person because shared staff persons are persons who are working part-time with you and working part-time with another entity. So with respect to the Oceanside office, that's—I'm assuming that that's what you were referring to, and so that employee in particular was working full-time with us.

Mr. CANNON. In a case like that, when you have an employee who is working for you and being paid by you but is volunteering outside, do you allow the utilization of LSC resources or CRLA resources in fulfilling those volunteer activities?

Mr. PADILLA. Well, no, Congressman, we don't. We're very, very clear with staff that when staff is doing any kind of work, actually both with—work that would be considered prohibited with entities that are doing restricted work, or when they're doing work with any nonprofit, we clearly, clearly tell our staff that they must follow the rules about respecting the resource, the CRLA resource. Whether that is paid by LSC funds, whether it's paid by State funds, whether it's paid by private foundations, all of that resource belongs to CRLA.

So to the extent that they may be working with another entity, we clearly explain what the rules are, what our expectations are with respect to even reimbursement. We're told that to the extent that resources may be used, for example, something as minimal as Xeroxing, we tell folks you have to reimburse programs when you're using that kind—our program when you're using that kind of resource.

So, Congressman, we're very clear about those rules. We are responsible for setting those bright lines for our attorneys and our advocates, and so we make sure that when they're working with those entities that they're protecting our resource, because we're the ones that employ them.

Mr. CANNON. Thank you, Mr. Padilla.

My time has expired, but, Ms. Barnett, I'd appreciate if you'd think about that answer because I'd like to come back to that on the second round.

And at this point, I'd recognize the Ranking Member for 5 minutes.

Mr. WATT. Two rounds, Mr. Chairman?

Mr. CANNON. Yes. Would you—the gentleman from Massachusetts is recognized if you have someplace else you need to be.

Mr. DELAHUNT. I thank the Chair. I will wait to speak to the copayment issue later. I still really can't understand why Mr. Padilla is here.

I'm almost embarrassed that you're here, Mr. Padilla. Here we are discussing a discrete issue in a State, in California, the details of which I don't know. I presume there's some political overtones to it. I'm just reading some pieces from the Modesto Bee and something about the dairyman and class action suits. And here we are in front of a congressional Subcommittee?

It's my understanding—and you can correct me. Maybe you can respond to this, Ms. Barnett. I understand there is a review being done by LSC.

Ms. BARNETT. Yes, Congressman. On March——

Mr. DELAHUNT. That's all I needed was the "yes." Now, let me ask you this: Has the review been concluded yet?

Ms. BARNETT. No, it has not. It is currently——

Mr. DELAHUNT. Thank you. That's all I need.

And here we are in a Subcommittee in the United States Congress talking about something about shared office space, concerns, I guess, have been expressed by Members of Congress as to whether CRLA—I'm even learning the acronyms in this short period of time—is somehow involved in a class action suit. I would hope and think that we could wait until the administrative review had been concluded before we have an oversight hearing.

I've got a lot of ideas for oversight hearings. And if the Chair and the Chair of the full Committee would want a long laundry list, I think at least from my world view, that are far more important and significant and would be ripe, if you will, to use the legal term, would be ripe for oversight.

But having said that, I will yield back the rest of my time. Mr. Padilla, I'm not even going to ask you any questions. I will yield back the rest of my time and wait for the second round, which hopefully will come soon, Mr. Chairman.

Mr. CANNON. I thank the gentleman. Let me just point out that we hope this system will work well and the oversight process and the inquiries will result in people who may not be as supportive as LSC as we would like them to be become more supportive of the agency.

Mr. DELAHUNT. Let me, if I can, Mr. Chairman, I want to state on the record, I am aware of your support, you know, for LSC and your concern for equal access to the justice system, because if we're going to have a justice system, we better have equal access because we'll lose the confidence of the American people in not just our justice system but our democracy. And I understand the purpose, your intention here, but at the same time—and I know sometimes it's incumbent upon those of us who serve in this body to do certain tasks. And I presume we're attempting to do that with a larger goal in sight. But here we are, we're talking about a specific case.

Mr. CANNON. There are a number of issues that have been raised that I want to touch on.

Mr. DELAHUNT. Sure.

Mr. CANNON. Because it seems to me that if we establish a record of where we're going, we've taken LSC, I think, as a body from a highly controversial, very angry issue to one that there is a great deal of support for. I think it's good to be clear about where we're headed, and, you know, Mr. Padilla is actually a pretty tough guy, been around for a long time, and——

Mr. DELAHUNT. I could tell he's a tough guy.

Mr. CANNON. We've had discussions about this. I don't think that anyone is objecting to where we're going on this. And we would like to see where LSC is headed, be clear so that we don't have some of the objections we've had in the past. And, frankly, I think the world is much better served today by the—what is almost close to unanimity in Congress over this agency. So——

Mr. DELAHUNT. I guess my point, Mr. Chairman, is that when viewed in the larger context of our responsibilities, for us to be conducting this inquiry, A, is premature, without having the administrative oversight function that we've invested into LSC concluded.

Well, you know, maybe I should exercise some restraint and conclude my remarks with that, Mr. Chairman.

Mr. CANNON. I thank the gentleman.

The Ranking Member is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I would say, now that I see this in brighter context, probably except for the procedural separation of powers issue on which we differ with the Administration, it's probably a blessing that we didn't fly an Assistant U.S. Attorney all the way across the country to deal with this. And I'd have to say it is a shame that Mr. Padilla had to fly all the way across the country and lose a whole day's work.

So, in a sense, there is a blessing that goes with the Department of Justice saying we're not going to let this person come over here and——

Mr. CANNON. I'd thank the minority not to give them excuses. [Laughter.]

Mr. WATT. Well, I clarify that I'm upset about the process issue, but I think the result has turned out to be all right.

Ms. Charn, your clinic is called Bellow-Sacks?

Ms. CHARN. That's the policy project that's looking at availability of legal services. We're called the Hale and Dorr——

Mr. WATT. Oh, Hale and Dorr.

Ms. CHARN.—Legal Services Center.

Mr. WATT. Legal Services Center, okay. And you all serve clients that are Legal Services eligible and clients that are not Legal Services eligible?

Ms. CHARN. Yes, that's correct.

Mr. WATT. Okay. And about what part of your resources are devoted to Legal Services-eligible clients versus non-Legal-Service-eligible clients?

Ms. CHARN. The majority of our clients are Legal Services eligible or close to it. But we serve a substantial number. It might be a third or more. I would have to check our data for certain, but there are a sizable number of people who are above. Probably the vast majority of clients are within 200 percent of poverty, but a few are more.

When we're focusing on something like predatory lending, and we've got a client who maybe household income is $40,000 and $20,000 and another that is $15,000 or $18,000 and they all have the same problem, then we'll want to—we'll want to represent all of those people because it often is more effective that way.

Mr. WATT. I'm actually less concerned about getting into the issue of the co-pay here than I am understanding how you have been able to comply with this split services requirement. There are a number of legal services organizations that get resources from places other than the U.S. Government. And we have said to them, You can't mix those resources and services with the services that you are providing for—I actually think it's a ridiculous policy myself, but I'm wondering how your organization has been able to deal with that dichotomy, getting private resources—getting resources from Harvard and, I presume, other funding sources in addition to the Legal Services resources that you get.

Ms. CHARN. Let me say that the vast majority of our resources—our budget will be about two hundred—$2,300,000 next year. Close to $2 million of that will come from Harvard Law School. We have—so we are substantially funded by the law school, and most of the Legal Services-eligible clients that we serve are served on law school money. So that's the main answer. We don't—we don't separate them.

We do have——

Mr. WATT. So your clients—your lawyers are serving Legal Service-eligible clients and——

Ms. CHARN. Yes.

Mr. WATT.—non-Legal-Service-eligible clients in the same context? You haven't had any kind of problems and nobody's raised a question about it?

Ms. CHARN. Well, we have a small grant that is in a—not us, but a separate corporation that serves—it's evolved historically because originally we were actually an LSC-funded program way back in the 1970's.

Mr. WATT. Perhaps I should quit asking questions about this. I really am not trying to create——

Ms. CHARN. I understand.

Mr. WATT.—create problems for you. I'm just trying to figure out how—what the distinction is.

Ms. CHARN. There's—we have a separate corporation. It's not subject to co-payments or any of these things.

Mr. WATT. Sharing the same space, though, and the same lawyers?

Ms. CHARN. No, not the same lawyers. It has its own staff.

Mr. WATT. So no sharing of lawyers' time on any of these cases that you're working on jointly?

Ms. CHARN. No. They would be—they would be separate. They have—they do work that's only—that is particular to that unit. And it's not the same work that the rest of the office would do. And it may change over time, but that's a very small part of our program. The vast majority of our service, that's mainly advice assistance and screening. And then most of the full representation work, the vast majority is done on law school money. And the reason that we have room to experiment is that money is not restricted in any

way. We are service oriented, we've seen value in mixed income service.

Mr. WATT. Ms. Charn, I hope I have not created a problem——

Ms. CHARN. I don't think you have.

Mr. WATT. I hope I haven't created an investigation here by asking you these series of questions.

Ms. CHARN. Mr. Padilla will help me. [Laughter.]

Mr. WATT. But if I have, I apologize. That was not my intent, I assure you.

Ms. CHARN. I don't think you have.

Mr. WATT. I think my time is up on this round. I'll yield back to the Chair.

Ms. CHARN. Thank you very much, Congressman Watt.

Mr. CANNON. I thank the gentleman.

We have a series of questions. I'm going to send questions, if the panelists are comfortable answering those in writing, that may be good. I'd like to just follow up on one comment, and then I'm not sure anybody else wants to have a second round.

But, Mr. Padilla, you talked about $511, which is this amount that was—I think you called it "immaterial" in an $18 million funding. And I understand that you've also solved that problem now by having a contract that doesn't allow for the carry of rent, which has come sporadically, apparently.

Would you talk just a little bit about that in this context? You solved the problem. It seems to me that the perception of interrelationship even at a nominal cost, even at a de minimis cost, has its problems. By fixing that, have you—are you suggesting or would you suggest to this panel that you have—you recognize these problems, small as they may be, as larger in the context of the perception that they create and, therefore, you are committed in the future to help avoid the perception of using LSC resources to fund these foundations?

Mr. PADILLA. Yes, Congressman. We have——

Mr. CANNON. That will do. [Laughter.]

Just kidding. Please go ahead.

Mr. PADILLA. Go ahead?

Mr. CANNON. I'm sorry. We're just joking here about it. But I would really actually appreciate your response to that point.

Mr. PADILLA. Well, Congressman, as we mentioned before, surprisingly enough, when I look at these investigations and audits, it's one of those few times when a director—when a director can actually get a feedback with respect how he or she will follow guidelines, follow regulations. And so to the extent that we go through an extensive audit, we take those findings seriously. Five hundred and eleven dollars, I wish I could say, Congressman, that it was zero. But, Congressman, the nature of the $511 is this: Clearly, it seems to me that what the public does not want to see, Congress does not want to see, are programs that in some way or another turn over direct resource over to entities doing restricted work. The perception of anybody doing that would create more problems than we already have.

But I distinguish that from an indirect subsidy. In this case, for us, we were following the guidelines that were being set by LSC. LSC in its 1610 talked about this. It talked about telling programs,

when you are working with another entity and sharing space, there are certain things that you must do. You must have agreements where you collect market rent. We had those. They ask—you have to have separate signage. If there are suites, it must be clear to the public that there is Legal Aid and there is the entity doing restricted work. And so we followed those rules.

Mr. CANNON. Let me just interject. You had one group where you had two separate entrances that came to the same group of desks. Are you saying that, given this audit, you're now looking at that and will take corrective action there as well?

Mr. PADILLA. We've already changed that, Congressman. As a matter of fact, there are no longer—no longer any such relationships with the CRLA Foundation. There is no—there are no shared suites. There are no longer any of those kinds of agreements that we've entered into. That's happened in the last year. At the time that the IG came in, the IG was looking at three such relationships. And all I am saying is that when they came back and you read the report, what they had a problem with was the issue of subsidy, that is, the $511 in late rent that we didn't charge. In other words——

Mr. CANNON. That was actually interest, was it not?

Mr. PADILLA. It was interest.

Mr. CANNON. Interest, was that—which was part of the contract?

Mr. PADILLA. The late rent came—the late rent was there. It was paid in lump sum. We collected it. And then the issue was: Well, why didn't you charge interest on that, because you are floating an interest-free loan? And so what we've now done is, as we enter new contracts with other nonprofits, we are now putting into our agreements that we will charge late rent in case they pay their late rent.

Mr. CANNON. So essentially you have a commercial agreement with penalties or interest that—with your—with these groups that you rent space to?

Mr. PADILLA. Yes, Congressman. And I do have to add that for a legal aid like us, that we are actually purchasing buildings in some communities. We also have leases where we pay high rents. Periodically, we will have space, and in order for us to try to make our space work, we rent to nonprofits.

And so you're totally correct that now we're being asked to treat even those relationships very commercially, and now we've—we now understand the rule. I don't think that LSC—maybe they will disagree with that rule about treating nonprofits in a commercial manner. But we understand it, and now all of our agreements that we're entering into—and as a matter of fact—well, with all those agreements, that's exactly what we have. We are now looking at these as being defined by commercial agreements, just like any other landlord-tenant relationship.

Mr. CANNON. I thank the gentleman. Let me just say that there's been some joking by the panel here. I don't mean to suggest that this issue is taken lightly by any of us at all. It has clearly been an intense issue historically. We appreciate your comments, especially Mr. Padilla, about how you've made adjustments after getting the guidelines from the IG. I encourage the LSC to continue to be clear about guidelines or clarify guidelines, and in your inves-

tigations look at these things, because clarity saves all of us a lot of difficulty.

That said, would anyone else like to participate in a second round? The gentleman from Massachusetts is recognized for 5 minutes.

Mr. DELAHUNT. Thank you, Mr. Chairman.

Can I ask you how much was the interest, Mr. Padilla? I didn't mean to come back to you, but I want to get my arms around this.

Mr. PADILLA. The interest that we——

Mr. DELAHUNT. The interest on the late payment.

Mr. PADILLA. $511.

Mr. DELAHUNT. Can you repeat that again, please?

Mr. PADILLA. It's $511, Congressman.

Mr. DELAHUNT. Fine. And how much did your round-trip ticket cost here?

Mr. PADILLA. It cost about $1,200 and change.

Mr. DELAHUNT. Thank you.

Let me go to Ms. Charn for a moment. I understand your concept of the co-payment system. I understand there was a proposal before the Massachusetts Legislature which would have incorporated that into their Legal Services, and that it was resoundly rejected. Am I accurate in that?

Ms. CHARN. I believe so, yes.

Mr. DELAHUNT. Okay. And you indicated, your words were "Maybe it should be implicated into the LSC system." And I guess that condition of that would be a completion of a critical study, which I thought I heard that you were undergoing or had under way.

Ms. CHARN. We plan to look carefully at our own experience and to get some independent and systematic evaluation of client—client response to it.

What I really——

Mr. DELAHUNT. If I can, I don't want to——

Ms. CHARN. Sure.

Mr. DELAHUNT.—delay you, and I know Mr. Padilla has got to get on that plane because we don't want to have him stay overnight again and continue to add on that. In any event—and I don't mean to be rude, Ms. Charn. I really want to compliment the program at Harvard. I'm familiar with it. Maybe you're unaware, but I served for 21 years as the elected district attorney in the greater Boston area, and we utilized many of the clinical programs in the metropolitan Boston area.

Ms. CHARN. I am aware of that.

Mr. DELAHUNT. And Harvard was good. It was good. BC was just a little bit better as far as the criminal—— [Laughter.]

—clinical program. But at the same time, I think you really do serve and do provide a wonderful experience for law students.

I don't think you need to teach them about the business dimension, however, because most Harvard Law School graduates, at least when they finish, receive their J.D. degree, they seem to be doing pretty well upon their graduation.

But, seriously—and we'll await the conclusion of that study that you alluded to earlier. But, you know, I think—and I'm glad to hear that you're servicing the moderate-income community because

a growing—a concern of mine is really access to the civil justice system. For the middle class today, it's almost impossible, particularly when you're dealing, you know, with a claim against a—against a corporation. I'm not talking a small business but against a corporation. You do not have the resources. And I think that is a niche area that really has to be addressed.

And it's my understanding, too, that one of the restrictions that Congress passed, I think it was in 1996, is that no longer is LSC prohibited to be involved in class actions. And I wonder if it's time to really, as far as legal clinical programs—and, again, we have many of them in the Boston area—to consider a consortium of those programs to examine a need, a vacuum, if you will, and as it particularly relates to LSC and the restrictions that are placed on it. Many of those restrictions I happen to think are unreasonable, but the law is the law and we respect the law.

But we need some lawyers today who service that low- to moderate-income that really do need the kind of resources that the law schools can supply, and particularly those areas that could very well address a significant social need that oftentimes is brought about through the mechanism of a class action suit. Best example, the Firestone case, for example. I really think that would be a very exciting opportunity for a consortium of law schools to come together with a program to train future lawyers in terms of how to meet that particular—how to meet—not just how to meet that particular need, but to give them an experience that has become very rare as opposed to the direct aid that's provided by LSC.

I don't know. Maybe I'm not being clear enough in terms of what I'm suggesting, but take, for example, the restriction on LSC dealing with class action suits and the need for particularly certain segments of our community who do not have the wherewithal, could never envision what a class action suits really means when there is an obvious problem to be addressed. For the law schools to support that kind of effort in clinical programs, because there is a vacuum, there is an opening—and, again, too often today, you know, our Government is not protecting those who really need to be protected the most, those that are the vulnerable. And we have to rely on lawyers. We have to rely on the courts. We have to rely on access to the system.

Any comments?

Ms. CHARN. Well, I do share the regret that there are restrictions on remedies that can be pursued. I accept that they're there, and I think it's important that until and unless they're changed, there absolutely should be compliance. I think class action is a remedy. In some cases, it's appropriate. I don't think it's the be-all and end-all of what people need. I think that lots of people also need direct service, and we've been very concerned about those just above poverty who share exactly the same kinds of problems, are victims of the same sorts of situations. And I don't think—I think there can be cause for resentment when the very poor, albeit in small numbers, are eligible for things that middle-income and people who are working hard but couldn't begin to afford decent legal services don't have access. So we've been concerned about that.

On the subject of restrictions, I think one that has some real practical effect is that the prohibition from seeking attorneys' fees

in ordinary cases where it's authorized by local law and statute, that can be an important source of income, and it does bring in more income to our program than any part of the co-payments. And we are not—we are not looking at high-profile cases because we want our students to have some direct, hands-on experience, and you're not going to give a second-year law student any lead role. They'll do research, but they know how to do research. They don't know how to sit in a room with a client, bargain across the table, or make a 2-minute argument in a busy court as opposed to a lengthy argument in a high-level court.

So we've looked at that part of the need, and I do think at a practical level, the inability of programs to be able to access attorneys' fees where it's authorized by local law is something that could provide resources, would be a benefit, and it was on that base that we built a co-payment system.

Mr. DELAHUNT. I would encourage you, Ms. Charn, to incorporate that particular issue in terms of the study that you referred to earlier. I think it would be very beneficial to have.

Ms. CHARN. Thank you, Congressman.

Mr. CANNON. The gentleman yields back.

I think the Ranking Member would like to take another round, and I will defer to him in just a moment.

Let me point out, Ms. Charn, that your point that people on the lower end get angry because some people get a benefit and they don't is very well taken, and it's one of the key issues that I think we need to focus on to keep LSC a healthy organization.

I just want to make a point, Mr. Padilla. My round-trip ticket is about—is less than $300. We need to get you a Government fare somehow in this process. [Laughter.]

And, of course, as we reduce the cost of your being here, the enormity of the cost of compliance or dealing with this audit is great. My understanding is that it cost somewhere way north of $113,000 to deal with this audit. I think—I don't know that anybody is going to complain about that. I think it's very important that we have clarity about the rules. Other people in other places will see how clear the rules have become and avoid problems there. And so we appreciate your—the time and effort you have put into this and what it does for the health of the whole organization.

With that, the Chair yields 5 minutes to the gentleman.

Mr. WATT. Thank you, Mr. Chairman. Just let me clarify, though, this is not another round. This is my second bite at the apple, as you and Mr. Delahunt have already had your second——

Mr. CANNON. I would just appreciate it if you didn't take as big a bite as each of us took. We went way over the red light.

Mr. WATT. I'm just going to take long enough to try to dig myself out of this hole that I dug for myself in the first round of questions, and I want to do it this way:

First of all, I want to say how much I agree with the last comment Ms. Charn made about attorneys' fees. I think that's one of the more ridiculous rules that we have imposed upon Legal Services Corporation.

Number two, in my continuing effort to get myself out of the hole with Ms. Charn, I want her to deliver to my good friend and former classmate, Duncan Kennedy, my highest regards and tell him I'll

be up there for the convention. I'm looking forward to him hosting me there.

Ms. CHARN. Professor Kennedy came and practiced with us at the center, and I hope I won't be disclosing too much in saying that he never passed the bar. We had to have him as a paralegal. But he was very effective.

Mr. WATT. Oh, is that right?

Ms. CHARN. Very, very effective.

Mr. WATT. Well, he never was much attention—paid much attention to those kinds of details. His thought processes—and I was in the same class with him. We always thought we're always on a different plane than the proletariat lawyers who were having trouble understanding the simple concept. He had taken it to another concept. So it didn't surprise me that he ended up being a professor and I ended up being a country lawyer and politician. So give him my best regards. He's a great friend of mine, and I respect him highly—even though he hadn't passed the bar, it sounds like.

Ms. CHARN. He didn't take—he would have passed it. Let me be clear.

Mr. WATT. Finally, I want to clarify, I guess, your program, the Hale and Dorr Legal Services Center, does or does not receive LSC support?

Ms. CHARN. A separate entity, a separate corporation receives LSC support. Historically, we had a strong affiliation with the LSC-funded programs in the area. After the Gingrich congress, that changed, for a variety of local reasons. But——

Mr. WATT. The Gingrich congress is a concept I do not understand.

Ms. CHARN. I mean the Contract With America, the restrictions that came in——

Mr. WATT. That was in 1995–96?

Ms. CHARN. Yes.

Mr. WATT. I have never acceded to the notion that that was his Congress or anybody else's.

Mr. CANNON. It did become mainstream America.

Mr. WATT. It was—this Congress is always the American people's Congress, and——

Ms. CHARN. Well put.

Mr. WATT.—this is the people's House

Ms. CHARN. Well put.

Mr. WATT. But I understand you're talking about 1995–96.

Ms. CHARN. Yes.

Mr. WATT. Okay. All right. Keep going.

Ms. CHARN. So I would say that, in fact, what our program does is, aside from that continuing small grant to a separate corporation, in fact, Harvard Law School is providing its own resources that are making available substantial services to LSC clients.

Mr. WATT. Okay. So with respect to that program, you can charge a co-pay or whatever you want. I mean, you don't need Congress'——

Ms. CHARN. That's right.

Mr. WATT. Okay. And in the LSC-funded program, you are not charging a co-pay——

Ms. CHARN. Certainly not.

Mr. WATT.—because that's prohibited——

Ms. CHARN. That's prohibited.

Mr. WATT.—by the rules.

Ms. CHARN. Exactly right.

Mr. WATT. All right. What I'm trying—the bottom line I'm trying to get to on this co-pay issue is I assume and hope you're not suggesting that because in a separately funded mechanism where you do services for Legal Services-eligible clients and non-Legal-Services-eligible clients, you have a co-pay system that you would impose that same co-pay system in every Legal Services Corporation-funded program throughout America. That's not what you're suggesting, is it?

Ms. CHARN. No, I don't——

Mr. WATT. Okay. All right. I just——

Ms. CHARN. It's not for me to suggest—we have some experience with it. In the future, as we evolve, I don't think it's unthinkable, but I have no—I'm not making any suggestion that that would be a priority of any kind for this legal—and I trust Chairman Strickland and the new president. That is really a matter of policy for the Congress and them. I simply report on an experience, and it's our role——

Mr. WATT. And actually, in your experience—I take back what I said in my opening statement—you have the right to experiment in your program because you're not received Federal funds.

Ms. CHARN. That's correct.

Mr. WATT. In that part of your program, which is why I wanted to go back and clear this up. I didn't want to start another investigation. There are two separate programs here.

Ms. CHARN. Yes.

Mr. WATT. And one is Legal Services funded and one is not. So I just wanted to be clear on that.

I think I have dug myself out of the hole. I probably put myself back in it by mentioning Duncan Kennedy.

Ms. CHARN. Not at all.

Mr. WATT. But he'll understand that I was trying to get myself out of the hole.

With that, I'll yield back.

Mr. CANNON. The Chair was aware that these are separate programs, I might just point out.

Mr. WATT. Okay.

Mr. CANNON. And I had no intention of pursuing it beyond that.

We thank the panel very much. We appreciate the Members of the Committee who have been here today asking questions, watching over me, making sure we stayed on the straight and narrow.

Let me just say in closing that this is an important issue. It's been an issue that America has reacted to in many different ways. I think, Ms. Charn, your statement about the concern by people who can't get access to legal services is a very serious one. I appreciate the way you are dealing with it, and we're going to take a careful look in the future at a program that might mitigate that along the lines of what you've done with Hale and Dorr and with Harvard, and we appreciate that.

Mr. Padilla, we appreciate your having come in and come across the country. It's not a day, let me point out. It's actually 3 days.

You know, the Federal Government calls travel across the country a day's work, so we appreciate that.

And, Ms. Barnett, we appreciate your being here and your participation.

It seems to me Mr. Padilla would like to make another comment.

Mr. WATT. And I need to make a unanimous consent request.

Mr. CANNON. Okay. Why don't we go to the unanimous consent request and we'll let——

Mr. WATT. All right. Mr. Chairman, I ask unanimous consent that we have submitted for the record letters of support for the California Rural Legal Assistance, Inc., as if they needed that, from Members of the Congressional Hispanic Caucus, Brennan Center for Justice at NYU School of Law, Mexican American Legal Defense and Educational Fund, League of United Latin American Citizens, Farm Worker Justice Fund, Inc., California Catholic Conference, Mexican American Bar Association, twelve law professors, and the National Council of La Raza.

Mr. CANNON. Thank you. Without objection, so ordered.

[The "letters of support" are inserted in the Appendix.]

Mr. CANNON. Mr. Padilla, do you want to make a final comment?

Mr. PADILLA. Yes. Chairman, just putting my whole issue aside, I just felt the need to make one statement about thanking you for your leadership. As you well know, CRLA spends a significant amount of time representing working people. And to the extent that you as a Congressman has taken leadership in the ag jobs bill and taken leadership in the DREAM Act, I have to say on behalf of the clients that we serve in California, people who sometimes the only sustenance that they can get—they need the sustenance of food, but they also need sustenance like faith and hope. And to the extent that you have taken the leadership in that area with those two pieces of legislation, I have to thank you on behalf of our client community, because I know you've taken a position on a very volatile issue. But it's an issue that's so critical to the people that we serve on a daily basis. And I just wanted to make that comment because this is probably the last time that I will ever be able to thank you so publicly because of the stance you've taken.

Mr. CANNON. Well, I hope we could meet privately because I intend to get to California, but I thank you very much. And as we talked yesterday, let me just say, and as I said earlier in the hearing, we have problems in America. We need to solve those on many fronts. But opening up the path for people to move from lower income to higher income, meaning getting education available to them, having access to other resources, those things are vitally important, not to me, not to you, but to all Americans. It's important that all Americans have—all other Americans have all the opportunities that this great country provides.

I would ask unanimous consent to insert the IG report in this matter in the record. Without objection, so ordered.

[The "IG report" is inserted in the Appendix.]

Mr. WATT. I would ask unanimous consent to insert in the record the exhibits that Mr. Padilla——

Mr. CANNON. Without objection, so ordered.

Mr. WATT.—testified about with reference to the labor camp at Haute, California.

Mr. CANNON. Without objection, so ordered.
[The material referred to is inserted in the Appendix.]
Mr. CANNON. And on this kindly note, let us adjourn the hearing.
[Whereupon, at 2:24 p.m., the Subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

Letter Submitted by Members of the Congressional Hispanic Caucus

Congress of the United States
Washington, DC 20515

March 31, 2004

The Honorable Chris Cannon
Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
Washington, D.C. 20510

RE: Support for California Rural Legal Assistance

Dear Chairman Cannon:

As Hispanic Members of Congress, we commend your leadership in holding oversight hearings on the Legal Services Corporation (LSC) and its provision of free legal services to the indigent populations of this country. We support LSC and the funding it provides to critical legal service agencies across the country. We understand that one of the most effective legal services agencies serving the Latino and rural poor, California Rural Legal Assistance (CRLA), will be appearing before your committee on April 1. We write to share with you and the Committee our views regarding the importance of the work of agencies like CRLA and our concern with any efforts to further restrict the ability of legal services programs to serve poor Latino communities.

The Latino community is the largest and fastest growing minority group in the United States. In some states, like California, the need for free legal services is extremely important because of the high rate of poverty among Latinos. Current demographic data indicates that although Latinos are 33% of the general population in California, they are 52% of the poor. In comparison, the White population comprises 47% population but only 29% of the poor. Also, farm worker poverty rate is significantly higher, estimated at 38%.

Many poor Latinos particularly Latino farmworkers depend on LSC funds for basic legal services. LSC grantees work on cases related to critical poverty issues such as domestic violence, child custody and visitation rights, evictions, access to health care, unemployment and disability claims as well as other issues like farm worker rights and civil rights. According to client demographics, services to Hispanics comprise almost 30% of LSC's workload.

CRLA has played a vital and special role in providing free legal services to poor Latinos. It is considered one of the premier legal aid programs in the country and is the largest migrant farm worker program. CRLA serves 23% of the farm workers in the United States. Annually, CRLA provides benefits to over 25,000 poor persons; Latinos make up 50-60% of CRLA's clients. In its illustrious 37-year history, CRLA has been a leader in advocating on behalf of California's Latino poor communities. Below are some examples of these cases.

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- **Farm workers**: CRLA abolished the use of the short-handled hoe in state agriculture, a practice that disabled hundreds of farm workers; recently partnered with EEOC to settle a $1.8 million sexual harassment case, the first such case brought by the EEOC in agriculture;

- **Latino civil rights**: CRLA brought desegregation actions in rural communities; forced the state to strike down the state's constitutional requirement of English language literacy for voters; and

- **Latino language and education rights**: CRLA successfully challenged IQ testing of non-English speaking children and prevented hundreds of school districts throughout the state from assigning thousands of Latino children to classes for the mentally retarded.

This record of advocacy is exemplary. CRLA's success can be attributed to many factors, including its ability to leverage the resources of the private bar by co-counseling in major litigation. CRLA has worked with twenty-seven law firms in bringing litigation to remedy often wide-spread abuse and appalling injuries to low-income workers, seniors, children and the disabled. Many of these clients were Latino. CRLA co-counseled in these cases to remedy situations such as the following:

- **Farm labor camps housing** hundreds of workers with non-functioning bathrooms where human waste accumulated on the floors of bathrooms; showers and washbasins with no running water; doorways and window openings with no doors, glass or screens; inadequate meals prepared in filth-laden surroundings; and cases where hundreds of workers had illegal deductions taken from their pay, or simply were not paid, resulting in no wages for weeks of work;

- **Sexual harassment** suffered by farm worker women employees in order to retain their jobs, subjected to the injustice by their supervisors;

- **Squalid housing complexes** in which low-income workers paid substantial rents for structures so dilapidated that in one instance a child broke his leg falling through a hole in the floor, and where the building inspector gave 24-hour notice to vacate for fear the entire structures would collapse in the rain;

- **Sexual predator abuses** in subsidized housing projects where staff were permitted to prey on helpless seniors and disabled people;

- **Elder-abuse cases** in which senior citizens lost their life-long homes in fraudulent loan schemes; and

- **Highly-hazardous agricultural chemicals** applied illegally immediately adjacent to low-income residential communities injuring hundreds of adults and children.

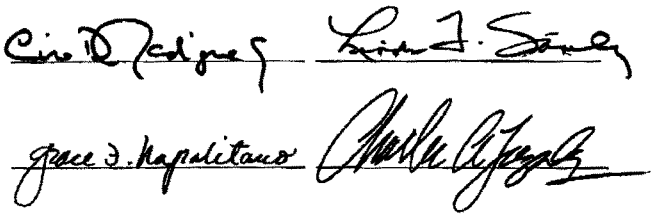
A recent California report *"The Path to Equal Justice: A Five-Year Status Report On Access To Justice In California"*, published by the California Commission on Access to Justice (December 2002), indicates that "72% of California's low-income people do not receive the legal help they need to resolve basic problems relating to home, health and education." Given the lack of Federal legal aid funds to meet existing civil legal needs, it is vital for organizations like CRLA to partner with the private bar and organizations funded by IOLTA funds (interest on lawyers trust accounts).

CRLA cases in which it co-counseled with the CRLA Foundation, a California IOLTA-funded support center, have included some of the largest farm-worker employment cases. Hundreds of seasonal harvest workers had been routinely denied wages for their back-breaking labor but through successful cases brought by CRLA and CRLA Foundation, workers have been able to obtain thousands of dollars in wages due them.

CRLA's success has garnered it much attention, some of it unwarranted. We are aware that CRLA has been the subject of several LSC audits and investigations, some of which may have been instigated by those who would prefer to have CRLA be less effective in its effort to seek redress for the serious violations of law affecting the poor, hardworking and mostly Latino rural communities. CRLA's latest auditors made recommendations that CRLA is implementing and the Congressman who requested the audit has indicated his satisfaction with CRLA's compliance with LSC regulations and the law.

We urge the House Judiciary Subcommittee on Commercial and Administrative Law to consider the significant resources that CRLA has expended in bringing labor, education, civil rights and housing advocacy on behalf of Latino impoverished communities and other rural poor. We urge the Subcommittee to provide CRLA and other legal services the ability and resources to continue bringing these actions in the State of California and elsewhere.

Sincerely,



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LETTER SUBMITTED BY THE BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF LAW

March 30, 2004

The Honorable Chris Cannon
Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
Washington, D.C. 20510

Re: Support for California Rural Legal Assistance

Dear Chairman Cannon:

We commend your leadership in holding an oversight hearing on the Legal Services Corporation (LSC) and on its critically important mission of providing legal representation in civil matters to low-income individuals, families and communities in America. We write to express our strong support for LSC and for the tremendous work of the more than 140 local nonprofit organizations that, with funding from LSC and from countless private, state and local supporters, provide direct legal assistance that enables low-income people to resolve their difficult legal problems pursuant to the rule of law.

In addition, we write to support California Rural Legal Assistance (CRLA), an organization which we understand will be appearing before the Subcommittee, and to express our concern about erroneous, misleading and insubstantial criticism recently advanced against CRLA by the LSC Inspector General (IG) and by one group, the Western United Dairymen. This group evidently opposes CRLA's important work in fulfilling LSC's mission through the representation of low-wage workers who have been cheated out of minimum wage and overtime pay, and who have been denied the basic protections of health and safety laws, by some corporate wrongdoers that include, allegedly, certain members of the California dairy industry.

The Brennan Center's Perspective On Strengthened Civil Legal Services

The Brennan Center for Justice at NYU School of Law shares its perspective on these matters as a national organization dedicated to enabling low-income individuals, families and communities to obtain high quality legal representation, whether the problem is eviction and unsafe housing conditions; harassment by predatory lenders; unfairly denied wages and hazardous workplaces; abusive spouses in custody disputes or in domestic violence matters; or myriad other problems that confront our society's most vulnerable members and that can best be resolved pursuant to the rule of law.

In support of this goal of high quality legal representation, the Brennan Center engages in public education, research, counseling, litigation and legislative and regulatory advocacy. The

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Center has published an eight-part *Access to Justice* series documenting the value to our society of the work of civil legal aid lawyers, and illuminating harms caused to low-income people and communities by funding restrictions that interfere with the efforts of nonprofit LSC grantees to assist their low-income clients. The Center has litigated *LSC v. Velazquez*, 531 U.S. 533 (2001), in which the U.S. Supreme Court held that federally funded legal services lawyers are authorized by the United States Constitution to advance certain legal arguments on behalf of individuals seeking welfare benefits, making clear that it is unconstitutional to restrict these lawyers to making arguments only with respect to the facts.

CRLA Provides High Quality Legal Assistance to Low-Income Families

For more than 37 years, CRLA has provided vitally needed legal assistance to low-income families in California who are subjected to a variety of forms of exploitation. CRLA's services are needed now more than ever, as California's poverty population has swelled since 1990 by more than one million people (accounting for 55% of the national increase in people living below the poverty line during the last decade). According to a December, 2002 report by the California Commission on Access to Justice. "72% of California's low-income people do not receive the legal help they need to resolve basic problems relating to home, health and education."

In response to this need, CRLA relies on financial support from a combination of federal, state, local and private sources to finance its work on behalf of approximately 25,000 low-income people in California each year. CRLA reports that during the two year period reviewed by the IG it also relied on pro bono assistance from 27 private law firms that co-counseled cases with CRLA to remedy the following problems:

- **farm labor camps** housing hundreds of workers with non-functioning bathrooms, where human waste accumulated on the floors of bathrooms and showers; with washbasins that had no running water; with doorways and window openings that had no doors, glass or screens; with inadequate meals that were prepared in filth-laden surroundings; and where hundreds of workers had illegal deductions taken from their pay, or simply were not paid, resulting in no wages for weeks of work;

- **sexual harassment** suffered by female farm worker employees in order to retain their jobs;

- **squalid housing complexes** in which low-income workers paid substantial rents for structures so dilapidated that in one instance a child broke his leg falling through a hole in the floor, and where the building inspector gave a 24-hour notice to vacate for fear the entire structure would collapse in the rain;

- **sexual predator abuses** in subsidized housing projects where staff were permitted to prey on helpless seniors and disabled people;

- **elder abuse** resulting in senior citizens losing their life-long homes due to fraudulent

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loan schemes;

- **disabled students** attending schools in districts that failed to bring facilities into compliance with state and federal access laws, necessitating students to be carried by other students up and down stairs to enter buildings, attend classes, and go to the bathroom;

- **highly-hazardous agricultural chemicals** applied illegally immediately adjacent to low-income residential communities harming hundreds of adults and children.

CRLA also reports that, during the past year, it has represented workers from eight separate dairy farms who were "all victims of serious – and remarkably similar – failures to pay minimum and overtime wages as well as frequent failures to provide paid rest and meal breaks required by law. . . . Wage-and-hour violations are not the only employment tragedies in the dairy industry, where failures to comply with clearly understood safety rules have resulted in the deaths of three workers in a little over a year and the death of a 2-year old child in December."

Tragically, allegations like these of disregard for the law by unscrupulous employers, and of exploitation of vulnerable low-wage workers – the hardworking folks who put fresh strawberries and milk on our breakfast tables – are not uncommon in the United States. In challenging exploitation and in representing workers willing to seek enforcement of America's civil laws, CRLA should be commended by Congress for carrying out LSC's core mission of providing "high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel," rather than be criticized unfairly by the IG and by employer associations that seek to protect those employers who routinely skirt the law.

The Inspector General's Criticism of CRLA Is Erroneous, Misleading and Insubstantial

Criticism of CRLA by the IG in its December 11, 2003 audit report is erroneous, misleading and insubstantial. The IG evaluated whether CRLA was in compliance with LSC's "program integrity" regulation, 45 C.F.R. § 1610.8. The regulation requires private LSC grantees to maintain legal, financial and physical separation from any organization that engages in LSC-restricted activities. It also bars LSC grantees from transferring LSC funds to such organizations and from subsidizing any LSC-restricted activities. The IG found that while CRLA maintained legal separation from, and did not transfer any LSC funds to, any such organization, the alleged closeness of the relationship between CRLA and the California Rural Legal Assistance Foundation ("Foundation"), a legally separate entity that does not share an overlapping board of directors with CRLA, violated the program integrity regulation.

The IG's conclusion is erroneous in that it relies on the fact that two of CRLA's approximately eighty attorneys performed work for the Foundation, even though LSC's own guidelines establish a 10% rule presumably permitting CRLA to share as many as eight of its attorneys with the Foundation. The IG's conclusion is also erroneous in criticizing CRLA for co-counseling LSC-permissible cases with the Foundation. LSC's rules do not bar grantees from entering into such co-counsel relationships.

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The IG's remaining criticisms of CRLA are at once trivial and misleading. The IG says that CRLA "subsidized restricted activities," inviting a misperception that CRLA actively paid for restricted activities. In truth, the report merely found that CRLA did not impose a fee on certain late rental payments made by the Foundation to CRLA. These fees, according to CRLA's calculations, would have amounted to only $511.76 and equaled "less than three one-thousandths of one percent of CRLA's $18.3 million budget." Finally, the IG states that CRLA did not physically separate itself from the Foundation in one building in Modesto that housed both CRLA and Foundation offices. CRLA explains, however, that this criticism is based on the insubstantial fact that both organizations had access to a lunchroom that could be entered from a common hallway.

The LSC Regulation Upon Which the IG's Report is Based Hurts Low-Income Families and Violates the Free Speech and the Establishment Clauses

Fundamentally, the basic requirement of physical separation relied on by the IG, and embodied in LSC's program integrity regulation, hurts low-income people and communities and violates both the Free Speech and Establishment Clauses, as well as federal norms for regulating the privately funded activities of nonprofit federal grantees.

By requiring nonprofit organizations receiving LSC funds to establish physically separate organizations before using their own private funds to engage in LSC-restricted activities, the regulation imposes an unconstitutional burden on the privately funded, First-Amendment protected speech of legal aid clients and their attorneys, nonprofit legal aid programs, and the private, state, and local funders of these programs. It has prevented many low-income individuals, families and communities from receiving necessary privately funded legal assistance, and imposed costly government obstacles to private philanthropy.

The burdensome regime embodied in the LSC program integrity regulation stands in sharp contrast to the flexible regime embodied in the Administration's faith-based initiative, which allow extensive sharing of facilities and staff between the federally funded secular, and the privately funded religious, activities of nonprofit federal grantees. The combined effect of the program integrity regulation and the government's "faith-based initiative" is to favor religious speech in violation of both the Establishment Clause and the First Amendment's ban on viewpoint discrimination.

In addition, LSC's program integrity regulation violates federal norms for regulating the privately funded activities of nonprofit federal grantees. Longstanding rules promulgated by OMB for nonprofit grantees of federal agencies and by the IRS for all nonprofit 501(c)(3) and (c)(4) organizations, as well as the rules promulgated by the Administration for faith-based grantees, all authorize nonprofits receiving federal funds to use their own private funds to engage in federally restricted activities, like lobbying and proselytizing, without requiring them to do so through physically separate organizations housed in separate facilities and operated with separate staff.

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Conclusion

We urge the House Judiciary Subcommittee on Commercial and Administrative Law to commend CRLA for its important work on behalf of low-income families, and for its unwavering commitment to the ideal of "equal justice under law" that lies at the core of LSC's mission. In addition, we urge the Subcommittee to provide CRLA and other legal services organizations with the necessary freedom to continue to strengthen their work on behalf of vulnerable low-income people and communities in California and throughout our Nation.

Sincerely,

Tom Gerety
Executive Director

cc: The Honorable Mel Watt

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LETTER SUBMITTED BY THE MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND (MALDEF)

MALDEF

Mexican American Legal Defense and Educational Fund

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March 30, 2004

The Honorable Chris Cannon
Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
Washington, D.C. 20510

RE: **Support for California Rural Legal Assistance**

Dear Chairman Cannon:

We commend your leadership in holding oversight hearings on the Legal Services Corporation (LSC) and its provision of free legal services to the indigent populations of this country. We support LSC and the funding it provides to critical legal service agencies across the country. We understand that one of the most effective legal services agencies serving the Latino and rural poor, California Rural Legal Assistance (CRLA), will be appearing before your Subcommittee. We write to share with you and the Subcommittee our views regarding the importance of the work of agencies like CRLA and our concern with any efforts to further restrict the ability of legal services programs to serve poor Latino communities.

The Latino community is the largest and fastest growing minority group in the United States. In some states, like California, the need for free legal services is extremely important because of the high rate of poverty among Latinos. Current demographic data indicates that although Latinos are 33% of the general population in California, they are 52% of the poor. In comparison, the white population comprises 47% population but only 29% of the poor. Also, farm worker poverty rate is significantly higher, estimated at 38%.

Many poor Latinos particularly Latino farmworkers depend on LSC funds for access to basic legal services. LSC grantees work on cases related to critical poverty issues such as domestic violence, child custody and visitation rights, evictions, access to health care, unemployment and disability claims as well as other issues like farm worker rights and civil rights. According to client demographics, services to Hispanics comprise almost 30% of LSC's workload.

CRLA has played a vital and special role in providing free legal services to poor Latinos. It is considered one of the premier legal aid programs in the country and is the largest migrant farm worker program. CRLA serves 23% of the farm workers in the United States. Annually, CRLA provides benefits to over 25,000 poor persons; Latinos make up 50-60% of CRLA's clients. In its illustrious 37-year history, CRLA has been a leader in advocating on behalf of California's Latino poor communities. Below are some

examples of these cases.

- **Farm workers**: CRLA abolished the use of the short-handled hoe in state agriculture, a practice that disabled hundreds of farm workers. CRLA recently partnered with EEOC to settle a $1.8 million sexual harassment case, the first such case brought by the EEOC in agriculture;

- **Latino civil rights**: CRLA brought desegregation actions in rural communities. CRLA forced the state to strike down the state's constitutional requirement of English language literacy for voters; and

- **Latino language and education rights**: CRLA successfully challenged IQ testing of non-English speaking children and prevented hundreds of school districts throughout the state from assigning thousands of Latino children to classes for the mentally retarded.

This record of advocacy is exemplary. CRLA's success can be attributed to many factors, including its ability to leverage the resources of the private bar by co-counseling in major litigation. CRLA has worked with twenty-seven law firms in bringing litigation to remedy often wide-spread abuse and appalling injuries to low-income workers, seniors, children and the disabled. Many of these clients were Latino. CRLA co-counseled in these cases to remedy situations such as the following:

- **Farm labor camps housing** hundreds of workers with non-functioning bathrooms where human waste accumulated on the floors of bathrooms; showers and washbasins had no running water; doorways and window openings had no doors, glass or screens; inadequate meals were prepared in filth-laden surroundings; and cases where hundreds of workers had illegal deductions taken from their pay, or simply were not paid, resulting in no wages for weeks of work;

- **Sexual harassment** suffered by farm worker women employees in order to retain their jobs, subjected to the injustice by their supervisors;

- **Squalid housing complexes** in which low-income workers paid substantial rents for structures so dilapidated that in one instance a child broke his leg falling through a hole in the floor, and where the building inspector gave 24-hour notice to vacate for fear the entire structures would collapse in the rain;

- **Sexual predator abuses** in subsidized housing projects where staff were permitted to prey on helpless seniors and disabled people;

- **Elder-abuse cases** in which senior citizens lost their life-long homes in fraudulent loan schemes; and

- **Highly-hazardous agricultural chemicals** applied illegally immediately adjacent to low-income residential communities injuring hundreds of adults and children.

A recent California report *"The Path to Equal Justice: A Five-Year Status Report On Access To Justice In California"*, published by the California Commission on Access to Justice (December 2002), indicates that "72% of California's low-income people do not receive the legal help they need to resolve basic problems relating to home, health and education." Given the lack of Federal legal aid funds to meet existing civil legal needs, it is vital for organizations like CRLA to partner with the private bar and organizations funded by IOLTA funds (interest on lawyers trust accounts).

CRLA cases in which it co-counseled with the CRLA Foundation, a California IOLTA-funded support center, have included some of the largest farm-worker employment cases. Hundreds of seasonal harvest workers had been routinely denied wages for their back-breaking labor; but through successful cases brought by CRLA and CRLA Foundation, workers have been able to obtain thousands of dollars in wages due them.

CRLA's success has garnered it much attention, some of it unwanted. We are aware that CRLA has been the subject of several LSC audits and investigations, some of which may have been instigated by those who would prefer to have CRLA be less effective in its effort to seek redress for the serious violations of law affecting the poor, hardworking and mostly Latino rural communities.

We urge the House Judiciary Subcommittee on Commercial and Administrative Law to consider the significant resources that CRLA has expended in bringing labor, education, civil rights and housing advocacy on behalf of Latino impoverished communities and other rural poor. We urge the Subcommittee to provide CRLA and other legal services the ability and resources to continue bringing these actions in the State of California and elsewhere.

Sincerely,

Vibiana Andrade

Vibiana Andrade
Acting President

LETTER SUBMITTED BY THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS

League of United Latin American Citizens

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March 30, 2004

The Honorable Chris Cannon
Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
Washington, D.C. 20510

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CRLA cases in which it co-counseled with the CRLA Foundation, a California IOLTA-funded support center, have included some of the largest farm-worker employment cases. Hundreds of seasonal harvest workers had been routinely denied wages for their back-breaking labor but through successful cases brought by CRLA and CRLA Foundation, workers have been able to obtain thousands of dollars in wages due them.

CRLA's success has garnered it much attention, some of it unwanted. We are aware that CRLA has been the subject of several LSC audits and investigations, some of which may have been instigated by those who would prefer to have CRLA be less effective in its effort to seek redress for the serious violations of law affecting the poor, hardworking and mostly Latino rural communities/.

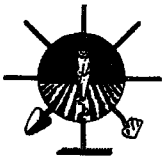
We urge the House Judiciary Subcommittee on Commercial and Administrative Law to consider the significant resources that CRLA has expended in bringing labor, education, civil rights and housing advocacy on behalf of Latino impoverished communities and other rural poor. We urge the Subcommittee to provide CRLA and other legal services the ability and resources to continue bringing these actions in the State of California and elsewhere.

Sincerely,

Hector Flores

LETTER SUBMITTED BY THE FARMWORKER JUSTICE FUND, INC.

FARMWORKER JUSTICE FUND, INC.
1010 Vermont Avenue, N.W., Suite 915
Washington, D.C. 20005
(202) 783-2628 • Fax (202) 783-2561



March 30, 2004

The Honorable Chris Cannon
Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
Washington, D.C. 20510

RE: **Support for California Rural Legal Assistance**

Dear Chairman Cannon:

The Farmworker Justice Fund, Inc. commends your leadership in holding oversight hearings on the Legal Services Corporation (LSC) and its provision of free legal services to the indigent populations of this country. We support LSC and the funding it provides to critical legal service agencies across the country. One of the most effective legal services agencies serving the Latino and rural poor, California Rural Legal Assistance (CRLA), will be appearing before your Subcommittee. We write to share with you and the Subcommittee our views regarding the importance of the work of agencies like CRLA and our concern with any efforts to further restrict the ability of legal services programs to serve poor Latino communities.

The Farmworker Justice Fund, Inc., as you know from your efforts regarding the agricultural worker immigration legislation, is a national advocacy organization for migrant and seasonal farmworkers. It was founded in 1981 to help farmworkers improve their wages, working conditions, immigration status, occupational safety and health and access to justice. FJF is not and has not been a recipient of LSC funds.

California is home to approximately 900,000 agricultural workers. The large majority are immigrants. The large majority also are of Hispanic origin. In addition, the majority of farmworkers are poor . Consequently, the need for free, high-quality legal services is extremely important.

Many farmworkers depend on LSC funds for basic legal services. LSC grantees work on cases related to critical poverty issues such as domestic violence, child custody and visitation rights, evictions, access to health care, unemployment and disability claims as well as other issues like employment-law issues and civil rights.

CRLA has played a vital and special role in providing free legal services to poor Californians. It is considered one of the premier legal aid programs in the country and is the largest migrant farm worker program. CRLA serves 23% of the farm workers in the United States. Annually,

CRLA provides benefits to over 25,000 poor persons; Latinos make up 50-60% of CRLA's clients. In its illustrious 37-year history, CRLA has been a leader in advocating on behalf of California's Latino poor communities. Below are some examples of these cases.

- **Farm workers**: CRLA abolished the use of the short-handled hoe in state agriculture, a practice that disabled hundreds of farm workers; recently partnered with EEOC to settle a $1.8 million sexual harassment case, the first such case brought by the EEOC in agriculture;

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- **Elder-abuse cases** in which senior citizens lost their life-long homes in fraudulent

loan schemes; and

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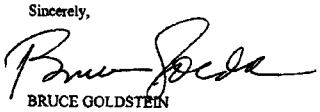
CRLA's success has garnered it much attention, some of it unwanted. We are aware that CRLA has been the subject of several LSC audits and investigations, some of which may have been instigated by those who would prefer to have CRLA be less effective in its effort to seek redress for the serious violations of law affecting the poor, hardworking and mostly Latino rural communities/.

We urge the House Judiciary Subcommittee on Commercial and Administrative Law to consider the significant resources that CRLA has expended in bringing labor, education, civil rights and housing advocacy on behalf of Latino impoverished communities and other rural poor. We urge the Subcommittee to provide CRLA and other legal services the ability and resources to continue bringing these actions in the State of California and elsewhere.

Sincerely,



BRUCE GOLDSTEIN
Co-Executive Director
FARMWORKER JUSTICE FUND, INC.

LETTER SUBMITTED BY THE CALIFORNIA CATHOLIC CONFERENCE

ARCHDIOCESES OF LOS ANGELES AND SAN FRANCISCO
DIOCESES OF FRESNO, MONTEREY, OAKLAND, ORANGE, SACRAMENTO, SAN BERNARDINO, SAN DIEGO, SAN JOSE, SANTA ROSA AND STOCKTON
BYZANTINE CATHOLIC EPARCHY OF VAN NUYS, MARONITE CATHOLIC EPARCHY OF OUR LADY OF LEBANON OF LOS ANGELES

March 29, 2004

The Honorable Chris Cannon, Chair
Subcommittee on Commercial and
Administrative Law, Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20510

RE: Support for California Rural Legal Assistance

Dear Chairman Cannon:

We commend your leadership in holding oversight hearings on the Legal Services Corporation (LSC) and its provision of free legal services to the indigent populations of this country. We support LSC and the funding it provides to critical legal service agencies across the country. We understand that one of the most effective legal services agencies serving the Latino and rural poor, California Rural Legal Assistance (CRLA), will be appearing before your Subcommittee. We write to share with you and the Subcommittee our views regarding the importance of the work of agencies like CRLA and our concern with any efforts to further restrict the ability of legal services programs to serve poor Latino communities.

The Latino community is the largest and fastest growing minority group in the United States. In some states, like California, the need for free legal services is extremely important because of the high rate of poverty among Latinos. Current demographic data indicates that although Latinos are 33 percent of the general population in California, they are 52 percent of the poor. Also, the poverty rate of farm workers is significantly higher, estimated at 38%.

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(916) 443-6851 • FAX (916) 443-5629

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This record of advocacy is exemplary. CRLA has worked with twenty-seven law firms in bringing litigation to remedy often wide-spread abuse and appalling injuries to low-income workers, seniors, children and the disabled. Many of these clients were Latino. CRLA co-counseled in these cases to remedy situations such as the following:

- **Farm labor camps housing** - hundreds of workers with non-functioning bathrooms where human waste accumulated on the floors of bathrooms; showers and washbasins with no running water; doorways and window openings with no doors, glass or screens; inadequate meals prepared in filth-laden surroundings; and cases where hundreds of workers had illegal deductions taken from their pay, or simply were not paid, resulting in no wages for weeks of work;

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A recent California report, *"The Path to Equal Justice: A Five-Year Status Report On Access To Justice In California"* published by the California Commission on Access to Justice (December 2002), indicates that

"72% of California's low-income people do not receive the legal help they need to resolve basic problems relating to home, health and education."

Confronted by that reality, and in searching how to respond to so many human problems that clamor for redress, the Church insists that government has the moral obligation of *securing basic justice for all members of the commonwealth.* It is a longstanding principle of Catholic social teaching that the guaranteeing of basic justice for all is not an optional expression of largesse but an inescapable duty for the whole of society. See the pastoral letter *Economic Justice for All*, U.S. Conference of Bishops, No.120 (1986). In the words of Pius XI, "Charity will never be true charity unless it takes justice into account.... Let no one attempt with small gifts of charity to exempt [her]himself from the great duties imposed by justice." Hence, we stand in solidarity with efforts to continue providing financial and other support for legal aid societies and others engaged in basic justice.

Advocacy groups working on behalf of the poor in California tell us that given the lack of Federal legal aid funds to meet existing civil legal needs, it is vital for organizations like CRLA to partner with the private bar and organizations funded by IOLTA funds (interest on lawyers' trust accounts). CRLA cases in which it co-counseled with the CRLA Foundation, a California IOLTA-funded support center, have included some of the largest farm worker's employment cases. Hundreds of seasonal harvest workers had been routinely denied wages for their back-breaking labor, but through successful cases brought by CRLA and CRLA Foundation, workers have been able to obtain thousands of dollars in wages owed to them.

We urge the House Judiciary Subcommittee on Commercial and Administrative Law to consider the significant resources that CRLA has expended in bringing labor, education, civil rights and housing advocacy on behalf of Latino impoverished communities and other rural poor. We ask the Subcommittee to provide CRLA and other legal services the ability and resources to continue bringing these actions in the State of California and elsewhere.

Sincerely yours,

Al Hernández Santana
Associate Director for Hispanic Affairs
On behalf of Episcopal Region XI's Commission of the Spanish-Speaking

cc: California Rural Legal Assistance Foundation, Inc.
RECOSS President, Humberto Ramos, Archdiocese of Los Angeles
Rural Community Assistance Corporation, West Sacramento office
Western Center on Law and Poverty, Inc. Los Angeles, California

LETTER SUBMITTED BY THE MEXICAN AMERICAN BAR ASSOCIATION

Mexican American Bar Association
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March 28, 2004

The Honorable Chris Cannon
Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
Washington, D.C. 20510

RE: Support for California Rural Legal Assistance

Dear Chairman Cannon:

The Mexican American Bar Association commends your leadership in holding oversight hearings on the Legal Services Corporation (LSC) and its provision of free legal services to the indigent populations of this country. We support LSC and the funding it provides to critical legal service agencies across the country. We understand that one of the most effective legal services agencies serving the Latino and rural poor, California Rural Legal Assistance (CRLA), will be appearing before your committee on April 1. We write to share with you and the Committee our views regarding the importance of the work of agencies like CRLA and our concern with any efforts to further restrict the ability of legal services programs to serve poor Latino communities.

The Latino community is the largest and fastest growing minority group in the United States. In some states, like California, the need for free legal services is extremely important because of the high rate of poverty among Latinos. Current demographic data indicates that although Latinos are 33% of the general population in California, they are 52% of the poor. In comparison, the White population comprises 47% population but only 29% of the poor. Also, farm worker poverty rate is significantly higher, estimated at 38%.

Many poor Latinos particularly Latino farmworkers depend on LSC funds for basic legal services. LSC grantees work on cases related to critical poverty issues such as domestic violence, child custody and visitation rights, evictions, access to health care, unemployment and disability claims as well as other issues like farm worker rights and civil rights. According to client demographics, services to Hispanics comprise almost 30% of LSC's workload.

CRLA has played a vital and special role in providing free legal services to poor Latinos. It is considered one of the premier legal aid programs in the country and is the largest migrant farm worker program. CRLA serves 23% of the farm workers in the United

States. Annually, CRLA provides benefits to over 25,000 poor persons; Latinos make up 50-60% of CRLA's clients. In its illustrious 37-year history, CRLA has been a leader in advocating on behalf of California's Latino poor communities. Below are some examples of these cases.

- Farm workers: CRLA abolished the use of the short-handled hoe in state agriculture, a practice that disabled hundreds of farm workers; recently partnered with EEOC to settle a $1.8 million sexual harassment case, the first such case brought by the EEOC in agriculture;

- Latino civil rights: CRLA brought desegregation actions in rural communities; forced the state to strike down the state's constitutional requirement of English language literacy for voters; and

- Latino language and education rights: CRLA successfully challenged IQ testing of non-English speaking children and prevented hundreds of school districts throughout the state from assigning thousands of Latino children to classes for the mentally retarded.

This record of advocacy is exemplary. CRLA's success can be attributed to many factors, including its ability to leverage the resources of the private bar by co-counseling in major litigation. CRLA has worked with twenty-seven law firms in bringing litigation to remedy often wide-spread abuse and appalling injuries to low-income workers, seniors, children and the disabled. Many of these clients were Latino. CRLA co-counseled in these cases to remedy situations such as the following:

- Farm labor camps housing hundreds of workers with non-functioning bathrooms where human waste accumulated on the floors of bathrooms; showers and washbasins with no running water; doorways and window openings with no doors, glass or screens; inadequate meals prepared in filth-laden surroundings; and cases where hundreds of workers had illegal deductions taken from their pay, or simply were not paid, resulting in no wages for weeks of work;

- Sexual harassment suffered by farm worker women employees in order to retain their jobs, subjected to the injustice by their supervisors;

- Squalid housing complexes in which low-income workers paid substantial rents for structures so dilapidated that in one instance a child broke his leg falling through a hole in the floor, and where the building inspector gave 24-hour notice to vacate for fear the entire structures would collapse in the rain;

- Sexual predator abuses in subsidized housing projects where staff were permitted to prey on helpless seniors and disabled people;

- Elder-abuse cases in which senior citizens lost their life-long homes in fraudulent loan schemes; and

- Highly-hazardous agricultural chemicals applied illegally immediately adjacent to low-income residential communities injuring hundreds of adults and children.

A recent California report "The Path to Equal Justice: A Five-Year Status Report On Access To Justice In California", published by the California Commission on Access to Justice (December 2002), indicates that "72% of California's low-income people do not receive the legal help they need to resolve basic problems relating to home, health and education." Given the lack of Federal legal aid funds to meet existing civil legal needs, it is vital for organizations like CRLA to partner with the private bar and organizations funded by IOLTA funds (interest on lawyers trust accounts).

CRLA cases in which it co-counseled with the CRLA Foundation, a California IOLTA-funded support center, have included some of the largest farm-worker employment cases. Hundreds of seasonal harvest workers had been routinely denied wages for their back-breaking labor but through successful cases brought by CRLA and CRLA Foundation, workers have been able to obtain thousands of dollars in wages due them.

CRLA's success has garnered it much attention, some of it unwanted. We are aware that CRLA has been the subject of several LSC audits and investigations, some of which may have been instigated by those who would prefer to have CRLA be less effective in its effort to seek redress for the serious violations of law affecting the poor, hardworking and mostly Latino rural communities.

We urge the House Judiciary Subcommittee on Commercial and Administrative Law to consider the significant resources that CRLA has expended in bringing labor, education, civil rights and housing advocacy on behalf of Latino impoverished communities and other rural poor. We urge the Subcommittee to provide CRLA and other legal services the ability and resources to continue bringing these actions in the State of California and elsewhere.

Sincerely,

Edward R. Ortega
President, Mexican American Bar Association

LETTER SUBMITTED BY 12 LAW PROFESSORS

March 29, 2004

By Fax to (202) 530-4849 and Regular Mail
The Honorable Chris Cannon
Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
U.S. Congress, House of Representatives
Washington, D.C. 20510

Support for California Rural Legal Assistance

Dear Congressman Cannon:

We commend you on your leadership in holding these oversight hearings on the Legal Services Corporation and its provision of free legal services to the indigent of this country. We, the undersigned group of Latina/o law professors from schools across the country, continue to support the existence of this critical service to all indigent populations of this country but recognize that as the Latina/o community continues to grow in population, there is a commensurate growth of Latina/os in poverty which makes the continued provision of legal services of particular interest and concern to us. We are particularly concerned and would strongly oppose any effort to further restrict the ability of legal services programs to serve these communities.

LATINA/O ADVOCACY THROUGH LEGAL SERVICES IS A CRITICAL ISSUE IN CALIFORNIA AND THE ENTIRE UNITED STATES.

Latina/os are the largest and fastest growing minority group in the United States. In many states, like California, Latina/os comprise a significant part of the population and of the state's poor. For example,

- In the United States, one person in eight is Latina/o; in California,[1] one of three people are Latina/o. California represents 12% of the U.S. population,[2] but accounts for 31% of the Latina/o population.[3]

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[1] **Census 2000 Profile**, p.3.

[2] Id. p.1.

[3] **The Hispanic Population: Census 2000 Brief**, p.4. One half of all Latina/os live in two states – California and Texas.

- Not only does California have the largest number of poor in the country with 4.7 million,[4] it also accounts for the most significant poverty increase in the country. While the number of people in poverty increased in U.S. by nearly two million, California's alone increased by nearly 1.1 million, 55% of the total increase.

- Current demographic data indicates that although Latina/os are 33% of the general population in California, they are 52% of the poor; this compares to the White population which comprise 47% population but only 29% of the poor.[5]

- Nationally, the 2000 Census data indicates that poverty rates vary disproportionately by race and Latina/o origin. For example, non-Hispanic whites had the lowest poverty rate (8.1%), Asians (12.6 %), Native Hawaiian or other Pacific Islanders (17.7%), Blacks/African-Americans (24.9%), American Indians and Alaska Natives (25.7%). Latina/os had a poverty rate of 22.6%.[6]

- California data indicates that, while the State poverty rate is 13.4%, the poverty rate among whites is 8.4% and 20.8% among Latina/os. In California, the rate of poverty among farm workers is significantly higher, estimated at 38%.[7] Nationally, one study concluded that "61% of all farm workers, and 50% of those with 3 to 5 family members, had below poverty incomes"[8]

Because California has such high numbers of poor people, such high numbers of Latina/os and high Latina/o poverty rates, the issue of legal aid service to the poor in California is extremely important. Many Latina/o poor depend on LSC funds for basic legal services. Latina/o farm workers, with much higher poverty rates, are much more vulnerable and find access to legal services scarcer. LSC grantees work on cases related to critical poverty issues such as domestic violence, child custody and visitation rights, evictions, access to health care, unemployment and disability claims as well as other issues like farm worker rights and civil rights. According to client demographics, service to Latina/os comprise almost 30% of LSC's

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[4] California is followed by Texas (3.1 million), New York:(2.7 million), Florida (1.95 million, Pennsylvania (1.3 million), and Illinois (1.29 million).

[5] **Current Population Survey Basic Report, March 2003 Data: California State Department of Finance, Demographic Research Unit.**

[6] *See* ***Poverty: 1999, Census 2000 Brief***, p.5, issued May 2003.

[7] *See* **Alicia Bugarin and Elias Lopez, California Research Bureau, Farmworkers in California** 45 (July 1998).

[8] *See* **Findings from the Natinal Agricultural Workers Survey 1997-1998**, U.S. Dep't of Labor, Research Report No.8, March 2000, p. 39.

workload.[9]

CALIFORNIA RURAL LEGAL ASSISTANCE HAS A HISTORY OF PROVIDING QUALITY AND CRITICAL LEGAL SERVICES TO THE LATINA/O POOR.

In the context of national legal services, California Rural Legal Assistance has played a special role. It is considered one of the premier legal aid programs in the country and is the largest migrant farm worker program. CRLA serves 23% of the farm workers in the U.S. CRLA annually services to more than 25,000 poor persons; Latina/os make up 50-60% of CRLA's clients. In its 37-year history, CRLA has provided major advocacy for California's Latina/o poor communities.

- **For farm workers**, CRLA abolished the use of the short-handled hoe in state agriculture, a practice that disabled hundreds of farm workers, sometimes permanently (*Carmona v. Div. of Industrial Safety*); stopped the resurgence of a new bracero program because it denied agricultural employment to the local domestic work force (*Alaniz v. Wirtz*); CRLA recently partnered with EEOC to settle a $1.8 million sexual harassment case, the first such case brought by the EEOC in agriculture (*Alfaro v. Tanimura*);

- **With respect to language and education rights**, CRLA successfully challenged IQ testing of non-English speaking children and prevented hundreds of school districts throughout the state from assigning thousands of Latina/o children to mentally retarded classes (*Diana v. State Board*); legislated the first state bilingual education law in the United States; forced the California State Dept. of Education to monitor and enforce standards addressing the needs of California's 1.6 million limited English proficient (*Comite v. State Superintendent of Public Instruction*); compelled HEW and the Department of Benefit Payments to require county welfare departments serving substantial non-English speaking recipients to have adequate bilingual personnel (*Association Mixta v. HEW*); and recently stopped the State from excluding limited English proficient children from participation in No Child Left Behind's Reading First program (*Pazmino v. California Board of Education*).

- **On civil rights**, CRLA brought desegregation actions in rural communities (*Hernandez v. Stockton Unified, Atilano v. Salinas Union High School*);CRLA forced the state to strike down the state's constitutional requirement of English language literacy for voters (*Castro v. State of California*); recently, in conjunction with the U.S. Department of Housing and Urban Development (HUD), brought successful administrative complaints which resulted in a HUD fair housing enforcement agreement with Riverside County for $21 million (*Hernandez v. Riverside County*).

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[9] *See* **Legal Services Corporation: Serving The Civil Legal Needs of Low-Income Americans**, A Special Report to Congress, April 30, 2000, p.14.

CALIFORNIA RURAL LEGAL ASSISTANCE CONTINUES TO BRING CRITICAL ADVOCACY THROUGH THE ABILITY TO CO-COUNSEL.

CRLA's strong record of advocacy is exemplary. CRLA's success can be attributed to many factors, including its ability to leverage the resources of the private bar by co-counseling in major litigation. Given the inability of Federal legal aid funds to meet existing civil legal needs, it would be a travesty for this means of leverage to be curtailed.[10] Co-counseling in litigation has previously never been identified by LSC as a program-integrity issue. A recent audit failed to recognize that CRLA has worked with twenty-seven law firms in bringing litigation to remedy often wide-spread abuse and appalling injuries to low-income workers, seniors, children and disabled. Many of these clients were Latina/o. CRLA co-counseled in these cases to remedy situations such as the following:

- **farm labor camps housing** hundreds of workers with non-functioning bathrooms where human waste accumulated on the floors of bathrooms, showers and washbasins had no running water, doorways and window openings had no doors, glass or screens; inadequate meals were prepared in filth-laden surroundings; and cases where hundreds of workers had illegal deductions taken from their pay, or simply were not paid, resulting in no wages for weeks of work (*see, e.g.*, Ramirez v. J.B. Farm Labor Contractors, et al, E.D.Cal. Case No. CIV-S00-1162-GEB PAN; Martinez v. Eguiluz, San Joaquin County Superior Court No. CV013404; Tello v. Underwood Ranches, Ventura County Superior Court Case No. CIV 194183; Apio, Inc. v. Maldonado/Vargas, et al, Intervenors, Santa Barbara County Superior Court Cook Division Case No. 1007848; Martinez, et al. v. Munoz, et al., San Luis Obispo County Superior Court Case No. 001029;

- **sexual harassment** suffered by farm worker women employees in order to retain their jobs, subjected to the injustice by their supervisors (*e.g.*, Montes v. Coastal Valley Management, N.D. Cal. Case No. C01-21105 PVT);

- **squalid housing complexes** in which low-income workers paid substantial rents for structures so dilapidated that in one instance a child broke his leg falling through a hole in the floor, and where the building inspector gave 24-hour notice to vacate for fear the entire structures would collapse in the rain (*e.g.*, Moreno v. Maddy, Santa Cruz County Super. Ct. Case No. 125163; Sanchez, et al. v. Robert Roth Revocable Trust, et al., Santa Barbara County Superior Court, Cook Div. Case No. 1041451);

- **sexual predator abuses** in subsidized housing projects where staff were permitted to

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[10] **In The Path to Equal Justice: A Five-Year Status Report On Access To Justice In California**, the California Commission on Access to Justice (Dec. 2002) concluded that "72% of California's low-income people do not receive the legal help they need to resolve basic problems relating to home, health and education."

prey on helpless seniors and disabled people (*e.g.*, Blayney v. Young, C.D. Cal. Case No. 00-08836 FMC (SHx); Project Sentinel [Cordero] v. Lai, E.D. Cal. Case No. CV-F-98-5688; Project Sentinel [DeCuir] v. Arenas, E.D. Cal. Case No. CIVF-01-5030 REC SMS);

- **elder-abuse cases** in which senior citizens lost their life-long homes in fraudulent loan schemes (*e.g.*, Alami v. Gregory Development Co., Stanislaus County Super. Ct. Case No. 253775; Poe v. Rocha, Stanislaus County Superior Court Case No. 253314);

- **illegal housing displacement** of low-income and minority residents from redevelopment areas by municipalities that refused to provide low- and moderate-income housing as required by law (Garcia v. City of Buellton, C.D.Cal. Case No. CV 02-4994 WMB (JTLx));

- **local housing moratoriums** imposed in violation of fair-housing and land-use laws on already-approved projects to build family housing for farm workers (*e.g.*, Diaz v. County of Sutter (Diaz I), Sutter Cnty. Super. Ct. Case No. 95CV0058; Diaz v. County of Sutter (Diaz II), Sutter County Superior Court Case No. 95CV0993; Community Housing v. City of Orland, E.D. Cal. Case No. CIV.S-0100131 GEB PAN);

- **disabled students** attending schools in districts which failed to bring any of their facilities into compliance with state and federal access laws, necessitating students to be carried by other students up and down stairs to enter buildings and reach classes, and to have no access to bathrooms (*e.g.*, Mitchum v. Santa Barbara School District);

- **highly-hazardous agricultural chemicals** applied illegally immediately adjacent to low-income residential communities injuring hundreds of adults and children (*e.g.*, Gomez v. Western Farm Services, Inc., et al. C.D. Cal. Case No.x);

Cases in which CRLA co-counseled with the CRLA Foundation, a California State Bar (IOLTA)-funded support center, have included some of the largest farm-worker employment cases in which hundreds of seasonal harvest workers had been routinely cheated out of wages for their back-breaking labor. (Ramirez v. J.B. Farm Labor Contractors, *supra*; Bartolo v. Casas Farm Services, San Joaquin County Superior Court Case No. CV 013851; Martinez v. Eguiluz, *supra*; Tinoco v. Ponderosa Forestry Services, E.D.Cal. Case No.CIV S-96-1299 DFL PAN; Cartas v. Kahn, E.D.Cal. Case No. CIVS-0100245 FCD DAD).

We urge the Subcommittee on Commercial and Administrative Law to consider the significant resources that CRLA has expended in bringing labor, education, civil rights and housing advocacy on behalf of Latina/o impoverished communities and other rural poor. We urge the committee to provide CRLA and other legal services the freedom to continue bringing these actions in the State of California and elsewhere.

Very truly yours,

Kevin R. Johnson*
University of California, Davis

Margaret E. Montoya
University of New Mexico

Alberto Manuel Benitez
George Washington University

Joaquin G. Avila
UCLA

Miguel A. Mendez
Stanford

Richard Delgado
University of Pittsburgh

Laura Padilla
California Western

Reynaldo Valencia
St. Mary's (San Antonio, Texas)

M. Isabel Medina
Loyola University New Orleans

George A. Martínez
Southern Methodist University

Ian Haney Lopez
University of California, Berkeley

Rogelio Lasso
University of Missouri, Kansas City

* **Institutions listed for affiliation purposes only.**

LETTER SUBMITTED BY THE NATIONAL HISPANIC LEADERSHIP AGENDA

c/o National Puerto Rican Coalition • 1901 L Street, Ste 802• Washington, DC 20036

Tel: 202-223-3915 • Fax: 202-429-2223 • Website: www.bateylink.org/nhla.htm

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National Puerto Rican Coalition
Vice Chair, Vacant
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U.S.-Mexico Chamber of Commerce
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Hispanic Association on Corporate Responsibility
Hispanic Association of Colleges & Universities
Hispanic Council on International Relations
Interamerican College of Physicians & Surgeons
Labor Council for Latin American Advancement
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National Hispanic Environmental Council
National Hispanic Foundation for the Arts
National Hispanic Media Coalition
National Hispanic Medical Association
National Puerto Rican Forum
National Latina/o Lesbian, Gay, Bisexual & Transgender Organization
Puerto Rican Legal Defense & Education Fund
Society of Hispanic Professional Engineers
Southwest Voter Registration & Education Project
U.S. Hispanic Chamber of Commerce
Individuals
Rudy Bereva
Henry Cisneros
Rita DiMartino
Frederick Fernandez
Hon. Ciro Rodriguez

March 31, 2004

The Honorable Chris Cannon, Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20510

RE: Support for California Rural Legal Assistance

Dear Chairman Cannon:

We commend your leadership in holding oversight hearings on the Legal Services Corporation (LSC) and its provision of free legal services to the indigent populations of this country. We support LSC and the funding it provides to critical legal service agencies across the country. We understand that one of the most effective legal services agencies serving the Latino and rural poor, California Rural Legal Assistance (CRLA), will be appearing before your Subcommittee. We write to share with you and the Subcommittee our views regarding the importance of the work of agencies like CRLA and our concern with any efforts to further restrict the ability of legal services programs to serve poor Latino communities.

The Latino community is the largest and fastest growing minority group in the United States. In some states, like California, the need for free legal services is extremely important because of the high rate of poverty among Latinos. Current demographic data indicates that although Latinos are 33% of the general population in California, they are 52% of the poor. In comparison, the white population comprises 47% population but only 29% of the poor. Also, farm worker poverty rate is significantly higher, estimated at 38%.

Many poor Latinos particularly Latino farmworkers depend on LSC funds for access to basic legal services. LSC grantees work on cases related to critical poverty issues such as domestic violence, child custody and visitation rights, evictions, access to health care, unemployment and disability claims as well as other issues like farm worker rights and civil rights. According to client demographics, services to Hispanics comprise almost 30% of LSC's workload.

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- **Farm workers**: CRLA abolished the use of the short-handled hoe in state agriculture, a practice that disabled hundreds of farm workers. CRLA recently partnered with EEOC to settle a $1.8 million sexual harassment case, the first such case brought by the EEOC in agriculture;

- **Latino civil rights**: CRLA brought desegregation actions in rural communities. CRLA forced the state to strike down the state's constitutional requirement of English language literacy for voters; and

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We urge the House Judiciary Subcommittee on Commercial and Administrative Law to consider the significant resources that CRLA has expended in bringing labor, education, civil rights and housing advocacy on behalf of Latino impoverished communities and other rural poor. We urge the Subcommittee to provide CRLA and other legal services the ability and resources to continue bringing these actions in the State of California and elsewhere.

Sincerely,

Manuel Mirabal
Chair

REPORT OF LEONARD J. KOCZUR, ACTING INSPECTOR GENERAL, LEGAL SERVICES CORPORATION

Legal Services Corporation
Office of Inspector General

December 16, 2003

James J. Daley
Oversight Counsel
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
House of Representatives
B353 Rayburn House Office Building
Washington, DC 20515

Dear Jim:

Enclosed is our report entitled "Review of Grantee's Transfer of Funds and Compliance with Program Integrity Standards – California Rural Legal Assistance, Inc." This audit reviewed the grantee's' compliance with LSC regulations governing relationships with organizations that engage in LSC restricted activities. The audit found that from January 1, 2000 through May 10, 2002 the grantee did not comply with the program integrity requirements of LSC regulation 45 CFR1610. The primary problem was that the grantee did not adequately separate itself from the California Rural Legal Assistance Foundation, an organization that engages in legal activities prohibited by LSC's 1996 Appropriations Act. We made recommendations that would correct the problem.

The grantee disagreed with the report's findings and recommendations. Under our procedures we asked the grantee to provide a plan to implement the recommendations. If the grantee does not provide an acceptable plan within 60 days, the OIG will refer the report to LSC's Office of Compliance and Enforcement (OCE) for follow-up. OCE will either agree with the OIG and require the grantee to implement the recommendations or agree with the grantee and the recommendations will not be implemented.

If you would like additional information, please call me on 202-295-1651 or email me at lk@oig.lsc.gov.

Sincerely,

Leonard J. Koczur
Acting Inspector General

Enclosure

3333 K Street, NW, 3rd Floor
Washington, DC 20007-3522
Ph: 202.295.1500 Fax: 202.337.6616
www.oig.lsc.gov

Legal Services Corporation
Office of Inspector General

December 11, 2003

Mr. José R. Padilla
Executive Director
California Rural Legal Assistance, Inc.
631 Howard Street, Suite 300
San Francisco, CA 94105

Dear Mr. Padilla:

Attached is our final report on the results of the Program Integrity audit of California Rural Legal Assistance, Inc. Your comments on the draft report did not agree with the audit's findings and recommendations. We reviewed the comments and concluded that they did not provide a basis for significantly modifying the findings and recommendations. We deleted the finding related to rent payments at the Madera office. Other minor changes were made, but the substance of the report is the same as the draft. We reaffirm our findings and the recommendations for corrective actions. Please provide a corrective action plan to implement the recommendations within 60 days of the date of this letter.

Your comments are briefly summarized in the body of the final report and incorporated in full as Appendix I.

Sincerely,

Leonard J. Koczur
Acting Inspector General

Enclosure

cc: Richard P. Fajardo
Chair, CRLA

Legal Services Corporation
Randi Youells
Vice President for Programs

3333 K Street, NW, 3rd Floor
Washington, DC 20007-3522
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LEGAL SERVICES CORPORATION
OFFICE OF INSPECTOR GENERAL

REVIEW OF GRANTEE'S TRANSFER OF FUNDS AND COMPLIANCE WITH PROGRAM INTEGRITY STANDARDS

Grantee: California Rural Legal Assistance, Inc.

Recipient No. 805260

Report No. AU 04 -02
December 2003

www.oig.lsc.gov

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RESULTS OF AUDIT

The Legal Services Corporation (LSC) Office of Inspector General (OIG) conducted this audit to determine whether California Rural Legal Assistance, Inc. (grantee) complied with certain requirements of 45 CFR Part 1610. This regulation prohibits grantees from transferring LSC funds to an organization that engages in activities prohibited by the LSC Act and LSC appropriation acts, and LSC regulations. To comply with these requirements, grantees must be legally separate from such organizations, not transfer LSC funds to them, not subsidize any restricted activity, and maintain physical and financial separation from them. An exception applies for transfers of LSC funds solely for private attorney involvement activities.

Between January 1, 2000 and May 10, 2002 the grantee did not maintain objective integrity and independence from a legal organization that engaged in prohibited activities in violation of 45 CFR 1610.

In addition, the grantee:

- did not prepare statements of facts and identify clients in certain cases, and
- improperly made rental payments for an organization in violation of 45 CFR 1630.

The OIG reviewed cases initiated under California Business & Professional Code Section 17200 and concluded that the grantee did not violate LSC regulations covering class action suits or eligibility determinations.

Recommendations for corrective action are on pages 6 and 7.

OBJECTIVE INTEGRITY AND INDEPENDENCE

The grantee did not maintain objective integrity and independence from the California Rural Legal Assistance Foundation (Foundation) a legal organization that engages in LSC restricted activities.

Program Integrity Requirements

Section 1610.8 of LSC's regulations states that grantees must have objective integrity and independence from organizations engaged in LSC restricted activities. The grantee meets the requirements of this section if:

- the other organization is a legally separate entity,

- the grantee does not transfer LSC funds to the organization and LSC funds do not subsidize restricted activities, and

- the grantee is physically and financially separate from the other organization.

The preamble to Section 1610.8 requires grantees to ensure that it is not identified with restricted activities and that the other organization is not so closely identified with the recipient that there might be confusion or misunderstanding about the recipient's involvement with or endorsement of prohibited activities. A grantee will be considered to be subsidizing the activities of another organization if it provides the use of its resources for restricted activity without receiving fair value for such use. Guidance promulgated by LSC interpreting the program integrity requirements discusses the issue of separate personnel, and states that the greater the responsibilities of the staff who are employed by both organizations, the more danger that program integrity will be compromised.

COMPLIANCE WITH REQUIREMENTS

The grantee satisfied the first requirement. The Foundation is a separate legal organization. The second and third requirements were not met. The grantee did not improperly transfer LSC funds to the Foundation but it subsidized restricted activities. The grantee maintained a close relationship with the Foundation that makes it difficult to distinguish between the two organizations and results in a violation of the program integrity regulation. The specific problem areas are:

- Co-counseled cases
- Shared staff
- Rent subsidy
- Physical separation of facilities

Each issue is discussed in the following.

Co-counseled Cases

The grantee co-counsels cases with the Foundation. Grantee attorneys are the lead counsel in most cases and in one case a Foundation attorney was the lead counsel. For some cases a part time CRLA attorney was the lead counsel. On one case the same individual was the lead attorney for the Foundation.

The organizational structure of the grantee is important to the discussion of the co-counseled cases. The grantee has four Directors of Litigation, Advocacy and Training (DLATs), each responsible for oversight of grantee operations in approximately one-quarter of the State of California. One of the grantee's DLATs works part time for the grantee and part time for the Foundation. The DLATs report directly to the grantee's Executive Director. One step below, and reporting to, the

DLATs are the Office Directors, each responsible for direct oversight of one of the grantee's branch offices.

We reviewed six co-counsel agreements the grantee had with the Foundation. The grantee was the lead counsel in five cases and the Foundation for one case.

- The Foundation was the lead counsel on case A. The lead Foundation attorney for the case was the grantee's part time DLAT. The grantee attorney on the case was another DLAT.

- The grantee was the lead counsel on case B. The grantee's lead attorney was an office director for one of its branch offices. The Foundation's attorney was the grantee's part time DLAT who was the lead attorney for the Foundation on case A.

- The grantee was the lead counsel on the four remaining cases. In one case, the grantee's part time DLAT was the grantee's attorney of record. She had no involvement in these cases as an attorney for the Foundation.

The co-counsel agreements for the five cases on which the grantee was the lead counsel were similar. In these five cases the vast majority of legal work was to be done by the grantee. The grantee was responsible for:

- Maintaining the master case file
- Maintaining a calendaring system for all litigation related dates
- Insuring all filings and other actions occur in a timely manner
- Developing and/or overseeing the development of any discovery plan and its implementation
- Coordinating responsibility for court appearances, including responsibility for preparation for the appearances
- Initial drafting of pleadings and moving and supporting papers
- Polling of parties regarding significant decisions which must be made
- Coordinating contact with the media, approving written press releases, and maintaining a media file

The Foundation was responsible for the review and edit of pleadings and moving and supporting papers drafted by the grantee. The grantee was responsible for all costs and expenses of the litigation. The Foundation was allowed to seek attorneys' fees.

The co-counsel agreement for the case on which the Foundation was lead counsel did not list the responsibilities of the lead counsel. Costs were to be shared.

Shared Staff

Two senior level grantee attorneys also worked with the Foundation. A DLAT in the San Francisco office worked part time for the Foundation. The former office director of the Oceanside office was a full time employee but also worked for the Foundation. LSC guidance in an October 30, 1997 Program Letter states that "... the greater the responsibilities of the staff who are employed by both organizations, the more danger that program integrity will be compromised."

The part time DLAT who also worked for the Foundation was to work 90 percent of the time for the grantee and 10 percent for the Foundation. The DLAT is one of the grantee's most senior positions. This DLAT was responsible for the grantee's cases dealing with workers' wage cases. She was also responsible for supervising offices in one–quarter of the state.

The grantee's full time manager of the Oceanside office also worked simultaneously for the Foundation. This individual was the office director for the grantee's Oceanside branch office until January of 2001, when she left her grantee job. During this time she also held a director's position with the Foundation. After leaving the grantee's employment the individual continued to work for the Foundation.

On the Foundation's web site the individual was identified as the Director of the Border Project. Her telephone number was the same number as her listing at the grantee's Oceanside branch. Newspaper articles from 1999 and 2000 identified her as a Foundation director. Two letters to high ranking U.S. Department of Justice officials identified the individual as director of the Foundation's Border Project. Both letters dealt with illegal immigrants. An article in the San Diego Union Tribune newspaper on illegal immigration also identified the individual as a project director for the Foundation.

We verified that the individual was a full time grantee employee until January of 2001. Until she left the grantee's employment publicly available information indicated that this individual was doing prohibited activities, lobbying Federal Government officials on behalf of illegal aliens. Grantee staff in the Oceanside office and the individual's supervisor told us that they did not know of the Office Director's relationship with the Foundation.

Rent Subsidy

The grantee subsidized the Foundation by routinely allowing late payment of rent over a long period of time. Between June 2001 and May 2002 the Foundation seldom paid its rent for three offices on time.

The grantee leased office space to the Foundation in San Francisco, Modesto and Fresno. The leases provided that rental payments were due on or before the first day

of each month. The leases were unusual in that they did not provide for late payment fees or interest charges in the event rents were not paid when due.

From June 2001 through April 2002, the Foundation paid its rent at three or four month intervals rather than monthly. In September 2001, the Foundation paid the grantee the current rent due for September and the rents overdue for June, July, and August 2001. The October 2002 rent was paid on time. Five months later, in February 2002, the Foundation paid the grantee the current rent due for February 2002 and the rents overdue for November and December 2001, and January 2002. Three months later, in May 2002, the Foundation paid the grantee the current rent due for May 2002 and the rents overdue for March and April 2002.

The following chart shows the total amount of late payment by each Foundation office.

San Francisco	$ 14,959
Modesto	7,000
Fresno	6,708
Total	$ 28,667

After a brief period of on time payment, the Foundation made $ 4,128 in late rent payments for its Fresno office from October 2002 until May 2003.

By allowing the interest free use of these funds the grantee subsidized the Foundation activities. Subsidizing the Foundation through allowing late rental payments is an old unsolved issue for the grantee. A review by LSC's Office of Compliance and Enforcement in 2000 disclosed the same problem with late rental payments but the grantee failed to correct the problem.

The problem with late rental payments was mitigated in mid 2002 when the Foundation moved from the space it rented from the grantee in San Francisco and Modesto. The fact remains that over a lengthy period of time the grantee subsidized the operations of an organization that did prohibited and restricted activities.

Physical Separation of Facilities

The grantee did not physically separate itself from the Foundation in the shared office space in Modesto. A large sign outside the building indicated that the grantee and the Foundation occupied separate suites of offices. However, inside the building the grantee and the Foundation were located in the same office suite. The grantee's space was not separated from the Foundation's space and the two organizations were indistinguishable. Each organization had a separate entrance but there was no separation of offices inside the suite. We were told that the grantee's staff has been instructed to not enter Foundation space. Subsequent to completion of on-site audit work, the Foundation moved from the shared space.

Conclusion

Considering all the factors, the grantee maintains a relationship with the Foundation that violated LSC's program integrity regulation. While the problem has been somewhat mitigated by the departure of a grantee employee and the Foundation vacating space previously rented from the grantee, the sharing of senior staff and the close relationship on co-counseled cases continues. This needs to be corrected.

Recommendations

The grantee's management needs to take steps to provide adequate separation from the Foundation. Specifically, we recommend that the Executive Director:

1.1 Preclude the part time litigation director from participating on cases that are co-counseled with the Foundation

1.2 Adopt policies and procedures precluding senior staff, DLATs and office directors, from co-counseling case with the Foundation

1.3 Preclude senior staff from working for the Foundation on a part time basis

1.4 Adopt procedures so that in the future full time grantee employees are precluded from working simultaneously for the Foundation

1.5 Require that future leases for space rented to other organizations follow standard commercial practices and provide for late payment penalties

STATEMENT OF FACTS AND CLIENT IDENTIFICATION

The grantee did not prepare statements of facts nor identify all clients as required by 45 CFR 1636.2. These cases were identified as 17200 cases in reference to the section of the California Code they were filed under (see page 8 for further discussion of these cases). The grantee provided information that indicated approximately 435 plaintiffs were represented and 238 were named and identified in the pleadings. The remaining 197 were not identified. Statements of facts were not prepared for the unidentified 197 plaintiffs.

Section 1636.2 of LSC's regulations requires that when a grantee files a complaint in court or participates in litigation, it must identify each plaintiff and prepare a statement of facts that each plaintiff signs.

Grantee management stated that it complied with the regulation and that 45 CFR 1636.2 does not require statements of facts or client identification for clients in these cases.

We disagree with the grantee. A review of pleadings indicated that the unnamed and thus unidentified plaintiffs were parties to the litigation. Specific facts concerning their situations were cited in the pleadings. The requirements of 45 CFR 1636.2 apply. The grantee needs to adopt procedures to ensure compliance with 45 CFR 1636.2. All plaintiffs should be identified and they should sign statements of facts.

Recommendation

2.1 We recommend that the Executive Director implement procedures to ensure that statements of facts are prepared for all 17200 type cases and that all clients are identified

IMROPER RENT PAYMENTS

The grantee improperly paid rent for a separate organization, the San Luis Obispo Legal Alternatives Corporation (SLOLAC). This organization is co-located with the grantee's branch office in San Luis Obispo. In total, the grantee provided $6,845 in subsidization during 2000 and 2001.

SLOLAC is a separate legal organization that provides legal services to the elderly. The grantee used LSC grant funds to pay SLOLAC's rent from 2000 through 2001. SLOLAC does not screen clients for their citizenship/alien status and therefore may serve clients who are ineligible to receive LSC assistance under 45 CFR Part 1626. Grantee staff told us that the payments were made as part of its PAI program. The grantee's financial records did not support this contention. We calculated that the grantee improperly spent $6,845 in LSC grant funds over the two year period.

Section 1630.3(a) (2) of LSC's regulations provides that expenditures by a grantee are allowable under the grantee's grant or contract only if the grantee can demonstrate that the cost was reasonable and necessary for the performance of the grant or contract as approved by LSC. The rent payments for SLOLAC did not meet the requirements of this regulation.

Recommendations

To correct the rent payment problem, we recommend that the Executive Director:

3.1 Require SLOLAC to pay their fair share of the rent

3.2 Require the managing attorney in the San Luis Obispo office to review all rental payments and allocations quarterly to ensure that the subsidization does not reoccur.

CASES UNDER SECTION 17200 OF THE CALIFORNIA CODE

The grantee initiates cases under California Business & Professional Code Section 17200 which allows actions for unfair competition to be brought on behalf of individuals and the general public. Two questions about these cases are: do they violate the prohibition on doing class action cases and is the grantee representing clients without determining their eligibility?

Part 1617 of LSC's regulations precludes grantees from initiating or participating in class action suits. These suits are defined as "... a lawsuit filled as, or otherwise declared by the court ... to be a class action pursuant..." to various Federal, state, or local rules of procedure. Part 1611 requires grantees to determine the financial eligibility of clients and Part 1626 requires that only citizens or eligible aliens (with some specific exceptions) be accepted as clients.

For 17200 cases, the grantee accepts individuals as clients after determining they meet LSC eligibility requirements. Some of the clients are named plaintiffs and others are unnamed plaintiffs in the lawsuit the grantee files. Other individuals, who are in the same situation and have the same cause of action as the grantee's clients, may benefit from the lawsuit and could receive monetary awards. No eligibility checks are made on these individuals because they are unknown to the grantee when the action is filed.

An example of a 17200 type of case involves agriculture workers having a pay dispute with their employer. One or more workers meet the LSC eligibility requirements and become the grantee's clients. A lawsuit is filed under Section 17200 for the disputed pay. The grantee wins or settles the case and the clients as well as all the other workers, who may or may not be eligible for LSC funded assistance, benefit in a monetary award or settlement.

The grantee provided information on 55 cases filed under Section 17200. Most of the cases involved wage claims and farmworker housing issues. These cases had approximately 460 eligible clients and an additional 779 individuals who benefited from the litigation and whose eligibility was not determined. The grantee informed us that as many as 2,610 additional individuals, whose eligibility had not been determined, could benefit from lawsuits in process as of August 2002. In some cases the court directs the grantee to distribute settlement funds to the individuals involved in the suit. The grantee would therefore provide services to individuals who may or may not be eligible.

In eight cases, only injunctive relief was sought and the general public will benefit.

Settlements had been reached in 33 cases. Plaintiffs were the only beneficiaries in eight cases. The grantee established financial and citizenship eligibility for all plaintiffs. In the remaining 25 cases the beneficiaries included unknown individuals

whose eligibility had not been established. We estimated that about 3,800 individuals who were not party to the litigation may ultimately benefit.

Settlement had not been reached in the remaining 14 cases and both plaintiffs and the general public could benefit. We were unable to estimate how many individuals could benefit from the litigation.

The OIG concluded that the grantee had not violated 45 CFR 1617, 1611 or 1626. The 17200 cases were not filed as nor have the courts certified them as class actions. Therefore 45 CFR 1617 has not been violated. The grantee determined eligibility for all named and unnamed plaintiffs. The other individuals who may benefit from the suits are not grantee clients nor are they represented by the grantee. Parts 1611 and 1626 do not require the grantee to determine the eligibility of individuals who benefit from, but are not a party to, litigation.

BACKGROUND

The grantee is a nonprofit corporation established to provide legal services to indigent individuals who meet eligibility guidelines. It receives both a basic field grant and a migrant grant from LSC. The basic field grant services specific counties in the state of California (including two service areas acquired through merger effective January 1, 2001) and the migrant grant services the entire state. The grantee is headquartered in San Francisco, California. Branch offices are located in throughout the state. At the time of our visits, the grantee had total staff of 128, including 43 attorneys. The grantee received total funding of about $8.6 million during their most recent fiscal year, which ended December 31, 2001. LSC provided about $5.9 million, or about 69 percent of the total funds received by the grantee during that year. LSC is provided about $5.9 million to the grantee during 2002.

Our audit was initiated when the OIG received a letter from the Western United Dairymen about activities engaged in by the grantee. A letter from the Honorable Calvin M. Dooley subsequently followed, also expressing concern about activities and relationships of the grantee.

Grantees are prohibited from transferring LSC funds to another person or organization that engages in restricted activities except when the transfer is for funding PAI activities. In these instances the prohibitions apply only to the LSC funds that were transferred to the person or entity performing within the PAI program. Grantees must also maintain objective integrity and independence from organizations that engage in restricted activities. Grantees may not use grantee resources to subsidize restricted activity. "Subsidize" means to use grantee resources to support, in whole or in part, restricted activity conducted by another entity.

OBJECTIVES, SCOPE, AND METHODOLOGY

This audit assessed whether the grantee complied with requirements established in 45 CFR Part 1610 relating to the transfer of funds to other organizations and program integrity standards.

Our review covered the period January 1, 2000 through May 10, 2002. The OIG began the audit fieldwork in early January 2002 and visited the grantee's offices in San Francisco, Fresno, Modesto, Marysville, Salinas, Oceanside, and San Luis Obispo during the periods January 7-18, February 25 to March 8 and April 29 to May 10, 2002. At LSC headquarters in Washington, DC, we reviewed materials pertaining to the grantee including its Certifications of Program Integrity, audited financial statements, grant proposals, and recipient profile. OIG staff discussed issues relating to the grantee with LSC management officials.

We reviewed the leases and subleases of the grantee to ascertain any relationship between the grantee and entities that may be engaged in LSC restricted activities. If such a relationship was revealed, we conducted an analysis to ensure that the lease payments to the grantee had been calculated at fair market value. Additionally, we reviewed the rental revenue account to ensure that payments to the grantee were made on a timely basis.

We conducted on-site visits of the central office in San Francisco and the following six grantee branch offices: Modesto, Fresno, Marysville, Salinas, Oceanside and San Luis Obispo. We toured the office space and the building they were located in, assessing compliance with the criteria set forth in 45 CFR Section 1610.8(a)(3). We visited the grantee's financial statement auditor.

A legal services provider, California Rural Legal Assistance Foundation, was located in the same building as the grantee's offices in San Francisco, Fresno, Modesto and Oceanside but Foundation staff would not speak to us. A different legal services provider, San Luis Obispo Legal Alternatives Corporation, was located in the same building as the grantee's office in San Luis Obispo. The OIG interviewed the Project Director of San Luis Obispo Legal Alternatives Corporation.

During the on-site visit, the OIG interviewed and collected information from the Executive Director, senior management, case handlers, and other staff. We ascertained whether the grantee's employees were generally knowledgeable regarding the guidelines set forth in Part 1610. The audit included an assessment of the grantee policies and procedures applicable to the transfer of funds to other organizations and program integrity requirements.

The OIG gained an understanding of the client intake process utilized by the grantee. We identified the grantee's controls regarding its oversight of its Private Attorney Involvement program.

The OIG identified and reviewed cases that had been filed in court to determine if the grantee had engaged in a restricted or prohibited activity. All cases were discussed with a Director of Litigation and Training or a Directing Attorney employed by the grantee.

The OIG reviewed three separate populations of cases that had been filed with the courts as follows:

- a sample of 97 cases selected from the case listing provided by the grantee used to support CSR submissions to LSC (An additional 10 cases were selected, for a total sample size of 107 cases);
- a sample of 19 co-counseled cases, totaling 127 client case files; and
- 55 cases identified by the grantee as involving actions taken on behalf of the public pursuant to California Business & Professions Code Section 17200. (In addition, 10 client case files were sampled for review.)

We reviewed fifty-five cases identified by the grantee as involving actions taken on behalf of similarly situated members of the public pursuant to California Business & Professions Code Section 17200. The pleadings from each of these cases were reviewed in order to determine whether the cause of action involved restricted and/or prohibited activities and to ascertain the beneficiaries of this cause of action. Additionally, the existence of any co-counsel arrangement was confirmed and the parties identified. Furthermore, the settlement agreements (if applicable) were reviewed to ascertain the number of people benefiting from this action and whether any fees and/or costs were awarded to any parties to the litigation.

The OIG reviewed the grantee's financial accounts for vendors including contractors, employees, and consultants. From the 1,633 vendors identified in the grantee's Master Vendor List, we judgmentally selected 129 vendors and examined 100 percent of the activity. We reviewed 820 transactions totaling $1.08 million. In addition to the vendor charges reviewed, we reviewed $465,000 in payments related to three subgrants to the Foundation to determine whether LSC funds were used.

We also reviewed three miscellaneous income categories during CY 2000 and 2001—donations, rents, and attorneys fees. Of the $363,581 received through 1,342 donations, we reviewed 264 donations totaling $149,900. We also reviewed 116 rental payments totaling $81,510 received from 9 tenants, and $47,581 received in attorneys fees, court and transcription costs, and sanctions.

For the branch offices located in Madera and San Luis Obispo, we reviewed the office space expenses, by funding source, for the years 2000 and 2001. We calculated LSC's funded portion of these costs to assess allowability.

The OIG assessed the process used by the grantee to allocate direct and indirect costs to LSC and non-LSC funds. Policies and procedures relating to payroll and timekeeping were evaluated. The grantee's employees were interviewed to determine their understanding as to which fund they should charge their time relative to case handling.

All agreements between the grantee, and other organizations and individuals, were requested. The OIG reviewed all materials provided including grant funding instruments, leases, and contracts.

We performed this audit in accordance with *Government Auditing Standards* (1994 revision) established by the Comptroller General of the United States and under authority of the Inspector General Act of 1978, as amended and Public Law 105-277, incorporating by reference Public Law 104-134.

SUMMARY OF GRANTEE'S COMMENTS ON DRAFT REPORT AND THE OIG'S RESPONSE

The grantee's comments stated that the report confirms that it is "... in full compliance with applicable LSC rules and policies." The comments disagreed with the report's findings and recommendations and asked that the OIG reconsider its conclusions. The grantee's comments are in Appendix I.

The grantee stated that the OIG audit focused on its relationship with the California Rural Assistance Foundation (Foundation) and "ultimately expanded into a review of CRLA compliance with LSC regulatory changes implemented by Congress in 1996." The grantee also stated that the OIG review required it to produce hundreds of pages of specially prepared legal memoranda and required thousands of hours of staff time.

The OIG's review of compliance with program integrity requirements necessitated a review of the grantee's relationship with the Foundation, an organization engaged in LSC restricted activities. The OIG also reviewed the grantee's relationships with other organizations. Contrary to the grantee's assertion, the OIG did not undertake a comprehensive review of compliance with the restrictions imposed by Congress in LSC's 1996 appropriation. The OIG did not request and did not require the vast majority of legal memoranda and attachments prepared by the grantee, nor did the audit require the grantee to expend the inordinate amount of staff time it allegedly devoted to the audit process. The memoranda were prepared and time was spent primarily at the grantee's discretion.

The OIG considered the grantee's comments in finalizing the report and made some revisions. The OIG does not agree with the grantee's statement that it complies with LSC rules and regulations. To the contrary, the grantee did not comply with 45 CFR Parts 1610, 1636, and 1630 during the audit period. We made a few minor revisions in the text of the report that do not impact on our findings.

The grantee provided extensive comments, some of which were not directly relevant to the OIG's findings. The OIG summarized and addressed what it considered the grantee's significant and relevant comments. Not all comments were addressed. The fact that a specific comment was not addressed should not be interpreted as meaning that the OIG agrees with the comment.

A summary of the grantee's comments and OIG response for each finding follows.

GRANTEE COMMENT – PROGRAM INTEGRITY

The grantee disagreed with the report's finding that it did not comply with program integrity requirements.

The OIG finding was based on four specific problem areas as follows: co-counseled cases with the Foundation, shared staff, rent subsidy, and physical separation of facilities. The grantee's comments disputed each specific problem area.

The grantee disagreed that its overall co-counseling relationship with the Foundation violated 45 CFR 1610. According to the grantee, co-counseling was an effective means of involving the private bar in the delivery of legal services to the low income community and the grantee has identical co-counseling arrangements with over two dozen other firms. The comments confirmed the co-counseling relationship between the grantee and the Foundation described in the draft report. The comments stated that the part time DLAT who co-counseled the case for the Foundation did not supervise the Directing Attorney who was the grantee attorney for the case as stated in the report.

The report included a discussion of the Director of the Oceanside office position as director of the "Border Project" for the Foundation while a full time grantee employee. Her telephone number on the Foundation's web site was the same as her grantee telephone number. Grantee comments stated that to the best of management's knowledge the individual was an unpaid volunteer for the Foundation and did not engage in the practice of law. The comments agreed that the telephone number listing was inappropriate.

The grantee stated that LSC's regulations do not provide specific limits on sharing personnel. According to the grantee, the LSC guidance focuses on the number of shared staff as a percentage of the total staff. A small percentage of the staff was involved with the Foundation and the grantee asserted that it complied with the regulation.

The grantee disagreed with the finding that it subsidized the Foundation by allowing late rent payments for space leased in three grantee offices. The information provided confirmed that the Foundation had paid its rent late without interest being charged. According to the grantee, its accounting procedures became more rigorous before the issuance of the draft report and fully meet the OIG recommendation. Documentation was provided indicating that in May 2002 and October 2003 the Foundation was billed for interest charges related to late payments. Subsequent rent payments were asserted to be on time.

The grantee stated that the report's conclusion that the space rented to the Foundation in Modesto was not physically separated from the grantee's space appeared to extend the 1610 requirements beyond what was commonly understood. According to the grantee, the Foundation's space was identified by appropriate signs and confusion was unlikely because the distinction between the grantee's space and the Foundation's space was apparent to the public. The grantee also stated that this Foundation lease was terminated in mid-2002.

In disagreeing with the OIG's findings, the grantee referred to a review conducted by LSC's OCE that preceded the OIG's audit. The grantee stated that OCE examined the same issues as the OIG and found no violation of the program integrity requirements of 45 CFR Part 1610. According to the grantee, OCE indicated that the grantee's relationships with the Foundation did not raise material concerns and did not violate the objective integrity and independence standard of 45 CFR Part 1610.

The grantee declined to implement the OIG's five recommendations related to these findings.

OIG RESPONSE

The comments did not provide information to change the OIG's conclusion that the grantee did not comply with the program integrity requirements.

Part 1610 of LSC's regulations requires that program integrity be accessed under three criteria, the third of which is physical and financial separation, 45 CFR §1610.8(a)(3). Physical and financial separation is determined through a review of the totality of the circumstances. The OIG evaluated the overall relationship between the grantee and the Foundation and concluded that the program integrity requirements were not met. The grantee addressed each of the four OIG identified problem areas as discrete issues and did not discuss the need for an assessment of the totality of the circumstances.

LSC guidance on shared personnel states that percentage of staff shared should be considered when assessing the separateness of organizations. The guidance also requires that the responsibilities of the staff shared be considered. The grantee had two senior level attorneys co-counsel cases with the Foundation. One of the attorneys was the attorney for the grantee on a case and the attorney for the Foundation on another case. This arrangement does not provide for adequate separation between the grantee and the Foundation. The grantee raised an issue about the description of a supervisory relationship. The OIG deleted the reference to supervision in the report.

A third senior level attorney, the Director of the Oceanside office, was identified as occupying an important position with the Foundation. The grantee stated that it was unaware of this arrangement but now understands that the individual was an unpaid volunteer for the Foundation. Given the close relationship between the grantee and the Foundation it is difficult to understand how the grantee did not recognize the individual's significant position with the Foundation. The grantee's part time DLAT, who also worked for the Foundation, supervised the Director at the Oceanside office, underscoring the rationale for limiting the sharing of senior staff discussed above. The listing of the director's grantee telephone number as her Foundation telephone number indicates that she used grantee assets for conducting Foundation business. The grantee violated 45 CFR Part 1610.

In summary, the grantee did not provide any information that would warrant significantly changing the co-counseling and shared staff discussion in the report. Accordingly, the only change made was to delete the reference to supervision as mentioned above.

It is difficult to understand the grantee's disagreement with the finding that it subsidized the Foundation by allowing late rental payments. The grantee provided information that substantiated the finding. The comments did not dispute that the Foundation's rent payments were late and interest was not charged. Clearly, this resulted in a subsidization of the Foundation.

The grantee did begin to bill the Foundation for interest on late payments in May 2002, after the OIG pointed out the problem and insisted that such billings were needed. The grantee provided information indicates that shortly after the OIG staff completed on-site audit work Foundation rental payments were again late and interest was not charged. In October 2003, the grantee billed interest for late rental payments that were made between September 2002 and January 2003. The OIG did not change the finding on subsidization.

The OIG disagrees with the grantee's assertion that the Foundation's space in the Modesto office was physically separate from the grantee's space. The grantee's comments stated that signs distinguished the Foundation space from the grantee's space. A sign outside the building indicated that the Foundation and grantee occupied separate suites. In fact, the two offices were in a single suite and were not separated by a physical barrier. Foundation and grantee staff moved freely within the suite. There were no signs inside the building that distinguished between the Foundation and the grantee. We recognize that the Foundation no longer shares space with the grantee in Modesto. At the time of our review a physical separation problem existed and we did not change the finding.

In disagreeing with the report findings the grantee's comments cited a review done by OCE that found no program integrity violations. In December 2000 OCE completed a limited review that covered some program integrity issues. A comprehensive program integrity review was not done.

The OIG reaffirms its recommendations. Based on the comments provided by the grantee, we renumbered the recommendations in this section as 1.1 through 1.5.

GRANTEE COMMENT – STATEMENT OF FACTS

The grantee disagreed with the finding that it did not comply with the statements of facts and client identity requirements of 45 CFR Section 1632.2. The grantee stated it obtains statements of facts from and identifies all plaintiffs in 17200 type cases. From time-to-time the grantee documents an attorney client relationship with individuals through a non-litigation retainer agreement. These retainers may be for the purposes of counseling and advising, but they do not authorize the grantee to file suit on the client's behalf. According to the grantee, these clients are not plaintiffs or parties to the litigation and statements of facts are not required. Consequently, the grantee did not agree to implement recommendation 2.1.

OIG RESPONSE

The OIG does not agree with the grantee's assertion that it complies with 45 CFR Part 1636. The grantee's comments discussed its retainer agreements with clients who were unnamed plaintiffs in the 17200 cases. Retainer agreements are not the issue.

In 17200 cases, the grantee files complaints on behalf of named plaintiffs and members of the general public who are similarly situated individuals and who would benefit from the litigation. In certain of these cases, the grantee has clients it refers to as "unnamed plaintiffs." The grantee represents these "unnamed plaintiff" clients in connection with the 17200 litigation. At times, the grantee pleads specific facts about these clients in the complaints but does not name them as plaintiffs because they are members of the general public who are similarly situated individuals and would benefit from the litigation. This is precisely the type of situation Part 1636 was intended to cover. The grantee need not name these individual clients in the complaint, but under Part 1636, it must identify these clients to the defendant and prepare a written statement of facts.

The OIG reaffirms its recommendation.

GRANTEE COMMENT – IMPROPER RENT PAYMENTS

The grantee disagreed with the OIG's finding that it improperly paid rent for two organizations co-located with the grantee's offices in San Luis Obispo and Madera.

The grantee's comments stated that rent was paid for a legal clinic that engaged in non-restricted activities at the San Luis Obispo branch office. The grantee stated that the clinic's clients were overwhelmingly LSC eligible and the clinic fulfilled the grantee's PAI obligation. The grantee stated that the rent payments for the legal clinic were reasonable and necessary for the performance of its grant and are proper PAI expenditures. According to the grantee, its accounting staff inadvertently discontinued allocating the rent payment to the PAI account, but this did not cause the expense to be ineligible as PAI.

The grantee provides a room rent free to a non-profit organization that promotes community and economic development in its Madera branch office. The grantee stated that the organization is not a legal services provider and does not engage in restricted activities. The organization provides volunteers to work on community education and maintains records of the volunteer hours. The value of the volunteer's activities far exceeded the value of one room that is provided rent free. The grantee stated that it rents the entire building and the amount it pays is not increased by allowing the community organization to occupy one room. The grantee stated that LSC's Property Acquisition and Management Manual allows it to provide the space rent free and requires that rent be charged only to organizations that engage in restricted activities.

Consequently, the grantee declined to implement recommendations 3.1 and 3.2.

OIG RESPONSE

We reviewed the grantee's comments and confirmed our finding that the grantee did not comply with LSC requirements at its San Luis Obispo office. We deleted the part of the finding related to the Madera office.

The legal clinic located in the San Luis Obispo branch office does not screen for citizenship/alien eligibility status. Consequently, it is unclear how the grantee can assert that the clients are "overwhelmingly [LSC] eligible clients." The grantee has no assurance that the legal clinic is only serving LSC eligible clients. Therefore, LSC provided funds cannot be used to pay the clinic's rent. The grantee agreed that during the audit period the rent costs were not charged to the PAI program as the OIG reported.

The grantee's position on providing a rent free room to the community organization at its Madera office has not completely persuaded us. However, we note that the grantee explained that it incurred no additional costs. Due to the minor amounts involved, we deleted that part of the rent finding relating to the Madera office and modified our recommendations accordingly.

We do not agree that LSC's Property Acquisition and Management Manual requirement to charge rent applies only to organizations engaged in restricted activities.

The OIG modified recommendations 3.1 and 3.2 to apply only to the San Luis Obispo office.

CALIFORNIA RURAL LEGAL ASSISTANCE, Inc.

November 14, 2003

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LSC

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Acting Inspector General
Legal Services Corporation
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Re: **CRLA's COMMENTS IN REPLY TO**
OIG DRAFT AUDIT REPORT
Recipient No. 805260 ***[Faxed to (202)-337-6616]***

Dear Mr. Koczur:

Thank you, again, for extending the time period for our comments. The week extension from November 7 to November 14 allowed us provide you with more extensive comments than we otherwise could have provided.

Accompanying this report are CRLA's comments to your draft report issued September 30, 2003. I hope the comments allow you to modify some of the draft recommendations made in your initial (draft) report.

If our comments require further information or discussion, please call me at (415)-777-2752. It is our intent that any information provided the general public would not unnecessarily reduce the support for legal services that exists nor in any way result in any public misunderstanding regarding how CRLA serves its rural clientele.

Sincerely,

Jose R. Padilla
Executive Director
California Rural Legal Assistance Inc.

Enclosure

APPENDIX I

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

CRLA's COMMENTS IN REPLY
TO OIG DRAFT AUDIT REPORT
(issued September 30, 2003)
re

"REVIEW OF GRANTEE'S
TRANSFER OF FUNDS
AND COMPLIANCE WITH
PROGRAM INTEGRITY STANDARDS"

Jose R. Padilla, Executive Director
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November 14, 2003

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EXECUTIVE SUMMARY

After a two-year compliance review by the Office of the Inspector General that is to the best of our knowledge unprecedented in its breadth, the OIG's Draft Audit Report by and large confirms that CRLA is a well-regulated recipient of Legal Service Corporation funding in full compliance with applicable LSC rules and policies. However, the Draft Report specifies a few, limited areas in which the OIG contends that different practices are necessary. CRLA respectfully disagrees, and in these Comments explains how and why.

Specifically, the OIG's Draft Report argues that CRLA has violated LSC Regulation Part 1610 by failing to maintain adequate "program integrity" between CRLA and an entity--the "Foundation"--that undertakes activities in which an LSC recipient is precluded from engaging. The Report reaches this conclusion because it finds that CRLA has: (1) co-counseled with Foundation legal staff; (2) "shared" two of its staff with the Foundation on a part-time basis; (3) "subsidized" the Foundation by failing to charge interest on late Foundation rent payments; and (4) insufficiently separated the physical space that the Foundation previously leased in one of CRLA's offices. Ironically, these very same issues were examined by LSC's own Office of Compliance and Enforcement only eight months prior to commencement of the OIG review, and OCE found no violation with the "program integrity" requirements of Part 1610.

For reasons set out more fully below, we conclude that CRLA's co-counseling and shared staff have been in full compliance with all LSC requirements, including 1610 "program integrity". [See, Sections I.A. and I.E., below.] We have revised our accounting procedures both to diminish the likelihood that the Foundation will tender rent payments after their due dates and to assure that our invoicing for any late-payment interest occurs promptly. [See, Sections I.C. and I.E., below.] And any issue regarding separation of space has been mooted by termination of the lease some time ago. [See, Section I.D., below.]

The Draft Report also concludes that CRLA has not complied with LSC Regulation 1636.2 requiring programs to obtain plaintiff statements of fact and provide plaintiff identification. Here, the Draft Report simply errs; CRLA is in full compliance. [See, Section II.A., below.]

The Draft Report further concludes that CRLA improperly provides space to the San Luis Obispo seniors legal clinic and to the Madera coalition that provides volunteers to undertake CRLA activities. Here, again, the Report errs: these practices are consistent with all applicable LSC requirements. [See, Section II.B., below.]

Contrary to the Draft Report's conclusions in these limited areas, we believe the OIG's findings demonstrate that CRLA has been conscientiously and rigorously in compliance with LSC's mandates in these areas just as it has been in all others. We respectfully urge the Inspector General to reconsider his conclusions.

APPENDIX I

INTRODUCTION

California Rural Legal Assistance, Inc. ("CRLA") hereby comments in response to the Office of the Inspector General's Draft Report of his recently-completed audit covering the period January 1, 2000 through May 10, 2002.

The OIG Draft Report culminates a review process that began on June 11, 2001, and extended through the September 30, 2003 issuance of the Draft Report. The OIG's initial audit notice of June 11, 2001, stated that an audit of CRLA's "program integrity" as defined under 45 C.F.R., § 1610 would be conducted. The actual audit focused on our relationship with the California Rural Legal Assistance Foundation ("Foundation"), and ultimately expanded into a review of CRLA compliance with LSC regulatory changes implemented by Congress in 1996. The audit process included: on-site fieldwork involving four separate audit-team field visits (including the visit for the exit interview) totaling nearly seven weeks; production of hundreds of case files;[1] CRLA's transmission to Washington of thousands of pages of case and advocacy materials plus hundreds of pages of specially-prepared legal memoranda between and after visits; and literally thousands of hours of CRLA staff time in responding to OIG's document and other information requests.

We are gratified that this extensive review has confirmed the propriety and regularity of CRLA's operations in most respects, and in no respect concludes that penalties should be imposed. The Draft Report does, however, provide a limited number of prospective recommendations for future practices. The OIG's determination that CRLA failed to maintain program integrity from the Foundation is predicated upon extremely limited circumstances that we do not believe support the conclusion. We also believe that certain OIG recommendations (and their underlying findings or reasoning) regarding other compliance issues misapprehend facts or are inconsistent with longstanding

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[1]The Draft Report (at page 11) characterizes CRLA as having delayed in providing access to some of these files. We find the statement inexplicable. Upon the OIG's identification of an initial sample of 97 cases for file review, we promptly informed the audit team that some 30 of those files were administrative proceedings in agencies under which the identity of the party and/or information revealing that party's participation in proceedings was confidential under applicable state or federal law. We were prepared to make these administrative-proceeding files immediately available for audit team review under alternative procedures we proposed to protect the identities of those particular clients and/or "insulate" their identities from the proceedings in which they participated, as we believed state and federal law required. The OIG declined to review the files under conditions protecting client confidentiality, and subsequently requested that CRLA provide legal memoranda in support of our positions. We responded with five separate memoranda (corresponding to the various agency and/or administrative schemes) within 24 hours, and thereafter CRLA and the OIG engaged in a number of discussions (including a meeting of our Executive Director with the Acting Inspector General in Washington). Ultimately, the OIG proposed a different procedure which satisfied CRLA's client-confidentiality concerns, and review of these administrative files thereafter occurred at the audit team's convenience. The OIG subsequently added another 10 files to the sample, which also were promptly provided.

LSC policies and the Corporation's expectations about implementation of those policies. We comment in Section I regarding Part 1610 "Program Integrity" *vis a vis* the Foundation, and in Section II on other, non-1610 issues.

I. PART 1610 "PROGRAM INTEGRITY" *vis a vis* THE FOUNDATION

CRLA is a private California non-profit corporation that was formed in 1966 to provide free legal counseling and representation to low-income communities throughout rural California. CRLA has been a "qualified program" or "recipient" within the meaning of the Legal Services Corporation Act (42 U.S.C. §§ 2996 *et seq.*, § 2996e) since commencement of the Corporation. CRLA is governed by a Board of Directors; its senior management structure includes an Executive Director, a Deputy Director, a Controller and a Human Resources Director. CRLA's administrative headquarters is in San Francisco. As of the commencement of the audit, CRLA had 23 field offices in 21 locations. Senior-level advocacy-management includes four Directors of Litigation, Advocacy and Training (DLATs), each of whom provides senior-level oversight and supervision to a group of assigned Regional Offices (and affiliated satellites), and each of whom is also responsible on a program-wide basis for specific substantive areas of advocacy.

The Foundation was incorporated as a Section 501(c)(3) non-profit corporation in January 1982, and has existed as an independent non-profit corporation at all times thereafter. The Foundation's Board and management are entirely separate from CRLA. The Foundation's administrative headquarters are in Sacramento.[2] The Foundation is not an LSC recipient, and does engage in restricted activities not permitted to LSC recipients. As permitted under Section 1610, CRLA transfers certain amounts of non-LSC funds to the Foundation.

CRLA believes that it has conscientiously and vigorously maintained "program integrity" from the Foundation, as required by 45 C.F.R. Section 1610.8. Nevertheless, the Draft Report concludes that CRLA failed to maintain "objective integrity and independence" from the Foundation because--in the OIG's view–CRLA "subsidized" the Foundation in certain ways and we failed to maintain physical separation from the Foundation. The Draft Report also concludes that CRLA maintains a "close relationship with the Foundation that makes it difficult to distinguish between the two organizations" in violation of program integrity requirements. These conclusions are predicated upon findings in four "specific problem areas", discussed in turn below, none of which is expressly tied in the Draft Report to any specific provisions of Section 1610.8. We respectfully do not believe that the findings support the conclusions.

Before addressing these issues, however, we note that the OIG audit followed a complaint from the Western United Dairymen--transmitted through a member of Congress--that replicated an earlier

[2]At one time CRLA had a legislative advocacy office in Sacramento but, since 1996, has not had an office in that city.

complaint by the Dairymen to the Legal Services Corporation. In response to that earlier complaint, in October 2000, LSC's Office of Compliance and Enforcement (OCE) had reviewed CRLA's relationship with the Foundation under Part1610 standards--including the issues reviewed by the OIG beginning less than 12 months later: co-counseling, shared staff, rent payments, physical and financial separation. OCE also reviewed financial data related to the division of costs between CRLA and the Foundation in bringing specific co-counseled litigation. The October 2000 OCE audit also reviewed CRLA leases to the Foundation which then existed in Modesto, Fresno and San Francisco. The OCE review of these leases produced one specific recommendation: that CRLA improve our office security in San Francisco by placing a lock on the door between our space and the space leased by the Foundation; CRLA immediately complied. Ultimately, approximately 8 months before the OIG review began, OCE indicated to CRLA that our overall implementation of 1610–specifically, our various relationships with the Foundation–did not raise a material concern and did not violate the "objective integrity and independence" standard of 1610.

A. Co-counseled Cases

The Draft Report concludes that co-counseling arrangements between CRLA and the Foundation demonstrate a lack of independence between the two entities not consistent with the program integrity requirements of Part 1610. This conclusion is reached with no apparent reference to most of the relevant facts provided to the OIG, and does not withstand informed scrutiny.

CRLA attempts to secure "private", *i.e.*, non-LSC-funded, attorneys to co-counsel with our staff attorneys in significant litigation. Co-counseling is, of course, common in litigation and other types of legal practice, and is consistent with the Act and Regulations. CRLA undertakes co-counseling to satisfy our obligation under LSC Regulations to expend 12 ½ % of our annualized basic field award to involve private attorneys in delivery of legal services. ("Private Attorney Involvement" or "PAI", 45 C.F.R., § 1614.)[3]

In CRLA's experience, co-counseling is a synergistically effective means of involving the private bar in service to the low-income constituency we serve for a number of reasons: (1) in some cases, co-counseling obtains the benefit of more experienced litigators who can enable a local office staffed by limited-experience staff to undertake representation that we could not otherwise provide; (2) in some instances, co-counseling provides the added staffing and physical resources of a private law firm that

[3]We use the term "co-counseling" to refer to joint representation between CRLA and outside attorneys of LSC-eligible clients with whom CRLA has retainers. In this joint representation and pursuant to a provision in the co-counseling agreement, outside counsel execute their own independent retainers with the clients represented by CRLA. From time to time, CRLA represents clients in litigation in which outside counsel represent other parties with parallel interests, claims or defenses, i.e., co-plaintiffs or co-defendants–but who do not jointly represent CRLA's clients. We do not characterize these situations as "co-counseling", and do not enter co-counseling agreements.

enables CRLA to pursue extensive litigation for which we otherwise would not have adequate professional and/or support personnel to undertake; and, (3) in some cases, co-counseling enables CRLA to use our "expertise" to acquaint and train members of the local private bar in specialized areas of poverty law with a goal of expanding the availability of private-bar representation to low-income clients including the vast number of non-LSC-eligible poor people in rural California. CRLA takes pride in our years of efforts to involve the private bar in rural poverty-law cases in the face of challenges posed by issues of distance, language, often-perceived conflicts of interest by local attorneys and, frequently, relatively-limited recoveries in comparison to time and resource demands of the cases.

CRLA implements litigation co-counseling arrangements through written co-counseling agreements, generally based upon a 9-page "model" agreement that is tailored in individual cases as appropriate to the particular circumstances of the case and/or the needs and resources of outside counsel. The audit team requested that CRLA identify all litigated cases with co-counseling agreements that were in effect at any time during calendar years 2000 or 2001. We identified agreements in 42 separate cases including six in which the Foundation co-counseled, and made forty-one agreements available for review.[4] In these 42 cases (including some cases in which we co-counseled with more than one firm), CRLA co-counseled with at least 26 different law firms one of which was the Foundation.[5] We co-counseled on more than one case with at least 9 of these firms.

The audit team remarked during on-site field visits that they had never previously encountered recipient co-counseling arrangements documented in such detail. More germane to the Draft Report's conclusion, the on-site team reported to CRLA management that they found no distinctions or discrepancies between the written co-counseling agreements CRLA entered with the Foundation and those CRLA entered with other law firms, and further found no distinctions or discrepancies between actual implementation of the co-counseling arrangements CRLA entered into with the Foundation and those CRLA entered into with the other firms.

By disregarding the extensive nature of CRLA's co-counseling arrangements with many non-LSC-funded counsel, the Draft Report implies a unique or "close" relationship between CRLA and the Foundation when the reality is that the co-counseling "relationship" is identical to that with all of the numerous law firms with whom CRLA co-counsels. We cannot understand why the Draft Report treats this completely appropriate activity as demonstrating "lack of independence" from the Foundation when (although the Draft Report fails to mention it) CRLA engages in identical co-counseling arrangements with over two dozen firms in addition to the Foundation.

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[4]As we reported previously to the Inspector General, CRLA was unable to locate the co-counseling agreement in one, non-LSC-funded case (which was not co-counseled with the Foundation).

[5]These firms included both traditional, for-profit, private law offices and other non-profit entities that provide legal representation.

The Draft Report expresses concern because, in the five co-counsel agreements with the Foundation in which CRLA was lead counsel, the agreements included a provision spelling out in some detail lead-counsel's responsibilities; that provision did not appear in the one agreement in which the Foundation was lead counsel. This again ignores the fact that this circumstance was by no means limited to co-counseling agreements with the Foundation. The 41 total co-counsel agreements designated CRLA as lead counsel in 25 agreements, and outside law firms as lead counsel in 16 agreements. Of these forty-one agreements, five (approximately 12%) did not include the provision detailing lead-counsel's responsibilities referenced in the Draft Report: Of these latter five, CRLA was lead counsel in three and outside counsel was designated lead counsel in the remaining two (including the one referenced in the Draft Report–in which the Foundation was co-counsel). Thus, the absence of the provision spelling out lead counsel's responsibilities was not limited to one agreement with the Foundation and, indeed, occurred more often in agreements designating CRLA as lead counsel.

The Draft Report notes that CRLA was responsible for all costs and litigation expenses in cases co-counseled with the Foundation; that provision actually was included in five of the six agreements. The same cost-allocation provision was included in fourteen of the remaining 35 agreements with other outside counsel. Another 13 agreements provided that outside counsel would cover their own travel, photocopying and postage costs, while CRLA would advance all other costs. The remaining eight included other variations. This observation merits three responses: *First*, CRLA's payment of these costs for outside counsel is an appropriate PAI expenditure fully authorized by LSC rules. (Indeed, it would be appropriate to pay all of outside counsel's costs *and fees* as PAI expenditures, but CRLA "leverages" these relationships through encouraging outside counsel to underwrite costs to the maximum extent feasible and to seek fees through fee-shifting awards.) *Second*, CRLA's advancement of costs is a condition negotiated with outside counsel (including those other than the Foundation) to obtain their participation; outside counsel's willingness to assume costs varies from case to case depending upon their respective evaluations of the costliness of the litigation and the timing and likelihood of recovery, as well as counsel's perceptions of their own respective financial capacities. *Third*, the agreements provide that costs awarded by the court or recovered from defendants will be paid proportionally to the party that incurred the costs–thus, outside counsel do not have a preferential position in recovering costs.

CRLA takes pride in the documentation and transparency of our co-counseling arrangements. We are frankly puzzled by the OIG's conclusion that our co-counseling with the Foundation--in a manner which OIG's audit team confirmed demonstrates neither favoritism nor other special consideration--demonstrates lack of either objective integrity or of CRLA independence from the Foundation, or suggests an "identification" between CRLA and the Foundation that does not exist in other co-counseled arrangements.

B. Shared Staff

During the first year of the audit period, one full-time CRLA employee served as a volunteer

with the Foundation. During both years a second, part-time employee was employed by the Foundation during time neither pledged to nor paid by CRLA. We believe these positions did not, and do not, offend 1610 program integrity requirements. However, the Draft Report expresses concerns about the participation of shared staff in cases co-counseled with the Foundation, as well as the management-level and number of shared staff. We address these in order.

1. Participation of Shared Staff in Co-Counseled Cases

The Draft Report concludes at page 3 that CRLA's overall co-counseling relationship with the Foundation is problematic due to shared staff between the two organizations. We respectfully disagree.

As noted above, CRLA's day-to-day advocacy is overseen by four DLATs. Each has oversight over approximately one-quarter of CRLA's regional offices, and each further has responsibility as a program-wide resource and senior policy advocate in one or more designated substantive areas (*e.g.*, housing; *e.g.*, employment). The DLATs hold twice-monthly meetings to review and approve proposed litigation, and to jointly review CRLA's advocacy in general. One of the four DLATs is part-time, working for CRLA on a 90%-time appointment and for the Foundation on a 10% basis.

In "Case A" co-counseled with the Foundation, CRLA's part-time DLAT--utilizing her non-CRLA time--served as lead counsel for the Foundation, and throughout that case entered her appearances as counsel for the Foundation. The lead attorney in that case for CRLA was another (full-time) DLAT; thus CRLA staffed the case with an equivalent senior litigator who was not under the supervision of the part-time DLAT staffing the case for the Foundation.

In Case "B" co-counseled with the Foundation, CRLA's part-time DLAT again served as a counsel for the Foundation (again utilizing her non-CRLA time and, again, entering her appearances only as counsel for the Foundation). CRLA's lead attorney was the Directing Attorney for the CRLA regional office in which the case originated. The Draft Report errs in stating that the part-time DLAT participating in the case for the Foundation was the regional-office Directing Attorney's supervisor; in fact, the Directing Attorney (and corresponding regional office) in question was supervised not by the part-time DLAT participating in the case for the Foundation but by a different DLAT.

2. Number and Status of Shared Staff

The Draft Report, at pages 3-4, concludes that the sharing of 2 "senior level attorneys" with the Foundation contributed to a violation of "program integrity" requirements.

Section 1610.8 provides that

[w]hether sufficient physical and financial separation exists will be determined on a

> case-by-case basis and will be based on the totality of the facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include but will not be limited to . . . (i) the existence of separate personnel . . .

(45 C.F.R., § 1610.8(3).) LSC's regulations do not articulate specific limits on shared personnel. However, LSC has provided additional guidance through other formal communications to programs. For example, a recipient may have an overlapping board with an organization that engages in restricted activity so long as the recipient otherwise maintains objective independence and integrity from the other organization. (LSC Memorandum, to LSC Program Directors, Board Chairs, from John A. Tull, Director/Office of Program Operations (Oct. 30, 1997), p. 2 fn. 3.) Although permitted by LSC, CRLA and the Foundation have never had overlapping boards.

LSC has also advised that,

> [g]enerally speaking . . . the more staff "shared" or the greater the responsibilities of the staff who are employed by both organizations, the more danger that program integrity will be compromised. Sharing an executive director, for example, inappropriately tends to blur the organizational lines between the entities. Likewise, sharing a *substantial number or proportion* of recipient staff calls the recipient's separateness into question.

(*GUIDANCE IN APPLYING THE PROGRAM INTEGRITY STANDARDS*, attachment to LSC Memorandum, *supra*, emphasis added.) LSC then advises that "[f]or larger organizations, 10% of the recipient's attorney/paralegal staff should serve as a guide" to interpreting "substantial portion". (GUIDANCE, *supra*, p. 3 fn. 2.) CRLA implemented this 10 % guideline as our limitation on shared part-time staff. With approximately 70 attorneys/paralegals during the audit period, the LSC guideline would trigger consideration of CRLA's program integrity upon the existence of 7 shared staff.

The Draft Report, however, raises the concern where only 2 staff were shared between CRLA and the Foundation. One of these two shared-staff positions ended nearly three years ago upon resignation of that individual who was the former full-time Directing Attorney of CRLA's Oceanside office. The Inspector General concludes that, during her CRLA tenure, this individual was also the Director of the Foundation's "Border Project". To the best of CRLA's knowledge, this individual's role with the Foundation was as an unpaid volunteer.[6]

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[6]The Inspector General determined that the Foundation's web site listed the "Border Project" Director's telephone as her CRLA office number. CRLA was unaware of this during the time we employed the individual as our Oceanside Directing Attorney. We agree that such a listing was inappropriate.

In sum, CRLA took care to comply during the period under examination with published LSC guidelines, falling far under the suggested limits on shared staff. We are, again, puzzled at the OIG's criticism of practices substantially within LSC criteria on which CRLA was encouraged to rely.

C. Rent Subsidy

The Draft Report, at pages 4-5, concludes that CRLA subsidized the Foundation by allowing late payments of rent for space leased to the Foundation in three CRLA offices. We believe the facts do not justify that conclusion, and in any case our accounting procedures regarding tenant rent payments had already become more rigorous before the Draft Report issued, and now fully meet the OIG recommendation.

Prior to October 2000 when CRLA was reviewed by LSC's Office of Compliance and Enforcement (OCE), CRLA management did not consider late rent payments by the Foundation or any other tenant to be subsidies. This was consistent with our treatment of other receivables including those due from federal agencies. Thus, it was and is quite common for CRLA to carry Accounts Receivable balances for grants that are many times greater than the rent owed CRLA by the Foundation at any time. HUD, for example, often pays CRLA four or five months after grant income has been accrued and the corresponding receivable has been earned. Of course, neither HUD nor any other granting entity would pay CRLA interest on the amount owed, as the OIG proposes should have been the case with the Foundation.

Nevertheless, after OCE in late 2000 raised the question of late rents potentially constituting subsidization,[7] CRLA's Executive Director and then-Controller advised the Foundation's Executive Director and Board Chair in February 2001, that late rent payments could be considered a subsidy unless appropriately compensated. CRLA further urged the Foundation to implement automatic, timely rent payments inasmuch as we preferred not to start the practice of invoicing rent, which we received from several tenants, because of late payments by one. CRLA informed LSC of this communication in March, 2001.[8] Thereafter, the Foundation made timely rent payments for a number of months in early 2001.

In mid-2001, CRLA's incumbent Accountant and Controller each left their positions, and we re-filled those positions. In late April, 2002, we re-hired the former Controller who, upon reviewing the Foundation's record of payments, determined that there had again been late payments, and promptly invoiced the Foundation on May 1, 2002 for interest on late payments. (Copy attached.)

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[7]OCE did not find the late-payment situation to be a material violation and did not recommend any specific corrective action. Nevertheless, CRLA took corrective action.

[8]Letter from CRLA Executive Director Jose R. Padilla to Legal Services Corporation David de la Tour (LSC Office of Compliance and Enforcement), dated March 23, 2001.

The Foundation thereafter made a number of timely rent payments in mid-2002, but again fell behind in late 2002 and early 2003. On October 17, 2003, CRLA again invoiced the Foundation for interest on these late payments. (Copy attached.) Beginning July, 2003, CRLA has been invoicing the Foundation for rent on the 15th of each month preceding the following month's rent. Since then, the Foundation has timely made all rent payments.

D. Physical Separation of Facilities.

CRLA rents or sublets space in our various office properties to numerous tenants dependent upon our contemporaneous space needs and consistent with the provisions of 45 C.F.R. Section 1630. The Draft Report concludes at page 5 that space rented to the Foundation in CRLA's Modesto regional office was not physically separated from CRLA's own space. That conclusion appears to extend the requirements of 1610 beyond what has been commonly understood.

CRLA's lease with the Foundation for Modesto specified discrete space to be occupied and used by the Foundation, for which fair-market rent was charged. The Foundation's separate space was identified by appropriate signs that were clearly visible to the public and were equivalent to the signs identifying other commercial entities in adjoining suites in the same building complex. The distinction between CRLA space and Foundation space thus was apparent to the public, and confusion was unlikely.

Regardless of any differences in opinion on this point, that lease was terminated in mid-2002, as CRLA required the space for a new Seniors Project. The Foundation no longer has a presence at this address.

E. OIG Prospective Recommendations re Program Integrity *vis a vis* the Foundation:

The Draft Report correctly concludes that CRLA and the Foundation are legally separate entities, but opines that CRLA did not maintain objective integrity and independence from the Foundation based upon the factors described above. CRLA respectfully does not believe that the circumstances described by the Draft Report support its conclusion. We here respond to the individual Draft Report Recommendations (set out in bold).

1.1. *The grantee's management needs to take steps to provide adequate separation from the Foundation. Specifically, we recommend that the Executive Director:*

(Although the Draft Report's enumeration of this first set of recommendations is confusing, we infer that No. 1.1 is simply the general introductory clause to the following specific recommendations.)

1.2 *Preclude the part time litigation director from participating on cases that are co-counseled with the Foundation*

The Draft Report has identified no problems of time-keeping, misuse of resources, subsidization, or even public confusion that can be traced or attributed to our part-time DLAT spending her 10% outside time during 2000, 2001 or 2002 in serving as an employee of the Foundation (and the presumptively no-greater time she may have spent as Foundation counsel in *two* of six cases that were co-counseled with CRLA.)

As we have described, this individual's appearances for the Foundation in the two cases co-counseled with the Foundation were scrupulously entered on behalf of the Foundation (and Foundation clients). No court or party was mislead or confused about her role or about the role of the CRLA attorney in representing CRLA's clients. The Draft Report draws no distinction between her effectiveness when litigating as a CRLA attorney staffing other cases co-counseled with other law firms compared with her performance as a CRLA attorney staffing other cases co-counseled with the Foundation. The on-site team expressed the view that this DLAT devoted hours often well in excess of her 90 % time to her cases and administrative responsibilities for CRLA.

Although Section 1604 does not apply to part-time employees, CRLA's policies are stricter. CRLA evaluated whether this individual's outside practice (in her part-time employment by the Foundation) would interfere with efficient performance of her duties with CRLA or involve conflicts of interest with CRLA clients[9] or conflicts with her duties and responsibilities to CRLA. In the two cases in which this individual appeared for the Foundation, CRLA and she ensured that she would not be responsible for CRLA's client files or for CRLA's representation.

In short, no instances of public confusion between the entities have been shown, no compromise of client (or institutional) interests has been found, no conflict with the employee's performance of her CRLA duties has been shown, and no violation of any professional responsibility standard has been suggested. And there is also no LSC regulation that prohibits this employee (or any other DLAT) from co-counseling with any firm. The OIG's recommendation, under the actual circumstances presented here, responds to no specific practical or public-policy need.

1.3. *Adopt Policies and procedures precluding senior staff, DLATs and office directors, from co-counseling case [sic] with the Foundation*

We have already explained why co-counseling is important and appropriate. CRLA believes this Recommendation responds to no practical or policy imperative, and is not consistent with

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[9]Of course, full duty of loyalty to, and absence of any conflict of interest, are required of both firms jointly representing the same client as co-counsel. These duties require co-counsel keep each other fully apprised of information and developments material to the co-counsel engagement.

longstanding LSC guidance on this issue. Its implementation would eliminate for many CRLA offices any possibility of co-counseling in our most critically-needed advocacy priorities.

Generally, co-counseling occurs in cases that are larger or more complex–the very cases which CRLA will, and ethically must, staff with more senior attorneys who have the experience and expertise to provide adequate representation in these cases. The Recommendation requires that CRLA staff cases co-counseled with the Foundation only with junior staff–a proposal that not only requires CRLA's disparate treatment of the Foundation compared to all other co-counseling partners, but raises serious issues of professional responsibility *vis a vis* our clients in those cases.

Moreover, CRLA encounters the greatest difficulty in obtaining co-counsel in employment representation and litigation–a CRLA priority. In many of our rural service areas, local private attorneys will not participate in these cases due to their perceived conflicts with the agricultural industry that is the local economic engine, their lack of experience and/or expertise in employment law, and the fact that virtually all plaintiffs, witnesses and beneficiaries do not speak English. Not uncommonly, the Foundation is the only source for co-counsel in these cases.

A number of these rural offices are "single-attorney" offices, in other words, the local (management-level) Directing Attorney (referred to as the "office director" in the Recommendation) is the *only* local CRLA attorney. CRLA's backup for these over-burdened (or otherwise unavailable) Directing Attorneys consists of the DLATs, who travel extensively to work with our regional offices. By prohibiting both the DLATs and the "office director"/Directing Attorney from co-counseling with the Foundation, the Recommendation effectively prevents representation in these cases, and leaves dozens or hundreds of often-sub-minimum wage workers without remedy.

For all these reasons, we respectfully suggest that this Recommendation is fundamentally inconsistent with efficient provision of quality legal services consistent with the Act.

1.4. *Preclude senior staff from working for the Foundation on a part time basis*

Part 1610 does not prohibit shared staff. Longstanding LSC guidelines contemplate sharing at every level of management below Executive Director. Since the 1996 implementation of "program integrity" CRLA has never had 10 % of its attorney/paralegal staff serve as part-time shared staff with the Foundation (or with any other entities doing restricted work). The entire shared attorney staff between CRLA and the Foundation (since the end of Year 2000) consists of one of CRLA's four, third-tier-level managers[10] working for the Foundation 10% of her time. In the context of the LSC's

[10]CRLA's Executive Director is the first level of management; the Deputy Director is the second level of management; and the Directors of Litigation, Advocacy and Training (4 positions) are the third tier. The last have responsibility only over advocacy and have no responsibility over financial or other

published guidelines discussed above, this constitutes 1.4% of CRLA's (70-member) attorney/paralegal staff (and only 0.14% on a full-time-equivalent basis). Acknowledging that program integrity is a flexible concept and that the weight accorded shared staffing must consider the extent of responsibilities, we respectfully conclude that this part-time shared staff position does not violate any LSC regulation or policy.

CRLA has conscientiously observed the program integrity standard with scrupulous observance of the letter and spirit of the regulation. We respectfully urge that the Recommendation is unmerited.

1.5. *Adopt procedures so that in the future full time grantee employees are precluded from working simultaneously for the Foundation*

Beyond the policy concerns of 45 C.F.R. Section 1610, the outside employment of *full-time* CRLA attorneys is expressly regulated by 45 C.F.R. 1604. This provision generally precludes outside practice of law but permits certain limited compensated and uncompensated practice. Since 1996, CRLA has not only prohibited outside practice of law for compensation, but in an approach stricter than required by LSC, CRLA has conditioned other gainful employment upon prior review and approval by the Executive Director based on a number of factors. (CRLA Case Handling and Office Procedures Manual, § III.D.9., pp. III-44 to III-45.)

CRLA's understanding of our former Oceanside Directing Attorney's outside activities (with the Foundation) was that she performed these as an uncompensated volunteer, and that her activities did not include engaging in the practice of law. Thus, our understanding is that neither Regulation 1604 nor CRLA's formal policies were implicated by her activities even if the latter involved restricted activities.

We can, and do, address employees' personal-time volunteer activities that communicate or suggest to the public that CRLA sponsors or is associated with the activities or that the employee is undertaking the activity as a CRLA employee. We cannot–and should not--prohibit employees from volunteer participation in personal activities once the employee meets the threshold of avoiding conduct or communication that implies CRLA is sponsoring or participating in the activity.[11]

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administrative areas.

[11]By way of example, CRLA prohibits employees from passing out CRLA literature or CRLA-identified materials during their personal-time participation in a lawful demonstration. We do not–and believe we cannot–prohibit employees from such First Amendment activities during their personal time so long as they do not promote confusion as to sponsorship or affiliation. As noted earlier, we do not condone associating CRLA with restricted activities that may have occurred as a result of the Oceanside employee's posting of her CRLA work telephone number as the contact for her (personal-time) volunteer activities. We learned of that only following the employee's resignation. And this Recommendation does

1.6. *Require that future leases for space rented to other organizations follow standard commercial practices and provide for late payment penalties*

First, we again note that CRLA does now advance invoice the Foundation for rent on the 15th of each preceding month, and its payments are now timely. We also invoiced the Foundation for interest on prior late payments.

The OIG recommends that "future leases for space rented to other organizations follow standard *commercial* practices and provide for late payment penalties." (Draft Report, Recommendation 1.6, emphasis added.) CRLA believes that our current policy of advance-invoicing rents and our demonstrated history of charging interest where late payments have occurred meet the spirit of the recommendation. But we also observe that the OIG's recommendation appears to be inconsistent with LSC's Property Acquisition and Management Manual which provides that :

> [i]f a recipient uses real property acquired in whole or in part with LSC funds to provide space to another organization which engages in [restricted]activity . . ., the recipient shall charge the other organization an amount of rent which shall not be less than that which *private non-profit organizations in the same locality charge* for the same amount of space under similar conditions.

(66 Fed. Reg. No. 178, 47697, § 5(f), emphasis added.)

The notion of applying "standard commercial practices" to relationships between non-profits is not a non-profit community practice, i.e., renting to a non-profit is not the same as renting to a for-profit. CRLA has tenant relationships with other non-profits and has used the same standards with them as with the Foundation, consistent with the guideline in the Property Acquisition and Management Manual.

II. OTHER ISSUES BEYOND 1610 "PROGRAM INTEGRITY"

A. Compliance With Section 1636.2: Statements of Facts and Client Identification in "17200" Litigation[12]

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not address that situation in any event.

[12]The Draft Report separates the discussion of CRLA's litigation under California Business & Professions Code Sections 17200 *et seq.* ("17200 litigation") into two non-contiguous sections. Under the subtitle, "Cases Under Section 17200 of the California Code", the Draft Report concludes at pages 8-9, and we agree, that CRLA complies with 45 CFR Sections 1611, 1617 and 1626 in our "17200" litigation. The Draft Report addresses CRLA's compliance in our "17200 litigation with 45 Section 1636.2 in a

1. CRLA Complies With Section 1636.2 by Obtaining Statements of Facts From and Furnishing Identification As To All Plaintiffs It Represents In "17200" Litigation.

Sub-Part 1636.2 requires CRLA to identify the plaintiffs we represent and to obtain written factual statements signed by those plaintiffs. CRLA fully complies. The Draft Report concludes at pages 6-7 that CRLA clients who are *not* plaintiffs and *not* parties to litigation should nevertheless be considered "plaintiffs" and that CRLA should similarly identify these non-plaintiff clients to adverse "parties" and obtain signed fact statements. This is consistent with neither the plain language of, nor the policy reason for, the rule.

Part 1636 is not ambiguous. Sub-part 1636.1 provides in relevant part that,

> **[t]he purpose of this rule is to ensure that, when an LSC recipient files a complaint in a court of law or otherwise . . . the recipient identifies the *plaintiff* it represents to the defendant and ensures that the *plaintiff* has a colorable claim.**

Sub-part 1636.2(a), which establishes the affirmative requirements, further provides,

> **When a recipient files a complaint in a court of law or otherwise . . . participates in litigation against a defendant . . . on behalf of a client who has authorized it to file suit in the event that the settlement negotiations are unsuccessful, it shall:**
>
> **(1) Identify each *plaintiff* it represents by name in any complaint it files . . .; and**
>
> **(2) Prepare a dated written statement signed by each *plaintiff* it represents, enumerating the particular facts . . .**[13]

From time to time CRLA will have an attorney-client relationship, documented through a non-

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separate section on pages 6-7 under the subtitle "Statement of Facts and Client Identification".

[13]The dictionary definition of a "plaintiff" is, unsurprisingly, consistent with the assumption underlying these regulations: "A person who brings an action; the party who complains or sues in a civil action and is so named on the record . . . ." (BLACK'S LAW DICTIONARY (5th ed., 1979); "1. one who commences a personal action or lawsuit to obtain a remedy for an injury to his rights . . . 2. the complaining party in any litigation . . ." (WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1986).)

litigation retainer, with one or more individuals who are potentially members of the general public eligible for remedies in a 17200 action,[14] conditioned upon the plaintiff(s) ultimately prevailing. The retainers may be for purposes of investigation or for purposes of counseling and advising concerning the subject matter of the 17200 litigation, but they do not authorize CRLA to file suit on the individual's behalf. These clients are not, however, plaintiffs nor otherwise parties to the litigation, and do not have party standing before the court to participate in, affect or control the litigation any more than any other stranger.[15] These retainers are completely appropriate: Neither the Legal Services Corporation Act nor any other federal or state law limits CRLA to representing clients to individuals who authorize litigation and are named parties (plaintiffs or defendants) thereto.

Apparently, the Inspector General believes that any client with whom CRLA executes a retainer with regard to a matter that may be the subject of litigation brought under Bus. & Profs. Code Sections 17200 et seq. is a "plaintiff" although these persons do not appear as plaintiffs in the litigation, have no standing to appear before the court, and have not authorized CRLA to file a lawsuit on their behalf. That characterization has no basis in federal or state law nor in fact, and Section 1636.2 does not require recipients to identify clients to adverse interests when those clients are only counseled rather than named as parties to litigation.

2. OIG Prospective Recommendation re 1636.2 Compliance

2.1 ***We recommend that the Executive Director implement procedures to ensure that statements of facts are prepared for all 17200 type cases and that all clients are identified***

The Draft Report goes astray by equating all CRLA clients regardless of the nature of their representation, and referring to counseling clients as "unnamed" and/or "unidentified plaintiffs."[16] There is no such thing.

Part 1636 requires neither executed statements nor client identification for clients who are not

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[14]California Business & Professions Code Sections 17200 *et seq.* provide multi-person relief where the plaintiff brings the suit for the interests of members of the general public. As recognized previously by LSC and the Inspector General, these suits are not Rule 23 class actions unless the plaintiff specifically pleads them, and the Court certifies them, as such.

[15]The majority of CRLA's 17200 actions seek injunctive relief. The fact that CRLA may allege that injuries are occurring, or likely to occur, to members of the general public which merit injunctive relief does not convert those members of the general public into plaintiffs by any theory of which we are aware (whether or not they have consulted with CRLA without authorizing it to file litigation on their behalf).

[16]The Draft Report repeats this mischaracterization in further discussion of CRLA's "17200" cases at page 8.

named parties to litigation (whether under Section 17200 or some other statute). Beyond repeatedly employing the term of art "plaintiff" (rather than, for example, the broader term "client"), the applicability of sub-part 1636.2 to a particular client is conditioned upon that client's express authorization to file suit–which these non-plaintiff clients have not done. Particularly in poverty law, where the consulting client's potential adversary is often an employer or landlord or other party in a position of power, revelations of the client's potentially critical perspective can have devastating consequences, including job termination, eviction, or other forms of retaliation. These clients' interests are protected by privacy considerations recognized in both state and federal law.[17] Long-developed, well-understood principles of discovery predicated upon the rationale of promoting fair litigation appropriately govern when these non-parties' identities may be appropriately disclosed.

B. PROVISION OF SPACE FOR OTHER ORGANIZATIONS

CRLA provides space for a seniors law clinic staffed by volunteer private attorneys in San Luis Obispo. In Madera, we provide a local, non-profit that does not undertake restricted activities an otherwise unused room in the former residence we lease for our offices in return for that project's providing volunteers to undertake community outreach and education for CRLA advocacy within our priorities. The Draft Report characterizes both as "improper rent payments". In fact, both are valid and valuable components of LSC-sanctioned priorities.

1. Rent Payment for San Luis Obispo Legal Alternatives Corporation ("SLOLAC") Senior Legal Services Clinic

CRLA maintains a regional office in San Luis Obispo, seat of the Central Coast county of the same name. Although nominally staffed with two attorneys, in recent years the office has been often staffed below this level due to budget limitations. CRLA also pays rent for a separate, single-room office of approximately 240 square feet[18] to house a seniors' legal clinic operated pursuant to a grant from the local Area Agency on Aging, by a local non-profit organization, the San Luis County Legal Alternatives Corporation ("SLOLAC"). The room is in the same office building as, and is adjacent to, our San Luis Obispo regional office. The clinic's clients are advised and represented by volunteer private attorneys through the County Bar Association.

The OIG's Draft Report concludes that CRLA's payment of rent for this seniors clinic does not meet the requirements of LSC Regulation Section 1630.3(a)(2), which provides that expenditures by a

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[17]The issue here should not be confused with any rights of LSC (or the OIG) to know the clients' identities.

[18]Rent has gradually increased from $300 monthly in the first year of this arrangement to $418 during 2003.

grantee are allowable "only if the recipient can demonstrate that the cost was . . . reasonable and necessary for the performance of the grant or contract as approved by . . . [LSC]", and that this expense cannot be credited as a Private Attorney Involvement (PAI) expenditure due to an accounting oversight.

As we further explain below, the seniors' legal clinic engages in non-restricted activity in undertaking CRLA priority work for overwhelmingly eligible clients. We underwrite the space cost to enable the clinic to exist in furtherance of our internal priorities and to fulfill our PAI obligation.

In 1982, CRLA began its Private Attorney Involvement ("PAI") program as mandated by LSC, initially focusing on co-counseling to meet our PAI obligation. In 1985, CRLA retained a consultant to assess our existing PAI program and make recommendations on how to strengthen it. One of the consultant's recommendations stated:

> . . . Although CRLA should continue its focus on co-counseling, it should also revisit the issue of the feasibility of more traditional pro bono referral systems and pro bono clinics. It is clear that in a number— if not all— of the CRLA offices informal programs through an in-house referral program or small pro bono effort have sprung up which supplement the co-counseling program and appeal to attorneys who cannot make the time commitment required by co-counseling. CRLA should encourage such efforts and should provide technical assistance to offices seeking to implement a pro bono referral or clinic program.

(Esther R. Lardent, *PRIVATE ATTORNEY INVOLVEMENT/TECHNICAL ASSISTANCE VISIT REPORT: CALIFORNIA RURAL LEGAL ASSISTANCE* (October 1, 1985) pp. 11-12.)

Consistent with this recommendation, in 1987 CRLA began working with the San Luis Obispo County Bar Association to begin a local volunteer lawyer program. By December 1988, the San Luis Obispo County Bar had formally honored CRLA's local Directing Attorney for his work in establishing the *pro bono* referral project. The project was broadened in 1989 to include a "TRO Pro Per Clinic" in collaboration with CRLA.

In 1992, the San Luis Obispo County Legal Alternatives Corporation (SLOLAC) was incorporated as a § 501(c)(3) nonprofit entity.[19] During the audit period, SLOLAC provided four types of advocacy services, including the Senior Legal Services Project housed in the office for which

[19]SLOLAC's purpose is "to facilitate, provide and promote pro bono and in pro per legal services and alternative dispute resolution." (Articles of Incorporation, SLOLAC; Article II (endorsed Oct. 28, 1992); By-Laws of San Luis Obispo Legal Alternatives Corporation Article I Recitals, Section 3.) SLOLAC's seven board members include one member designated by the San Luis Obispo County Bar Association, and one member designated by CRLA. (By-Laws, *supra*, Article IV.)

CRLA pays the rent in question here.[20]

(a) CRLA's Rent Payments for the SLOLAC Seniors Legal Services Clinic Are Reasonable and Necessary For Performance of the Grant

There has been general acknowledgment that LSC and Area Aging Agencies (AAA) should work hand-in-hand to provide legal services to seniors. In Fiscal Year 2002, over $16 million was provided under the Older Americans Agency Act to LSC-funded legal services programs. Through its State Planning process, LSC has encouraged recipients to coordinate resource development with other local-community groups and has encouraged partnerships that would respond to unmet needs.

The Senior Legal Services Project is the only agency providing legal services for seniors in San Luis Obispo County. (Newsletter of the American Bar Association, *supra.*) Recently, with American Bar Association funding, the Project embarked on a year-long project to reach out to Latino elders and to provide them with legal assistance. (*Id.*)

CRLA's collaboration with SLOLAC and our support of the seniors legal services clinic has been an effort to meet LSC's expectations. Over its history, CRLA has obtained various AAA grants and directly operated seniors legal services programs under AAA provisions. AAA funding does not cover the full cost of operating these programs, and we have no doubt that were we to solicit the AAA grant in San Luis Obispo and directly administer and operate the Seniors Legal Services clinic, CRLA's costs would be substantially higher than the $418 per month we expend to provide space for this clinic operated by the local non-profit SLOLAC. Thus, this arrangement has been favorable to CRLA and has constituted a sound business practice.

Over the years CRLA has kept LSC apprised concerning the existence, operation and success of this clinic–with no question about propriety or nature of our involvement ever raised in response. For these as well as the reasons described earlier in this section, we respectfully disagree with the Draft Report's conclusion that this expenditure is neither "reasonable" nor "necessary" for performance of our LSC grant within the meaning of Section 1630.3(a)(2).

(b) CRLA's Rent Payments for the SLOLAC Seniors Legal Services Clinic Are Proper PAI Expenditures

The underwriting of the space costs of this AAA-funded clinic staffed by members of the private bar was legitimate PAI expense. Unfortunately, an internal miscommunication at CRLA

[20]SLOLAC's other three projects include a domestic-violence TRO clinic; a conflict-resolution program; and a voluntary legal services pro bono panel. These three projects are housed elsewhere, and receive no financial support from CRLA.

resulted in our Accounting Department's failure to allocate rent payments for the SLOLAC Senior Legal Services Clinic as a PAI expense during the audit period,[21] and for this reason alone the Draft Report concludes that the rental payment did not qualify as PAI. The mere fact that this expense was temporarily not credited as PAI in CRLA's accounts in no way causes the expense to be *ineligible* as PAI.

Since inception of the PAI obligation, LSC continuously has encouraged recipients to provide resource support to other legal non-profits for a number of reasons: to increase the number of low-income legal service providers in areas where little service exists; to better serve poverty communities that need special services (*e.g.*, seniors legal services)[22]; to serve low-income clients that recipients may lack sufficient services or expertise to assist (*e.g.*, victims of domestic violence). LSC has long encouraged CRLA to diversify our PAI program.

Since the late 1980's, CRLA has treated its collaborations with the San Luis Obispo County Bar Association--activities now performed by SLOLAC--as an integral part of our Private Attorney Involvement Program. By December, 1988, our San Luis Obispo Directing Attorney was presenting the San Luis Obispo Volunteer Legal Services Program ("VLSP") to other CRLA offices as a model for PAI compliance. Information provided the OIG audit team demonstrated that CRLA's 1990, 1993 and current PAI Plans (prepared pursuant to 45 C.F.R., § 1614.4(a)) described the Program as an example of a *pro-bono* referral project that could be replicated in other parts of the state. Again, during the recent LSC-driven Reconfiguration (merger plan) of legal aid programs, CRLA presented the SLOLAC model as part of our statewide PAI program.

2. CRLA's Provision of Space in our Madera Office for the Madera Coalition For Community Justice (MCCJ)

CRLA's Madera regional office is housed in a stand-alone, former single-family residence (zoned for commercial use). The house is leased to CRLA as a single unit for a fixed rent, regardless of the portion of the house that is actually occupied. The owner makes no rent adjustment available to CRLA for using less than all existing rooms within the structure. Nor does CRLA incur additional rental cost by expanding our use–or permitting another entity--to occupy an otherwise unused room. In

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[21] At some point, Accounting discontinued this allocation on the assumption that since CRLA was so readily meeting its PAI-expenditure obligation, there was no reason to allocate any additional qualifying expenses including the SLOLAC seniors clinic. Senior management's attempt to correct this upon subsequently discovering the situation was temporarily "derailed" as a result of unexpected turnover in the accounting personnel and considerable resultant lost communication. CRLA has now corrected this oversight.

[22] Since the 1980's LSC has allowed recipients to use LSC funds as a non-Federal match for Older American Act projects. (LSC General Counsel Opinion, July 30, 1980.)

short, we can't rent part of the structure–it's all or nothing; nevertheless, in the Madera commercial rental market, this building provides CRLA the most cost-effective available rental space.

LSC's Property Acquisition and Management Manual (PAMM) provides that,

> [w]hen using real or personal property acquired in whole or in part with LSC funds for the performance of an LSC grant or contract, recipients may use such property for other activities, provided that such other activities do not interfere with the performance of the LSC grant or contract, and provided that such other uses meet the requirements of paragraphs (e) and (f) of this section.

(Legal Services Corporation, *PROPERTY ACQUISITION AND MANAGEMENT MANUAL*, § 5(d), 66 Fed.Reg. 47697 (No. 178, Sept. 13, 2001).)

The Madera Coalition for Community Justice (MCCJ) is a non-profit organization that promotes community and economic development, and promotes local volunteerism. The organization provides a number of community service projects including food sharing, recycling, a community garden, clothing and childcare. The organization is not a legal-services provider and does not engage in restricted activities. Few, if any other, non-profit organizations that serve low-income people exist in Madera County.

In early 1997, CRLA's Board adopted our five-year program priorities including "Community and Rural Economic Development" which further embraced the separate concepts of "community building" and "community economic development". Community education, community building and community volunteerism, are generally accepted descriptions of the work of legal services programs all around the country (see, e.g., LSC's Program Letter 98-6, calling for expanded involvement of eligible individuals and families in self-help activities.) The Board further recognized the need for CRLA to increase "outreach to rural poverty communities". (CRLA Priorities Conference Report to the CRLA Board, adopted May 29, 1997.)[23]

As of May 1997, CRLA was still feeling the 1996 loss of 28% of our LSC grant, amounting to $1.4 million, which had resulted in CRLA losing 41 employees. For the first time in its history, CRLA was forced to staff many of its offices with 1 attorney; indeed, 9 of our then-15 offices (including Madera) were subjected to this reduced staffing. Ultimately, the Madera Directing Attorney recommended that the office use a small AAA grant to keep its second attorney, while at the same time relying on MCCJ instead of a CRLA Community Worker to carry out CRLA's local community

[23]Recipients are required by 45 CFR 1620 to ". . . . establish . . . priorities for the use of all of all of its Corporation and non-Corporation resources." (45 C.F.R., § 1620.3.) Recipients are then expected to adhere to these priorities. (45 C.F.R., §1620.6.)

education responsibility. The Directing Attorney also recommended allowing MCCJ to use an otherwise unused room in CRLA's "house" for meetings and storing project supplies. Given CRLA's minimum salary of $19,000 for a Community Worker, this presented an exceptionally cost-effective way of conducting some of CRLA's community outreach.

In December 1997, CRLA and MCCJ signed a Memorandum of Understanding pursuant to which CRLA would provide "office space, copier and FAX resources" in return for which MCCJ through volunteers would "work. . . on community-building projects and provid[e]. . . community education on poor people issues" equivalent to fair value for CRLA's resources.[24] The MOU specifically described the implementation of a volunteer system developed by Edgar Cahn[25] and presented at CRLA's priority conference as one of MCCJ's projects. As part of its annual priority-setting process, in February 1998, CRLA's Board added "volunteerism as part of [the] service delivery structure" to the existing "community building and economic development" priority.

The Madera Directing Attorney has maintained records of the hours provided by MCCJ volunteers pursuant to the annual MOUs, and CRLA provided the OIG audit team with a 6-year summary of volunteer hours through June 2003. Excluding 2003, MCCJ volunteer hours averaged 1,714 hours per year, equivalent to 228.5 CRLA work days (7.5 hrs/day) or 45.7 work weeks per year. At current minimum wage ($6.75/hr.), this volunteer activity had a value of $11,570 annually. The total volunteer time generated by the project, 11,484 hours, reflects a value of $77,517 at current minimum wage.

MCCJ thus undertakes legitimate activities in implementation of CRLA priorities. In the absence of this arrangement, CRLA would have to directly hire staff to accomplish the same results. Accepting the Draft Report's valuation of the space at $2,456 for the audit period, CRLA receives considerably more than fair value in this exchange.

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[24]CRLA oversees the MCCJ project through both our Madera Directing Attorney and our Executive Director. The MOU between CRLA and MCCJ (as with all CRLA tenants) provides notice of pertinent LSC regulations and tenant certification of understanding and compliance:

> I certify that I have reviewed the following restrictions imposed on CRLA Inc. by its funder and certify that, where restrictions would apply, the Madera Coalition has not used any CRLA resources in violation of those restrictions or has otherwise paid CRLA Inc. a fair value for CRLA resources that were provided; in the latter case, such use was authorized by the Madera Directing Attorney prior to its use.

[25]Edgar Cahn is generally recognized as the co-founder of national legal services supported by the federal government. His doctrine of exchanging volunteer activities for other services is called "Time Dollars".

3. OIG Prospective Recommendations re Provision of Space To Other Organizations

3.1 *Require SLOLAC and MCCJ to pay their fair share of the rent*

(a) San Luis Obispo/SLOLAC

The seniors clinic provides clients with counsel and representation through the local private bar. The clinic's existence is supported by CRLA's providing the physical facility and by our staff's collaborative efforts with the County Bar Association to establish, administer and fund the project. This expenditure "involve[s] private attorneys in the delivery of legal assistance to eligible clients" (45 C.F.R., § 1614.1(a)) and "encourages the involvement of private attorneys in the delivery of legal assistance to eligible clients through . . . [a] pro bono mechanism (*id.*, subd. .2(a).) The clinic provides direct delivery of legal assistance to eligible clients. (*Id.*, subd. .3(a).) There is virtually no question that the clinic is legitimate PAI activity.

We acknowledge CRLA's recent failing in allocating or expensing this rental cost as a PAI expenditure. We have already rectified that oversight. The seniors clinic obtains client information concerning alienage status but does not deny services on account of status. Therefore, the only PAI issue is to determine a formula based upon percentage of eligible clients for allocating appropriate proportion of the rent to PAI expenditures. [26]

Accordingly, we conclude that the Recommendation is inconsistent with longstanding policies of the Corporation and Congress that CRLA has over many years taken conscientious and reasoned steps to maximize.

(b) Madera/MCCJ

CRLA respectfully believes that the Draft Report misconstrues and misapplies LSC regulations to MCCJ's occupancy of a room in our Madera office.

There is no issue under LSC Regulation Section 1630 because there has been no CRLA out-of-pocket or marginal expenditure for the space that we permit MCCJ to use. A "questioned cost" under Section 1630 is one that "appears unnecessary or unreasonable and does not reflect the actions a prudent person would take in the circumstances." (45 C.F.R., § 1630.2(g)(3).) These factors don't

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[26]Our informal understanding is that the seniors clinic has served one alien-status-ineligible client (out of approximately 2,400 total clients) during the past 8 years. CRLA does not count the AAA/seniors clinic cases for CSR purposes. The amount of space costs attributable to one improper client in many years of representation of thousands of clients is not material from an accounting perspective under either LSC or federal accounting rules. In terms of cost allocation to permissible activity, this was *de minimis*.

exist in the Madera situation: there is no "unnecessary" or "unreasonable" cost because there is *no* avoidable cost–CRLA can't rent less than the whole house; CRLA can't reduce the rental fee by not occupying the room in question; and CRLA's rent hasn't increased by one cent by allowing MCCJ to occupy the otherwise unused room, and CRLA couldn't find smaller suitable office space at a proportionally lower price. As described above, we have obtained services valued at over $77,000 at minimum wage–for a space that the Draft Report values at $2,456. Our actions are those of a prudent person, as sub-paragraph 1630.2(g)(3) requires.

Whether CRLA *could* charge MCCJ rent for the space and thus garner additional income does not raise a subsidization issue under Section 1610 or 1630. "Subsidization" of non-restricted entities is not forbidden, and since MCCJ is not an entity engaging in prohibited or restricted activities, the issue of "subsidization" does not arise under the Act or regulations. This is confirmed in LSC's PAMM which provides that recipients shall charge other organizations using space acquired with LSC funds if the organization engages in activity *restricted* by the LSC Act. (*PROPERTY ACQUISITION AND MANAGEMENT MANUAL, supra*, § 5(f); see, *id.*, par. 5(e) regarding provision of services.) There is no similar requirement for "tenants" that do not engage in restricted activities.

As described earlier, CRLA engages in the relationship with MCCJ and uses the volunteer services provided by MCCJ for the express purposes of meeting CRLA Board-set priorities that promote "community-building" and "community volunteerism". MCCJ provides not only a model for implementation of this "volunteerism" priority, but-- in its absence--CRLA would be obliged to directly hire staff.

3.2 ***Require the managing attorneys' [sic] in the San Luis Obispo and Madera offices to review all rental payments and allocations quarterly to ensure that the subsidization does not reoccur.***

The Recommendation is unnecessary. For the reasons just set out, "subsidization" has not occured in this context, and there is no danger that it will. CRLA's staff, including Directing Attorneys, are regularly advised and trained concerning obligations under Section 1610, specifically including issues of subsidization. Directing Attorneys are required in their regular approval of all local expenses and allocations to ensure that subsidization of an entity engaged in restricted activities does not occur. In this regard, we take pride in already doing more than Recommendation 3.2 proposes.

CONCLUSION

With respect to "program integrity" between CRLA and the Foundation, CRLA has readily corrected the minor oversights (virtually all of an accounting nature) or terminated the facilities lease that concerned the audit team. CRLA's practices in co-counseling and sharing staff were, and are, completely legitimate activities in full compliance with all LSC (and other professional) obligations.

They do not individually constitute violations, nor do they comprise a violation of Part 1610 taken together.

CRLA also respectfully disagrees with the Draft Report's conclusions that we violate Section 1636.2 by treating non-parties as such; and that we provide space improperly to the San Luis Obispo seniors legal clinic or the Madera coalition that provides volunteers to undertake CRLA activities.

In sum, the OIG's factual findings portray a program that is conscientiously and rigorously in compliance with LSC's mandates, and the Draft Report's limited conclusions of noncompliance and remedial recommendations are unwarranted.

ATTACHMENT TO

CRLA's COMMENTS IN REPLY TO OIG DRAFT AUDIT REPORT (issued September 30, 2003)

November 14, 2003

APPENDIX I

California Rural Legal Assistance, Inc.
631 Howard Street, Suite 300
San Francisco, CA 94105
415-777-2752 fax 415-543-2752

Invoice No. 2002-06

INVOICE

Customer

Name	California Rural Legal Assistance Foundation
Address	2424 "K" Street
City	Sacramento State CA ZIP 95816
Phone	

Date	5/1/02
Order No.	
Rep	
FOB	

Months	Description	Unit Price	TOTAL
	Interest Charges for Late Payment		
2	January 2001	$20.89	$41.78
1	February 2001	$20.89	$20.89
3	June 2001	$21.58	$64.74
2	July 2001	$21.58	$43.16
1	August 2001	$21.58	$21.58
3	November 2001	$21.58	$64.74
2	December 2001	$21.58	$43.16
1	January 2002	$21.58	$21.58
2	March 2002	$21.58	$43.16
1	April 2002	$21.58	$21.58
1	Federal Express: Luke Cole to Dania Gutierrez	$21.06	$21.06

	SubTotal	$407.43
Shipping & Handling		$0.00
Taxes	State	
	TOTAL	$407.43

Office Use Only

Due Upon Receipt of Invoice. Interest of 1% (12% per annum) will be charged after 30 days.

Paid by check # 8887 - ck date 06/03/02
RS

APPENDIX I

California Rural Legal Assistance, Inc.
631 Howard Street, Suite 300
San Francisco, CA 94105
415-777-2752 fax 415-543-2752

INVOICE

Name:	California Rural Legal Assistance Foundation				
Address:	2210 K Street, suite 201				
City:	Sacramento	State:	CA	ZIP:	95816
Attn:	Daniel	Fax:	916-446-3057		

Date:	October 17, 2003
Terms:	
Invoice No:	**2003-39**

QTY	Description	Unit Price	Total
	Interest Charges for Late Payment - 1% of Total Invoice		
10	September 2002 Rent Payment - Paid in June 03	4.73	47.27
4	October 2002 Rent Payment - Paid in Jan 03	5.16	20.64
3	November 2002 Rent Payment - Paid in Jan 03	5.16	15.48
2	December 2002 Rent Payment - Paid in Jan 03	5.16	10.32
6	January 2003 Rent Payment - Paid in Jun 03	5.28	31.69

Please Make Check Payble To:
CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

Sub Total	125.39
Shipping & Handling	0.00
Taxes	0.00
Total	125.39

APPENDIX -- II

OIG STAFF AND CONSULTANT TEAM MEMBERS

Anthony M. Ramirez (Auditor-in-charge)

David Young

Abel Ortunio

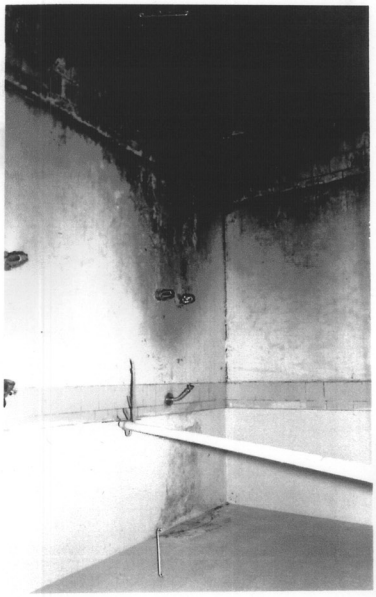
Claudette Moore, Consultant

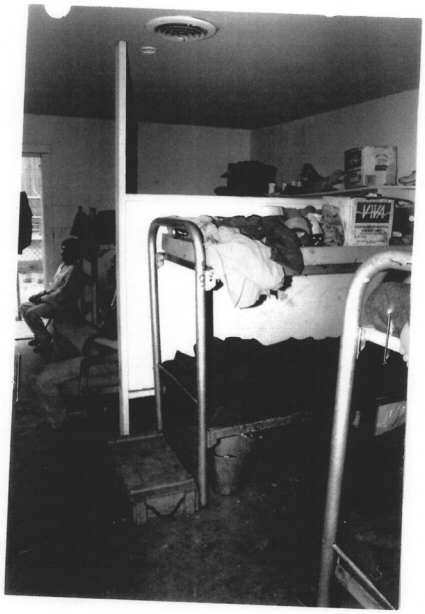
Terry Oehler, Esq., Consultant

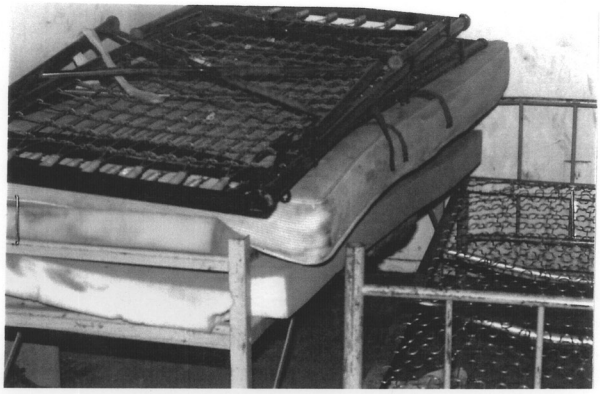
John Carter, Esq., Consultant

PHOTOGRAPHS SUBMITTED BY CALIFORNIA RURAL LEGAL ASSISTANCE INC.

LABOR CAMP NO. 2 HOLT, CA 5/23/00



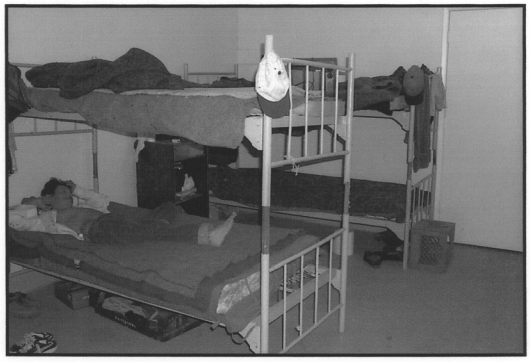


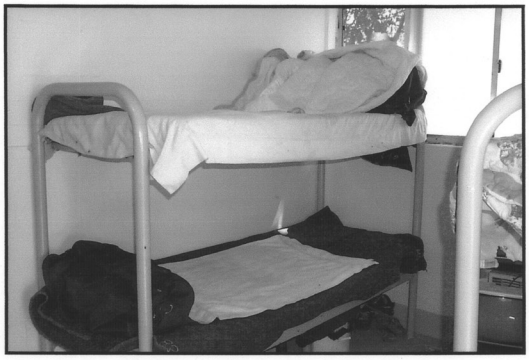


Camp 1, Victoria Island
June 4, 2000

Camp 1, Victoria Island
June 4, 2000

Camp 1, Victoria Island
June 4, 2000





SUPPLEMENTAL PREPARED STATEMENT OF JEANNE CHARN, DIRECTOR, HALE AND DORR LEGAL SERVICES CENTER, AND DIRECTOR, BELLOW-SACHS ACCESS TO LEGAL SERVICES PROJECT, HARVARD LAW SCHOOL

The following information is offered as a supplement to the written remarks and oral testimony presented to the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee on Wednesday, March 31, 2004.

On the topic of experiments at the Hale and Dorr Legal Services Center with client co-payments, I emphasize that we serve clients above 125% of poverty. Some of these clients are fledgling entrepreneurs, not for profits and other clients not typically served by LSC funded legal services providers. These clients may have incomes above poverty, but they cannot afford decent legal services at market rates. Most of the Center's clients who have incomes above 125% of poverty have legal problems that are the same as most of our clients who are below 125% of poverty—they have job related issues, or they are seeking unemployment compensation; they seek disability assistance because they are ill or injured and cannot work; they seek assistance with child support, protection from domestic violence or assistance with divorce; they are homeowners threatened with foreclosure or tenants with unsafe or unhealthy apartments who may also be facing eviction. Housing costs in Boston are high so many people above the lowest income levels have difficulty finding and retaining decent affordable housing. With rental housing costs in lower income Boston neighborhoods reaching eight hundred to as much as one thousand dollars per month or more, we serve many clients who are "shelter poor," that is their incomes may be above poverty but they have no discretionary money and could not possibly afford lawyer assistance.

For tenants, we claim attorney's fees pursuant to state statutes and rules. All income from representation of tenants is pursuant to these statutes and rules. When we represent clients who have been victimized by predatory lending, we similarly seek attorney's fees and costs of litigation pursuant to local and federal statutes.

Under 45 CFR Part 1642, LSC funded programs are not permitted to seek these fees. As indicated in my testimony on March 31, 2004, I would urge the Subcommittee to consider easing the current restrictions that prevent LSC grantees from seeking fees under existing statutes and rules, whether local or federal. These fee-shifting statutes are intended to encourage compliance and deter rule breaking. Permitting LSC grantees to seek such fees would have no impact on the present substantive restrictions that Congress has enacted, but would be consistent with the intent of the fee shifting statutes and would produce income to programs that would support increased service.

While existing regulations do not permit LSC grantees to seek attorney's fees pursuant to statute or rule, I would point out that section 1642.6 of 45 CFR Part 1642 permits LSC grantees to seek reimbursement of out of pocket costs from ". . . damages or statutory benefits . . ." that result from the representation. LSC might encourage programs that may not be doing so already to regularly seek reimbursement of out of pocket costs when representation produces funds from which such costs could be paid.

At the Hale and Dorr Center, we seek such cost recoveries from all clients whether above or below 125% of poverty. The clients who are represented with the Private Attorney Involvement (PAI) funds pursuant to an annual contract with Boston's Volunteer Lawyer Project (VLP) are never charged co-payments because VLP has only LSC funds. However, we do seek co payments from clients below 125% of poverty whom we represent with non-LSC funds. We seek co-payments from these very low-income clients only when our representation produces resources from which the co-payment can be made, for example, back benefit awards in disability or unemployment compensation matters. In these areas, most co-payment charges are for clients in the income range of 200% of poverty or lower.

Finally, a note on the PAI funds received by a separate not for profit entity housed at the Hale and Dorr Center in Jamaica Plain from the LSC grantee, The Volunteer Lawyer's Project. While these funds must be used to serve clients consistent with LSC regulations and the LSC statute, participating in a PAI program funded by an LSC grantee such as the VLP does not restrict other funds of the private attorney. We have gone further and segregated the PAI funds in a separate not for profit entity that contracts annually with the VLP. Pursuant to contract, VLP requires the not for profit to serve a specific number of LSC eligible clients each year.

In conclusion, I want to express my thanks to the Committee for its interest in the service delivery experiments of the Hale and Dorr Center and the broader work of the Bellow-Sacks Access to Civil Legal Services Project. The knowledge, thought-

fulness and obvious commitment of the Subcommittee Chair and members to making high quality legal services broadly available was heartening and of great importance to the future of our legal system.

RESPONSE TO POST-HEARING QUESTIONS FROM HELAINE M. BARNETT, PRESIDENT, LEGAL SERVICES CORPORATION

July 16, 2004

The Honorable Chris Cannon
Chairman, Subcommittee on Commercial
and Administrative Law
House of Representatives
Committee on the Judiciary
B-353 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Cannon:

Enclosed please find the Legal Services Corporation's (LSC) answers to your supplemental questions from LSC's Oversight Hearing on March 31, 2004. In addition, enclosed are LSC's corrections to the transcript from the hearing.

Please do not hesitate to contact me at (202) 295-1600, if you have any questions.

Sincerely,

Helaine M. Barnett
President

cc: The Honorable Melvin L. Watt

Legal Services Corporation's (LSC) Supplemental Answers to Questions from LSC's Oversight Hearing on March 31, 2004

Question 1: California Rural Legal Assistance (CRLA) claims that there are several examples of inconsistency within LSC and the IG's Office. In the example of rent subsidy, CRLA claims that the December 2000 report found that the same "indirect subsidy" was treated as lacking material value, and that in the 2003 report, this same infraction was found to be an actual subsidization,. Were these situations, in fact, identical and constitute an inconsistency, or were they found to be different and deserving of separate conclusions.

Regarding the "rent subsidy" between CRLA and the Foundation, both LSC management and the Office of Inspector General (OIG) identified a failure by CRLA to charge late penalties. In both situations CRLA was told that this was a problem and committed itself to correcting it.

In 2000 the Office of Compliance and Enforcement (OCE) determined that CRLA and the Foundation had entered into a number of agreements for the benefit of each party, and that these agreements were at fair market value. However, there were minor lapses in CRLA billing. Prior to OCE's on-site review, two overdue bills were paid to CRLA for which CRLA did not charge any late penalties. LSC determined that the lack of penalties amounted to an indirect subsidy, which was the equivalent of a short-term, interest-free loan. LSC notified CRLA of this finding and advised CRLA that this situation should not continue. LSC did not describe the indirect subsidy it found as lacking material value. No action was taken because the situation was corrected and was not to continue.

The Inspector General found that CRLA routinely allowed late payment of rent by the Foundation from June 2001 to May 2002. The leases did not provide for late payment fees or interest charges in the event rents were not paid when due. The Inspector General found that the failure of the Foundation to pay late fees—which, according to documents submitted by CRLA to the IG totaled $511—was an interest free loan from CRLA to the Foundation and therefore was a subsidization of its operation.

There is no inconsistency in the findings of LSC management and the OIG. The OIG found that, after being put on notice by LSC management, CRLA allowed the subsidy to occur again. Both LSC management and the OIG identified this problem. In response to the OIG's report, CRLA stated that it will correct the problem by invoicing rent payments and charging interest for late payments.

Question 2: The audit report of the IG on CRLA states that the shared office spaces between the Foundation and CRLA in Modesto was indistinguishable from one another, that each organization had a separate entrance, but that once inside there was "no separation of offices inside the suite". On the other hand, Mr. Padilla, claims that the only shared space was a lunchroom. These versions are at complete odds with one another. Please comment and clarify.

The OIG found that CRLA "did not physically separate itself from the Foundation in the shared office space in Modesto. . . . The grantee's space was not separated from the Foundation's space and the two organizations were indistinguishable."

In responding to the draft of the audit report, CRLA stated that the "Foundation's separate space was identified by appropriate signs that were clearly visible to the public and were equivalent to the signs identifying other commercial entities in adjoining suites in the same building complex." Based on that, CRLA concluded that the "distinction between CRLA space and Foundation space thus was apparent to the public, and confusion was unlikely."

The OIG addressed this response in its final report. The OIG states that "[i]n fact, the two offices were in a single suite and were not separated by a physical barrier. Foundation and grantee staff moved freely within the suite."

At this stage of the follow-up process LSC management has before it the facts as reported by the OIG. Management cannot speculate about the basis for CRLA's disagreement with the OIG's characterization of the space. Furthermore, the OIG also found that "[s]ubsequent to completion of on-site audit work, the Foundation moved from the shared space." Therefore, the shared office space in Modesto no longer exists and the OIG made no recommendations regarding it.

Question 3: In the case of the DLAT (a senior level staff member of CRLA) who shared time between CRLA (90%) and the Foundation (10%), Mr. Padilla states that the guidelines suggest that LSC Guidelines allow up to 10% of a grantee's staff to be shared employees. Considering the confusion which this causes, as well as the perceived and potential conflict of interest, would you comment on whether there should be a complete bar on any such sharing of employees of senior level status? If not, how can this perceived conflict be averted?

A complete ban on the sharing of senior employees could undermine LSC's defense of court challenges to the 1996 restrictions. In *LASH v. LSC,* the federal district court in Hawaii enjoined LSC's enforcement of certain 1996 Congressional restrictions, which the court determined violated Constitutional protections. Specifically, the court found that LSC's "interrelated organizations" test was too restrictive on grantees and burdened their First Amendment rights. In particular, it did not allow grantees sufficient alternative avenues of expression through non-LSC organizations. The ability of part-time grantee staff to work at such organizations part-time was one factor the court examined.

In response to the *LASH* decision, LSC replaced the interrelated organizations test with the program integrity standard used by the Reagan-Bush era Department of Health and Human Services. In circumstances analogous to the program integrity requirements on LSC grantees, this standard was designed to ensure that HHS funded health programs maintained sufficient separation from programs that provided abortion services. HHS explicitly permitted the sharing of personnel between these programs if overall program integrity was maintained. In *Rust v. Sullivan,* the Supreme Court upheld the HHS

standard as consistent with the First Amendment rights of federal grantees. As part of this regulatory revision, LSC represented to courts in both the Second and the Ninth Circuits that part-time employees at LSC grantees would not be completely barred from also working for unrestricted entities. Based on these revisions, the injunction was lifted and both circuits upheld LSC's program integrity test as facially consistent with the First Amendment. Nonetheless, litigation challenging the program integrity is ongoing in the Second Circuit. In *Velazquez v. LSC* and *Dobbins v. LSC,* LSC is defending the program integrity test against an "as applied" challenge. LSC risks another injunction against enforcement of the Congressional restrictions if it does not leave recipients and their staff with sufficient room to express their First Amendment rights.

The 1997 LSC Guidance in Applying the Program Integrity Standards issued under Part 1610 is consistent with numerous judicial decisions on the issue. The regulation involves a delicate balance between LSC's vigorous enforcement of the restrictions and the grantees' First Amendment rights. In the 1997 guidance, LSC made the following points regarding part-time staff working at grantees and other organizations, in conformity with the *Rust* decision:

- There is no *per se* bar against a grantee employing part-time staff who are also employed part-time by an organization which engages in restricted activities.
- Generally speaking, however, the more staff "shared," or the greater the responsibilities of the staff who are employed by both organizations, the more danger that program integrity will be compromised.
- Sharing an executive director, for example, inappropriately tends to blur the organizational lines between the entities.
- Likewise, sharing a substantial number or proportion of grantee staff calls the grantee's separateness into question.
- For larger organizations, 10% of the grantee's attorney/paralegal staff should serve as a guide [to determine a "substantial number or proportion"].

This guidance is consistent with LSC's vigorous defense of the Congressional restrictions and program integrity standard. Physical and financial separation, which includes the separation of personnel, requires a totality of the facts analysis. When an issue arises in which a grantee and an entity that does restricted activities both employ the same person, LSC will looks carefully at the situation to determine if program integrity is maintained. LSC believes that this flexible test, taking into account other aspects of the situation as well, is best designed to enforce the restrictions to the maximum extent possible within the confines of the First Amendment as applied by the federal courts. Because the Supreme Court has indicated that this flexible test enables Congress to restrict the use of non-federal funds, so long as alternative avenues of expression are available, it may be impossible to avoid all *appearances* of conflicts. Instead LSC's regulations and our enforcement of Congressional restrictions are designed to provide that there is no conflict in fact.

Question 4: In February of 2003, the Office of Compliance and Enforcement conducted an on-site investigation of the South Carolina Centers for Equal Justice and found numerous problems at SCCEJ, including non-compliance with the LSC guidelines and concerns over expenditures of LSC directed funds. As result, SCCEJ has been placed on month-to-month funding, pending progress being made on the problems identified by OCE. Please comment on the progress demonstrated by SCCEJ and when you expect it to implement of (sic) a reform and compliance program.

LSC takes very seriously its responsibilities to ensure that the programs it funds expend their grants in accordance with all applicable federal requirements and restrictions. OCE issued its report on its on-site investigation of February 2003 on November 6, 2003. Representatives of the South Carolina Centers for Equal Justice (SCCEJ) Board and Management met with the LSC Director of the Office of Compliance and Enforcement and staff, the Acting Vice President for Compliance and Administration and the Vice President for Legal Affairs on December 30, 2003 to discuss what actions SCCEJ would take to correct the problems that were enumerated in OCE's report. We found that the board of the program had taken very serious and aggressive steps and made changes in the program's management to address the concerns LSC raised. We found a high level of cooperation and willingness to take corrective action.

On February 16, 2004 the SCCEJ submitted a response to the OCE report of November 2003. That response detailed the actions that SCCEJ had taken in response to the report and what remained to be done. The program, while not agreeing with all of OCE's findings, did agree to make necessary changes to address each of OCE's findings. OCE has scheduled a follow up on-site investigation of the SCCEJ September 13-17 to verify that the program has conducted the corrective action it reported to LSC and to follow up on a few areas that the investigation team did not have time to complete in 2003. Subsequent to that on-site visit LSC will make a determination as to whether the program has taken sufficient corrective action to be removed from month to month funding.

Question 5: Could you please explain the function of the organization "Friends of LSC" who comprises it, what activities it engages in, and what your organization's role is in conjunction with it? In addition, does any of your staff work in any way for this organization and, if so, what funds are used to compensate them for the time spent on such work and what structural mechanism is in place to assure that their activities are sufficiently separate?

Friends of the Legal Services Corporation ("Friends") is a private 501(c)(3) organization. Friends' mission is described in its Articles of Incorporation and includes:

? Raising funds to support all aspects of the missions of LSC;

? Educating the public as to the wisdom and need to (a) provide equal access to the system of justice in our nation for individuals who seek redress of grievances; (b) provide high quality legal assistance to those who would otherwise be unable to

afford adequate legal counsel; and (c) provide legal counsel to those who face an economic barrier to adequate legal counsel;

? Acquiring, holding, and managing assets for use by LSC where doing so may result in lower costs or greater efficiencies for LSC;

? Pursuing any other purposes which a non-profit corporation organized under the Act described in Section 501(c)(3) of the Code is legally entitled to pursue.

Until now, Friends has been involved only in the purchase, financing and leasing of the building which houses LSC.

Friends is comprised of a Board of Directors and a volunteer. The Board is chaired by Thomas F. Smegal, Jr., a senior partner at the law firm of Knobbe Martens Olson & Bear in San Francisco. Vice-Chairman of the Board is John W. Martin, Jr., former General Counsel of Ford Motor Company. The other directors are Alexander D. Forger, Esq., Special Counsel to Milbank, Tweed, Hadley & McCloy in New York and a former President of LSC; Hulett H. Askew, Esq., Director of the Office of Bar Admissions of the Supreme Court of Georgia and former LSC Board Director; Professor Peter B. Edelman, Professor of Law at Georgetown University in Washington, DC; and the Honorable Deborah G. Hankinson, former Justice of the Supreme Court of Texas. The volunteer is Lynn Bulan, Esq.

The only LSC staff member who does any work for Friends is Lynn Bulan, Senior Assistant General Counsel. Ms. Bulan works for Friends in a strictly voluntary capacity and LSC does not compensate her in any way for her work with Friends. Ms. Bulan's activities are separated in that she gives up many of her evening and weekend hours to perform her work for Friends. In addition, Ms. Bulan's supervisor at LSC has informally tracked any time she has spent during the workweek on Friend's activities and has ensured that she has made up the time. In the future, LSC will institute a formal documentation procedure to track any LSC staff time spent working for Friends.

Question 6: Through the State Planning Initiative, overlap of legal services within jurisdictions have apparently been minimized by the forming of one or more larger scale legal providers instead of the fractionalization of several smaller components. If an organization, such as CRLA, is overly noncompliant, does there exist the ability to readily transfer administrative control of a grantee to another grantee that would comply with LSC's guidelines and restrictions?

LSC's State Planning Initiative was designed to satisfy Congress' mandate in the LSC Act of 1974 to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas." Grants are competed by a single service area. Service areas are competed intact; an applicant cannot apply for a portion of a service area. In a competition, the successful bidder must provide a plan for the delivery of services in the entire service area.

When a grantee does not complete its grant term, either because LSC must terminate funding for the program due to repeated violation of the restrictions or for some other reason, LSC has discretion to determine how legal assistance will be provided to the service area. LSC may enlarge the service area of another recipient to include that program's service area or form a contract with another organization to serve the area for a short period of time before conducting a competition.

Question 7: At the hearing, the indication was given that the process was on-going in regard to the Inspector General's report and recommendations toward making CRLA compliant with LSC guidelines. Since the hearing, what additional action has occurred? What future plans are being pursued to assure CRLA's compliance with the IG's recommendations?

The complexity of the CRLA situation is reflected by the two years that the OIG spent on this audit. Given the seriousness of the allegations, LSC management has attempted to ensure that any fact or legal opinion that might influence the result has been fully considered. To that end, LSC management has had a few meetings with the OIG regarding both the facts and the legal issues raised. The audit and analysis are progressing and we expect an LSC management decision on the case very soon. LSC's Office of Compliance and Enforcement will monitor the grantee regularly to ensure that CRLA is complying with any and all conditions that result from this audit.

However this matter is resolved, it will likely have an impact on the litigation over the 1996 restrictions. The Constitutional implications of the program integrity issues require very careful and deliberate scrutiny and discussion. To quote the Second Circuit, LSC must apply this regulation in a way that is not "unduly burdensome and inadequately justified with the result that the 1996 Act and the regulations will suppress impermissibly the speech of certain funded organizations and their lawyers." *Velazquez v. LSC,* 164 F.3d 757, 767 (2d Cir. 1999). We are taking great care to ensure that LSC can continue to vigorously enforce all of those restrictions within the First Amendment confines set by the federal courts. We will inform you as soon as final action is taken in this matter.

Question 8: On June 1, 2004, Dean Andal of Stockton, California submitted to LSC a request to amend LSC regulation Part 1617 – Class Actions, Section 1617.2(a) and (b). Is there any action planned on this amendment, and as President, how do you feel personally about such an amendment?

Under LSC's Rulemaking Protocol, decisions as to whether to undertake rulemakings must be made by the Board of Directors. 67 Fed. Reg. 69763, November 19, 2002. As Mr. Andal's rulemaking petition arrived just prior to the last meeting of the Board of Directors on June 4-5, 2004, it was not possible to address the petition at that meeting. It is anticipated that his petition will be taken up for discussion by the Board of Directors at the next meeting, September 10 - 11, 2004. As President of LSC, I will work with management and counsel to formulate a position to recommend to the Board after careful study and review of the issues. I have, by letter dated July 7, 2004, informed Mr. Andal of the status of his petition.

Question 9: CRLA still has eight open class action lawsuits that predate 1996. They were found to be unlawfully participating in one, Hernandez v. Stockton Unified, by the Inspector General's latest report. Why hasn't LSC required them to petition the court and remove themselves from all eight? Has there been any attempt to have CRLA reimburse LSC for federal funds which were used to satisfy billing for this representation?

In the 1996 LSC regulations, the definition of "initiating or participating in any class action" excludes "non-adversarial activities, including efforts to remain informed about, or to explain, clarify, educate or advise other about the terms of a final order granting relief." 45 CFR §1617.2(b)(2). This permits recipients to continue to provide some non-adversarial services in the dormant cases in which they had been engaged prior to the ban. At the same time, in keeping with Congressional intent, the regulation ensures that recipients do not act as the driving force behind class action litigation or participate in such actions in any adversarial way. The regulation precludes involvement with any official activities related to enforcement of the settlement for the class or other participation in any adversarial activities which might arise after the entering of the final order (e.g., post-settlement litigation). Of course, if a post-order class action case becomes active once again and resumes its adversarial nature for any reason, recipients must promptly move to withdraw in order to avoid participating in a class action. See *Preamble to Interim Rule*, 61 Fed. Reg. 41964 (August 13, 1996).

In the *Hernandez* case, for many years the case was inactive and CRLA was not in violation of the restriction. However, once the case resumed an active, adversarial posture, CRLA's activities amounted to participation in the class action, in violation of the restriction. We believe that the CRLA case is an isolated incident, and not indicative of any overall pattern of grantee behavior.

With respect to LSC action following up on this matter, the OIG has informed us that CRLA has withdrawn from the case and that no additional follow-up is needed to ensure corrective action taken on the *Hernandez* matter. As to the matter of reimbursement of LSC funds, LSC's Office of Compliance and Enforcement is looking into what expenses were incurred by CRLA and whether LSC funds were used. LSC will take the appropriate action to recover any improperly expended LSC funds.

Question 10: Across the nation how many open class action lawsuits are active where an LSC recipient is still the counsel of record?

Since the class action restrictions were instituted in 1996, LSC grantees are not permitted to initiate or participate in any class action lawsuits. We are aware of no current active class action litigation in which LSC grantees are participating. There are some remaining class action cases which were filed prior to 1996 in which there was a final order entered in the case and in which there has been no court action for several years. These cases do not involve ongoing adversarial proceedings and the only activity of the grantee in these cases is non-adversarial, whereby the grantee is passively receiving reports from parties involved in administering class action settlements or providing information to clients and

others about final orders granting relief in class actions. As explained in the answer to question nine, this activity is not prohibited.

Question 11: Since these cases pre-date the prohibition on class action cases and have been open for more than 10 years, why hasn't LSC acted more aggressively to withdraw grantees from this representation? Is more Congressional guidance necessary?

The safe harbor was built into the prohibition of class action cases because of the reality that once an order is entered in a class action suit and the only action remaining is monitoring, it is often impractical if not impossible to successfully transfer the case to another attorney. Courts often will not give leave to an attorney to withdraw from a case in that situation. Moreover, as LSC grantees have not accepted new class action cases since the prohibition went into effect, the number of cases in which an LSC grantee is monitoring a non-adversarial case decreases every year. Congressional intent in this matter is quite clear and no further guidance is necessary.

Supplemental Answer on Client Co-Payments

As the Committee expressed a specific interest in the question of whether or not clients of LSC-funded programs should be required to provide a co-payment in exchange for services, LSC wishes to take this opportunity to elaborate on that issue and to respond to the testimony provided by Jeanne Charn of the Hale and Dorr Legal Services Center (the Center), a non-LSC funded program that requires a co-payment from some of its clients.

LSC grantees and the Center exist to serve different functions. The Center's primary mission, as part of a law school, is to educate law students. While both the Center and LSC grantees provide high-quality legal services to low-income clients, the Center is also primarily concerned with exposing students to the practical aspects of practicing law, including the collection of fees and other elements related to the business of law.

Aside from the fact that the LSC grantees and the Center have different goals, they operate in a number of substantially different ways that make it inappropriate to simply take a system used by one and transplant it to the other. For example, the Center serves clients at four times the national poverty level, whereas LSC grantees serve clients at 125% of the national poverty level. The Center represents clients in a geographically limited and relatively homogeneous service area, while LSC funded grantees serve clients nationwide, representing clients in urban and rural areas, and serving racially, ethnically diverse populations which speak numerous foreign languages. The Center also provides services to entities (community non-profits, affordable housing developers, small businesses) as well as individuals. The Center therefore has a much higher-income client pool from which this system can draw revenue and provides services that clients of LSC grantees do not need or use.

The Center's system of client co-payments also allows for a number of exceptions. The Center does not charge co-payments to clients whose only income comes from need-based benefits, to clients whose income is below the poverty line, or for clients in an

emergency situation. It should be noted that the overwhelming majority of LSC grantee clients, who represent the poorest of the poor, would fall into these categories.

Finally, a co-pay could have a detrimental impact on our over-burdened and under-resourced programs. They would have to set up the paperwork and accounting systems to ensure the required payments were received, accounted for and used properly. In addition, they would have to establish a system to provide for a waiver of the co-pay when the clients were in dire situations and unable to make even the smallest contribution.

RESPONSE TO POST-HEARING QUESTIONS FROM JOSE R. PADILLA, EXECUTIVE DIRECTOR, CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

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June 24, 2004

Jose R. Padilla, Esq.
Executive Director
California Rural Legal Assistance
631 Howard Street, # 300
San Francisco, CA 94105

Dear Mr. Padilla:

Thank you for appearing before the Subcommittee on Commercial and Administrative Law at the legislative oversight hearing on the Legal Services Corporation on March 31, 2004. Your testimony, and the efforts you made to present it, are deeply appreciated and will help guide us in whatever action we take on this matter.

Pursuant to the unanimous consent request agreed upon at the hearing, Subcommittee Members were given the opportunity to submit written questions to the witnesses. These questions are annexed. Your response will help inform subsequent legislative action on this important topic.

Please submit your written response to these questions by 5:00 p.m. on July 9, 2004, to: James J. Daley, Oversight Counsel, Subcommittee on Commercial and Administrative Law, B353 Rayburn House Office Building, Washington, DC 20515. Your responses may additionally be submitted by e-mail to: james.daley@mail.house.gov

In addition, we have enclosed for your review a copy of the official transcript of this hearing. The transcript is substantially a verbatim account of remarks actually made during the hearing. Accordingly, please only make corrections addressing technical, grammatical, or typographical errors. No substantive changes are permitted. Please return any corrections you have to: James Daley, Subcommittee on Commercial and Administrative Law, B353 Rayburn House Office Building, Washington, DC 20515 by July 9, 2004.

Mr. Jose Padilla
June 24, 2004
Page Two

If you have any questions regarding the enclosed questions or transcript, please feel free to contact Mr. Daley at (202) 226-2421.

Thank you for your continued assistance.

Sincerely,

CHRIS CANNON
Chairman
Subcommittee on Commercial and Administrative Law

Enclosures

c: The Honorable Mel Watt

Questions for Mr. Jose Padilla, Executive Director of California Rural Legal Assistance, from the Honorable Chris Cannon, Chairman Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary

1) The office manager in your Oceanside officel was working as a full time employee for CRLA. As the head of the office and in a supervisory role, it would be assumed that this individual was directly overseen by one of your DLAT's as well as yourself. Please articulate how much interaction you have with the Foundation, and what form this interaction takes. And, considering your views on the importance of immigration issues, were you not aware that this employee held a Director position within the Foundation dealing with these specific issues? Was any corrective action or managerial oversight taken in this matter? Was she asked to quit or terminated by you for her actions?

2) In your written testimony, you appear to dismiss the IG's findings regarding the indirect subsidy of the Foundation through the lack of commercially accepted standards for rent payments, indicating that the amount of $511.00 is immaterial in value. Wouldn't you agree that when a grantee and a group active in restricted activities form a cooperative business atmosphere, that the degree of care and appearance of impropriety are heightened? And, in fact, wouldn't it be fair to say that it is the policy which the IG is being critical of, and that the amount, what ever it may be, is in fact the immaterial issue, but the policy is what needed to be evaluated?

3) You stated in your written testimony that "...[The] presence or absence of minor penalties for late rental payments is no ground for a finding of any material violation of law". In regards to shared staff, you note that the *number* of shared employees fell below LSC guidelines for the *amount* of employees which allows LSC to question structure, not whether they were properly separated. In the case of the alleged co-counseling, you state that you had no "prior notice" that this could be a Section 1610 Program Integrity violation. In response to the Hernandez case, you indicate that participation in negotiations were not "adversarial" in nature, and not only a "presence," although your attorneys responded within the Court record as being present and having a representational capacity. Is there confusion as to the purpose and rationale behind the restrictions? You indicate in your written testimony that "CRLA institutionally, and [you] personally, take pride in knowing that [your] understanding of, and strict adherence to, the laws and regulations governing legal services" and that you "fully understand that survival of national legal services today is a bipartisan responsibility that has required agreement to a restricted legal practice". One could argue that the way you view and interpret regulations contradict this statement. How do you respond?

4) You have claimed that there are several examples of inconsistency within LSC and the Office of its IG. In the example of rent subsidy, you claimed that the December 2000 report found that the same "indirect subsidy" was treated as lacking material value, and that in the 2003 report, this same infraction was found to be an actual subsidization. Were these situations, in fact, identical and caused be a problem of inconsistency in interpretation, or were they found to be different and deserving of separate approaches by the Corporation?

5) The report of the Inspector General states that office space shared by the Foundation and CRLA in Modesto was indistinguishable, that each organization had a separate entrance, but that once inside there was "no separation of offices inside the suite". However, you stated that, in fact, the only shared space was a lunchroom. Please explain this apparent discrepancy.

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July 9, 2004

Congressman Chris Cannon
Committee On the Judiciary
2138 Rayburn House Office Building
Washington, , D.C. 20515-6216

Re: **CRLA Response to Questions Submitted to the Subcommittee on Commercial and Administrative Law**

Dear Congressman Cannon:

I thank the Subcommittee for the invitation to be a part of the Oversight Hearing on the Legal Services Corporation held March 31, 2004. We were we happy to cooperate with the Subcommittee's difficult but important task of LSC oversight, and we were particularly appreciative of the chance to present direct testimony to clarify recent public complaints brought against us. I was especially grateful to have been able to meet with you personally and share views concerning the opportunities afforded by our government to the poor to improve their lives through equal opportunities for themselves and their children.

I also appreciate the opportunity to respond to the five enumerated questions attached to your June 24 letter. My answers follow:

1. Claudia Smith was the full-time Directing Attorney of CRLA's Oceanside office until she voluntarily left CRLA in January 2001. I was aware during at least the latter part of her tenure that she also performed unpaid volunteer work on her personal time for the Foundation, and that at least some of her volunteer work addressed immigration issues. I was not aware until brought to my attention by the OIG that, in her volunteer activities, Ms. Smith, at some point, assumed or was given the title of "Director".

In her capacity as a full-time CRLA employee, she was subject to direct supervision of her advocacy and litigation activities by the Director of Litigation Advocacy & Training (DLAT), a senior litigation director assigned to the Oceanside office. She was further subject to oversight on general operations, administration and personnel matters, first by CRLA's Deputy Director, and ultimately by me. CRLA and I have limited legal rights under employment law generally and under the LSC Act and regulations to perform oversight or intervene in an employee's non-CRLA activities performing

unpaid volunteer work on an employee's personal time. I note that Ms. Smith, as a full-time CRLA employee and not employed by the Foundation, was not a "shared employee" under 45 CFR 1610 as that term refers to staff employed part-time by the recipient and employed part-time by another entity performing activities restricted under the Act.

One responsibility which CRLA concededly does have is to require that our employees performing volunteer work on their own time undertake no actions that implicate their employer-recipient, CRLA. After Ms. Smith left CRLA, the Office of Inspector General (the IG) brought to our attention that a Foundation website listed Ms. Smith's CRLA phone number–a matter as to which I was unaware up to that moment. CRLA acknowledges that that listing was inappropriate, and we undertook several corrective actions including drafting new provisions for our staff manuals as well as for employment agreements emphasizing the prohibition on actions that would associate CRLA with volunteer activities. We further drafted a policy that will not allow a CRLA senior manager (including DLATs and Directing Attorneys) to assume a "Director" role with the Foundation as a shared employee. In light of her departure two and one-half years earlier, no action was undertaken vis a vis Ms. Smith.

During the recent IG audit of CRLA, the relationship between CRLA and the Foundation went through a thorough review. As understood and reviewed by the IG audit team, my interaction with the Foundation is in the context of negotiating and overseeing CRLA's subgrant of state monies (IOLTA) to the Foundation, ultimately, to ensure implementation of our contractual agreement. This function is performed through periodic meetings and communications with the Foundation's Director, and through my review of periodic grant activity reports submitted by the Foundation. (Of course, I also oversee other subgrant relationships that CRLA will develop time to time with other entities other than the Foundation).

2. Regarding the second question concerning the materiality of a finding valued at $511 and a policy concerning late rent charges, our written testimony rather than dismissing the issue (policy) of the late interest charges, emphasized that out of a grant of $18 million over the 2-year period of IG review, the IG found rigorous compliance across the board.

Any commercial or non-commercial entity that is audited, will concern itself with whether audit findings are of a material or non-material nature. Regarding a particular finding, and where possible, an audited entity will determine the dollar value of particular findings and judge them material or immaterial and, similarly, expect them to be judged material or immaterial by the auditor. This was CRLA's expectation throughout the IG audit. In this instance, it is not fair to say that it is *ever* proper or right — when an auditor has found very broad-based compliance on policy matters as the IG found--- for anyone to then take a very small and not material error and evaluate and then elevate it to a status that it does not deserve i.e. heighten it to a material finding.

Even though we disagreed with the IG's conclusions, we did not disregard the finding. We did not ignore the policy of having penalty clauses and through them charging interest for late rent. We took corrective action by determining the sum owed and collected payment. We also

acted to implement penalty clauses in our subleases.

3. We respectfully disagree with the implication of this question that because CRLA disagrees with positions taken by the OIG that have never been sanctioned by Congress or the Corporation, we are neither adhering to the laws and regulations governing legal services nor acting in cognizance or the spirit of a bipartisan agreement to a "restricted" legal practice. The third question states correctly that "CRLA institutionally, and I personally, take pride in knowing that our understanding of, and strict adherence to, the laws and regulations governing national legal services" is a precedent to protecting the resource. It also correctly states that "CRLA fully understands that survival of national legal services today is a bipartisan responsibility that has required agreement to a restricted legal practice".

In reality and practice, we work hard not just to follow the letter of the rules and restrictions, but also the underlying spirit and purpose as well. We believe we have done so. We have adhered to all LSC published regulations and guidelines and policy statements as to the proper way to follow laws and regulations and will continue to do so. When we are notified by LSC that we have a questionable practice, we immediately take corrective action.

Let me address the specific examples you have referenced. We discussed the $511 in late interest charge to public interest entities above and feel that our response does not indicate any disregard for our adherence to any rule or regulation. Regarding shared staff, the fact that CRLA did not skate close to the line, but has a number of shared employees far below the published LSC guideline is another indication of strong regard for rules and regulations and their purpose.

Regarding "no prior notice" that co-counseling would be used as a criterion for assessing 1610 compliance, it is important to understand that CRLA raises no technical "notice" argument. Rather, you can understand how we could find it difficult to expect that CRLA's very clear compliance with the published rules could nonetheless lead to a violation of the 1610 program integrity regulation using "unpublished" criteria. Regarding *Hernandez*, our attorneys in Modesto--- as our IG answer explained-- were responding in a very old case, to an effort by the court and school district to assist in the removal of a court order and end the matter once and for all. The IG found that corrective action should be taken and CRLA complied by formal withdrawal.

CRLA is considered a larger legal services program with its almost 140 employees, operated with a $10 million budget through an extended 22-office network of service offices. It was investigated vigorously for 30 months. At the end of this very long investigation, we are proud to say that so few issues in number were raised. But we do not take lightly the findings that indicated areas where we could improve operation and we have done so.

4. Regarding the fourth question about CRLA's claim of LSC and IG inconsistency in two instances of rent subsidization, the initial LSC finding in 2000 led to CRLA meeting with the Foundation's Board chairperson and its Director and reaching an understanding with the

Foundation regarding the changes necessary to correct the matter. Subsequently, I ordered a change in policy and practice that was communicated to CRLA accounting staff. The 2001 changes were not fully implemented by existing nor by subsequent staff. In this period, CRLA discharged the Controller who failed to implement the change, and brought a much needed stability to the financial oversight of the program. Nonetheless, the corrective action addressing the LSC finding of 2000 fell through . When rediscovered by the IG, CRLA went ahead and collected the late rent penalties as a second corrective action. Had the initial corrective action not lapsed, penalties would have not been necessary as the rent payments would have been collected in a timely manner. CRLA never contended that the IG found something new and different. It was a failure identified by LSC initially and LSC told us to deal with it. We did. To our surprise, the second audit found it had lapsed. Corrective action was taken a second time.

5. As we have stated in our testimony , we no longer share any space with the Foundation in Modesto nor in any other CRLA office site location. Regarding the question, there is no discrepancy in the facts, but only a difference in the conclusions drawn from them regarding how the suites were internally connected. As suggested by the IG (and we agree), the two spaces in question had separate entrances, separate numbered suites, with separate public signage.

My written statement of March 31, 2004, states: "the OIG questioned the fact that both tenants [CRLA and the Foundation] could access a shared lunchroom and concluded it was impermissible". The IG's report, on the other hand, elevates the lunchroom to something that it isn't by the statement that "inside the building [CRLA] and the Foundation were located in the same office suite" and then that "[CRLA's] space was not separated from the Foundation's space and the two organizations were indistinguishable". But in fact, once entering the Foundation suite entrance and traveling through the Foundation space, the only way to connect with the main CRLA office suites i.e. enter into the primary CRLA staff offices from inside- required walking into a common hall at the back of the Foundation space that led to the common lunchroom.

We - the IG and CRLA- both would agree to the fact that a lunchroom connected both suites i.e. served as the *internal* entrance from the Foundation offices to the CRLA offices and vice versa. But to then say that this use of space was "indistinguishable" suggests a totally different space configuration. In other words, to say that two suites are "indistinguishable" once you got inside, suggests that there would be a mix of shared space and an intermixing of rooms housing respective staffs and because offices were intermixed that the existing hallways to those offices would also be shared. This was not the case. All offices immediately accessible from the Foundation's suite entrance were foundation offices. Only *one* common hallway came between these adjoining Foundation offices and the separate CRLA space. The lunchroom from that small common hallway connected the CRLA group of offices by way of that common lunchroom. Therefore, all our employees were divided not intermixed and all our offices were separated and not intermixed.

If you have any further questions, please contact me at (415)-777-2752. Again, I thank you for the opportunity to assist the Subcommittee in understanding the difficult issues raised in the IG's report about CRLA and raised by other sources unrelated to the IG.

Sincerely,

Jose R. Padilla
Executive Director
California Rural Legal Assistance

cc The Honorable Mel Watt

RESPONSE TO POST-HEARING QUESTIONS FROM JEANNE CHARN, DIRECTOR, HALE AND DORR LEGAL SERVICES CENTER, AND DIRECTOR, BELLOW-SACHS ACCESS TO LEGAL SERVICES PROJECT, HARVARD LAW SCHOOL

THE BELLOW-SACKS
ACCESS TO CIVIL LEGAL SERVICES PROJECT

The Bellow- Sacks Access to Civil Legal Services Project is a joint project of
Harvard Law School's Program on the Legal Profession, Clinical Education Program, and of the
Hale and Dorr Legal Services Center of Harvard Law School

July 16, 2004

Honorable Chris Cannon, Chairman
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
Congress of the United States
House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515-06216

Dear Representative Cannon,

I set out below my response to the two written questions that followed the Subcommittee hearing on March 31, 2004. With your correspondence and the questions, I received a copy of the transcript. I enclose the few grammatical corrections that I have made to my testimony.

My response to your questions is as follows:

Question 1: Your statements have clearly indicated the advantages which could come from a system such as the one which you have directed being applicable to grantees under LSC's purview. As a former consultant to LSC, do you believe that the applicability of a co-pay system within a grantee framework is effective? What hurdles do you see in such implementation?

I believe that a co-pay system could be effective within the LSC grantee structure, but I my opinion is that implementation would be challenging.

On the matter of potential effectiveness, a fundamental concern is that co-pays not deter the initial seeking of advice and assistance. To assure this, I would have no co-pays for preliminary inquiries and no co-pays for any form of limited advice or service. I would also have no co-pays for emergency service, e.g. in domestic violence matters, imminent eviction from rental premises, imminent termination of need-based assistance.

From an equity point of view, it would likely make sense not to charge out of pocket co-payments to very low income clients such as those on need based public assistance programs or working clients whose take home pay is the same as or less than the income of those on need based benefits programs. A program such as LSC, directed

mainly to clients at or below 125% of poverty might, however, have a system of modest co-pays if the representation of a client, even a very low income client, produced a lump sum from which the modest co-payment could be made.

I would point out that LSC regulations already permit grantees to recover costs and expenses from an opposing party - see, 45 CFR, Part 1642, sec. 1642.2(b)(4). Grantees may also recover out of pocket costs from damages or statutory benefits awarded to clients pursuant to Part 1642, sec. 1642.6(a). Also, pursuant to sec. 1642.6(b), a grantee may require clients to pay court costs when the client does not qualify for *in forma pauperis* under local rules. LSC might determine the extent to which grantees presently take advantage of these provisions to recover costs from opponents or from clients. LSC might encourage use of these existing provisions to gauge the balance of benefits and difficulties that might be involved in a co-pay system.

In my opinion there would be a number of hurdles in LSC implementation of a co-pay system. In my program, before we implemented a co-pay system we put in place a strong quality assurance system and a good case management system from which we routinely gather data on cases, including substantive case outcomes. We also have strong financial and accounting support from Harvard Law School. All of this infrastructure plays an important role in a client co-pay system. I believe that LSC is taking important steps to assure that its grantees have strong quality, case management and case data systems. In my opinion, substantial progress in these areas is an important pre-requisite for any co-pay system.

Because the Hale and Dorr Center has a mission to experiment with approaches to delivery of legal services, we had staff as well as institutional support from then Dean Robert Clark for inaugurating the co-pay system. This support has been an important factor in our success to date with co-pays. It is more difficult for a grantor agency like LSC to achieve such support or "buy in" from its grantees. The grantor-grantee relationship has some built in tensions and top-down initiatives do not always produce bottom up enthusiasm. I support strong programmatic and policy leadership from LSC, so I would not shy from LSC initiated innovations, but I believe the challenges are greater than in an office like my own, where leadership is personal and face to face and where we have a mandate to experiment and innovate. Also, if LSC were to implement a co-pay system, it would have to develop criteria for effective performance and a system for assuring compliance by all grantees. These roles and responsibilities do not apply in a single office.

I would expect there would be considerable variation in grantee interest in a co-pay system and considerable variation in the capacity of grantee boards and managers to implement it. LSC would have to support those with interest and capacity as well as assure compliance by skeptics or opponents. Such variation in grantee response and capacity makes it difficult to bring about change system-wide. I would like to see more capacity at LSC to experiment with eager, willing grantees in pilot efforts and with competitive grant programs such as the recent Technology Initiative Grants effort. LSC should also have a strong capacity to conduct objective, credible analysis and assessment

of pilot or competitive grant programs in order to learn as much as possible about the costs and benefits of new initiatives and to identify and remedy implementation problems. In my opinion, implementation of any type of co-pay system for LSC grantees would require a good deal of careful planning, re-working and objective assessment of preliminary results in order to determine its system-wide feasibility and effectiveness.

Question 2: Please state your opinion as to the effectiveness and implementation of the 1996 restrictions which have been set upon grantees. Do you have suggestions as to how the restrictions may be better enforced, so that grantees may better serve their clients?

While I do not have information about the actual performance and compliance of LSC grantees, my impression from interacting with LSC program staff and directors is that there is broad and general compliance. There also appears to be a strong consensus among grantee staff and management that the restrictions do not enhance service to clients. This is a difficult claim to assess at a general level. While there has been a great deal of focus on the class action restriction, my personal view is that legla services providers have, in good faith, over valued class actions as a vehicle for assisting poor people. In light of present controversy around the class action remedy outside legal services, it may be that bi-partisan support at the Congressional level is best promoted, in the short run, by leaving this provision in place. It is worrisome, however, that the major funder of legal services to low-income clients prohibits a remedy that is available to any client who can pay for a lawyer. Therefore, I would hope that, in time, this restriction will be removed.

I believe that the prohibition against claiming attorney's fees from opponents has greater impact because this provision deprives providers of a source of funding that would support service to more clients. Equally important, fee-shifting provisions are enacted to encourage claimants and as a disincentive to the parties subject to such provisions to engage in proscribed conduct. If the legislature or the Congress has determined that such provisions are a useful part of a law enforcement scheme, then legal services programs should be able to assist in that larger law enforcement and deterrent system. If we ask the legal services system to seriously consider the potential advantages of a client co-payment system, we might want to re-consider this provision at the same time.

Finally, I would say that the 1996 provision that restricts use of non-LSC funds by LSC grantees imposes an administrative and managerial burden that draws resources away from service to clients. This restriction, in combination with remedy and other restrictions, inhibits or effectively prohibits mixed income service efforts where low and moderate-income clients might all find advice and assistance, as is the policy at the Center that I direct. As discussed at the hearing on March 31, I believe that mixed income service providers should be encouraged, not discouraged. It is certainly appropriate to assure that LSC funds support only the services and clients provided for by LSC legislation and regulations, but it seems to me that this could be accomplished without requiring the present elaborate segregation of funds. In my opinion, there should be a

strong LSC policy of comity with state and local funders. The present restrictions pose the risk that, even with the best of intentions, state and local funds could be subject to the same restrictions as LSC funds, even though state and local funders have not adopted similar policies. I would hope that the restrictions on use of non-LSC funds would be revised to reflect comity with local funders and a more practical and efficient approach to assuring that LSC funds are used as Congress intends.

The above responses are my opinions drawn from my experience in the past forty years as a legal services attorney and clinical project director. I hope that they are of some use to the Subcommittee in its important work. I am grateful for the opportunity to be of assistance to the Subcommittee and to share my views and opinions on the critical pissue of assuring that the legal system and its benefits are available to all.

Sincerely,

Jeanne Charn, Director
Hale and Dorr Legal Services Center,
Bellow-Sacks Legal Services Project, and
Senior Lecturer in Law

cc. Hon. Melvin L. Watt