AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 110–655

CLOSING THE JUSTICE GAP: PROVIDING CIVIL LEGAL ASSISTANCE TO LOW-INCOME AMERICANS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

MAY 22, 2008

Serial No. J–110–95

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

45–653 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00001 Fmt 5011 Sfmt 5011 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

COMMITTEE ON THE JUDICIARY

PATRICK J. LEAHY, Vermont, *Chairman*

EDWARD M. KENNEDY, Massachusetts	ARLEN SPECTER, Pennsylvania
JOSEPH R. BIDEN, JR., Delaware	ORRIN G. HATCH, Utah
HERB KOHL, Wisconsin	CHARLES E. GRASSLEY, Iowa
DIANNE FEINSTEIN, California	JON KYL, Arizona
RUSSELL D. FEINGOLD, Wisconsin	JEFF SESSIONS, Alabama
CHARLES E. SCHUMER, New York	LINDSEY O. GRAHAM, South Carolina
RICHARD J. DURBIN, Illinois	JOHN CORNYN, Texas
BENJAMIN L. CARDIN, Maryland	SAM BROWNBACK, Kansas
SHELDON WHITEHOUSE, Rhode Island	TOM COBURN, Oklahoma

BRUCE A. COHEN, *Chief Counsel and Staff Director*
STEPHANIE A. MIDDLETON, *Republican Staff Director*
NICHOLAS A. ROSSI, *Republican Chief Counsel*

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00002 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Cardin, Benjamin L., a U.S. Senator from the State of Maryland	1
prepared statement	143
Feingold, Hon. Russell D., a U.S. Senator from the State of Wisconsin, prepared statement	154
Grassley, Hon. Charles E., a U.S. Senator from the State of Iowa, prepared statement	175
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont, prepared statement	197

WITNESSES

Barnett, Helaine M., President, Legal Services Corporation, Washington, D.C.; accompanied by Jonann C. Chiles, Member, Board of Directors, Legal Services Corporation, Little Rock, Arkansas	4
Boehm, Kenneth F., Chairman, National Legal and Policy Center, Falls Church, Virginia	21
Diller, Rebekah, Deputy Director, Justice Program, Brennan Center for Justice, New York University Law School, New York, New York	27
Franzel, Jeanette M., Director, Financial Management and Assurance, U.S. Government Accountability Office, Washington, D.C.	24
Joseph, Wilhelm H., Jr., Executive Director, Maryland Legal Aid Bureau, Inc., Baltimore, Maryland	19
Livingston, Lora J., Judge, 261st District Court (Texas), Austin, Texas, and Member, Standing Committee on Legal Aid and Indigent Defendants, American Bar Association	15
Wallace, Jo-Ann, President and Chief Executive Officer, National Legal Aid and Defender Association, Washington, D.C.	17

QUESTIONS AND ANSWERS

Responses of Helaine M. Barnett to questions submitted by Senators Sessions and Grassley	35
Responses of Jonann C. Chiles to questions submitted by Senator Sessions	103
Responses of Jeanette M. Franzel to questions submitted by Senator Sessions	106

SUBMISSIONS FOR THE RECORD

American Bar Association, Thomas M. Susman, Washington, D.C., letter and attachments	108
Associated Press:	
August 15, 2006, article	116
January 18, 2008, article	120
Barnett, Helaine M., President, Legal Services Corporation, Washington, D.C.; accompanied by Jonann C. Chiles, Member, Board of Directors, Legal Services Corporation, Little Rock, Arkansas, statement	123
Boehm, Kenneth F., Chairman, National Legal and Policy Center, Falls Church, Virginia, statement	134
Boozer, F. Vernon, Chair, Maryland Legal Services Corporation, Baltimore, Maryland, statement	139
Diller, Rebekah, Deputy Director, Justice Program, Brennan Center for Justice, New York University Law School, New York, New York, statement	146
Franzel, Jeanette M., Director, Financial Management and Assurance, U.S. Government Accountability Office, Washington, D.C., statement	156

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00003 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

Page

Goldsmith, Sharon E., Esq., Executive Director, Pro Bono Resource Center of Maryland, Baltimore, Maryland, statement 169
Joseph, Wilhelm H., Jr., Executive Director, Maryland Legal Aid Bureau, Inc., Baltimore, Maryland, statement and attachments 177
Kepplinger, Gary L., General Counsel, General Accountability Office, Washington, D.C., statement 189
Livingston, Lora J., Judge, 261st District Court (Texas), Austin, Texas, and Member, Standing Committee on Legal Aid and Indigent Defendants, American Bar Association, Washington, D.C., statement 199
National Conference of Bar Presidents, Chicago, Illinois, letter 212
National Organization of Legal Services Workers, Local 2320, International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW), Detroit, Michigan, statement 215
U.S. Senators in support of an increase in Legal Services Corporation funding, Washington, D.C., joint letter 225
Wallace, Jo-Ann, President and Chief Executive Officer, National Legal Aid and Defender Association, Washington, D.C. 230
West, Kirt, former Inspector General, Legal Services Corporation, Washington, D.C., statement 245

CLOSING THE JUSTICE GAP: PROVIDING CIVIL LEGAL ASSISTANCE TO LOW–INCOME AMERICANS

THURSDAY, MAY 22, 2008

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, Pursuant to notice, at 2:15 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Ben Cardin, presiding.

Present: Senator Cardin.

OPENING STATEMENT OF HON. BEN CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. The Committee will come to order.

First, let me thank Senator Leahy for allowing me to chair today's hearing on "Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans."

Let me first apologize for being a few minutes late. The Senate is voting on the farm bill, the veto override, and that is going to be the last vote of the week. So I appreciate your patience in the starting of this hearing.

I also from the beginning want to thank particularly Senator Kennedy. We all, of course, hold Senator Kennedy in our prayers. The discovery this week about his illness has been a blow to all of us here on both sides of the aisle, and there has been a tremendous outpouring of support. We know that he will continue to fight, but we miss him.

In planning this hearing, I talked to Senator Kennedy, who gave me a lot of good advice as to what we should be doing. He is an ardent supporter of bridging the justice gap in America and wants to do everything he can to provide additional help to those today that do not have adequate access to our legal system, and I thank Senator Kennedy for that. He, of course, chairs the Committee that has primary jurisdiction over the Legal Services Corporation, and obviously his leadership in this area is indispensable. I also want to acknowledge the work that is being done on the Appropriations Committee that has been involved in many of these issues.

As I pointed out, the purpose of today's hearing is to establish a record in the Judiciary Committee on a matter that is very important to the work of our Committee, and that is, how well are we meeting the needs of those people who are otherwise unable to get adequate legal representation in dealing with access to our jus-

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00005 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

tice system? And I would hope that today's hearing would focus on that so that we would have a good chance to make an assessment of where we are and where we need to go.

The LSC Board completed a report that documented the justice gap in America. That report is titled, "The Current Unmet Civil Legal Needs of Low-Income Americans." It was a reflection of what they discovered in 2005, and what that report pointed out—and I must tell you, I was a little bit surprised because I did not think the circumstances were as positive as that report pointed out, which was not very positive—is that one out of every two eligible individuals who seek legal assistance are denied services because of budgetary reasons. That means that we have a large gap in meeting our responsibilities.

That report was done in 2005. It pointed out pretty clearly that that is those who seek help, and a large number of individuals do not even bother to try to get help to deal with their legal needs. So the gap is much larger than 50- percent failure in meeting needs.

And then when one understands that the eligibility—the number of people who are eligible for legal services has increased since 2005, we have had major disasters since that time that add to the need for people having access to our legal system, including, of course, Katrina. We are suffering through a difficult economic time. The number of foreclosures are at an all-time high. That adds again to the circumstances of need, taking us well beyond where we were in 2005. And since 2005, the resources made available for civil legal needs have certainly not been keeping up with those additional challenges.

As has been pointed out in the reports that have been made available to our Committee, there have been several States that have done an assessment as to where we are in meeting the needs of low-income families, and those reports show that the gap could be as high as 80 percent—in other words, one out of five people who need help who are eligible for services are getting those services. I think that is a shocking number, and we need to do something about it.

We have a responsibility, and I must tell you, I have gone through this a great deal with the different interest groups, and it is clear to me that the legal profession has a responsibility. The legal profession is charged with the access to justice, and the legal community must do more.

It is clear to me that State and local governments must do more. They have direct responsibility for the welfare of their citizens, have certain standards that must be met, and State and local governments must do more.

But it is clear to me that the Federal Government must do a lot more in order to meet these needs. We have a responsibility, as the senior partner in administering the institutions of Government, to make sure that the legal system is available to all of our citizens. That responsibility, in my view, has not been met.

In 1981, the Legal Services Corporation statute was passed, and that statute authorized $321 million of Federal funds to meet the needs of civil legal services for the poor. Presumptuously, that would be what we thought the needs were in 1981. The staff has

prepared a chart that I will ask them just to show which will tell us where we have been since 1981. In fiscal year 2007, the amount went to $348 million. But as you can see the blue lines on that chart, the amount of funds that the Federal Government has provided has not kept up with the inflation, and the red line is the inflationary number.

If we just adjusted the amount of moneys that were provided in 1981 to provide the same level of service adjusted for inflation using 1981 dollars, we should be at $678 million to the Legal Services Corporation. So we need to do much better at the national level than we are doing today.

My own experiences on how we should deal with this are really learned from what happened in Maryland during the 1980s. During the 1980s, I was asked to chair a commission to study where we were in Maryland and what we could do to try to improve the situation. All the stakeholders sat on the commission, and we studied the circumstances in Maryland and found that there was a shocking gap between needs and services, where only one out of four were really being met with their needs.

So we set out to do something about it, and we asked all of the players to do more. We had many recommendations which have been enacted into law. One of those was to have our two law schools that are located in Maryland start clinical programs and have experiences available for every law student to understand their responsibility for poverty law.

I remember talking to Governor Schaefer at the time, and Governor Schaefer agreed to put a substantial amount of money in the State budget in order to implement that recommendation. He did that based upon the commitment that the bar would do more and lawyers would do more and the private sector would do more in order to close the gap. And today we have robust clinical programs in both of our law schools, which are providing direct services to the vulnerable population as well as training the lawyers of the future to be more sensitive to their responsibilities.

We attempted to have lawyers do more, and we succeeded. The Maryland pro bono program is much more robust than it was in the 1980s. I see Herb Garten, who is in the audience, a member of the Board. It is a pleasure to have Herb here. He was instrumental at the Bar Association in Maryland in stepping up and carrying out their responsibilities. We asked the private sector to do more. We asked lawyers through their IOLTA program to do more. And we made a major difference.

So I think we can do a much better job both through the direct services that are provided through the Federal Government through grants as well as by the major stakeholders assuming a greater responsibility, including the lawyers.

So today's hearing, the purpose of which is to establish a record, a record for this Congress, I hope, to use to develop a game plan to address the gap that exists today, develop a strategy to close that gap so that our justice system that we showcase around the world is truly available to all of our citizens.

[The prepared statement of Senator Cardin appears as a submission for the record.]

With that, I will turn to our first panel of witnesses. As is the custom of the Judiciary Committee, I am going to ask the two panelists if they would stand in order to take the oath. Please raise your right hands. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. BARNETT. I do.

Ms. CHILES. I do.

Senator CARDIN. Thank you, and let the record show affirmative response.

Our first of two witnesses, is Helaine Barnett, who is the President of Legal Services Corporation, comes out of an experience in legal aid work which we are very proud of, and she is accompanied by Jonann Chiles, who is a member of the Board of Directors and recently appointed from Little Rock, Arkansas.

We will start with President Barnett.

STATEMENT OF HELAINE M. BARNETT, PRESIDENT, LEGAL SERVICES CORPORATION, WASHINGTON, D.C.; ACCOMPANIED BY JONANN C. CHILES, MEMBER, BOARD OF DIRECTORS, LEGAL SERVICES CORPORATION, LITTLE ROCK, ARKANSAS

Ms. BARNETT. Thank you and good afternoon, Senator Cardin.

First of all, Senator Cardin, we want to thank you for holding this hearing today and for giving us an opportunity to talk about LSC's ground-breaking report on the justice gap in America and the work that LSC-funded programs are doing to serve the civil legal needs of the poor. Your long-standing public support and hard work for civil legal aid in Maryland, your chairmanship of the Maryland Legal Services Corporation, and your association and friendship with Herb Garten, whom you recognized today, are well known. Now we are able to thank you for your national leadership on this important issue.

I am honored to be the first career legal aid attorney to hold the position of President of the corporation in its 34-year history. I know first-hand what our work means to the lives of our clients and have a deep personal commitment to providing high-quality civil legal services to eligible low-income Americans.

Fifty million Americans are eligible to receive civil legal aid from LSC-funded programs, including more than 13 million children. The stark reality today is that the need for civil legal aid to protect basic human needs is much greater than the resources available.

As you noted, in September of 2004, the Legal Services Corporation Board of Directors asked LSC staff to document the extent to which civil legal needs of low-income Americans were not being met. LSC conducted a year-long study culminating in the 2005 report "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans."

The study established that for every client who received service, one eligible applicant was turned away for lack of adequate program resources. All those committed to a civil society know that turning away half of the people who seek legal assistance is not acceptable. Equal justice under law is a bedrock principle and these numbers do not reflect equal justice.

LSC's "unable to serve" study documented only those who actually sought assistance from an LSC-funded program, but as you know, Chairman Cardin, the need is much greater. Many eligible people do not contact the program either because they are unaware they have a legal problem, they do not know that the program can help them, or they do not know that they are eligible for free civil legal assistance.

And while our study is now more than 2–1/2 years old, there have been nine additional statewide legal needs studies and reports published since our study, and they have all confirmed that the justice gap findings are a reality and, if anything, are understated.

Furthermore, the number of people sliding into poverty who need legal assistance is doubtlessly increasing as a result of the subprime mortgage foreclosure crisis, the recent rash of natural disasters across the country, and the general economic downturn and rising costs of such essentials as energy, gas, and food.

Whether someone has lost their home to foreclosure or flooding, or whether their monthly income can no longer provide for life's necessities, more and more Americans will soon be turning to legal services programs for help in getting back on their feet.

So what is the strategy to close the justice gap in America? The Corporation is developing long-term strategies involving strengthening local, State, and national partnerships. Our grantees work hard every day to ensure efficient use of the funding that is available, and they will continue to do so.

Technology is a vitally important tool to help expand access to justice and provide self-help options for those that we are unable to directly serve. Technology improvements allow LSC grantees to deliver more assistance and is part of the strategy.

Private attorney involvement is another important element of the strategy. The LSC Board has taken a leadership role and is using LSC's national voice to encourage a culture of expanded private attorney involvement as an effective tool for providing legal services to more persons in need. Last year, private attorneys handled more than 97,000 cases for LSC-funded programs, and we are working in partnership with the ABA on ways to expand private attorney involvement.

While these are important elements of the strategy, technology and private attorneys alone cannot close the justice gap.

Our Justice Gap Report concluded that just to serve those who actually sought help and were eligible to receive it, LSC's funding from the Federal Government would have to more than double, as would State, local, and private funding. Recognizing the political and fiscal realities at the time, the Board elected to request from Congress that the Federal increase be spread over 5 years.

Nationwide, LSC encourages its grantees to leverage their Federal dollars, working with their partners in State equal justice communities, and this has resulted in significant increases of State, local, and private funds between 2005 and 2007.

However, while State, local, and IOLTA funds have expanded, State budget deficits and the drop in interest rates are placing some of those increases at serious risk.

Mr. Chairman, as we have discussed, LSC is improving both our governance and our oversight. As you know, the Government Ac-

countability Office issued two reports, one in September 2007 on the Corporation's governance and accountability, and another in January 2008 on our grants management and oversight. We appreciated both of these reviews of our policies and practices and cooperated fully with GAO throughout the audits. Further, we accepted all of the recommendations and have made it a top priority to address the recommendations of both reports and have implemented or gone beyond nearly all the recommendations. We welcome the opportunity it has presented to help us do our job even better. In my written statement, I have provided a full accounting of our progress to date.

In conclusion, the Justice Gap Report is as compelling today as it was when it was released in September of 2005. While the statistics are daunting, numbers alone do not tell the whole story of the impact that the lack of resources for providing high-quality legal assistance has on the lives of low-income individuals and families.

For those millions of low-income Americans who are trying to keep a roof over their heads, who are trying to escape an abusive or life-threatening relationship, who are trying to keep their families together and safe, civil legal assistance is not just an abstract concept but a service that helps save lives and provides safety, security, and a path to self-sufficiency. It all flows from our founding principle of equal access to justice established in the Preamble to our Constitution and reiterated in our Pledge of Allegiance.

As U.S. Supreme Court Justice Lewis Powell said, "'Equal Justice under Law' is not merely a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society...it is fundamental that justice should be the same, in substance and availability, without regard to economic status."

That is the mission that LSC and our grantees across the country try every single day to fulfill.

Thank you.

[The prepared statement of Ms. Barnett appears as a submission for the record.]

Senator CARDIN. Thank you very much for your testimony.

Ms. Chiles, do you want to make a statement or do you just want to respond to questions?

Ms. CHILES. Senator, I will be happy to respond to questions. I do not have a prepared statement. However, I would like to echo Ms. Barnett's thanks to you for convening this hearing.

Senator CARDIN. Take as much time as you want on that.

[Laughter.]

Ms. CHILES. We appreciate your recognition of the justice gap and your dedication to working to closing the justice gap. I am here to assure you on behalf of the Board that we are dedicated to closing the gap through the efficient and effective use of the resources that are available to us.

Senator CARDIN. Thank you very much, and I am going to have a couple questions for you.

Let me first start with the 2005 report. It indicated that one out of every two eligible individuals who seek services are unable to receive those services, and I want to put a face on it. Can you tell us what happens to those individuals? Do you have any idea where

they go or what type of cases we are talking about, what type of people we are talking about that are turned down for services?

Ms. BARNETT. The individuals who sought assistance sought in the areas of our program's priorities. When our programs are unable to assist them, perhaps there can be a referral to a bar association or pro bono panel; perhaps they go pro se to the courts on their own. But in large measure, we all know that when we are not able to assist them, they have nowhere else to go.

Senator CARDIN. There is not a huge safety net out there beyond your grantees. What type of cases are we talking about?

Ms. BARNETT. We are talking about the core matters that our grantees represent nationwide, whether they are family law cases, keeping families intact; whether they are keeping safe and habitable housing; whether they are preventing foreclosure; whether they are assisting with needed medical care; whether they are providing benefits to disabled persons.

Senator CARDIN. Senator Kennedy, as I have indicated, is taking a lead effort on these issues, including trying to get the appropriations level at a higher amount, along with Senator Harkin. If you were to receive extra funding—and staff has made—I was asking for a copy of the letter. The letter was dated May 21st and actually is signed by a good number of members—by a majority of the Members of the Senate asking for additional funds.

Where are your priorities? Where would these additional funds be used if you got additional funding beyond the current level?

Ms. BARNETT. Well, as you, I am sure, are aware, we have asked for $471 million for fiscal year 2009, and 95 percent of that would go to the local programs based on the statutory formula of the poor person population in their geographic area.

The additional money would go for technology initiatives since we believe that is an important strategy with regard to help closing the justice gap. We also have asked for additional money to continue our loan repayment assistance program, which we think is critically important to attract young lawyers to legal aid programs and to retain high-quality staff. In addition, we have less than 4 percent going to grants management and administrative oversight. We feel we do need additional oversight staff, particularly to implement those changes and recommendations we have adopted from the GAO report.

Senator CARDIN. Could you just tell us how much of your budget goes for administrative purposes?

Ms. BARNETT. Less than 4 percent.

Senator CARDIN. But that also includes the oversight that you are required to do with the grantees?

Ms. BARNETT. It is. In fact, "administration" is a term that we hope we can change. It really has to do with grants oversight and management. And, yes, that goes—less than 4 percent, and that does cover the staff that we need to provide both the oversight for compliance and program quality to ensure it.

Senator CARDIN. Well, just to make an observation, that is certainly a relatively small percentage of the funds, and I applaud you on that. Clearly, as the GAO report pointed out, but as this Committee has said, we want to make sure that there is proper supervision to make sure the funds go for their intended purpose. So you

need to have an adequate staff in order to do that, so it is difficult with the amount of funds that have been made available.

Let me just read you one of the demographic information that has been made available to us, that for low-income persons there is one attorney for every 6,800 in civil legal needs. In the general population, it is one out of every 525. So just looking at the number of lawyers that are prepared to handle the civil legal needs of low-income families versus the number of lawyers available to the general public, there is a huge difference, 13 times more attorneys for the general public than for low-income families.

Do we really have equal justice with that type of a disparity on those attorneys that are handling these matters?

Ms. BARNETT. Well, we don't believe we do have equal access to justice right now with the current level of funding. That is part of the reason we are asking for additional funding where the great bulk of it goes to the program, to hire staff, to deal with their salary needs, to get more staff. We do believe that private attorney involvement can be expanded and enhanced. We do believe that through technology we can make available more pro se initiatives. We do believe that we encourage our programs to leverage their Federal dollars and work in State access-to-justice communities to increase both the local, State, and private funding as well.

So, without at least a doubling of the Federal commitment and a doubling of the local, State, and private sources, there will not be enough attorneys to represent those who desperately need it.

Senator CARDIN. So that brings me to your request. Your request you said was four hundred and?

Ms. BARNETT. Seventy-one.

Senator CARDIN. Four hundred and seventy-one million. Does that represent a minimum access dollar amount, or is that the pragmatic number that you would hope could be made available?

Ms. BARNETT. When we made our report to the board of directors, they said, recognizing political reality and fiscal constraints, that it would be prudent to ask for the doubling of the Federal commitment over 5 years. So the original idea was to ask for a 20-percent increase each year. Of course, we have not gotten 20 percent, and we recognize it is going to be a much longer process than 5 years.

But the $471 million request is based on 20 percent of the Senate's allocation in their bill last year for basic field, so it has a rationale behind it.

Senator CARDIN. So to double the budget in 5 years was the—

Ms. BARNETT. Was the original concept, and obviously we well recognize it is going to take quite a bit longer than that to accomplish.

Senator CARDIN. Ms. Chiles, let me, if I might, ask you to comment on the GAO report as to how well it was received by the board, what the board has done in response to it, whether you accept their recommendations that should be made, and whether you are taking steps to implement those changes.

Ms. CHILES. Yes, the board has accepted the GAO report, embraced the GAO report, and worked diligently over the course of the past 6 or 7 months to address the concerns raised in the GAO report. I can, if you would like, go through briefly each of the rec-

ommendations that the GAO made to the board and to management, and I can tell you what has been done to date.

Senator CARDIN. If you could do that briefly, that would be helpful.

Ms. CHILES. Feel free to interrupt me if I am not brief.

In August of 2007, the GAO issued a report entitled "LSC Governance and Accountability Practices Need to be Modernized and Strengthened." There were four recommendations made to management. There were eight recommendations made to the board. The first recommendation—

Senator CARDIN. I think we have the recommendations in our file, so if you could just perhaps tell us how you have responded to it, it might be more helpful to us.

Ms. CHILES. OK, very well. We have enacted a Code of Conduct, which applies to the board, officers and employees. We have instituted training on that Code of Conduct.

LSC has instituted a Continuity of Operations Plan. That plan will be tested in July.

The LSC examined whether the Government Accounting Standards Board should be adopted as a financial standard for LSC, determined that that was appropriate, and have continued to operate under those standards.

Fourth, the GAO recommended that LSC management conduct and document a risk assessment program and implement—well, I should say conduct and document a risk assessment and thereafter implement an appropriate program to deal with risk assessment. And to date, management has researched risk management programs and best practices, identified the risk environment for the Corporation, and begun an office-by-office risk assessment.

When this assessment is finished, an appropriate policy will be enacted and followed at the Corporation. The institution of a risk assessment and management program will do much to address the concerns that have been raised by the GAO in both the first report and the second report.

The GAO made eight recommendations to the board in the first report. They recommended that we establish an Audit Committee or an Audit Committee function. That has been done, and I believe that that is going to be a very useful tool within the Legal Services Corporation for addressing, again, the risk issues identified by the GAO. I think it is also going to be a very helpful tool for communication between the Board, management, and the Inspector General's office.

Also in response to the GAO report, the board has adopted charters for three of its subcommittees. The board is currently looking at creating a charter for its Operations and Regulations Committee and its Governance and Performance Review Committee. We are working to take—we are working to determine what the appropriate allocation of responsibilities is between those two committees, and that is why we don't have those two charters finished yet. We do expect to have those in place in August, our next meeting.

The GAO recommended that the board develop and implement a procedure to evaluate key management processes, including processes for risk assessment, mitigation of risk, internal controls, and financial reporting. And this recommendation is going to be taken

care of largely, I believe, by the creation and operation of the Audit Committee.

We have established a shorter timeframe for issuing LSC-audited financial statements, and still pending is the establishment of an orientation program for new members, training for new members, the creation of a Compensation Committee function, and the evaluation of the performance of the board, each board committee, and each board member. And, again, the reason those last three to four recommendations have not been accomplished yet is because the board is still discussing the proper allocation of those responsibilities within the board, with Operations and Regulations or Performance Review.

Senator CARDIN. Can you give us just a timeline as to when—I take it you are going to act on those recommendations, you intend to do that?

Ms. CHILES. Yes, sir. We intend to act as quickly as possible. In fact, we intended to act on those recommendations in our August meeting. Questions arose about the right way to go about dealing with these last recommendations; hence, the addition of these items to our next agenda, our next board meeting agenda.

Senator CARDIN. Do you anticipate at the next board you will be able to act on those issues?

Ms. CHILES. Yes, sir. Yes, sir.

Senator CARDIN. Thank you.

Ms. CHILES. And I would be happy to report back to you about what we do.

Senator CARDIN. If you would, we would appreciate that. Keep us informed on that. It would be helpful to us.

Ms. CHILES. That covers the first GAO report.

The second GAO report was issued in December 2007. It was entitled "LSC Improved Internal Controls Are Needed in Grants Management and Oversight." Four recommendations were made to management, one recommendation was made to the board.

The first recommendation to management is that it followup on each instance of improper use of Federal moneys. That has been done and is still being done by the office—well, by Legal Services management working together with the Inspector General's office. And when we receive—when the board receives a report on the examination of those grantees who are identified specifically in the GAO report, we plan to conduct a case study using those instances to determine how those situations could have been addressed and can be addressed in the future should they arise.

The second request, the second full request from GAO to LSC is that the management develop and implement policies and procedures for information sharing amongst the Office of Inspector General, the Office of Program Performance, and the Office of Compliance and Enforcement, and that they coordinate their visits to grantees. That is being done. As we speak today, that is being done, and it will continue to be done. It is being done in practice, and it has been taken care of through the drafting of updated policies and procedures within the Corporation.

The third of four recommendations to management was that LSC management develop and implement an approach for selecting grantees for internal controls and compliance reviews based on

risk-based criteria; and also that that approach use information results from oversight and audit activities consistently. Again, this gets back to the issue of coordination and communication within LSC and with the Inspector General's office. And I can represent to you as a member of the ad hoc committee which was formed by the board to address some of these issues—well, to address in particular the issues of communication and coordination that we have made great strides in the past 6 to 7 months in the areas of communication and coordination. And the Legal Services Corporation is stronger because of it.

The last recommendation to the Corporation from the GAO is that LSC develop and implement procedures to improve the effectiveness of the current LSC fiscal compliance reviews by revising its guidelines, and those guidelines have been updated. And if you have questions about specific changes to the guidelines, management would, I am sure, be more than happy to give you that information.

The last recommendation, which was addressed to the board, was that the board develop and implement policies that delineate organizational roles and responsibilities for grantee oversight and monitoring, including grantee internal controls and compliance. And that has been done and is continuing to be done. That was accomplished primarily through the creation of an ad hoc committee on the board, a three-member committee made up of Mr. Garten, Sarah Singleton from New Mexico, and myself. Sarah was the designated liaison to management. The ad hoc committee had several briefings from the OIG and from OPP and OCE. We have had one public meeting. We gave a report to the entire board at our last board meeting in April.

In response to that report, the board, the entire board of the Legal Services Corporation, adopted a very clear and detailed statement of the roles and responsibilities of each of the oversight entities at the Legal Services Corporation. And I am pleased to report that that document was the result of very hard work on the part of LSC management, the Office of—excuse me, OPP, OCE, and the Office of Inspector General. We have a new Inspector General, Jeffrey Schanz, who is a pleasure to work with.

Senator CARDIN. Well, thank you for that pretty thorough reply.

Ms. BARNETT. Mr. Chairman, would it be possible for me just to elaborate on one or two of the management recommendations and the action that was taken?

Senator CARDIN. Sure.

Ms. BARNETT. With regard to the followup of the nine instances that GAO identified during their program visits, I did refer eight of them to the Office of the Inspector General, and the Office of Inspector General has completed the field work at all eight of them and has reported to us that for the eight sites reviewed and based on the OIG's preliminary analysis, management of the grantees have adequately addressed the GAO recommendations and are implementing additional controls to prevent those issues from reoccurring.

I also sent an advisory in March to all LSC-funded programs reminding them of the need for accurate documentation and the regulations regarding unallowable costs, specifically stressing the pro-

hibition on the use of LSC funds for alcohol and lobbying, the need for written policies governing salary advances, and a reminder of the regulation governing derivative income.

We kept one of the programs that was identified by GAO because we had already begun an Office of Compliance and Enforcement review. And I can report to you that LSC is taking action to terminate the current grant and replace it with month-to-month funding, with strict special conditions that require monthly action and reporting to LSC. And should the program not be able to meet those special conditions, LSC will terminate the month-to-month funding and seek a different provider through new competition.

And, finally, I would just point out that with regard to our revised fiscal component, we now, as part of our expanded Office of Compliance and Enforcement onsite fiscal reviews, are specifically looking for specific documentation, contract service arrangements, employee interest-free loans or salary advances, lobbying fees, late fees or penalties due to lack of good financial management, derivative income, and alcohol purchases. So we have improved, based on the GAO recommendations and what they have reported to us, our fiscal review. And we have finally gone beyond the recommendations and addressed the timeliness of our reports. All reports for 2007 have been provided to all grantees in either draft or final form. We have set in our new manuals new timelines. Within 60 days after a program visit, they will get a draft report, for the most part, and 90 days thereafter.

So we have even gone beyond, I believe, the recommendations to improve our oversight.

Senator CARDIN. Well, thank you. I appreciate that. And if you will keep us informed as to the further actions taken, we would appreciate it.

I want to return to the capacity within the legal system. When I chaired the Maryland Legal Services Corporation, one of the most glaring problems we identified was the gap on salaries for those that are in Legal Services versus private practice and other fields of public interest law. And I really do admire those lawyers who go into public interest law at any level, whether it is in the criminal justice system or whether it is in the civil side.

We had legislation before this Committee last year that dealt with loan forgiveness, and I know that we looked at the disparities within public interest then, and it was the legal aid lawyers who were at the bottom. Although the salary levels for public defenders and prosecutors should be higher, they were higher than those that are in the legal aid bureaus.

When I was at the Maryland Legal Services Corporation, 1 year we made that our priority. We decided we were not going to expand any new opportunities until we could adjust the salary levels of those attorneys that were providing the services in order to try to keep experienced lawyers helping meet these needs.

I am interested as to whether you have looked at that issue with the different grantees as to whether there is a commitment to try to deal with the salary disparity for those that are in the civil legal field in public interest law.

Ms. BARNETT. The Legal Services Corporation, Mr. Chairman, has a 3-year pilot program for a loan repayment assistance pro-

gram, and we have a total of 82 participants in 24 programs initially getting $5,000 a year for 3 years, and this past year we got a $500,000 appropriation, and we are raising it to $5,600 for 3 years.

Our evaluation of the first year of the program definitely demonstrated what I think is no surprise to anyone in this room, that loan repayment assistance programs definitely helped young people go to legal service programs and remain there, as well as permitting the programs to help recruit and retain high-quality staff.

You have so rightly pointed out that legal aid attorneys are the lowest paid of any public sector attorneys, with an average starting salary of $37,000, graduating with an average debt load of more than $80,000.

When I mentioned that 95 percent of the increased appropriation would go to the LSC programs, it is our assumption that some programs would use some of that money for salary adjustments as well as other infrastructure needs.

Senator CARDIN. I am certain that happens. One of my suggestions might be that there actually be a strategy, if there is again a commitment—if Congress were to make a commitment to double the funds going to LSC, it seems to me that one of the priorities should also be certain understandings as to how that money is going to get to improve the career opportunities for legal aid attorneys. I think that would be a beneficial part of a tangible accomplishment. It is not just providing a wider variety of services, which we need to do, or taking in more numbers. It is also retaining quality attorneys to meet these needs.

Ms. BARNETT. We are having in June a conference of all our executive directors, and salary is one of the workshop issues in our recruitment and retention session that we will be focusing on. We will have all 137 LSC-funded programs represented, and this will be a good forum to have that discussion.

Senator CARDIN. I have one last question, which is—the critics of LSC often point out that you have a model that in litigation both sides should have attorneys. Now, I happen to think that makes common sense to have lawyers on both sides of an issue. But my question is: Have you been able to demonstrate that when you have proper legal representation in matters that could be in litigation, there is a stronger possibility that these cases or probability that these cases can be resolved absent a lengthy trial; whereas, when you don't have adequate representation, sometimes you have unnecessary litigation?

Ms. BARNETT. Our statistics nationwide show that only about 10 percent of the cases handled by all LSC-funded programs actually go to trial; that, in fact, a lot of what we do is preventative, a lot of what we do is being able to settle and negotiate a correct resolution for our clients without the necessity of a lengthy trial. And Jonann Chiles and I were discussing this in the taxi coming over here. Perhaps you will share the story of the Tennessee client.

Ms. CHILES. I thought this was a good example of how our grantees educate their clients to become effective advocates for themselves. We were told about an incident from Tennessee where a client went into a grantee's office to set up a meeting with a lawyer for the purpose of talking about how to deal with an eviction notice

from her landlord. The women went home—she made her appointment. She went home carrying a flyer in her hand from the grantee, and in that flyer was a list of her rights and duties as a tenant and the obligations of a landlord under Tennessee law.

When the woman got home, her landlord was there with the police waiting to evict her. She held up her pamphlet and told the landlord, "Well, you haven't met A, B, C, and D, and until you do those things, my lawyer says that you can't evict me." Well, the landlord looked at the pamphlet, and the police officer looked at the pamphlet, and everyone agreed that she had not had her due process and she could not be evicted yet.

I thought that was a good example of a client being educated and empowered to represent themselves effectively.

Senator CARDIN. Well, thank you for sharing that with us. Again, I thank both of you for being here, and I thank you for your testimony.

Ms. BARNETT. Thank you so much.

Ms. CHILES. Thank you.

Senator CARDIN. The second panel, let me introduce the second panel. Then I will ask you all to remain standing to take the oath.

The second panel will consist of the Honorable Lora Livingston, a judge from the 261st District Court in Texas, and a member of the Standing Committee on Legal Aid and Indigent Defendants, American Bar Association; Jo-Ann Wallace, the President and CEO of the National Legal Aid and Defender Association, from Washington, D.C.; Wilhelm Joseph, the Executive Director of the Maryland's Legal Aid Bureau, Baltimore, Maryland, the person who we are very proud to have here, who I have had the honor to work with on legal service issues over the years and who does an outstanding job for the people of our State; Kenneth Boehm, Chairman of National Legal and Policy Center from Falls Church, Virginia; Jeanette Franzel, the Director of the Financial Management and Assurance Team, U.S. Government Accountability Office—that is GAO—Washington, D.C.; and Rebekah Diller, Deputy Director of Justice Program, Brennan Center for Justice, New York University Law School in New York.

Would you all please raise your hands? Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge LIVINGSTON. I do.

Ms. WALLACE. I do.

Mr. JOSEPH. I do.

Mr. BOEHM. I do.

Ms. FRANZEL. I do.

Ms. DILLER. I do.

Senator CARDIN. Thank you. The record will reflect that there was an affirmative reply to the oath, and we will start with the Honorable Lora Livingston.

STATEMENT OF LORA J. LIVINGSTON, JUDGE, 261ST DISTRICT COURT (TEXAS), AUSTIN, TEXAS, AND MEMBER, STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, AMERICAN BAR ASSOCIATION

Judge LIVINGSTON. Thank you very much, Senator Cardin, for letting me visit with you this afternoon about this very important issue. I will just briefly for the record continue with my introduction.

My name is Lora Livingston. I am a State court judge. I live in Austin, Texas. I am a general jurisdiction trial court judge there, but I am submitting this testimony at the request of the President of the American Bar Association, William Neukom of Seattle, Washington—he could not be here today—to voice the association's views with respect to closing the justice gap that you so eloquently talked about earlier at the beginning of this hearing. It is the association's goal to ensure justice for all and to ensure, most importantly, access to justice for all Americans, not just those who can afford a lawyer. The ABA strongly believes that this objective can be and must be largely achieved by strengthening the Legal Services Corporation because it is the entity in our system of justice that really is the linchpin to ensuring access to the legal system for all Americans.

The ABA is the world's largest voluntary professional organization with more than 413,000 members. It is the national representative of the legal profession, and it serves the public and the profession by promoting justice, professional excellence, and respect for the law. We are an association that is firmly rooted in the rule of law and believe in its precepts.

I started my career as a legal aid lawyer. I was what we call a "Reggie." I was part of the Reginald Heber Smith Community Lawyer Fellowship program, and my assignment was in Austin, Texas. That is how I got to Texas from California, where I am from.

I spent about 6 years in the legal aid office in Austin, Texas, doing basic poverty law work, and I then went into private practice and then later became a judge.

I am here on behalf of President Neukom and the ABA and also on behalf of the Standing Committee on Legal Aid and Indigent Defendants. We call that committee within the ABA "SCLAID" for short. SCLAID is chaired by former Texas Supreme Court Justice Deborah Hankinson. She could not be here today and so asked me to provide this testimony on her behalf.

We have five judges on SCLAID, and I think that that should demonstrate to you and signal just how important SCLAID is within the ABA and the importance of this work, ensuring access to justice for all, because it includes so many members of the judiciary on the committee.

The ABA has a long history of involvement in access-to- justice initiatives. Ms. Barnett talked about Supreme Court Justice Lewis Powell and his work serving the ABA when he was President and calling back in 1964 for a major expansion of the Nation's legal services work for the poor, and that ultimately led to the creation of the LSC program.

The ABA strongly opposed past efforts to eliminate the efforts to reduce access to legal services for the poor and since then has been

very involved in securing bipartisan support for not only LSC but for access-to-justice initiatives in general. You referred earlier to the Senate letter, dated yesterday, that is signed by, I believe, 55 Senators, and we are still working on getting more signatures on that letter. But in addition to that letter, you should also—

Senator CARDIN. Let us know when you have 60, please.

Judge LIVINGSTON. Great. Even better. See, your information is more up-to-date than—

Senator CARDIN. No, no. I said let us know when you get to 60.

Judge LIVINGSTON. Oh, let you know. OK. All right.

Senator CARDIN. That is a key number around here.

[Laughter.]

Judge LIVINGSTON. That is the number we are shooting for. That is our goal, and we will definitely let you know when we achieve that milestone.

In addition to that important letter, though, I should also tell you that there is a letter signed by all 50 State bar presidents, the State bar presidents of the District of Columbia Bar, as well as the bars in the Virgin Islands and Puerto Rico. This is an important issue to every State bar association in this country and some of its territories. I cannot underscore more significantly than that the widespread both partisan, bipartisan, and nonpartisan support for legal services to the poor in America.

LSC, I want to tell you, is the essential linchpin in our comprehensive system of delivery of legal services to the poor in this country. It is the most significant entity that we have in the administration of justice in this country, and it is the one, probably perhaps most important part of the overall system of justice. It is the one that funds most of the work that is done out in the field, and certainly there are partners—you have talked about IOLTA programs. There are certainly partnerships on the State and local level. There are grant funds that are nongovernmental funds that support legal services throughout the country, but LSC funds really are the linchpin to this comprehensive system of justice in our country, and that is why strengthening its work and providing additional funding for the work that it does is so important.

The Preamble to the U.S. Constitution states among the first enumerated functions of government that we are to establish justice. It is first. It is part of our fabric in this country, and we have to, it seems to me, at all levels of Government, certainly within the judiciary, certainly as the Senate, support it as best we can.

You have heard some stories, and you talked earlier about putting a face on legal services. I have got lots of stories, but I know that we are short on time, and I will not tell you all of them. But I want to tell you about one from Texas just briefly, if I might, and that involves—you know about the Katrina disaster and so forth, but since 2005, LSC programs have closed more than 10,000 hurricane- related cases through the end of 2007. That is phenomenal work in light of a major disaster, and it just begins to tip the iceberg of the very hard work that field programs have been conducting not just in response to a disaster, but that is the kind of hard work you get from every field program in this country. Without that work, people will go hungry, people will be evicted, people will not get the benefits that they need that they are enti-

tled to, that the Government provides for them and guarantees to each one of them. And that is why LSC needs the support, as much of it as you can give them, as much of it as we can give them on the State level, as much as we can do locally, as much as we can do in each individual community where poor people reside. And it is our responsibility as a government to do so. It is our responsibility as a legal profession to do. And we look forward to the partnership with the Senate in making that a reality.

Thank you very much for your time this afternoon.

[The prepared statement of Judge Livingston appears as a submission for the record.]

Senator CARDIN. Thank you for your testimony.

Jo-Ann Wallace?

STATEMENT OF JO-ANN WALLACE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, WASHINGTON, D.C.

Ms. WALLACE. Good afternoon, Senator, members of the staff. Good afternoon and thank you for the opportunity to speak to you today about the justice gap in America.

NLADA, the National Legal Aid and Defender Association, is a national organization committed to equal access through the delivery of excellence and civil and defender legal services. Our members are civil and defender advocates who provide legal assistance to people who otherwise could not cannot afford attorneys, corporations, and others who care about equal justice.

As has been stated, the Constitution recognizes that the establishment of justice is essential to the very creation of our Government. In passing the Legal Services Corporation Act, Congress recognized that there cannot be justice in America if a person's ability to access it depends on how much he can afford.

The delivery system that was instituted more than three decades ago established the Legal Services Corporation as the linchpin of a national system. That model, which remains true today, is fundamentally sound. But as you have now heard repeatedly, by any measure it is woefully underfunded. Federal funding for LSC in effect has been reduced by over 53 percent from its 1980 level. State-based studies put the unmet need anywhere, as you noted, from 70 to 90 percent. At a minimum, one out of two people who need legal assistance must be turned away by LSC providers.

While the dollars to support legal services have steadily decreased, the legal need, as you have heard, is increasing. Veterans returning, the mortgage lending crisis, the storms, the skyrocketing cost of life essentials are but some of the factors that are driving the need for services upward. In short, we are in a growth industry when it comes to demand and a recession when it comes to resources.

But while running the numbers is alarming, the picture is even more sobering when we remember that every one of the two that gets turned away represents a person with a face and a name and a right to expect justice in our democracy.

"Collette" was one of the lucky ones. When Hurricane Katrina struck New Orleans in August 2005, Collette lost her house and moved with her son, "James," to stay with friends in Missouri.

When that arrangement fell apart and Collette became homeless, the State took James and placed him in Missouri's foster care program.

Determined to regain custody of her son, Collette moved to New Orleans, the only place she could call home. She successfully applied for a HUD grant, but the money, the grant money, was delayed for months. All the while Collette was traveling back and forth to St. Louis to attend custody hearings and to spend a few hours with her son, James. At each hearing Collette was asked, "What progress have you made to rebuild your home?"

So Collette began rebuilding her home herself, paying for materials gradually with wages that she earned from part-time jobs. When staff from Legal Services of Eastern Missouri learned of Collette's plight, they put her in contact with a State-based organization whose volunteers helped Collette to renovate and refurnish her home. They connected her with mental health services for trauma survivors. And, finally, they convinced the court that James belonged with his mother.

Elsie Williams is another one of the lucky ones. Ms. Williams is a 70-year-old retired factor worker who lived on the $530 a month that she got from Social Security. So when the sofa bed that she had could not support her anymore, she did not have the money to replace it, and she could not afford the prosthetics that she needed as a cancer survivor. So for the first time in her life, Ms. Williams took out a loan.

Ms. Williams could not read the fine print of the contract that she signed. She did not know that she had agreed to sign over her monthly checks to the loan company or to let them charge her a 95-percent interest rate on that loan and to tack on numerous other legal and illegal charges. And so she did not understand why, when she went to the bank in the next few months, her Social Security money was not there.

But Ms. Williams found a young woman who had been willing to give up a job making more than $100,000 a year as a real estate attorney. She wanted to follow her dream to help people as an attorney with an Atlanta legal aid program. With the attorney's assistance, Ms. Williams got her Social Security checks back.

As these stories illustrate, the efforts of legal aid lawyers support better life outcomes for millions of people, and as the last example also illustrates, those efforts often come with significant personal sacrifice. I cannot tell you the exact starting salary of that young attorney in Atlanta. What I can tell you is that she took a substantial pay cut to go work for legal aid.

As a means of stretching scarce dollars to meet the ever growing demand for assistance, LSC programs have historically paid salaries that are the lowest of any sector of attorneys. Legal aid programs across the board this is true of. According to a 2006 report, the median salary for entry-level civil legal aid attorneys is a little more than $36,000. The lawyers making that entry-level salary usually face law school debt of between $80,000 and $120,000. The convergence of these factors has extracted a significant price over time due to costs of turnover and difficulty filling vacant position.

NLADA is most appreciative of recent Federal legislation that attempts to address this problem, but that additional investment in

the attorney work force must also be supported with increased Federal support for LSC if you want to ensure the availability of the next generation of lawyers dedicated to serving the public interest and also if you want to maximize the availability of funding for direct services.

The final point I would like to make also goes to the issue of cost-effectiveness. Equal access to justice cannot be administered efficiently when Legal Services are not able to use the same tools and strategies that other lawyers use to serve their clients. Congress should remove those restrictions on legal aid attorneys that are inconsistent with the purposes of the LSC Act, starting with the restrictions upon the LSC programs, what they can do with State, local, and private funds available to them.

In closing, I would like to thank the Committee again for shedding light on this important issue. We would urge Congress to recommit to equal access for justice by embarking on a course to expand funding and eliminate the restrictions that hamper the effectiveness of the public- private partnerships that are necessary to eliminate the justice gap.

Thank you.

[The prepared statement of Ms. Wallace appears as a submission for the record.]

Senator CARDIN. Thank you for your testimony.

Mr. Wilhelm Joseph?

STATEMENT OF WILHELM H. JOSEPH, JR., EXECUTIVE DIRECTOR, MARYLAND LEGAL AID BUREAU, INC., BALTIMORE, MARYLAND

Mr. JOSEPH. Good afternoon, Senator Cardin and staff gathered here, and thank you, Senator, for hosting the hearing, and thank you for your outstanding record of leadership on this issue in Maryland and now on the national level. And please allow me to convey, through you, my best wishes for the recovery and good will of Senator Kennedy. It is a particular honor for me to have been given this opportunity to appear before you.

I am humbled to be presenting before this august body, to address you on a subject that is very personal for me. In 1965, I was a young man with a solid high school education and a burning desire to pursue a higher education. At that time I was living in Port of Spain, Trinidad, the place of my birth. I was a member of a very poor but proud family with a strong work ethic and without the funds to support furthering my education. Today I am here as a testament to the generosity and support of many individuals and institutions in this great country who extended a helping hand to me. For this I am deeply grateful. Starting with a track scholarship and other assistance later, I have earned an undergraduate degree from a historically black university, a law degree from a reputable university law school, and a graduate degree from one of this country's leading institutions. For this and many other blessings I am very grateful.

Currently, I am most fortunate to be a member of a partnership in Maryland, the Legal Aid Bureau, whose mission is to provide the best civil legal assistance possible to low-income persons. That partnership comprises the judiciary at all levels—the private bar,

individuals and firms; the Maryland State Bar Association; governing bodies at the State, county, and city level; various funding sources including our IOLTA program, represented here today by Herb Garten and Susan Erlichman; the Maryland Legal Services Corporation; foundations; and, of course, the federally funded Legal Services Corporation.

In Maryland, this partnership approach to addressing the civil needs of the State's low-income is encompassed in three letters of the alphabet: S for sensible, E for enlightened, and C for compassionate. Our work is motivated by a shared intolerance for injustice and a willingness to help others pick themselves up by their own bootstraps. In Maryland, we face the same challenges that have been already outlined here today and that have been clearly set forth in my written submission. That is the challenge of addressing overwhelming needs with too few resources. This is a national crisis. In my opinion, it requires a national response.

In Maryland, we do leverage our LSC resources. We receive about $3.9 million from LSC. When I arrived in Maryland in 1996, our total funding was $9 million, and the funding then from LSC was around the same three-point-something million. Today, in Maryland, our budget will be $22 million, a testament to that partnership I referred to earlier.

Maryland Legal Aid Bureau represents the helping hand that catches thousands of vulnerable, unfortunate people before they fall off the precipice and through the trapdoors of circumstances that otherwise would cause them to fall into the quicksand of poverty and crisis, and go deeper and deeper.

Our clients are people who have recently suffered setbacks, such as loss of a job, unexpected illness, disability. They are vulnerable children, victims of abuse and neglect, elderly citizens, victims of domestic and family fractures, and low-wage workers.

Allow me to offer one illustration. Let's take a look at a fairly common legal aid family, and I ask the staff, get a pen and a piece of paper. I want to take you through a very short exercise.

Consider a family of three—two young children with one parent with a job that pays just above minimum wage, say $7 per hour. At that rate of pay, gross wages on 40 hours a week, 32 weeks a year, would bring them $14,560—way below the LSC eligibility guideline for a family of three, which is at $22,000. After the compulsory deductions for Social Security, et cetera, that wage earner's take-home pay is closer to $13,000.

Now, here is where the rubber hits the road. A quick look at a sample budget for that family will reveal the following: Rent, approximately $800 a month; food, $400 a month; child care, $400 a month; transportation, maybe $400, maybe a whole lot more with the gas prices; utilities, $150 per month; clothing, household repairs, et cetera, $150 per month. A very modest budget. Without health care being mentioned, those total expenses come to $2,300 per month, annually $27,600. Even with available subsidies for housing, food stamps, and utilities, this family will be in a crisis. Meeting $27,000 in expenses on a $13,000 budget is impossible. These people will try to survive by periodically failing to pay this particular bill or another—rent, utilities, et cetera.

These choices have consequences that bring them to the door of legal services for help. These circumstances also create an environment that is more conducive to domestic violence, abuse, and even criminal behavior, in order to make ends meet. In Maryland alone, there are over 500,000 such persons trying to subsist below this level of poverty. In 2007, with the coalition and partnerships, the Legal Aid Bureau helped some 53,000 of them. Combined with the efforts of other providers including over million pro bono hours rendered by private attorneys, we helped only a total of 101,000 persons with their civil legal needs statewide.

Senator Cardin, we need a fundamental change at the national level with regard to this question, this crisis of justice in America. This crisis on a daily basis contributes to suffering, despair, hopelessness, and robs our community of the full potential of all the members who now subsist at intolerable and embarrassing levels. We need a substantial increase in financial resources to meet new regularly, steadily increasing costs of doing business, recruiting, training, retaining qualified staff, paying for rents, utilities, supplies, communication, equipment, furniture, et cetera. Help us to help others pick themselves up by the bootstraps. Help us to help those without boots.

Thank you.

[The prepared statement of Mr. Joseph appears as a submission for the record.]

Senator CARDIN. Thank you very much for your testimony and for your service.

Mr. Kenneth Boehm?

STATEMENT OF KENNETH F. BOEHM, CHAIRMAN, NATIONAL LEGAL AND POLICY CENTER, FALLS CHURCH, VIRGINIA

Mr. BOEHM. Thank you. Good afternoon, Senator Cardin. My name is Ken Boehm, and I serve am the Chairman of the National Legal and Policy Center. From 1991 to 1994 I was Assistant to the President and Counsel to the Board of the Legal Services and prior to that headed the Department of Policy Development at Legal Services Corporation. It is an honor to appear before you today to share some of my views, which will be distinctly different than many of the other views you are hearing, but for that reason I especially want to present them.

For today's topic, I would like to focus on two observations.

First, we really are interested in closing the justice gap, and that is what we have to focus on, and closing that gap should involve a much broader approach than simply increasing the appropriation to a troubled Federal program by five-fold. As has been pointed out, page 19 of "Documenting the Justice Gap in America," the 2005 legal needs study done by LSC, they recommended an increase to $1.6 billion, which is a fivefold increase.

My second observation, which I will also get into a little bit, is that the Legal Services Corporation model has been plagued with many problems from the beginning, and if we are truly interested in solving this problem and not doing these incremental Band-aid approaches, we should think far beyond just giving extra money to the Legal Services Corporation.

As I am sure you know, the Legal Services Corporation has not been authorized since 1980. That is when its first reauthorization expired. That is 28 years through Republican and Democrat Congresses, Republicans and Democrats in the White house, without reauthorization. That is almost unique for Federal programs to go that long without any kind of consensus for reauthorization, and there is a reason for that.

Turning to "Documenting the Justice Gap in America," the study, there are some limitations to it. It was done by LSC and the programs, and the conclusion was give us five times our budget and that will be a good start toward solving the problems. That is not unusual in Washington for programs that want more money to simply ask for more money and give a study that is tailor-made to show that would solve the problem. But I think we have to think far beyond that. We have to look at alternatives that, in fact, may be more cost-effective, alternatives that are already being done by market and other forces, alternatives to deliver justice not just to poor people but middle-class people who can't afford the growing costs of being involved in a civil lawsuit.

It has been said here numerous times that LSC is the linchpin of providing legal assistance to the poor. It shouldn't be overlooked, the fact that for every 1 hour of service by a Legal Services Corporation-funded lawyer, there are 5 hours of pro bono, five private attorneys in private practice doing their responsibility, as they are supposed to be if they are in private practice. And so there are many other ways, of course, that legal services are given to the poor.

Outside of contingency fee funds in cases of personal injury, we have a growing trend—that has actually happened over the last 20 years—for an increase in the jurisdictional dollar amount of cases in small claims court. As I said, it has already been happening, these cases. I am sure as anyone here who has spent any time in small claims court can say, they are fact-based. There is no lawyer generally needed.

We also have seen a vastly greater increase in mediation, including mediation without lawyers, even though the American Bar Association feels that you should have lawyers in these mediation types of cases. And this is very, very helpful. People who study mediation say you get a faster result, it is more cost-effective. And sometimes the parties actually have a meeting of the minds—that is what mediation is all about—and you actually have a much better result on all fronts than if costly litigation is needed.

Another area that needs to be looked at is increased use of ombudsmen. As somebody who has followed Legal Services' policies for the last 15 years, this is happening at the State level, at the local level, through the Older Americans Act. There is Federal funding for volunteer ombudsmen for long-term care. Many, many different examples. In European countries, developing countries, Japan, Australia, Canada, ombudsmen are widely used to develop justice. We should ask ourselves—we know we are the most over-lawyered country in the world with something approaching a million lawyers out there. How does the rest of developing world solve their legal problems if they do not have as many lawyers per capita as we do? Well, the way they solve them is they make many of these less se-

rious legal problems, problems that can be solved in some way other than litigation and expensive lawyers, and we should look at those models.

The key question is: Is our goal increased access to justice? Or is it just increased federally funded lawyers and lawsuits? The alternatives generally are faster. They are more cost-effective. And all too often the burden really falls—the burden of some of this litigation falls on other people who cannot afford it. I will give you a very brief example.

A 70-year-old Ohio vegetable farmer named Russell Garber was sued by LSC-funded lawyers under a Federal law did not apply to small family farmers. As a matter of principle, he hired a lawyer to defend him. He couldn't afford a lawyer. He had to borrow and go into hock at age 70 to do it. The case was dismissed by a Federal judge in a strongly worded decision very critical of the Legal Services lawyers for bringing a case that did not apply in his instance. Instead of accepting their defeat, the lawyers from the Texas Rural Legal Assistance instead appealed to a three-judge panel. The three-judge panel affirmed the dismissal, and Mr. Garber won. His legal bill: $107,000.

Now, I talked to Mr. Garber this morning just to see how he was doing 4 years after that. He was up at 5. He was doing his chores. He is not retiring. He has a $107,000 legal debt.

My question is: Is that justice? We are supposed to be promoting justice, not just funding for a Federal program.

There are better approaches. They are outside what was in this study. They are outside generally what the bar looks like, because a lot of them don't involve funding with lawyers. They involve other ways of justice, as I listed.

The LSC model is deeply flawed. Not just have we had two fairly critical GAO reports just in the last year, there were two other back-to-back critical GAO reports in 1999 when GAO said they had widespread and significant problems with their case reporting. They were reporting to Congress. LSC disputed that and said, Oh, we have solved it, we have taken care of it—much as you have heard they have solved these GAO problems. GAO then did a second study in 1999 and found that they had not solved the problem, and their case numbers finally went way down because they were counting in one case, one program, 10,000 phone calls by non-lawyers as "legal cases."

Well, that is not fair to the taxpayer. It is not fair to poor people. And it is just not the way our Government should run.

If you look at just the last 2 years—and we have documented hundreds of abuses over the years. But if you look at just the last 2 years, you have the back-to-back GAO investigations; you have a strained relationship with the LSC IG, and Congress. There have been three full-time LSC IGs prior to the current one. All three left after severe feuds with the LSC Board. The last one, Kirt West, was about to be fired before three Members of Congress—two Senators and a Congressman—wrote a letter to the LSC Board saying, "Don't fire the IG while he is investigating you." That is a very, very—I do not know of any other Federal program that has had three consecutive IGs go out of business. They have had negative publicity based on use of limos, overpriced hotels. This was the As-

sociated Press and CBS Evening News. These were not conservative critics. And, in fact, program lawyers, the ones that we have heard who operate on very, very low salaries and are really giving their all to the program, were appalled to see that Legal Services had limos for their board members and were paying for first-class air travel and all sorts of other thrills that really do not belong in a Federal anti-poverty program.

My only thought is as you look at ways to meet the legal needs of the poor, think beyond just let's pour more money on this program. Think to are there some structural changes that could be done that help all people, not just the poor—the middle class who can't afford lawyers, the Russell Garbers of the world who can't afford lawyers—help all people get access to justice.

When the Framers said access to justice, they were not referring to Legal Services Corporation. That did not come until the 1970s. They wanted access to justice. I think what the Framers had in mind and what the saying on the Supreme Court facade means is we need to have a society with laws and institutions that allow people access to justice. And if that does not necessarily suit the needs of the American Bar or the Legal Services Corporation, well, I think we really should be after justice and not that.

And as I say, if I could make one recommendation, it would be this: that there be a real study, perhaps an independent study, by leading thinkers, and there are some good books that have been published. Just recently, there is one out by a Stanford law professor that looks to these alternatives out there, and let's see if that isn't a more cost-effective way to deliver access to justice.

Thank you very much.

[The prepared statement of Mr. Boehm appears as a submission for the record.]

Senator CARDIN. Thank you very much for your testimony.

Ms. Jeanette Franzel?

STATEMENT OF JEANETTE FRANZEL, DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE, GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, D.C.

Ms. FRANZEL. Good afternoon, Senator Cardin. I would like to ask that my written statement be submitted for the record.

Senator CARDIN. Without objection, all the written statements will be included in the record.

Ms. FRANZEL. Thank you. I am very pleased to be here to discuss our recent GAO reviews that have been mentioned throughout this hearing on Legal Services Corporation's governance, accountability, and grants management practices.

The Legal Services Corporation, or LSC, has the important mission of making Federal funding available to provide legal assistance in civil matters to low-income people throughout the United States. Today I will discuss LSC's organizational framework and funding and highlight the key findings from our August 2007 report on LSC's governance and accountability and our December 2007 report on LSC's grants management and oversight.

The sum of these two reports represent a comprehensive, top-to-bottom review of the LSC structures and processes that are needed

to increase assurance that LSC programs are carried out effectively and that funds are used in accordance with intended purposes.

First, regarding LSC's framework and funding, LSC is a very unique organization. It was established by a Federal charter in 1974 as a federally funded, private, nonprofit corporation. Despite its status as a private corporation, the vast majority of LSC's funding is from Federal appropriations. LSC uses its funding to provide grants to legal service providers, or grantees, who serve the low-income members of the community who need services. LSC received about $350 million in appropriations for fiscal year 2008 and has 137 different grantees.

LSC distributes its funding to grantees based on the number of low-income persons living within a service area, so grantees are the entities actually spending the funds and providing legal services to clients. LSC management is responsible for ensuring that these grant funds are used for their intended purposes. Thus, LSC is responsible for its own activities and internal controls and for providing oversight and monitoring of grantees and their internal controls, their use of grant funds, and compliance with laws and regulations throughout their operations.

LSC's Board of Directors plays a significant role in LSC's governance and is responsible for providing leadership and direction to LSC's management and overseeing LSC's operations. Since 1988, LSC has been under the oversight of an Office of Inspector General which has statutory authority to carry out audits and investigations of LSC programs, and LSC now has a new IG, as we have heard.

In the areas of governance and accountability, we found that LSC's practices had not kept up with evolving reforms that have impacted other types of organizations. I do want to emphasize that LSC's board members did show active involvement in LSC oversight through their regular board meeting attendance and participation. Also, in our discussions with individual board members, we found them to be highly committed to their responsibilities and very receptive to the suggestions that we were making and the improvements that need to be made in governance.

We made recommendations in the following areas to help strengthen LSC governance: establishing basic charters and responsibilities for the board and its key committees and putting those in writing; employing orientation, training, and performance assessment processes for the board and for its members; adding functions normally handled by boards of directors, such as audit committees, ethics committees, and compensation committees, to help oversee those areas impacting LSC's accountability and codes of ethics; and finally, very importantly, periodically evaluating key LSC management processes, such as risk assessment and mitigation, internal control, grantee oversight, and financial reporting.

We also found that LSC management practices had not kept up with recent developments for other types of organizations. LSC management itself had not implemented a systematic or formal risk assessment process and had not established comprehensive policies or procedures regarding conflicts of interest and ethics. In addition, LSC had not established a continuity of operations program.

In the area of grants management and oversight, which is really the heart of where LSC funding is applied in LSC operations, we found weaknesses that left grant funds vulnerable to misuse. Specifically, we found that the scope of LSC's monitoring of grantees' fiscal compliance was limited. In addition, LSC did not use a structured or systematic approach for assessing risk across its 137 different grantees in order to guide the timing and scope of grantee visits and oversight activities.

We also found that oversight feedback to grantees was often slow. As of September 2007, LSC had not yet issued reports to 10 of the 53 grantees that it had visited during 2006. Without such communication, grantee managers do not have information that they need about deficiencies and corrective actions that are needed to help protect their activities in their own program.

We also found poor fiscal practices and improper expenditures at 9 out of the 14 grantees that we visited, and I would like to stress that these were very limited reviews that we did. During our limited reviews, we identified issues that LSC could have identified with more effective oversight. We found systemic issues involving payments that were made without sufficient supporting documentation, and in those cases, it was impossible for us to determine whether the expenditures were accurate, allowable, or appropriate.

We also found improper expenditures and potentially improper expenditures at grantees using grant funds, including travel expenses, loans to employees, alcohol purchases, lobbying fees, questionable contractor payments, and improper use of LSC funds resulting from a real estate transaction.

As a result of our review, we made a total of nine recommendations to LSC's board and eight recommendations to LSC management. Both LSC's board and management expressed a commitment to taking corrective action to implement our recommendations. LSC's most recent progress report indicates that it is starting to take action on many of our recommendations and is planning action on the rest. LSC plans to provide us with a final update by September 1, 2008, and we look forward to receiving that report and reviewing LSC's progress.

I want to emphasize, however, that some of these corrective actions will take time to fully and properly implement, and many of these actions will need to be continually evaluated through an LSC ongoing risk assessment and monitoring process, which we are recommending also be put in place.

In conclusion, LSC serves a key mission, which is being highlighted during the current period of economic hardship for many workers and their families who need legal services they could not otherwise afford. Effective governance, internal controls grantee oversight, and diligent and proper performance by grantees are all critical to LSC's mission, the effective use of its appropriated funding, and its ability to serve the legal needs of low-income people. Maintaining sound internal controls and governance will be key to maintaining trust and credibility of LSC's mission and operations going forward.

That concludes my statement, and I would be happy to answer any questions that you have.

[The prepared statement of Ms. Franzel appears as a submission for the record.]

Senator CARDIN. Thank you very much.

Ms. Rebekah Diller?

STATEMENT OF REBEKAH DILLER, DEPUTY DIRECTOR, JUSTICE PROGRAM, BRENNAN CENTER FOR JUSTICE, NEW YORK UNIVERSITY LAW SCHOOL, NEW YORK, NEW YORK

Ms. DILLER. Thank you, Senator Cardin. On behalf of the Brennan Center for Justice, I would like to thank you for holding this hearing today and permitting me to testify. The Brennan Center for Justice is a nonpartisan think tank and advocacy organization, and for the last 10 years, we have been deeply involved through litigation, research, and advocacy in promoting equal access to the courts.

I am going to depart from my written testimony a bit and just speak about some of the issues that have come up during this panel.

First, I would just like to say that I agree with Mr. Boehm that certainly we can look at other models for closing the justice gap and for improving access to courts in this country. I think expanding small claims court jurisdiction and things like that are very useful. But I think we have to be very honest that that is just not going to close the justice gap.

When you look at the types of cases that legal services programs handle, primarily housing court cases, family court cases, those are cases where the other side has a lawyer, and in order for there to be any type of fairness in the proceeding, the legal services client needs to have a lawyer as well. So we can talk about these other matters that may complement efforts here to close the justice gap, but they are simply not going to fix the fact that when you have one side represented, if the other side is not represented, you have a very unfair proceeding.

One study that I cite in my testimony found that when a side is represented by a lawyer, they are five times more likely to prevail in litigation than when they are unrepresented, so that gives you a sense of the real difference that a lawyer makes.

The other thing I will just address is the fact that the justice gap study, while it was produced by the Legal Services Corporation, is consistent with every other study and in some ways understates the problem that every other study has found about the legal needs of low-income people going unmet. So it is not just LSC studies. It is the study of every access-to-justice commission that looks at the issue.

The Brennan Center itself I can tell you did a study on a local level where we looked at New York City housing court and we looked at how many tenants were represented, and we found that 76 percent were unrepresented, and that is in contrast to the landlord side of the proceedings where most observers estimate that about 90 percent have a lawyer. So the fact that low-income people go unrepresented is pretty irrefutable.

The other thing I will just note is that when you look at how the U.S. compares to other developed countries, it is very interesting, because while I am not really able to speak to the number of law-

yers or lawsuits, what I can tell you is that we fall way behind in terms of funding for civil legal aid. England spends about 11 times as much per capita on legal services as we do; Germany and France spend about as 2 times as much. So while there may be fewer lawsuits or lawyers, certainly when low-income people have legal needs there, they are much more likely to be represented.

The other thing I will just say is that to the extent that there is an assumption that, you know, somehow there is a self-interested effort here by lawyers to generate more business for lawyers, I think the salary quotes that we have heard from several witnesses really underscore the fact that no one is going into the legal services business for the money. So if we were really here for an effort to generate business for lawyers and provide funding for more and more lawyers just for that sake itself, we would not be talking about legal services. People go into legal services because they want to do good work, and they often do so at great financial sacrifice.

The other thing I will address here today is one step that the Congress could take which would not cost a penny, but I think would go pretty far toward helping improve the justice gap problem that we have talked about, and that is to eliminate the restriction on State, local, and private funds that is attached to the LSC appropriation every year. We have talked a lot about the involvement of State and local governments as partners, of IOLTA programs as partners, of private donors as partners. But what the Federal Government has done is it has said to local nonprofit organizations, if you take one penny of our money, we are going to restrict how all your other funds are spent.

This is way out of line with how every other Federal grantee is treated. The normal course is to certainly restrict how Federal funds are spent, but not to tell grantees and others, like State governments, how they can spend their funds.

What is happening as a result of this restriction is that the Federal Government is actually deterring partners from getting involved in the civil legal aid delivery system, deterring private funders from giving to legal aid programs because their funds will be restricted. It is deterring State governments and State actors from contributing to LSC-funded grantees. And it is also creating waste in the system. I will give you an example from Oregon.

Oregon State justice planners did not want their State funds to be restricted by the Federal Government, so they set up two systems of legal aid delivery that run parallel to each other. That means two sets of rent payments ever month, two sets of computer networks, copy machines. All the overhead that one office has now has to be borne by two offices. And the programs there calculated that if they did not have to operate separately due to the restriction on State, local, and private funds, they would save about $300,000 a year. That same $300,000 a year could go toward opening a new office in an underserved rural area of the State and serving more clients in their bread and butter legal services needs.

We have seen the impact of this restriction in particular in the subprime crisis and in efforts to defend homeowners against predatory lenders. One of the things it does is it tells legal services attorneys that they can't seek attorneys' fee awards even when such

awards have been authorized by consumer fraud statutes. And this means that their bargaining power is reduced when litigating in these cases. Wrongdoers do not have to pay fees that have been authorized by statute. And they are also depriving programs of potentially another source of revenue that could go to serve yet more homeowners in need of help.

I will stop there and take any questions.

[The prepared statement of Ms. Diller appears as a submission for the record.]

Senator CARDIN. Thank you for your testimony, and I thank all six of you for your testimony. It certainly helped complete our record here. Both Ms. Diller and Ms. Wallace spoke about the restrictions in the LSC law, which I am glad you both mentioned. It just seems to me that there are easier ways for priorities to be determined than putting legal restrictions in the statute itself.

You went through, Ms. Diller, a list of the restrictions and mentioned them. Did you mention them in priority order? Do you believe that outside funding is the most problematic restriction that LSC has? Or just there is no rhyme or reason to the list?

Ms. DILLER. Well, I would say the restriction on other funds is the most problematic because of the way that it ties up the money that comes from other sources, the way it distorts the planning that local communities can do about how they construct civil legal aid delivery systems. It deters other funds from coming into the system. So I do think that is the most problematic, and I would just point out that to the extent Congress has concerns about how its money is spent, it can certainly regulate that. But this is really outside the norm with the way that any other nonprofit grantee type of organizations are treated.

Senator CARDIN. Ms. Wallace, you mentioned that same restriction. I do not believe you mentioned other restrictions. Is that the area that you think is the most important for Congress to take a look at?

Ms. WALLACE. We agree that the restrictions generally present problems, but certainly agree that that particular restriction is one of the most problematic, and it is one of the ones that should be prioritized for a number of reasons. If we really are going to close the justice gap, we need to make the partnerships that are going to be required to do that as effective as possible. And that restriction really does hamper our ability to do that and hampers programs' abilities to do that. Not only that, but as was pointed out, we think that it is a pretty easy fix. So that is a good place to start.

Senator CARDIN. Mr. Boehm, you talked a little bit, particularly in your statement, about the advantages of pro bono. Do you favor a requirement that all lawyers participate in pro bono?

Mr. BOEHM. I would think there would be constitutional, if not ethical, problems with requiring it. It is a duty of the profession, and the profession—I think you have to look at a profession as a regulated monopoly, and people who are able to practice law privately have a responsibility. It comes with the very notion of a profession. And I think this should be every kind of suasion short of absolute requirement to the degree they should be publicly shamed if they do not, if they are in private practice and offering that. And I think also, by the way, lawyers who work for the Federal and

State governments, lawyers who now have problems doing that sort of thing, should be allowed to do it. And I think there ought to be a waiver for certain types of legal services when attorneys who are in different States from which they were admitted to the bar would like to do some volunteer work. Right now, you have to be admitted to the bar, which can be a problem in some cases.

Senator CARDIN. You raise some very legitimate points, but if we could work out the issues that you have referred to, would you favor a legal, enforceable obligation for attorneys to participate in pro bono, with the caveats that you have already mentioned, and others?

Mr. BOEHM. Yes, the main one is that if you force somebody to do that, it almost gets to—I have seen this debated. This has been debated by leading people on both sides. The Federalist Society had a series of debates. Mr. Alex Forger, who is the former LSC president, took the position it should be legally enforceable.

I think there are a lot of steps you can take right up to that line that go very, very close to requiring it, and a number of States have done it. I will give you some very quick examples. There is increased reporting requirements. In some States you have to go into great detail. Certain firms have made it firm policy. There is any number of things you can do, and there are some proposals, there are policy proposals out there for certain types of tax credits in a very limited way to further increase pro bono.

There is no shortage of lawyers per se. There is a shortage of pro bono.

Senator CARDIN. Judge Livingston, why hasn't the bar association taken a more affirmative view on the requirements for pro bono?

Judge LIVINGSTON. I think they have, in fact. I think that there are a number—

Senator CARDIN. To make it mandatory. They have not taken steps to try to make it mandatory.

Judge LIVINGSTON. They have not taken steps to make it mandatory for some of the reasons that Mr. Boehm has pointed out and more practical ones, perhaps, about lawyers not feeling—feeling an obligation, certainly, to the profession and to the community to participate in pro bono, but I don't know that involuntary servitude is really the way to go. At least, that has been the argument framed by some in this debate. I disagree with that. I think that we could certainly do—

Senator CARDIN. When I got out of law school—

Judge LIVINGSTON.—more than we are doing.

Senator CARDIN. When I got out of law school and walked past a courtroom, a judge grabbed me and said I would handle this case. I guess I could have told the judge no if I never wanted to go before his court again. But I handled the case. Is that—

Judge LIVINGSTON. Let me suggest—

Senator CARDIN.—involuntary servitude?

Judge LIVINGSTON. I don't think it is. I mean, I am in favor of mandatory pro bono personally. But I will tell you that as a representative of the profession, it is not a popular notion.

I will also tell you, though, that the profession has certainly stepped up. I bet when you went to law school that law firms, big

law firms that are paying these top- dollar salaries that are elusive to legal aid lawyers, those law firms traditionally have not allowed billable hour credit for pro bono work. Now that is a reality. So that is one very simple way that law firms have been responsive and have been out front encouraging the associates in their firms to participate in pro bono.

There are a number of initiatives in every State and local bar association that I am familiar with that not only encourages pro bono, but actively recruits pro bono lawyers, they participate in the pro bono organized activities of the bar. They have—we just left Minneapolis at the Equal Justice Conference, which used to be called the "pro bono conference," where there were a number of strategies discussed about ways that you can increase the interest among lawyers in doing pro bono, in actually helping them in carrying out their pro bono responsibilities as members of the profession. And there are just untold and millions and millions of examples of the profession stepping up to the plate to take this responsibility, not just in doing it but in reporting it and encouraging young lawyers in their firms to do so as well. It is an effort that we take seriously.

Senator CARDIN. The results are inconsistent among the States.

Judge LIVINGSTON. I am sorry?

Senator CARDIN. It is inconsistent among the States.

Judge LIVINGSTON. It is definitely inconsistent. It is inconsistent in communities within a State.

Senator CARDIN. That is true also. There have been more aggressive steps taken in some State over other States. I am not aware, though—maybe I am wrong about this—that the American Bar Association has taken a firm position that there is an obligation for attorneys to handle pro bono, that there should be reporting requirements in every State, that there should be specific programs in law schools to sensitize lawyers to enter pro bono programs. There is a whole list of things that they have done. I am not aware that the ABA has actually come out and said that every State should adopt these or try to make this a standard practice within the canons of ethics of attorneys.

Judge LIVINGSTON. Well, the canons of ethics that our association recommends do include taking the responsibility seriously and certainly encourages it. The Center for Pro Bono is one example of that. There is information in my written remarks about a website reference that you can go to to find out about all the initiatives going on at the Center for Pro Bono.

So there are a number of efforts, and I would say—I never want to disagree with a Senator, but I would certainly want to say that the association is on record absolutely encouraging States, encouraging State bar associations, encouraging local bar associations, and encouraging every single lawyer that is a member of the profession, certainly a member of the association, to engage in pro bono activities and to report that.

Senator CARDIN. Well, there is a big difference between encouraging and taking it to the line, and I would suggest beyond the line that Mr. Boehm is suggesting, in which you have the information in front of you about every attorney in your State as to what they are doing. And that is what we do in Maryland. Every lawyer must

report their pro bono activities. If you want to practice law in Maryland, you have got to do that.

Judge LIVINGSTON. Fabulous.

Senator CARDIN. Well, why doesn't the bar association work to require that in every State?

Judge LIVINGSTON. Well, I think that—

Senator CARDIN. My point is this. My point is this. The request is being made for the Federal Government through the taxpayer support to provide a greater level of activity to meet this gap. I support that. But the bar association also must take this to the next level. This is a partnership.

Judge LIVINGSTON. I agree.

Senator CARDIN. I will not forget the lesson I learned from Governor Schaefer when I went to him and asked him for more State money. The first question he asked me: "What are the lawyers doing?" I think that is a legitimate question.

Judge LIVINGSTON. I agree.

Senator CARDIN. And I happen to agree with the point that pro bono is a very, very valuable part of filling this gap.

Judge LIVINGSTON. I totally agree.

Senator CARDIN. We need to do a lot more.

Judge LIVINGSTON. I totally agree. I don't disagree with anything you said about how lawyers have to step up. What I am telling you, Senator, is that lawyers have stepped up. That does not mean we can't step up further. It does not mean we can't take a more active role. It does not mean we can't be more aggressive. The American Bar Association is totally 100 percent committed to all of the efforts that you have outlined, all of the suggestions that have been made here today, and this is not the only forum that we have heard them, certainly. And we will certainly look at all of those. We have been looking at them. That is what the Center for Pro Bono does. That is what the Pro Bono Committee does. That is a very important committee of the association. We recognize at annual awards ceremonies the work of pro bono lawyers throughout the country in local bars, in State bars, that are doing just enormous—giving an enormous effort of their time and energy and staff time and money toward this effort. And so lawyers do take this responsibility seriously, the association takes this responsibility seriously.

And while I agree that certainly more could be done, I want you to understand and appreciate the fact that the association is doing quite a bit to promote pro bono and to encourage pro bono among all of the members of the profession.

To the extent that we can do more, we will take that challenge and continue to work on it with your recommendations in mind.

Senator CARDIN. Thank you. I appreciate that response. I really do.

Our commission came out with a recommendation for mandatory pro bono, and I thought it was an ethical commission, Mr. Boehm. I did not think we were trying anything that was unconstitutional or unethical.

Ms. Franzel, is there anything more that you would like to see from the Legal Services Board in regards to how they are reacting—I know you want to see the final products, but is there anything that is of concern to you as to how they are currently re-

sponding to your request? I know that you have not completed the information, but are they on track to responding to the suggestions that you have made?

Ms. FRANZEL. Yes. I am very encouraged by the response. I do want to caution that many of the really difficult initiatives are in the planning stages or the initial stages, and so it will be really important to take a look at things like risk assessments and grantee oversight—those are the big-ticket items—and take a look at them over the next year or so.

Some of the other structural issues can be taken care of very quickly, such as restructuring the board and its responsibilities, and I am very pleased to see that those are already in process. And, of course, we will want to see how all of this is implemented.

Senator CARDIN. Thank you.

Mr. Joseph, on the salary levels, I haven't check the legal service—the Legal Aid Bureau as to their salaries recently. Are you having trouble in retaining attorneys? Is there a major gap in Maryland on the payment to legal aid attorneys versus other areas of public interest law? I know we are not competing with the large law firms, but in other areas of public interest law.

Mr. JOSEPH. All of the above. Generally in Maryland we are very aggressive about that. In 1996, our starting salary for lawyers was $25,000 a year, and it had been frozen for 7 straight years. A lawyer who worked there for 7 years—and we had many—had not gotten a single penny increase. This year, we are starting lawyers at $45,200. But even that puts us between $9,000 and $10,000 behind the State attorney—I know because my daughter works there—behind the Attorney General, behind public defenders. And what happens is that we are aggressive about recruiting the most committed and the most competent. And as soon as they show their wares in the public, they get recruited and folks try to snatch them, and they go.

So it is a difficulty. We do things to try to compensate for that. We have a nice liberal vacation schedule. We try to give leave for child care, different innovative ways to compete in the marketplace.

I think Mr. Boehm doesn't really understand what it is to run a legal aid program. It is a business. We have 300 employees, 140 lawyers, 13 physical locations around Maryland. We can't rely on $3.9 million from the Legal Services Corporation, so we have hundreds of individual contributors. We have to have a program observing that. We have lawyers who form a separate Equal Justice Council, lawyers from all the big law firms and small law firms. All they do is raise money for legal aid. We have pro bono hours being donated. Yet we touch a little piece of the need out there.

I think I demonstrated that when you live on a budget of poverty, every single day, every year, you will have the need for advice, for counsel, and sometimes representation. Mr. Boehm waved his hand at numbers, about somebody who got a small piece of information on the phone. Let me tell you, sometimes a piece of information that lasts 1 minute can give you the peace of mind that makes a difference in your life. Rich clients know it, too. They call their lawyers to get one piece of advice, and poor folks do it, too.

I support all the GAO ideas of efficiency and improvement. I support all the ideas of alternatives. We have mediation, we have ev-

erything. We still don't meet it. This is a serious crisis. The magnitude in numbers of people living in poverty is overwhelming. The frequency of the need for legal services is overwhelming. The complexity of the issues. I don't want a patent lawyer handling a complex housing issue. I don't want an entertainment lawyer trying to navigate complex Medicaid rules. No. It is going to be a very difficult time matching skills and need in a time-specific situation.

Senator CARDIN. Thank you for that response. By the way, I want you to engage the private community in the funding of legal aid. I want the law firms involved in the funding of legal aid. I think that is a healthy situation. And I think it is a lot easier to get the law firms and the private sector involved when the Government is a partner and the Government is a meaningful partner. And when you see the erosion of the Government support, it, I think, makes it more difficult to get the other partners to contribute and to provide the pro bono services that are necessary in order to meet the access-to-justice issues. So I want to see all the players, and that is why I do believe the bar must figure out new ways to energize lawyers to help fill this gap, because lawyers do have a special responsibility here. I do believe it is an ethical issue for attorneys to be involved in pro bono activities, and the failure to do so to me is an ethical violation of the oath of an attorney.

Let me again thank you all for your help on this panel. I can assure you there is tremendous interest on this Committee. I have talked to most of the members of the Committee, and they are very much interested in getting involved as we try to develop strategies to meet this gap. There is not a uniform position here. There are different views. But I think there is a genuine desire to close this gap. And we certainly will be working very closely with the Health and Education Committee and with the House Committees to try to develop a strategy.

Clearly, this needs more legislative attention, and I am hopeful that as Congress goes through the remainder of this year and next year, we will look toward ways that we can elevate the effectiveness of the Federal participation in these programs, obviously through additional resources, but we think there may be other ways that we can be helpful.

The record will remain open for 1 week for additional materials. I ask the witnesses to respond to members' questions in a timely manner if they are submitted by the members of this Committee, and without objection, statements from Senators Leahy and Feingold will be included in the record.

The Committee will stand adjourned. Thank you.

[Whereupon, at 4:15 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

[Additional material is being retained in the Committee files.]

QUESTIONS AND ANSWERS

Legal Services Corporation
America's Partner For Equal Justice

July 14, 2008

Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510-6275

President
Helaine M. Barnett

Board of Directors
Frank B. Strickland
Atlanta, GA
Chairman

Lillian R. BeVier
Charlottesville, VA
Vice Chairman

Jonann C. Chiles
Little Rock, AR

Thomas A. Fuentes
Lake Forest, CA

Herbert S. Garten
Baltimore, MD

David Hall
Boston, MA

Michael D. McKay
Seattle, WA

Thomas R. Meites
Chicago, IL

Bernice Phillips-Jackson
Buffalo, NY

Sarah M. Singleton
Santa Fe, NM

Dear Senator Leahy:

I am pleased to respond to your letter dated June 2, 2008, which enclosed written questions from Senator Jeff Sessions and Senator Charles Grassley after my testimony at the Senate Committee on the Judiciary hearing regarding "Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans" on May 22, 2008. Following are the questions posed and our answers to the questions.

Senator Sessions Questions

1. *GAO's December 2007 report raises major concerns about Legal Services Corporation's oversight of its grantees and the grantee's waste of taxpayer dollars. According to the GAO report, "LSC's control activities for monitoring grantees do not provide reasonable assurance that grant funds are being used properly and in compliance with laws and regulations." (Page 14.) In its review of Legal Services Corporation grantees' use of federal grant money, GAO found "poor fiscal practices and improper and potentially improper expenditures." (Page 1.) In one case, GAO found that a grantee spent $2800 on beer and wine for a reception for college interns. (Page 27.) The report lists several recommendations for oversight improvement.*

> *When will Legal Services Corporation complete its implementation of GAO's recommendations to improve its ability to monitor grantee use of taxpayer dollars?*

Answer: On May 21, 2008, LSC provided a letter to the Government Accountability Office highlighting LSC's progress in addressing all GAO recommendations (Attachment 1). The letter promised a September 1, 2008 update that we anticipate will mark the substantial completion of all Board and LSC management implementation of GAO recommendations. In addition, implementation of a risk management system for the Corporation and other tasks will be completed and documented at the policy and organizational levels, but will require continuous work and enhancements in order to be considered a completed system.

3333 K Street, NW 3rd Floor
Washington, DC 20007-3522
Phone 202.295.1500 Fax 202.337.6797
www.lsc.gov

45653.001

Chairman Patrick Leahy
July 14, 2008
Page 2

How can Congress be sure that GAO's recommendations have been effectively implemented so that the money we appropriate reaches the people who need it?

Answer: Since the beginning of the audit process with GAO, we have kept the Congress fully and currently informed through regular meetings with our oversight and appropriations committees and written status reports. We will continue to keep them informed. In addition to this regular reporting by our Office of Government Relations and Public Affairs, the LSC Board has now formed an Audit Committee that will provide internal review of our oversight activities and the Office of the Inspector General (OIG) will continue to oversee annual independent audits of all 137 of our grantee programs, using guidelines updated and improved in response to the GAO recommendations. Finally, our Office of Compliance and Enforcement (OCE) and our Office of Program Performance (OPP) have improved coordination among the offices and now prioritize program visits guided by enhanced risk assessment criteria. When reviewing programs on-site, OCE is now doing expanded financial reviews designed specifically to address issues raised by GAO.

2. *In its limited review of LSC grantees, GAO has found that LSC grantees are not using taxpayer dollars appropriately. GAO reviewed just 14 grantees, and found problems at 9 of them—that means 64% of the grantees had problems. According to GAO's December 2007 report, "Among the control weaknesses we found were grantee use of LSC grant funds for expenditures with insufficient supporting documentation, and for unusual contractor arrangements, alcohol purchase, employee interest-free loans, lobbying fees, late fees, and earnest money." (Page 18.) GAO only examined 14 grantees. But Legal Services Corporation has a total of 137 grantees and 900 offices across the United States.*

For FY 2009, LSC has requested $471 million in funding. That is a 35% increase over the FY 2008 levels.

Given that LSC is still implementing changes, and the effectiveness of those changes has not been verified, how much confidence can Congress have that appropriations to LSC will be well spent?

Answer: The vast majority of the LSC appropriations were never in question. In those specific instances where costs were questioned by GAO, we referred eight of the nine instances to the OIG. The Inspector General has stated that for the eight sites reviewed and based on the OIG's preliminary analysis, management at the grantees have adequately addressed the GAO recommendations, and are implementing additional controls to prevent those issues from recurring. The ninth site questioned by GAO, Nevada Legal Services (NLS), was already under LSC review and has been recently sanctioned by the Corporation. The current NLS grant was terminated and the program has been put on month-to-month funding

45653.002

with substantial special grant conditions that require specific and detailed monthly reporting. Further, in a March 20, 2008 Advisory to all LSC-funded programs, we reminded Executive Directors of the regulations regarding allowable costs and specifically stressed the prohibition of expenditures of federal funds for alcohol and lobbying. Based on the OIG findings, the programs' corrective actions, and our guidance issued to all LSC-funded programs, there is reasonable assurance that the current system of internal controls, including the changes implemented as a result of the GAO recommendations, is adequate to provide proper stewardship of taxpayer dollars. The clarification of the roles of Management, the Board, the OIG, and the Independent Public Accountants (IPAs), with the improvements now in place are sufficient to provide that assurance. In addition, we are working with the OIG to further enhance the oversight by the IPAs of grantee internal controls with additional audit review guidance.

How will LSC verify the effectiveness of the changes LSC is implementing? How will it report its findings?

Answer: The annual audit plans of the OIG, the newly-formed Audit Committee of the Board, the independent audit of the finances of the Corporation, the individual IPA audits of the 137 LSC-funded programs, and the on-site program visits by OCE and OPP, will combine to verify the effectiveness of the changes. LSC will engage in ongoing assessment of our oversight processes and will continue to share this information with the appropriate committees of Congress.

3. Since becoming President of Legal Services Corporation, please identify the number of complaints received by LSC regarding LSC-funded programs possibly violating the LSC Act or restrictions in the LSC appropriations law. Please identify each program by name, identify the allegations, identify the findings, and identify what if any enforcement actions or other sanctions taken by LSC.

Answer: Attachment 2 are the logs of complaints received in 2004 through 2007 which are now closed, with accompanying documentation, prepared by the LSC Office of Compliance and Enforcement (OCE) under the supervision of Danilo Cardona, Director of OCE, which identifies the number of complaints received by LSC regarding LSC-funded programs possibly violating the LSC Act or restrictions in the LSC appropriations law and identifies each program by name, the allegations, the findings, and what if any enforcement actions or other sanctions were taken by LSC. With respect to open complaints, the LSC Office of Compliance and Enforcement has 72 complaints docketed and are currently under investigation.

Chairman Patrick Leahy
July 14, 2008
Page 4

4. In 1996, Congress passed a series of reforms for LSC which have been incorporated in each subsequent year's appropriations for LSC. One of the reforms called for competition for LSC grants by programs providing legal services. For each year from 1997 through 2007, how many program grants were awarded and of that number, how many of those had any competition for the grant award? For each of the years 1997 through 2007, identify which incumbent programs had competition and what the result of the competition was by identifying the program receiving the grant. During the years 1997 through 2007, how many non-incumbent programs successfully won competition for LSC funding when competing against a program which was already receiving funding?

Answer: Consistent with 45 C.F.R. § 1634.9, a full and comprehensive evaluation is conducted for all grant proposals based on the ABA Standards for the Provision of Civil Legal Aid, the LSC Performance Criteria, LSC Regulations, and the LSC Request for Proposals (RFP). According to the records of the Office of Program Performance, from 1997 through 2007, grants were awarded as indicated in Attachment 3. Attachment 4 indicates which incumbent programs had multiple applicants and the result of the competition. Attachment 4 also identifies whether the grant proposal from the unsuccessful applicant was "not funded" or "rejected." Applicants are "not funded" in multiple applicant situations where the competing Applicant is evaluated as having the greater capacity for providing economical and effective delivery of high quality civil legal services to eligible low-income clients. In accordance with the LSC RFP, Applicant grant proposals are "rejected" if they are determined to be substantially incomplete or nonresponsive to the RFP.

For the period 1997 through 2007, three non-incumbent programs successfully won competition for LSC funding when competing against a program that was already receiving funding.

5. International Legal Aid Group (ILAG) Conference:

Will LSC staff and Board members attend the 2008 ILAG Conference and, if so, who specifically will attend the event?

Answer: The ILAG conference occurs every other year. It did not take place in 2008, but will occur in 2009. However, there was a Legal Services Research Centre conference in 2008 in Greenwich, England. President Barnett was asked to present LSC's report on Documenting the Justice Gap in America and did so. Chairman Strickland registered for the conference but was unable to attend.

How has LSC's participation in the ILAG conferences benefited legal services providers in the United States? Please describe the benefit in detail.

45653.004

Chairman Patrick Leahy
July 14, 2008
Page 5

Answer: LSC has previously responded to this question in its response to questions from Senators Grassley and Enzi and Congressman Cannon on May 18, 2006. LSC has participated in ILAG conferences since 1994. The 2003 ILAG conference was held at the Harvard Law School in Cambridge, Massachusetts. There are many benefits to LSC's participation in these international conferences. We learn about activities in civil legal aid programs in other countries with regard to such matters as quality assurances, strategic reviews and needs assessments. We believe it is important that LSC participate in an international gathering devoted to legal assistance to the poor. Nearly all of the other countries present at these conferences are represented by the heads of their national legal aid programs. As the national funder of civil legal aid programs in the United States, it is important that leaders of LSC be a part of these conferences.

How much will it cost LSC to send participants to the 2008 ILAG Conference? Please identify these costs with specificity and by individual.

Answer: Since there is no 2008 ILAG Conference, no costs have been incurred. With regard to the Legal Services Research Centre conference in 2008, President Barnett chose to pay her own expenses for the conference because she was able to combine her attendance at the conference with a previously planned family vacation.

Please explain in detail why sending LSC employees to the ILAG is an acceptable expenditure of taxpayer funds.

Answer: Section 1006(a) (3) of the LSC Act, 42 U.S.C. section 2996e (a) (3) authorizes LSC to engage in certain activities related to the delivery of legal assistance. Specifically, LSC is authorized to engage in research, training and technical assistance and to serve as a clearinghouse of information. Participation in selected international legal services conferences and meetings support these authorized activities by enabling LSC to learn about legal aid practices abroad and use and share that information back in the United States to promote legal services and access to justice within the United States.

6. Legal Services Corporation's Office of Program Performance (OPP) issued a report regarding the Legal Services of Nevada indicating that it was a good program. Subsequently, staff of the Government Accountability Office and LSC's own Office of Compliance and Enforcement (OCE) identified many serious problems at the same program. Please briefly explain why this happened and why confidence should be placed in LSC's grant oversight capabilities.

Answer: LSC takes seriously its responsibility for grants oversight and has systems in place which provide assurances and confidence in LSC's oversight activities. It is correct that the two oversight offices noted different findings from the on-site

45653.005

visits to Nevada Legal Services. The two LSC oversight offices examined different aspects of that program's operations during different time periods. Nonetheless, LSC has reviewed both visits and the procedures we were using for pre-visit preparation in both offices. We have now reinforced the importance of those procedures and implemented new procedures that should minimize a reoccurrence of situations such as this.

LSC continues to improve its oversight functions, most recently in response to the GAO report, undertaking specific activities to develop and update procedures manuals for the oversight offices, implementing periodic staff training, and generally improving communications and coordination between OPP and OCE. Specifically, we have implemented procedures which ensure that both oversight offices are reviewing *all* information available to LSC from both offices prior to visits, and we have reinforced the necessity for sharing program information between offices more regularly. Both offices are sharing their preliminary findings from site visits shortly after returning from those visits, even prior to writing the reports. We believe that the increased internal office coordination and information sharing which is now in place will result in improved grants oversight.

Senator Grassley Questions

(1) Legal Services Corporation Personnel Questions:

Since becoming President of Legal Services Corporation (LSC) several years ago, please identify how many full and part-time members of the LSC Staff have departed and of that number how many were terminated? Identify the positions held of all those who were terminated. Of those terminated how many were terminated for cause? Please identify if settlement agreements were executed with any of these individuals and if payments were made, please identify the amount of the settlement.

Answer: According to the records of the LSC's Office of Human Resources, since January 2004, thirty-four employees departed LSC. (In addition, six employees departed from LSC's Office of Inspector General but those are not covered by this response.) Of the thirty-four, four were terminated for cause. For thirteen of the LSC employees who departed as separations by mutual agreement, LSC entered into settlement agreements. However, according to Victor Fortuno, LSC General Counsel, each of those agreements contains a confidentiality provision, the violation of which would constitute a material breach of the agreement and possibly subject LSC to liability. LSC is, therefore, contractually obligated to keep confidential the terms of those agreements.

Attachment 5 is a chart, prepared by the LSC Office of Human Resources (OHR) under the supervision of Alice Dickerson, Director of OHR, which lists the positions held by all those who were terminated and indicates which ones were terminated for cause.

Additionally, please:

- *Identify by name every individual formerly employed either in a full or part-time capacity by groups receiving LSC funds that have been hired as a full or part time employee or in any consulting position(s) at LSC.*

Answer: Attachment 6 is a chart prepared by the LSC Office of Human Resources (OHR) under the supervision of Alice Dickerson, Director of OHR, that identifies by name every individual formerly employed either in a full or part-time capacity by groups receiving LSC funds that have been hired as a full or part time employee or in any consulting position(s) at LSC. Prior to contracting with a consultant, LSC requires the consultant to identify any existing employment relationship with an LSC grantee and prohibits the consultant from accepting any pay, including vacation pay, from an LSC grantee while consulting for LSC. No consultant is allowed to work on any program or grant review involving the consultant's own program.

- *Identify each such individual along with the position for which they were hired, their current position if different than the position they now hold, their previous affiliation with a program which received or is receiving LSC funding.*

Answer: No individual hired since 2004 that previously worked with a program receiving LSC funds has moved to a different position at LSC.

(2) LSC Board Meetings:

The Legal Services Corporation board has held regular board meetings to review LSC operations and set policy. For the years 2005 through 2007, please identify any individuals who testified before the LSC Board representing the agricultural community regarding problems with LSC-funded programs.

Answer: All Board Meetings of LSC are publicly noticed in the Federal Register in accordance with the relevant provisions of the Government in the Sunshine Act and include an opportunity for public testimony. In addition, all meeting notices are posted on the LSC website, which also lists the full annual Board meeting schedule through FY 2009. For the years 2005 through 2007, no representatives of the agricultural community testified before the LSC Board regarding problems with LSC-funded programs, nor did any representatives of the agricultural community

request to testify. However, Board Chairman Frank Strickland has met with Senator Saxby Chambliss to discuss the interests of agricultural growers on at least two occasions in recent years.

During the years 2005 through 2007, has the LSC Board ever invited critics of LSC's enforcement of restrictions to testify?

Answer: In November 2007, at the recommendation of the LSC Board, Chairman Strickland sent letters of invitation to the LSC January 2008 Board meeting in Washington, DC, to Dr. Edwin J. Feulner of the Heritage Foundation, Edward Crane of the Cato Institute, Christopher DeMuth of The American Enterprise Institute, Strobe Talbott of the Brookings Institution, Robert Reischauer of the Urban Institute, John Podesta of the Center for American Progress, and Robert Greenstein of the Center for Budget and Policy Priorities. The invitation stressed LSC's desire to have them learn of the recent activities of the Corporation and open a dialogue with them about the work of LSC.

Associated with the same January meeting, two members of the LSC Board, Vice Chairman Lillian BeVier and Michael McKay, met in person with Ken Boehm of the National Legal and Policy Center and former Attorney General Edwin Meese III, who is the Chairman of the Heritage Foundation's Center for Legal and Judicial Studies, founded in 2001 to educate government officials, the media and the public about the Constitution, legal principles and how they affect public policy. They requested a meeting at the Heritage Foundation with these two individuals which took place on the afternoon of January 24, 2008. As part of their meeting, they invited both individuals to discuss any ongoing concerns about the Corporation and to attend future LSC Board meetings.

(3) LSC Grantee Questions:

Please identify all LSC funded programs that have had "questioned costs" determinations along with the amount involved and the reason for the determination. Please identify any and all funds returned by grantees to LSC.

Answer: According to the records of the LSC Office of Compliance and Enforcement, during the period January1, 2004 through the present, there have been three questioned cost proceedings against three grantees as follows:

California Rural Legal Assistance, Inc. A questioned cost proceeding was instituted for violations of 45 CFR Parts 1609 (Fee-generating cases), Part 1638 (Restriction on solicitation), and Part 1642 (Attorney's fees). The disallowed cost was $18,783 and the grantee returned to LSC $18,783.

Bay Area Legal Aid. A questioned cost proceeding was instituted for a violation of 45 CFR Part 1642 (Attorney's fees). The proceeding is ongoing and LSC will inform your office of the amount disallowed and the amount returned to LSC by the grantee.

Legal Services New York City. A questioned cost proceeding was instituted for violation of 45 CFR Part 1608 (Political activities). The proceeding is ongoing and LSC will inform your office of the amount disallowed and the amount returned to LSC by the grantee.

Further, in 2004, California Rural Legal Assistance, Inc., was sanctioned $10,980.14 through an informal process under 45 CFR part 1618 (Enforcement procedures) for a violation of 45 CFR Part 1617 (Class actions).

Please identify what actions were taken by LSC against LSC grantees found to be representing ineligible clients. In responding, please identify the program, the type of ineligibility found, and any action taken by LSC.

Answer: Attachment 7, prepared by the LSC Office of Compliance and Enforcement (OCE) under the supervision of Danilo Cardona, Director of OCE, identifies what actions were taken by LSC against LSC grantees found to be representing ineligible clients. The attachment identifies the program, the type of ineligibility found, and any action taken by LSC.

Identify what enforcement or other actions were taken by LSC against LSC grantees found to be violating the restriction against lobbying by LSC-funded programs. Identify the program, the nature of the violation, and the actions taken by LSC if any.

Answer: According to the records of the LSC Office of Compliance and Enforcement (OCE), since January 1, 2004 through the present, LSC has only confirmed one violation regarding the restriction against lobbying by LSC-funded programs—the Legal Services New York City that was identified by the Government Accountability Office (GAO). The violation, according to the report of the GAO, involves a $50 payment of a lobby fee with LSC funds. LSC referred this matter to the LSC Office of the Inspector General (OIG) and is currently waiting for the report from the OIG to make its decision.

LSC is investigating a complaint against the Legal Aid Foundation of Los Angeles (LAFLA) in which the allegation of impermissible lobbying activity has been raised. In April 2008, OCE conducted an on-site investigation. LAFLA and the complainants have provided additional information since the time of the on-site visit. A final determination is expected shortly. LSC will provide the details of the final determination when issued.

Chairman Patrick Leahy
July 14, 2008
Page 10

(4) LSC Computer Software:

January 17-19, 2007, LSC hosted the 7th Annual Technology Initiative Grant Conference in Austin TX. At the conference, LSC announced that it had received a grant from Google, Inc. to participate in the Google AdWords program. Further, it is my understanding that LSC also received access to Google AdWords from Google. What was the dollar value of the software? Did LSC sign any agreements or other documents with Google regarding the terms, restrictions or any other limitations on the software? If so, please provide a copy of all documents associated either directly or indirectly with Google AdWords grant and or any other documents memorializing its terms and conditions.

Answer: On January 17, 2007, LSC received notice that Google had approved the Corporation's application for a Google Grant entitling LSC to up to $50,000 a month in free advertising in the Google AdWords program. There was no software involved, only this grant for free advertising. LSC created a list of key search terms designed to help low-income Google users find LSC-funded legal services lawyers.

On August 22, 2007, Google informed the Corporation that it was changing the Google Grant program and that these changes to the program would lower the Corporation's grant amount from $50,000 to $10,000 a month. The Corporation worked on its key words and bid amounts to maximize the usage of its grant and, according to Google, for the first six months of 2008, received $60,373.35 in free advertising, the maximum allowed under our grant. LSC technology staff has calculated that since the Google Grant was awarded to LSC on January 17, 2007, through June 30, 2008, the total value in free advertising has been $155,696.84. More importantly, there have been 212,008 clicks taking Google users to LSC's website so that they might find an LSC-funded legal services lawyer to help them.

Attachment 8 is a copy of LSC's application for the grant, e-mails from Google confirming the acceptance of the Corporation's application, an email from Google informing LSC of the change in its grant amount and an example of the Corporation's ad on Google.

(5) LSC Fundraising:

I understand that LSC is now engaging in activities to raise funds, not for grantees, but for LSC headquarters. In light of this fact, please respond to the following questions in detail. Please be sure to include all relevant documentation.

Identify who on LSC staff is authorized to raise funds. Please set forth their position within LSC.

45653.010

Answer: In March 2008, LSC filed an application to engage in charitable solicitations in the District of Columbia, which was approved on April 24, 2008. Included in the approved application was a list of the individuals authorized to raise funds on LSC's behalf, along with the job title of each individual listed (see Attachment 9).

Has the LSC Board approved of these fundraising activities?

Answer: At a Board meeting held via teleconference on February 20, 2008, the Board approved submission of an application to engage in charitable solicitations within the District of Columbia. Attachment 10 is the relevant portion of the transcript of that meeting. At a Board meeting held on April 26, 2008, the Board Chairman reported to the Board that staff had submitted the registration application, that approval should be forthcoming, and that solicitation would commence once the approval was received. Attachment 11 is the relevant excerpt from the transcript of the Board meeting.

How much has been raised to date? How much is anticipated?

Answer: After LSC's registration application was approved by the District of Columbia, LSC's Board Chairman sent out 26 solicitation letters but, to date, no contributions have been received. The Audit Committee is reviewing the manner in which future private fundraising will be conducted. This is an item on the Committee's agenda at its August meeting. According to David Richardson, LSC's Comptroller/Treasurer, only one solicited non-federal contribution has been received this year, and that was a $1,500 contribution from Friends of the Legal Services Corporation, Inc. In addition, a $25,000 unsolicited private contribution was received.

Also, from time-to-time, LSC has solicited small contributions from local venders for the benefit of in-house staff events like the LSC holiday party and from in-house staff for the benefit of third-party charitable organizations and causes such as the United Way.

Are there any restrictions on these funds and if so please identify those restrictions; if not, please state how these funds will be used; please be specific.

Answer: According to Victor Fortuno, LSC's General Counsel, there are restrictions on the receipt of non-federal funds. Pursuant to the LSC Act and restrictions contained in LSC's 1996 Appropriations Act, which restrictions have been incorporated in each subsequent appropriations act for LSC, all non-federal funds received by LSC must be separately accounted for and may not be used for any purposes prohibited by the LSC Act or any applicable appropriations laws, and all private donors must be so notified. *See* Section 1010(c) of the LSC Act, 42

U.S.C. § 2996i(c); LSC's 1996 Appropriations Act, Pub. L. 104-134, § 504(d)(1), 110 Stat. 1321 (1996). As with all LSC resources, additional restrictions may apply to the use of those funds as a matter of LSC's internal policies. In addition, individual grantors may impose restrictions on the use of the funds they contribute or donate to LSC.

Were LSC funds used to pay the salaries of those individuals engaged in fundraising activities? Is this an appropriate use of LSC funds? If so, please explain in detail.

Answer: Some of the individuals (but not the LSC Board Chairman) engaged in fundraising activities did so during their LSC time (i.e., during time that their salary was being paid by LSC). LSC staff engaged in fundraising activities for only a handful of occasions and the incidental costs of staff time and materials incurred in connection with those few fundraising events were minimal.

According to Victor Fortuno, LSC's General Counsel, the LSC Act confers upon LSC all the powers of a nonprofit corporation under the District of Columbia Nonprofit Corporation Law, except for the power to dissolve itself. *See* Section 1006(a) of the LSC Act, 42 U.S.C. § 2996e(a). It also authorizes LSC "to accept in the name of the Corporation, and employ or dispose of in furtherance of the purposes of [the LSC Act], any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise." *See* Section 1006(a)(2) of the LSC Act, 42 U.S.C. § 2996e(a)(2). The District of Columbia Nonprofit Corporation Act provides virtually the same authority. *See* 29 D.C. CODE ANN. § 29-301.05.

Please describe the oversight that the LSC Board will exercise over the use of all funds raised through LSC's fundraising activities. For example, is there a threshold amount that triggers Board pre-approval (e.g. expenditure exceeding $2,000)?

Answer: The Board receives notification of non-federal contributions received and how they are spent. The Board approves the budgeting of all funds. The Board does not approve individual expenditures of federal or non-federal funds. The Board will be kept specifically apprised of the Corporation's policies concerning acceptance and use of private contributions.

Is there any reason that Congress should not consider off-setting the amount of the LSC management and Administration's appropriation against the amount of its annual donations?

Answer: We hope that the Congress would review the feasibility or appropriateness of any offset discussion in the context of the modest scope of the LSC fundraising efforts and the stated purpose of the fund.

In light of the "justice gap" please set forth why LSC is raising money for its headquarters, as opposed to raising funds for the grantees.

Answer: The fundraising is not for the benefit of LSC headquarters, but for outreach and education that will ultimately aid the grantees by increasing public understanding of the LSC mission.

Why would LSC's fundraising activities not place it in direct competition with grantees that will likely be competing for the same limited private funds?

Answer: In the current strategic plan for LSC, entitled *Strategic Directions, 2006-2010,* adopted by the LSC Board of Directors January 28, 2006, the Corporation addresses this concern. Under the "Seek additional funding" objective, the plan recognizes as a strategy the need to turn to private fundraising for projects of national significance, and states:

> While sensitive to the need not to compete with legal services grantees for private contributions and the need not to impact negatively federal appropriations, LSC will seek to identify projects of national significance that could merit consideration for funding from private sources and will explore support for those projects.

(6) June 2008 Executive Directors Conference:

We have been advised that the LSC is planning to convene an executive directors' conference in June of 2008. It is our further understanding that taxpayer funds will be used in whole or in part to pay for this executive director's conference. In light of this fact, please respond to the following questions in detail. Please be sure to include all relevant documentation.

What is the estimated total cost of this conference? Please be sure to provide an accounting by expenditure area.

Answer: According to David Richardson, LSC Treasurer/Comptroller, Attachment 12 is the breakdown of the cost of this conference.

Please provide copies of any cost-benefit analysis done in anticipation of this conference including any and all written material examining other options for the conference including for example looking at video-conferencing?

Chairman Patrick Leahy
July 14, 2008
Page 14

Answer: LSC engaged in considerable planning and evaluation concerning the timing, location, and length of the Executive Directors Conference. We evaluated the possibility of connecting our conference to other national conferences, such as the ABA, NLADA or Equal Justice Conference. While in 2004 LSC held its Executive Directors Conference in conjunction with the NLADA Annual Conference, it was also the celebration of LSC's 30th anniversary. The 2008 Executive Directors Conference focused solely on the role of the Executive Director. Other national conferences are often attended by staff other than the Executive Directors of programs. Additionally, there are many subsidiary meetings that occur concurrently with these other conferences and we determined that it was important to our conference purpose and goals that the Executive Directors be available for all parts of the conference. The decision was made to have a stand alone conference. The correctness of that decision was confirmed by the attendance at the conference; 136 of the 137 LSC-funded programs were represented, all but four by the Executive Director. Additionally, the Executive Directors were able to maximize access to each other during the conference. The invaluable opportunities for the Executive Directors to meet together formally and informally throughout the conference could not have occurred through video conferencing.

Is there a reason that the LSC decided in these lean financial times not to conduct an executive director's conference in conjunction with other conferences as LSC had done in the past? For example, did the LSC consider conducting its executive conference with the NLADA, ABA, or the Equal Justice Conference?

Answer: See prior answer.

Does LSC intend to use any of the funds received through its fundraising activities to defray the cost of this executive conference? If so, please discuss in detail.

Answer: As stated in Attachment 12, the $6,095 cost of the reception held at the National Archives was paid for with non-federal funds.

(7) Comparison of FY2008 Office of Compliance and Enforcement (OCE) and Office of Program Performance (OPP) Budgets:

A review of LSC's budget demonstrates that more financial and human resources are given to OPP than to OCE? Why?

Answer: Historically, the LSC budget has supported more staff in the Office of Program Performance (OPP) than in the Office of Compliance and Enforcement (OCE), due to the number of different functions undertaken by OPP. A significant amount of the OPP program oversight involves assessing program quality;

45653.014

identifying and promoting best practices for legal services providers; encouraging the innovative uses of technology by grantees; collecting, analyzing, and using data from programs on their performance; and researching and implementing projects and initiatives to support and promote the quality delivery of legal services. These are all detailed and often complex tasks that must be done in addition to managing a standards-based competitive grants process for the distribution of the majority of the congressional appropriation. This historic allocation is constantly reviewed by LSC management and after considering the functions that we felt needed to be expanded, beginning with the budget process in 2007 for FY 2008, a substantial budget increase was sought to significantly expand the staff of OCE to allow for greater on-site capacity in our compliance function. However, the congressional appropriation did not provide any increase to permit this to happen.

LSC continues to make a congressional budget request that would support an expanded compliance function that would permit LSC to do more on-site review.

Does the lower funding level and allocation of resources to OCE reflect the Board's position that maintaining oversight of the expenditure of taxpayer funds is less important than the programmatic activity-related function discharged by OPP?

Answer: The Board has been very clear on its expectations of and full support for enhanced compliance oversight along with programmatic oversight. The Board has approved the recent LSC budget requests to Congress seeking additional funds to support expanded oversight.

How many investigators does the Office of Compliance and Enforcement currently employ?

Answer: The Office of Compliance and Enforcement (OCE) does not have any staff "investigator" positions. Most OCE staff members are attorneys; others have financial backgrounds, including some with CPA certifications.

OCE does engage in complaint investigations. However, any OCE investigation that has any potential for criminal involvement is referred to the Office of Inspector General (OIG) for their investigative staff to handle.

How many investigators does the Office of Program Performance employ?

Answer: The Office of Program Performance (OPP) does not have any staff "investigator" positions. Most OPP staff members are attorneys; others have research and evaluation training, technology experience, or other related backgrounds. OPP staff does not conduct investigations. Should any information come to the attention of OPP staff regarding a complaint against a grantee, that

matter is referred to OCE. If there is any potential for criminal involvement, the matter is referred to the OIG for their investigative staff to handle.

(8) LSC/OIG Access to Grantee Documents

In 1996, Congress passed the Omnibus Consolidated Recisions and Appropriations Act of 1996, Pub. L. No. 104-134 (110 Stat.1321). Section 509(h) of that bill explicitly states that "financial records, time records, retainer agreements, client trust fund and eligibility records, and client names...shall be made available to any auditor or monitor" of grantee of LSC Act funds. (See United States v. California Rural Legal Assistance, Inc., No. 1:07-mc-00123 (EGS) D.D.C. filed Mar. 23, 2007). Further, Section 509(g) of the 1996 Appropriations Act provides the LSC-OIG the authority to "conduct on-site monitoring, audits, and inspections [of LSC grantees] in accordance with Federal standards." Despite these congressional authorizations, some LSC grantees have denied the LSC Inspector General access to documents and records. In fact, the LSC/OIG has had to file a federal law suit to compel one grantee to allow access. [See Attachments 15].

Do you believe the OIG should have access to all grantee documents not subject to the Attorney client privilege? If not, why not?

Answer: Yes, to the full extent provided for by law.

Do you believe that LSC Grantees have a right to withhold information from the LSC/OIG?

Answer: According to Victor Fortuno, LSC's General Counsel, LSC grantees have a right to withhold information from the LSC/OIG only under the very limited circumstances provided by law. The LSC Act, 42 U.S.C. § 2996e(b)(3), denies LSC access to documents that are confidential "secrets" under state and local bar rules of professional responsibility. Client "secrets" include privileged information and some non-privileged information. Congress created a narrow exception to that prohibition in 1996 in Section 509(h) of LSC's appropriation for some specific types of information. However, even as to that information, Congress continued to prohibit access if the documents were protected by the attorney-client privilege (although some documents might be released with the privileged information redacted). Furthermore, federal attorney work-product privilege may protect some documents from disclosure to the LSC/OIG.

Chairman Patrick Leahy
July 14, 2008
Page 17

What is LSC doing to ensure that grantees are complying with requests from the LSC/OIG?

Answer: LSC Management respects the OIG's right to request information from grantees and fully supports the OIG in that effort. LSC Management fully expects grantees to comply with LSC access provisions, including those for the OIG. When issues of client secrets, attorney work-product or attorney-client privilege arise, LSC requires grantees to identify precisely the information withheld, the basis for withholding, and any alternative means of obtaining sufficient information for compliance purposes while respecting the limitations set by the LSC Act and LSC appropriations. LSC Management is committed to taking appropriate enforcement action against any grantee that fails to cooperate with information requests, including failures to provide legally sufficient justifications for withholding any information.

Moreover, LSC requires that, in order to receive LSC funding, grantees agree to the following grant assurances (numbers 10 – 12):

> During normal business hours and upon request, it will give any authorized representative of LSC or the Comptroller General of the United States access to and copies of all records that they are entitled to under the provisions of the LSC Act and other applicable laws. This requirement does not apply to any such materials that may be properly withheld due to applicable law or rules. It agrees to provide LSC with the requested materials in a form determined by LSC while, to the extent possible consistent with this requirement, preserving applicable client secrets and confidences and respecting the privacy rights of the Applicant's staff members. For those records subject to the attorney-client privilege, it will identify in writing the specific record(s) not being provided and the legal justification for not providing the record(s).
>
> Notwithstanding any other grant assurance, §1006(b)(3) of the LSC Act, 42 U.S.C. §2996e(b)(3), or any state rule governing professional responsibility, it shall, upon request, provide access to and copies of financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, except for those reports or records that may be properly withheld due to applicable law governing attorney-client privilege, to LSC and the LSC OIG and to any Federal department or agency that is auditing or monitoring the activities of LSC or of the Applicant and any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of LSC. For those reports or records subject to the attorney-client privilege, it will identify in writing the specific record(s) not being provided and the legal justification for not providing the record. Any materials furnished pursuant to this Assurance shall be provided in a timely manner.

45653.017

> It will cooperate with all reasonable information collection, including surveys, questionnaires, monitoring, audits, investigations, and compliance or evaluation activities undertaken by LSC, its agents, or the OIG. Such cooperation shall include making staff available to LSC, its agents, or the OIG for interview and otherwise allowing staff to cooperate with the same. It understands that nothing in these Grant Assurances in any way restricts or limits the authority of the LSC OIG to access any and all records and information to which it is entitled under the Inspector General Act of 1978, as amended, 5 U.S.C. app. §3 (the "IG Act"). It will submit, for each year of the grant and for each service area for which a grant is awarded, Grant Activity Reports in a format and at a time determined by LSC.

Has LSC taken any action to support the LSC/OIG in gaining access to documents and records they are allowed access to by law? If so, list any and all actions taken by the LSC to support the LSC/OIG in this manner. If not, please explain why LSC has not supported the LSC/OIG.

Answer: LSC has not generally encountered significant difficulty in obtaining access to requested information. In the relatively few instances where access issues have arisen, they have been appropriately resolved. For example, in one recent Office of Compliance and Enforcement (OCE) investigation, LSC resolved an access dispute within less than a month of the initial document request. A grantee initially refused to provide unredacted intake forms for four clients based on attorney-client privilege. OCE demanded the documents or specific showings of privilege for each client. Within one day of the demand, the grantee provided the requested documents.

In another case where a grantee resisted providing information to the OIG and the OIG requested Management's assistance in obtaining the information, LSC Management succeeded in getting the grantee to release a substantial amount of information. Management worked extensively with both the grantee and the OIG to narrow the issues to genuine questions of what information is protected from disclosure under the applicable law. At Management's suggestion, the grantee enlisted volunteers from the private bar with relevant expertise to determine the work involved for the grantee to conduct a privilege review of the thousands of case files affected. The grantee agreed to conduct a privilege review for a limited set of documents, but has asserted in defense to the OIG subpoena that review of thousands of cases would pose an inordinate and unnecessary burden. Throughout the process, Management made clear to the grantee that LSC would not tolerate any refusal to provide information that was not firmly rooted in applicable law. Currently, the OIG is engaged in a subpoena enforcement action against this LSC grantee regarding access to information that the grantee claims is subject to specific claims of work-product protection and attorney-client privilege. The matter remains *sub judice* and oral arguments are scheduled for August 26.

If you have any questions regarding the contents of this letter, I would be pleased to answer them. I can be reached at 202-295-1600 or hbarnett@lsc.gov.

Sincerely,

Helaine M. Barnett
President

Attachments

cc: Senator Benjamin J. Cardin

Attachment 1

Legal Services Corporation
America's Partner For Equal Justice

May 20, 2008

President
Helaine M. Barnett

Board of Directors
Frank B. Strickland
Atlanta, GA
Chairman

Lillian R. BeVier
Charlottesville, VA
Vice Chairman

Jonann C. Chiles
Little Rock, AR

Thomas A. Fuentes
Lake Forest, CA

Herbert S. Garten
Baltimore, MD

David Hall
Boston, MA

Michael D. McKay
Seattle, WA

Thomas R. Meites
Chicago, IL

Bernice Phillips
Buffalo, NY

Sarah M. Singleton
Santa Fe, NM

Ms. Jeanette M. Franzel
Director, Financial Management and Assurance
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Franzel:

I am pleased to forward this update on the progress of the Corporation in implementing the recommendations of the Government Accountability Office presented in the following two reports: *Legal Services Corporation, Governance and Accountability Practices Need to Be Modernized and Strengthened*, August 2007, and *Legal Services Corporation, Improved Internal Controls Needed in Grants Management and Oversight*, December 2007. In the past several months, the Board and LSC management have made it a top priority to address the recommendations of both reports and implemented or gone beyond nearly all the recommendations of both reports. Our update on each follows:

I. *Legal Services Corporation, Governance and Accountability Practices Need to Be Modernized and Strengthened*, August 2007.

GAO made four recommendations to management and eight recommendations to the Board with respect to the Corporation's governance and accountability practices.

Recommendations to Management

Recommendation: LSC management evaluate and document relevant requirements of the Sarbanes-Oxley Act of 2002 and practices of NYSE and ABA that are used to establish a comprehensive code of conduct, including ethics and conflict-of-interest policies and procedures for employees and officers of the corporation.

Action: LSC management researched codes of conduct for corporations and boards similar in size and structure to LSC, drafted a Code of Ethics and Conduct for directors, officers and employees of the Corporation and presented it to the Board. The Board adopted the Code on March 24, 2008. A copy of the Code is attached. LSC has scheduled training for all officers and employees for next month.

3333 K Street, NW 3rd Floor
Washington, DC 20007-3522
Phone 202.295.1500 Fax 202.337.6797
www.lsc.gov

45653.020

Recommendation: LSC management establish a comprehensive and effective Continuity of Operations Plan (COOP) program, including conducting a simulation to test the established program.

Action: LSC Management has adopted a COOP for the Corporation, and each LSC office has adopted a COOP program for that office. The COOP plans have been shared with all staff. As a part of the readiness testing of its Continuity of Operations Plan (COOP), LSC will be conducting in July a simulation test of its remote computer capacity, which is planned to come on line should an event at or near LSC offices cause the disruption of LSC's normal computer operations.

Recommendation: LSC management conduct an evaluation to determine whether Government Accounting Standards Board (GASB) should be adopted as the financial standard for LSC's annual financial statements.

Action: LSC management evaluated the use of financial standards for LSC's annual financial statements, and with the LSC Board of Directors' approval, decided to continue to use the Government Accounting Standards Board guidelines for LSC's financial reports.

Recommendation: LSC management conduct and document a risk assessment and implement a corresponding risk management program as part of a comprehensive evaluation of internal controls.

Action: LSC management has begun the process of establishing a more formal and rigorous risk management program at the Corporation. Management has researched a variety of risk management programs and best practices, identified the risk environment for the corporation, and begun an office-by-office risk assessment process. We plan to implement a risk management program this year commensurate with the size and budget of LSC.

Recommendations to the Board of Directors

Recommendation: Establish an audit committee function or rewrite the charter of its finance committee.

Action: An *ad hoc* committee of the Board researched audit committee options and charters, recommended the establishment of a separate Audit Committee, and received Board approval for the new committee and its charter. The Audit Committee held its first meeting at the Oklahoma City Board Meeting in April and adopted a work plan for the year. A copy of the Audit Committee Charter is attached.

45653.021

Recommendation: Establish charters for the Board of Directors and all existing or newly created committees.

Action: The Board of Directors has drafted charters for all Board committees, and approved the charters for the Audit, Finance, and Provisions Committees. Approval of final charters for a newly constituted Governance and Performance Review Committee and the Operations and Regulations Committee are pending final coordination between those two committees and will be finalized at the August, 2008 meeting of the Board.

Recommendation: Develop and implement procedures to periodically evaluate key management processes, including at a minimum, processes for risk assessment and mitigation, internal controls, and financial reporting.

Action: This annual review will be a duty of the newly formed Audit Committee. The evaluation of management processes is pending implementation of the risk management program by the Corporation described above.

Recommendation: Establish a shorter time frame (e.g. 60 days) for issuing LSC's audited financial statements.

Action: The Board directed the Office of Inspector General to deliver the 2007 audit report from LSC's independent public accountant earlier than last year when it was delivered in April. The audit report was delivered this year on January 7.

Recommendations: The remaining recommendations to the Board are: to establish and implement a comprehensive orientation program for new board members, develop a plan for providing a regular training program for board members, establish a compensation committee function or rewrite the charter of its annual performance review committee and implement a periodic self-assessment of the Board's, the committee's, and each individual member's performance. All four recommendations will be delegated to the newly constituted Governance and Performance Review Committee, pursuant to its proposed expanded charter, which will hold its first meeting in conjunction with the August Board Meeting in Wilmington, Delaware.

II. *Legal Services Corporation, Improved Internal Controls Needed in Grants Management and Oversight*, December 2007.

GAO made four recommendations to management and one recommendation to the Board with respect to LSC's grants management and oversight.

Recommendations to Management

Recommendation: LSC management perform follow-up on each of the improper or potentially improper uses of grant funds identified in the report.

Action: As LSC President, I referred eight of the nine programs identified in the GAO report to the Acting Inspector General for follow-up on November 20, 2007. The ninth program, Nevada Legal Services, was retained by management for follow-up since the Office of Compliance and Enforcement had already commenced a compliance review of the program prior to the GAO visit. LSC is taking action to terminate the current grant to Nevada Legal Services and replace it with month-to-month funding with strict special conditions that require monthly action and reporting to LSC. Should the program be unable to meet the special conditions, LSC will terminate the month-to-month funding and seek a different provider through a new competition pursuant to the LSC regulations.

The OIG has completed field work at all 8 of the programs referred to them with issuance of reports anticipated to be completed by the end of June. The OIG reports that for the eight sites reviewed and based on the OIG's preliminary analysis, management at the grantees have adequately addressed the GAO recommendations, and are implementing additional controls to prevent those issues from recurring.

In addition, as LSC President, I sent an advisory to all LSC-funded programs on March 20, 2008, reminding Executive Directors of the need for appropriate documentation of expenditures of LSC funds, of the regulations regarding unallowable costs, specifically stressed the prohibition of expenditures of LSC funds for alcohol and lobbying, the need for written policies governing salary advances, and a reminder of the regulation governing derivative income.

Recommendation: LSC management develop and implement policies and procedures for information sharing among the OIG, OCE, and OPP and coordination of OCE and OPP site visits.

Action: To date, LSC Management has:

- Established working groups, held many hours of joint staff meetings to work on the roles and responsibilities of the various oversight offices, and is sharing information and coordinating site visits, where appropriate, among OCE, OPP, and the OIG, while ensuring the OIG's independence.
- Established new protocols for information sharing and coordination of all work between OCE and OPP, including program visits.
- Completed four in-depth training sessions of LSC's oversight staff.
- Established quarterly staff meetings to continue coordination of work efforts.

Recommendation: LSC management develop and implement an approach for selecting grantees for internal control and compliance reviews that is founded on a risk-based criteria, and uses information and results from oversight and audit activities, and is consistently applied.

Action: LSC has reviewed and expanded the current risk factors for selection of grantees for program visits and is updating procedures included in OPP and OCE manuals. The application of risk factors such as date of last LSC visit, issues identified by the OIG, recent change in leadership, and issues related to program size (large or small), will be done by each office (OCE and OPP) and jointly discussed as decisions are made on which programs to visit for both compliance and programmatic oversight. In addition, LSC has updated procedures to ensure that they reflect our current practice of using information and results from oversight and audit activities and other risk criteria in planning internal control and compliance reviews.

Recommendation: LSC management develop and implement procedures to improve the effectiveness of the current LSC fiscal compliance reviews by revising its current guidelines.

Action: LSC has revised and updated written guidelines for the fiscal component of OCE's regulatory compliance reviews and established written guidance for following up on grantee interviews.

In fulfillment of a commitment to go beyond the GAO recommendations to make related improvements, LSC suspended routine on-site program visits in February and March to complete all 2007 outstanding reports, and has now completed and provided to LSC grantees all program visit reports through 2007, in draft or final form.

In addition, LSC has established set timeframes for report preparation following program visits. Most reports must be provided to the grantees within 90 days from on-site program visits, although for the large, statewide programs with multiple offices, the timeframe is 120 days. These and other procedures have all been reduced to writing in manuals.

Finally, with new procedures in place, LSC has set new program visit schedules for the remainder of 2008.

Recommendation to the Board of Directors

Recommendation: GAO recommends that the Board of Directors develop and implement policies that clearly delineate organizational roles and responsibilities for grantee oversight and monitoring, including grantee internal controls and compliance.

Action: The LSC Board of Directors established a three-member *ad hoc* committee, including a Board liaison, to work directly with LSC management and its Office of Compliance and Enforcement (OCE), the Office of Program Performance (OPP), and the Office of Inspector General (OIG) to implement the recommendations of the GAO reports.

The Board Liaison held two day-long meeting with representatives of OCE, OPP, Management and the OIG to discuss areas where improvement could be made with respect to communication, information sharing and fiscal oversight. Working groups were formed to address various aspects of the fiscal oversight process and changes are being considered and implemented on an on-going basis. At its April 2008 meeting, the Board of Directors adopted a resolution setting forth a clear delineation of the roles and responsibilities of the various offices based on the recommendations of the *ad hoc* committee.

We have worked hard over the past nine months to implement the recommendations of GAO, to go beyond the recommendations in improving LSC's grants management and oversight, and to embrace an ongoing improvement of governance and internal controls for the Corporation. We appreciate the work of GAO in bringing these matters to our attention. We will submit a final update by September 1, 2008 to document the completion of our implementation cycle.

If you have any questions or desire any further information, please let me know.

Sincerely,

Helaine M. Barnett
President

Attachments

cc: Kimberly McGatlin

Legal Services Corporation
America's Partner For Equal Justice

LEGAL SERVICES CORPORATION
CODE OF ETHICS AND CONDUCT

As adopted by the LSC Board of Directors March 24, 2008

I. Purpose

The Legal Services Corporation ("LSC" or "Corporation") maintains and enforces the highest standards of ethics and conduct. LSC expects all members of the Board of Directors (Directors), officers, and employees to perform their work with the utmost honesty, truthfulness, and integrity.

The purpose of this Code of Conduct ("Code") is to establish LSC's expectations for individual behavior, to provide basic guidelines for situations in which ethical issues arise, and to assist Directors, officers, and employees to carry out daily activities within appropriate ethical and legal standards. These ethical and legal standards apply to all of our business relationships and activities, including but not limited to those involving grantees, applicants, consultants, and vendors, as well as with one another. This Code is not intended to confer a legal right of action upon Directors, officers, employees, or third parties.

II. Compliance

LSC's Directors, officers, and employees are required to comply with this Code and with all laws, rules, regulations, and policies pertaining to LSC and to act in the best interests of LSC. This means following both the letter and spirit of the law. When compliance questions arise, employees should seek advice from their supervisors, managers, the Office of Legal Affairs, or the Ethics Officer. The Board of Directors shall designate an official to serve as the Ethics Officer for the Corporation.

The policies and procedures set out in this Code are applicable to the Office of the Inspector General, except in the event that they are inconsistent with the provisions of the Inspector General Act or other applicable laws. The Inspector General shall designate an official to function as the Ethics Officer for members of the Office of Inspector General, subject to ratification by the Board of Directors. Whenever any other LSC official or office is designated as the authority for taking or approving an action in this Code, the Inspector General or designee will replace such official or office with respect to an action or decision affecting the OIG.

III. Leadership Responsibilities

LSC's Directors, officers, and managers have a special obligation to help create a culture within LSC that promotes the highest standards of ethics and compliance. All employees shall have

45653.026

sufficient information, training, and guidance to comply with all laws, regulations, and policies pertaining to LSC, as well as access to the Ethics Officer to help resolve ethical dilemmas.

IV. Conflicts of Interest

A "conflict of interest" exists whenever a Director's, officer's, or employee's private interests could reasonably be seen as influencing, directly or indirectly, the individual's duty to act in the best interests of LSC. Interests, transactions, and relationships of an individual's family members may also give rise to conflicts.

LSC's Directors, officers, and employees shall refrain from entering into relationships or transactions that constitute a conflict of interest. Even relationships or transactions that give the appearance of a conflict should be avoided. If a conflict or apparent conflict does arise the individual must disclose and resolve it as described below. If in doubt about the potential for conflicts, the Ethics Officer should be consulted. See also the subsection on Directors, below.

There are many different ways in which conflicts of interest arise. For example, private interests, obligations to another company or governmental entity, or the desire to help a relative or friend are all factors that might make it difficult for a Director, officer, or employee of LSC to perform his or her work objectively and effectively. Further guidance on avoiding conflicts may be found in the LSC Employee Handbook, especially those sections covering outside employment (§ 5.4), using time and assets for personal benefit (§ 11.6), and acceptance of gifts (§ 11.12).

Officers and Employees

Any officer or employee who becomes aware of a conflict or a potential conflict within LSC shall bring it to the attention of their supervisor or the Ethics Officer. If an employee's supervisor is the Ethics Officer, the employee may bring a conflict to the attention of the President instead. Supervisors shall notify the Ethics Officer of any conflicts or potential conflicts called to their attention as well as any actions taken to resolve the issues. Officers and employees who believe it is not possible to avoid a conflict of interest must make full written disclosure of the surrounding circumstances to their supervisor, who shall bring it to the attention of the Ethics Officer. The Ethics Officer will make a final determination regarding the need for any limitations on the individual's involvement in the relationship, transaction, or decision.

Conflicts of interest involving the Ethics Officer must be disclosed to the LSC President and to the Board of Directors. The President of LSC shall disclose any potential conflict of interest involving the President to the Board. Such disclosures shall be made to the Chairman of the Board, or to a committee designated by the Board for this purpose, who will make a determination regarding the need for any limitations on the Ethics Officer's or President's involvement. The Ethics Officer will be notified for record-keeping purposes of the report and any action taken in response to it.

Officers and employees must avoid situations in which they might profit financially from LSC activities. If an officer or employee becomes aware of a personal affiliation or involvement (including seeking future employment) with an organization applying for or receiving an LSC

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00065 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.027

grant or otherwise competing for LSC business, the individual must fully disclose the nature of such affiliation or involvement to his or her supervisor and the Ethics Officer. The supervisor shall recommend, and the Ethics Officer shall make a final determination, regarding any appropriate limitations on the individual's involvement with the transaction or decision.

Directors

The LSC Act provides that no member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization with which such member is then associated or has been associated within a period of two years. Moreover, Directors have fiduciary duties to the Corporation including a duty of loyalty, which entails the duty to avoid conflicts of interest or to abstain from decision-making involving existing conflicts. Any Director who becomes aware of a conflict or a potential conflict within LSC shall bring it to the attention of the Ethics Officer and the Board of Directors.

Whenever a Director or officer has a private interest in any matter coming before the Board of Directors, the affected person must fully disclose the nature of the interest and withdraw from discussion and voting on the matter. Any transaction or vote involving a potential conflict of interest shall be approved only when a majority of disinterested Directors determine that it is in the best interest of LSC to do so. The minutes of the meetings at which such votes are taken shall record such disclosure, abstention, and rationale for approval.

Directors must avoid situations in which they might profit financially from LSC activities. If a Director becomes aware of a personal affiliation or involvement (including seeking future employment) with an organization applying for or receiving an LSC grant or otherwise competing for LSC business, the individual must fully disclose the nature of such affiliation or involvement in writing to the Ethics Officer and the Board of Directors. The Ethics Officer, in conjunction with the Board of Directors, shall make a determination about any appropriate limitations on the individual's involvement with the decision.

V. Restricted Political Activities

LSC officers and employees must comply with certain restrictions on political activity, which are imposed by the LSC Act and regulations. Specifically, LSC officers and employees shall not intentionally identify LSC with the political activity of any party, association, or candidate. They must comply with the same federal "Hatch Act" restrictions on political activity that apply to state and local officials, which include prohibitions on using official authority (including official titles) to influence elections; advising or coercing a covered employee to contribute to a party, group, or person for political purposes; and running for political office in a partisan election. *See* 42 U.S.C. § 2996e(e)(2); 5 U.S.C. §§ 1501 *et seq.* LSC Directors, officers, and employees may not use any political test or qualification in taking personnel actions or administering grants.

The Office of Legal Affairs and the U.S. Office of Special Counsel are available as resources to provide information and advice concerning Hatch Act restrictions.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00066 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.028

VI. Fair Dealing

Each Director, officer, and employee must endeavor to respect the rights of, and deal fairly with, LSC's grantees, applicants, stakeholders, suppliers, consultants, and employees. No one may abuse his or her authority or take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other intentional unfair-dealing practice. LSC's Directors, officers, and employees may not receive gifts or loans in connection with their LSC business dealings. Token gifts may be accepted in accordance with the LSC gift policy in the LSC Employee Handbook, Section 11.12. Anyone found to be soliciting, receiving, accepting, or condoning a bribe, kickback, or other unlawful payment, or attempting to initiate such activities, will be subject to termination and referral to law enforcement authorities for possible criminal proceedings.

VII. Confidentiality

LSC, by law and regulation, will make information and records concerning its operations, activities, and business available to the public to the maximum extent possible. Records will be withheld from the public only in accordance with the Freedom of Information Act, the LSC Act and regulations, and other applicable laws. However, LSC's Directors, officers, and employees must take reasonable care to avoid disclosure of confidential information, including exercising due care with regard to LSC records. The obligation to preserve confidential information continues even after employment with LSC or service on the Board of Directors ends.

VIII. Recordkeeping

LSC requires honest and accurate recording and reporting of information in order to make responsible business decisions. In the course of their work, Directors, officers, and employees will create or receive LSC records in electronic and hardcopy form, including but not limited to e-mails, internal memoranda, voicemail, letters, charts, graphs, visual materials, and reports. Records created or received during the course of LSC business are LSC property and, regardless of their location, do not belong to the individual who created, received, or maintained them. All records of LSC should be kept according to approved retention and disposal procedures, or as prescribed by LSC policy or law.

All of LSC's books, records, accounts, and financial statements must be maintained in reasonable detail, must accurately and appropriately reflect LSC's transactions, and must conform both to applicable legal requirements and to LSC's system of internal controls. It is a violation of this Code to prepare records or reports that are intentionally misleading. It is also a violation of this Code to intentionally omit or delete essential information from any record or report.

Directors, officers, and employees of LSC should exercise prudence in formulating the communications they make while transacting LSC business. They should take care to use appropriate language and behave professionally when communicating with others in connection

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00067 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.029

with the transaction of LSC business, including but not limited to their communications via e-mail.

Whenever it appears that records may be required in connection with a pending or reasonably anticipated lawsuit or government investigation, all potentially relevant records in electronic and hardcopy form must be preserved and retained, and ordinary disposal or alteration of any records pertaining to the subject(s) of the pending or reasonably anticipated lawsuit or investigation must be immediately suspended. If an individual is uncertain as to whether certain records under his or her control should be preserved because they may relate to a pending or reasonably anticipated lawsuit or investigation, he or she should preserve such records and contact LSC's Office of Legal Affairs for further guidance and direction.

IX. Protection of Corporate Assets

Directors, officers, and employees have a continuing obligation to protect and conserve all corporate money, property, and other resources, expending them strictly in accordance with LSC policies and procedures. For further information, please refer to Section 5.3 of the LSC Employee Handbook.

X. Audits and Financial Statements

LSC's Directors, officers, and employees will be responsive and accessible to auditors and will not in any way limit the scope of the auditors' work or restrict their access to LSC records or personnel.

LSC's Directors and officers are responsible for the design and implementation of policies and processes to promote full, fair, accurate, timely, and understandable disclosure of LSC finances in public reports.

LSC's officers and the Inspector General are responsible for reporting to the Board of Directors any significant disagreements between the LSC financial staff and the auditors with respect to accounting principles, methods, or practices, whether or not subsequently resolved.

XI. Fair Employment

LSC is committed to fair employment practices, including the prohibition of all forms of illegal discrimination. All employment decisions will be based on business reasons such as qualifications, skills, and achievements, and will be made in compliance with all applicable employment laws. For further information, see LSC's Equal Employment Opportunity Policy in Section 2.1 of the LSC Employee Handbook.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00068 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.030

XII. Nonretaliation

LSC prohibits retaliation against officers or employees of LSC who report in good faith instances of apparent misconduct or violations of any law, regulation, or LSC policy, or this Code or who cooperate or participate as a witness in the investigation of a complaint about a violation of this code.

XIII. Discrimination and Harassment

At no time should any Director, officer, or employee subject a colleague to any form of discrimination, harassment or intimidation, including abusive, harassing, or offensive conduct, whether verbal, physical, or visual. This includes anything that constitutes or contributes to a hostile work environment, as described in the LSC Employee Handbook. Threats or acts of violence or physical intimidation are strictly prohibited. Directors, officers, and employees are encouraged to make known to the offending person any conduct that makes them uncomfortable. Officers and employees have a duty to report immediately discrimination, harassment or threatening behavior to the Director of Human Resources or the Chief Administrative Officer when they become aware of it. Directors have a duty to report such behavior to the Ethics Officer.

For further information on reporting offensive conduct or to review the official policy prohibiting harassment, including the complaint procedure in its entirety, see LSC's Policy Prohibiting Harassment, Including But Not Limited to Sexual Harassment, which may be found in Section 2.3 of the LSC Employee Handbook.

XIV. Reporting and Resolving Violations

LSC's Directors, officers, and employees have a duty to report any reasonable suspicion of a violation of any law, regulation, or LSC policy, or this Code, or any reasonable suspicion of waste, fraud, abuse, or material mismanagement, to the Ethics Officer, the Office of Inspector General, or other appropriate personnel, in accordance with procedures contained in this Code or in the LSC Employee Handbook, Section 2. Anonymous reports will be accepted. The appropriate office of LSC, including the Office of Inspector General where appropriate, will promptly investigate any matter so reported. Confidentiality will be respected to the extent possible. LSC encourages its employees to talk with their supervisors, office directors, the Ethics Officer, or the Inspector General when in doubt about the best course of action to take in a particular situation.

The OIG will be informed of reported matters that involve violations of laws, rules, or regulations; mismanagement; gross waste of funds; abuse of authority; a substantial danger to the public health and safety; or other serious wrongdoing, whether by the reporting employee or the recipient of the report, so that it can determine whether an OIG investigation is warranted. In the absence of special or unusual circumstances, the following do not constitute the type of matters about which the OIG must be informed: minor or technical irregularities that occur on a non-recurring basis and involve neither abuse of authority nor a threat to the integrity of LSC

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00069 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.031

programs or operations, and employment-related complaints and grievances that can be handled through regular complaint and appeal procedures.

Directors, officers, and employees of LSC are expected to cooperate in the internal investigation of allegations of misconduct or violation of any law, regulation, or LSC policy, or this Code. Where appropriate, LSC may take disciplinary and/or corrective action, up to and including termination of employment, for the commission of any violation of this Code or for the failure to cooperate in an internal investigation.

If the Board of Directors concludes that a Director has knowingly violated any law, regulation, or LSC policy, or this Code, it may impose such disciplinary measures as are appropriate and permissible under the circumstances, including censure and, if warranted and permitted by law, removal of the Director from the Board.

By signing this document, the undersigned understands and acknowledges receipt of a copy of the LSC Code of Ethics and Conduct and agrees to abide by it.

Print Name:

_____

Signature Date

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00070 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.032

CHARTER OF THE AUDIT COMMITTEE OF LEGAL SERVICES CORPORATION

I. Establishment

On March 24, 2008, the Board of Directors ("Board") of the Legal Services Corporation ("LSC" or "Corporation") established, as a standing committee of the Board, a committee to be known as the Audit Committee (the "Committee"), and adopted this as the Committee's Charter.

II. Purposes

The purpose of the Committee shall be to assist the Board in fulfilling its responsibility to ensure that the Corporation's assets are properly safeguarded; to oversee the quality and integrity of the Corporation's accounting, auditing, and reporting practices; and to perform such other duties as assigned by the Board.

III. Membership

The Chairman of the Board ('Chairman") shall appoint at least three Directors other than the Chairman to serve on the Committee. The Chairman shall appoint the Chair of the Audit Committee from among these Directors. Three Committee members will be required in order to constitute a quorum. No member of the Committee may be an officer or employee of the Corporation. To the extent practicable, Members of the Committee should have at least a basic understanding of finance and accounting, be able to read and understand fundamental financial statements, and understand the Corporation's financial operations and reporting requirements.

IV. Terms

Members of the Committee shall serve for a term of one year, or until their earlier resignation, replacement or removal from the Committee or Board.

V. Meetings

The Committee:

(1) shall meet at least four times per calendar year, but may meet more frequently at the call of any member of the Committee;

(2) may adopt procedural rules that are not inconsistent with this Charter, the Corporation's Bylaws, or the laws to which the Corporation is subject.

VI. Resources

All offices, divisions and components of the Corporation ("Management"), including the Office of Inspector General ("OIG") shall cooperate with all requests made by the Committee for information and support. The Committee shall be given the resources necessary to carry out its responsibilities.

VII. Authority

The Committee:

(1) unless otherwise directed by the Board, shall oversee the selection and retention of the external auditor ('External Auditor(s)") by the Inspector General ("IG") of the Corporation;

(2) shall have unrestricted access to the Corporation's books, records, facilities, personnel, and External Auditor(s);

(3) is authorized to carry out the duties and responsibilities described in this Charter, as well as any other activities reasonably related to the Committee's purposes or as may be directed by the Board from time to time;

(4) may delegate authority to one or more designated members of the Committee;

(5) may rely on the expertise and knowledge of Management, the OIG, External Auditor(s), and such consultants and experts that the Board approves for carrying out its oversight responsibilities;

(6) may authorize to be conducted, or itself conduct, reviews into any matters within the scope of its responsibilities; and

(7) may require any person, including the External Auditor or any officer or employee of the Corporation, to attend Committee meetings or to meet with any member(s) of or advisor(s) to the Committee.

VIII. Duties and Responsibilities

The Committee:

(1) shall review with Management, the OIG, and the Corporation's External Auditor(s) the contemplated scope and plan for LSC's required annual audit;

(2) shall review and discuss with the External Auditor(s), the OIG, and Management the annual audit report and results of the External Auditor's year-end audit, including any problems or difficulties encountered by the

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00072 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.034

External Auditor(s); the OIG and the Management's response to any audit findings, and any areas of significant disagreement between Management, the OIG, and the External Auditor(s); and any recommendations of the External Auditor(s);

(3) shall in concert with the OIG annually review and confirm the independence of the External Auditor(s);

(4) shall review with the OIG its internal audit responsibilities, sanctions, and performance; its internal audit plan and the risk assessment that drives its internal audit plan; and the effectiveness of its internal audit plan and activities;

(5) shall consult with the IG as to an appropriate approach regarding communications and meetings between the Committee and the OIG;

(6) shall confirm the existence of appropriate monitoring of LSC's internal controls preventing or disclosing activities prohibited by statute, regulations or applicable circulars of the Office of Management and Budget;

(7) shall, in conjunction with the Board's Finance Committee, review, monitor, and evaluate the effectiveness and execution of the Corporation's policies and procedures with respect to identifying and managing financial and other risk exposures, and to assess the steps Management has taken to identify and control such risks to the Corporation;

(8) shall review Management representation letters or certifications and the LSC Finance Committee chairperson's letters or certifications regarding the contents, accuracy, or completeness of financial reports, as appropriate;

(9) shall establish procedures for the receipt, retention, and treatment of complaints or expressions of concern regarding accounting, internal controls and auditing issues, and which procedures should provide for the anonymity and confidentiality of such communications from employees;

(10) shall review and discuss with the OIG all significant matters relative to their financial audits and conduct of financial audits performed by the OIG, including any problems the OIG encountered while performing their audits;

(11) shall ensure that significant findings and recommendations made by the OIG and External Auditor(s) are addressed and, where appropriate, implemented by Management and/or the Board on a timely basis;

(12) shall report to the Board at least twice per calendar year and on such other occasions as requested to do so by the Board;

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00073 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.035

(13) shall review all regulatory and internal control matters that may have a material effect on the Corporation's financial statements;

(14) shall periodically assess the Committee's performance under the Charter, reassess the adequacy of the Charter, and report to the Board the results of the evaluation and any recommendations for proposed changes to the Charter;

(15) shall review any significant deficiencies in internal control over financial reporting identified by Management, the IG, or the External Auditor(s) and ensure that corrective action is taken by Management; and

(16) shall perform such other duties, consistent with this Charter, as are delegated to the Committee by the Board.

IX. Limitations

(1) Nothing contained in this Charter is intended to expand the applicable standards of liability under statutory or regulatory requirements for the Board or its Directors.

(2) Members of the Committee are entitled to rely on the expertise, knowledge, and judgment of Management, the Inspector General, and the External Auditor(s) and any consultant or expert retained by them. The Committee's responsibilities are not to be interpreted as a substitute for the professional obligations of others.

(3) It is not the duty of the Committee to conduct audits or to determine that the Corporation's financial statements are in accordance with generally accepted accounting principles, generally accepted government auditing standards (the "Yellow Book") and other applicable rules, regulations, guidelines and instructions. These are the responsibilities of the OIG, the External Auditor(s) and Management.

(4) Nothing contained in this Charter shall be construed as circumscribing the authority of the Inspector General under the Inspector General Act or is intended to restrict the authority of the Inspector General to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Corporation.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00074 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.036

Attachment 3

Overview of LSC Program Grant Awards 1997-2007
(From the records of the Office of Program Performance, Legal Services Corporation)

1	2	3	4
Grant Year	**Number of incumbent programs that received an LSC grant**[1]	**Number of incumbent programs that had competitors for the LSC grant**	**Number of non-incumbent programs that won the competition for LSC funding**
1997	285	22	2
1998	119	2	0
1999	104	4	1
2000	168	3	0
2001	97	2	0
2002	91	8	0
2003	64	2	0
2004	54	2	0
2005	67	2	0
2006	35	1	0
2007	44	3	0
Totals	1,128	51	3

[1] There are three reasons for the reduction in the number of programs in competition shown in this column. First, LSC began awarding grants for a period of up to three years beginning with 1997 grants. During the 1997 grant competition, programs were awarded either one, two, or three-year funding. As a result, programs that were awarded two and three-year funding were in renewal status; and the number of programs that were in competition in the succeeding years was reduced. Secondly, LSC redrew several service areas expanding the total geographical areas to be covered by a single LSC-funded grantee. The goal, which was reached, was to have only one LSC-grantee in each service area. This reduced the number of LSC grants that were available to be awarded. Thirdly, LSC programs began participating in strategic state planning processes to help ensure comprehensive and integrated legal services delivery statewide. These processes resulted in several program mergers to be consistent with having only one LSC-funded grantee in each service area.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00075 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.037

Attachment 4

LSC Grants with Multiple Applicants **
1997-2007
(from the records of the Office of Program Performance)

Grant Year	Service Area	Applicant Name	Applicant Receiving the Grant
1997	CA-15	California Rural Legal Assistance (LSC Grantee)	[redacted]
1997	CA-15	Leroy George Siddell (New Applicant)	[redacted]
1997	CA-2	Greater Bakersfield Legal Assistance, Inc (LSC Grantee)	[redacted]
1997	CA-2	Jones & Kramer, LLC(New Applicant)	[redacted]
1997	CA-21	Tulare/Kings Counties Legal Services (LSC Grantee)	[redacted]
1997	CA-21	Leroy George Siddell (New Applicant)	[redacted]
1997	CA-4	Legal Aid Foundation of Long Beach (LSC Grantee)	[redacted]
1997	CA-4	California Legal Foundation (New Applicant)	[redacted]
1997	CA-5	Legal Aid Foundation of Los Angeles (LSC Grantee)	[redacted]
1997	CA-5	California Legal Foundation (New Applicant)	[redacted]
1997	CA-7	Channel Counties Legal Services Association (LSC Grantee)	[redacted]
1997	CA-7	Oxnard Legal Clinic, Inc (New Applicant)	[redacted]
1997	CA-9	Legal Services Prog. for Pasadena & San Gabriel-Pomona Val. (LSC Grantee)	[redacted]
1997	CA-9	California Legal Foundation (New Applicant)	[redacted]
1997	CO-4	Colorado Rural Legal Services, Inc. (LSC Grantee)	[redacted]
1997	CO-4	Pueblo County Legal Services, Inc (LSC Grantee)	[redacted]
1997	CO-4	Pikes Peak Legal Services (LSC Grantee)	[redacted]
1997	DC-1	Neigh. Legal. Services. Prog. of the Dist. of Col. (LSC Grantee)	[redacted]
1997	DC-1	Lawrence & Associates Legal Group (New Applicant)	[redacted]
1997	MAZ	Community Legal Services (LSC Grantee)	[redacted]
1997	MAZ	Pinal & Gila Counties Legal Aid Society (LSC Grantee)	[redacted]
1997	MCA	California Rural Legal Assistance (LSC Grantee)	[redacted]
1997	MCA	Oxnard Legal Clinic, Inc (New Applicant)	[redacted]
1997	MMI	Legal Services of Southeastern Michigan (LSC Grantee)	[redacted]
1997	MMI	Legal Services of Eastern Michigan (LSC Grantee)	[redacted]
1997	NMS-1	East Mississippi Legal Services Corporation (LSC Grantee)	[redacted]
1997	NMS-1	Choctaw Legal Defense (New Applicant)	[redacted]
1997	MNJ	Camden Regional Legal Services, Inc (LSC Grantee)	[redacted]
1997	MNJ	Law Office of Lynn A Kenneally (New Applicant)	[redacted]
1997	MPA	Philadelphia Legal Assistance Center (LSC Grantee)	[redacted]
1997	MPA	Delaware Valley Legal Services (New Applicant)	[redacted]
1997	MWY	Wind River Legal Services, Inc (LSC Grantee)	[redacted]
1997	MWY	Legal Aid Services, Inc (LSC Grantee)	[redacted]
1997	NJ-12	Ocean-Monmouth Legal Services, Inc (LSC Grantee)	OMLS*
1997	NJ-12	Law Office of Lynn A Kenneally (New Applicant)	Not funded
1997	NWY-1	Wind River Legal Services, Inc (LSC Grantee)	WRLS*
1997	NWY-1	Legal Aid Services, Inc (LSC Grantee)	Not funded
1997	PA-1	Philadelphia Legal Assistance Center (LSC Grantee)	PLA*
1997	PA-1	Delaware Valley Legal Services (New Applicant)	Not funded
1997	PA-12	Legal Aid of Chester County (LSC Grantee)	LACC*
1997	PA-12	Delaware Valley Legal Services (New Applicant)	Not funded

* This applicant withdrew after being awarded the grant. The grant was ultimately awarded to the other applicant.

** LSC records are maintained by service area since competitions are held by individual service area.

45653.038

Grant Year	Service Area	Applicant Name	Applicant Receiving the Grant
1997	PA-18	Delaware Valley Legal Services (New Applicant)	[illegible]
1997	PA-18	Montgomery County Legal Aid Services (LSC Grantee)	[illegible]
1997	PA-3	Delaware Valley Legal Services (New Applicant)	[illegible]
1997	PA-3	Delaware County Legal Assist Assoc. (LSC Grantee)	[illegible]
1997	PA-4	Bucks County Legal Aid Society (LSC Grantee)	[illegible]
1997	PA-4	Delaware Valley Legal Services (New Applicant)	[illegible]
1997	TN-4	Memphis Area Legal Services, Inc (LSC Grantee)	[illegible]
1997	TN-4	Johnson & Settle, P.C. (New Applicant)	[illegible]
1997	UT-1	Utah Legal Services (LSC Grantee)	[illegible]
1997	UT-1	DNA People's Legal Services, Inc (LSC Grantee)	[illegible]
1997	WY-1	Wind River Legal Services, Inc (LSC Grantee)	[illegible]
1997	WY-1	Legal Aid Services, Inc. (LSC Grantee)	[illegible]
1997	WY-1	Legal Services for Southeaster Wyoming (LSC Grantee)	[illegible]
1997	WY-2	Wind River Legal Services, Inc (LSC Grantee)	[illegible]
1997	WY-2	Legal Aid Services, Inc (LSC Grantee)	[illegible]
1997	WY-2	Legal Services for Southeaster Wyoming (LSC Grantee)	[illegible]
1997	WY-3	Wind River Legal Services, Inc (LSC Grantee)	[illegible]
1997	WY-3	Legal Aid Services, Inc (LSC Grantee)	[illegible]
1997	WY-3	Legal Services for Southeaster Wyoming (LSC Grantee)	[illegible]
1998	MNY	Legal Aid Society of Mid-New York (Incumbent)	LASMNY
1998	MNY	Farmworkers Legal Services of New York (New Applicant - Withdrew)	Not funded
1998	NOR-1	Oregon Legal Services (Incumbent)	OLS
1998	NOR-1	Native American Program Dba Northwest Center for Indian Law (New Applicant)	Not funded
1999	CA-6	Legal Aid Society of Alameda County (Incumbent)	[illegible]
1999	CA-6	Volunteer Legal Services Corporation (New Applicant)	[illegible]
1999	MI-3	Legal Aid and Defender Assoc., Detroit (New Applicant)	[illegible]
1999	MI-3	Wayne County Neighborhood Legal Services (LSC Grantee)	[illegible]
1999	NM-4	Northern New Mexico Legal Services (Incumbent)	NNMLS
1999	NM-4	Justice, Inc (New Applicant)	Not funded
1999	OH-9	Legal Aid Society of Cincinnati (LSC Grantee)	LASC
1999	OH-9	Butler Warren Legal Assistance Association (Incumbent)	Not funded
2000	AZ-3	Community Legal Services Inc. (Incumbent)	CLS
2000	AZ-3	Pinal & Gila Counties Legal Aid Society (LSC Grantee)	Not funded
2000	AZ-5	Southern Arizona Legal Aid Society (LSC Grantee)	SALA
2000	AZ-5	Pinal & Gila Counties Legal Aid Society (LSC Grantee)	Not funded
2000	CA-25	Legal Aid of the Central Coast (Incumbent)	LACC
2000	CA-25	Legal Services Found. of Monterey Bay Area (New Applicant)	Not funded
2000	MAZ	Community Legal Services (Incumbent)	CLS
2000	MAZ	Pinal & Gila Counties Legal Aid Society (LSC Grantee)	Not funded
2000	NAZ-6	Southern Arizona Legal Aid Society (LSC Grantee)	SALA
2000	NAZ-6	Pinal & Gila Counties Legal Aid Society (LSC Grantee)	Not funded
2001	CA-30	San Fernando Valley Neigh. Legal Services (LSC Grantee)	SFVNLS
2001	CA-30	Legal Services Program for Pasadena & San Gabriel-Pomona Valley (LSC Grantee)	Not Funded
2001	VA-15	Southwest Virginia Legal Aid Society (LSC Grantee)	SVLAS
2001	VA-15	Legal Aid Society of the New River Valley (LSC Grantee)	Not Funded

* This applicant withdrew after being awarded the grant. The grant was ultimately awarded to the other applicant.

2

45653.039

Grant Year	Service Area	Applicant Name	Applicant Receiving the Grant
2002	LA-10	Acadiana Legal Services Corporation (LSC Grantee)	ALSC
2002	LA-10	Southwest Louisiana Legal Services Society (LSC Grantee)	Not funded
2002	MI-1	Legal Services of Southern Michigan (Incumbent)	LSSM
2002	MI-1	Wayne County Legal Services (New Applicant)	Not funded
2002	MI-3	Legal Aid and Defender Assoc. of Detroit (Incumbent)	LADA
2002	MI-3	Wayne County Legal Services (New Applicant)	Not funded
2002	MI-4	Legal Services of Eastern Michigan (Incumbent)	LSEM
2002	MI-4	Wayne County Legal Services (New Applicant)	Not funded
2002	MI-5	Legal Services of Southern Michigan (Incumbent)	LSSM
2002	MI-5	Wayne County Legal Services (New Applicant)	Not funded
2002	MI-6	Lakeshore Legal Aid (LSC Grantee)	LLA
2002	MI-6	Wayne County Legal Services (New Applicant)	Not funded
2002	MI-7	Oakland Livingston Legal Aid (LSC Grantee)	OLLA
2002	MI-7	Wayne County Legal Services (New Applicant)	Not funded
2002	TX-15	Texas Rural Legal Aid (LSC Grantee)	TRLA
2002	TX-15	Legal Aid of Central Texas (LSC Grantee)	Not funded
2003	MI-14	Legal Services of Eastern Michigan (LSC Grantee)	LSEM
2003	MI-14	Lakeshore Legal Services (LSC Grantee)	Not funded
2003	OH-19	Western Ohio Legal Services Association (LSC Grantee)	WOLSA
2003	OH-19	LAWCORE (New Applicant)	Rejected
2004	MA-10	Massachusetts Justice Project (LSC Grantee)	MJP
2004	MA-10	CPF/The Fatherhood Coalition (New Applicant)	Rejected
2004	MIN	Indiana Legal Services (LSC Grantee)	ILS
2004	MIN	Law Office of Buffy M. Bryant (New Applicant)	Rejected
2005	MA-12	New Center for Legal Advocacy (LSC Grantee)	NCLA
2005	MA-12	Legal Services for Cape, Plymouth, and Islands (LSC Grantee)	Not funded
2005	MA-14	Legal Services of Eastern Michigan (LSC Grantee)	LSEM
2005	MA-14	Lakeshore Legal Aid (Previous LSC Grantee)	Not funded
2006	NH-1	Legal Advice and Referral Center (LSC Grantee)	LARC
2006	NH-1	Community Legal Services (New Applicant)	Rejected
2007	FL-14	Three Rivers Legal Services, Inc. (LSC Grantee)	TRLS
2007	FL-14	Jacksonville Legal Clinic, Inc. (New Applicant)	Not Funded
2007	MSC	The South Carolina Centers for Equal Justice (LSC Grantee)	SCCEJ
2007	MSC	Georgia Legal Services Program (LSC Grantee)	Not Funded
2007	MWY	Wyoming Legal Services, Inc. (LSC Grantee)	WLS
2007	MWY	Legal Aid of Wyoming (New Applicant)	Not Funded
2007	NWY-1	Wyoming Legal Services, Inc. (LSC Grantee)	WLS
2007	NWY-1	Legal Aid of Wyoming (New Applicant)	Not Funded
2007	WY-4	Wyoming Legal Services, Inc. (LSC Grantee)	WLS
2007	WY-4	Legal Aid of Wyoming (New Applicant)	Not Funded

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00078 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.040

Attachment 5

Chart of Individuals terminated since January 2004.

Position Held	Full Time/ Part Time	Date of Separation	Reason for Leaving	Terminated for Cause	Settlement Agreement
Grants Analyst	Full Time	04/15/2004	Termination	Yes	None
Research Analyst	Full Time	03/03/2006	Termination	Yes	None
Mail/Supply/Reprographics Assistant	Full Time	03/03/2006	Termination	Yes	None
Web Application Developer/Administrator	Full Time	03/09/2007	Termination	Yes	None
OCE/Program Analyst	Full Time	09/30/2004	Resignation By Mutual Agreement	No	Yes
Executive/VP for Programs	Full Time	01/01/2005	Resignation By Mutual Agreement	No	Yes
OIT/Director, OIT	Full Time	02/22/2005	Resignation By Mutual Agreement	No	Yes
OPP/Senior Counsel	Full Time	05/12/2005	Resignation By Mutual Agreement	No	Yes
GRPA/Communications Director	Full Time	07/11/2005	Resignation By Mutual Agreement	No	Yes
OIM/Systems Analyst	Full Time	08/31/2005	Resignation By Mutual Agreement	No	Yes
GRPA/Administrative Assistant	Full Time	05/17/2006	Resignation By Mutual Agreement	No	Yes
OCE/Program Counsel	Full Time	01/15/2007	Resignation By Mutual Agreement	No	Yes
GRPA/Director/GRPA	Full Time	03/31/2007	Resignation By Mutual Agreement	No	Yes
OIT/Information Technology Specialist	Full Time	07/31/2007	Resignation By Mutual Agreement	No	Yes
GRPA/Communications Director	Full Time	11/05/2007	Resignation By Mutual Agreement	No	Yes
OIT/Senior Systems Analyst	Full Time	04/23/2008	Resignation By Mutual Agreement	No	Yes
OIT/IT Specialist/Network Administration	Full Time	05/15/2008	Resignation By Mutual Agreement	No	Yes

Attachment 6

Individuals formerly employed either in a full or part-time capacity by groups receiving LSC funds that have been hired since January 2004 as a full time or part time employee or in any consulting position(s) at LSC.

Employee	LSC Title/Full Time/ Part Time	LSC Consulting	Current and/or Former Employment with Groups Receiving LSC Funds
Janet LaBella	Program Counsel III OPP/Regular/ FT		Maryland Legal Aid Bureau
Karen Sarjeant	VP Program & Compliance/Regular/ FT		Provided consulting services to numerous LSC Programs - Legal Aid Bureau
Stephanie Edelstein	Program Counsel III OPP/Regular/ FT		Legal Aid Bureau, Inc.
Guy Lescault	Program Counsel III OPP/Regular/ FT	OPP	Neighborhood Legal Services, WY Program; Georgia Legal Services Program, National Employment Law Project; Camden Regional Legal Services; LSC, Atlanta, GA
Cheryl Nolan	Program Counsel III OPP/Regular/ FT		Legal Aid Foundation of LA; Legal Aid Society of San Diego; Legal Aid Society of Hawaii.
Bristow Hardin	Program Analyst III/OPP/Regular PT		Virginia Poverty Law Center, Food Law Project; New River Community Action Agency
Robert Echols		Executive Office	
John Tull		OPP; Executive Office	Pima County Legal Aid, Southern Arizona Legal Aid
Jonathan Asher	Acting Special Counsel to the President Temporary Employment/FT		Colorado Legal Services
Luis Jaramillo	Acting Special Counsel to the President Temporary Employment/FT		California Rural Legal Assistance, Inc.
Katherine Rudd Yeniscavich		OCE	Former LSC Employee
William Yeniscavich		OCE	Former LSC Employee
Kim Heron		OCE	Former LSC Employee
Deidre Crockett		OCE	Former LSC Employee
Timothy Baker		OCE	Former LSC Employee
Gloria Beaver		OPP	The SC Centers for Equal Justice, Board Member
Kelly Carmody		OPP	Arizona Statewide Legal Services Project; National Health Law Program; Tennessee Association of Legal Services; Office of Kentucky Legal Services Programs
Charles Cook		OPP	Ohio Legal Assistance Foundation; Legal Services of Eastern Oklahoma; Northeast Ohio Legal Services
Teresa Cosby		OPP	South Carolina Legal Services

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00080 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.042

Employee	LSC Title/Full Time/ Part Time	LSC Consulting	Current and/or Former Employment with Groups Receiving LSC Funds
Colleen Cotter		OPP	Indiana Legal Services; Legal Aid Society of Cleveland, OH.
Marcia Cypen		OPP	Legal Services of Greater Miami, Inc.
Joseph Dailing		OPP	Prairie State Legal Services, Inc.
Peter Dellinger		OPP	Advocates for Basic Legal Equality, Inc. – OH
Regina Derzon	Temporary Employee	LSC Consultant OPP/ PT	Legal Services of Alabama
Neal Dudovitz		OPP	Neighborhood Legal Services of Los Angeles, CA
Kathy Duncan		OPP	Legal Aid of North West Texas
Eleanor Eisenberg		OPP	Legal aid Society of Santa Cruz County
Cynthia Elliott		OPP	Appalachian Research and Defense of KY
Robert Gross		OPP	New Hampshire Legal Assistance
Larry Harley		OPP	South West Virginia Legal Aid Services
Mark Heller		OPP	Migrant Farmworker Program, Toledo, OH
Joan Howard		OPP	Legal Aid and Defender Association, MI
Claudia Johnson		OPP	Bay Area Legal Aid, CA
Lillian Johnson		OPP	Community Legal Services – AZ
Alma Jones		OPP	Legal Services of North Louisiana
Lisa Krisher		OPP	Georgia Legal Services Program
Alan Lieberman		OPP	Legal Services of Northern CA; Micronesian LSC; Cook County Legal Assistance Foundation.
Yvonne Maríajiménez		OPP	Neighborhood Legal Services, LA, CA
Neil McBride		OPP	Legal Aid Society of Middle Tennessee and the Cumberlands
Patrick McClintock		OPP	Iowa Legal Aid
Robert Oakley		OPP	Northwestern Legal Services, PA
Ben O. Obregon		OPP	Active Member – Legal Action of Wisconsin.
Jeanne Perry		OPP	Legal Services for New York City
Raun Rasmussen		OPP	Legal Services for New York City

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00081 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.043

Employee	LSC Title/Full Time/ Part Time	LSC Consulting	Current and/or Former Employment with Groups Receiving LSC Funds
Kevin Reynolds		OPP	Peninsula Legal Services, Eastern VA Legal Aid Services
Sheldon Roodman		OPP	Legal Assistance Foundation of Metropolitan Chicago
Bonnie Roswig		OPP	Statewide Legal Services of Connecticut, Inc.
Toby Rothschild		OPP	Legal Aid Foundation of Long Beach now Legal Aid Foundation of Los Angeles
Rodolfo Sanchez		OPP	Texas RioGrande Legal Aid
Leslea Smith		OPP	Legal Aid Services Oregon
Rosita Stanley		OPP	GA Legal Services Program
Vilma Suarez		OPP	Legal Aid of North Carolina
Charles Vaala		OPP	Southern Minnesota Regional LS, Inc.
Deidre Weir		OPP	Legal Aid & Defender Association Detroit, MI
Carolyn Worrell		OPP	Nevada Legal Services, Inc.
Ann Zaragosa		OPP	Texas RioGrande Legal Aid
Paul Agostinelli		TIG – 2004	Has consulted for several groups receiving LSC funds
Ray Agostinelli		TIG – 2004	Kaivo
IV Ashton		TIG – 2004	PS Technologies, Inc.
Ray Bollinger		TIG – 2004	Legal Aid of Western Tennessee (former employee)
Steve Casey		TIG – 2004	Employed by MA IOLTA.
Jennifer DiQuattro		TIG – 2004	Former LSC employee.
Clarence Franklin		TIG – 2004	North MS Legal Services
Julia Gordon		TIG – 2004	West Tennessee Legal Services, Inc.
Steve Gray		TIG – 2004	Legal Services of South Central Michigan, Inc.
Beth Heuer		TIG – 2004	Alaska Legal Services Corporation
Ed Marks		TIG – 2004	Legal Aid of Western Ohio, Inc.
Christopher Manydeeds		OPP – 2004	Anishinabe Legal Services, Inc.
Bob Nasdor		TIG – 2004	Legal Assistance Corporation of Central Massachusetts
Ronald Staudt		TIG – 2004	Chicago Kent Law School
A.J. Tavares		TIG – 2004	Legal Aid Society of Orange County
Bill Yarian		TIG – 2004	Legal Aid Society of Orange County
Gwen Daniels		TIG – 2005	Illinois Institute of Technology
Victoria Deak		TIG – 2005	Indiana Legal Services
Jaime Green		TIG – 2005	Indiana Legal Services
Gene Koo		TIG – 2005	TIG Grantee (works for the former Legal Aid University)
James Spencer		TIG – 2005	Legal Services of Southern Missouri
Pat Muller		TIG – 2007	South Carolina Legal Services

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00082 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.044

Attachment 8

Google Grants

Google Grants (Beta)

Home

About Google

Google Grants (Beta)
Program Details
Program FAQ
AdWords Info

Quick Tour
Learn how to create an effective Google Grants ad campaign.

Google Grants Application

Thank you for your interest in Google Grants. Please note that your organization must have current 501 (c)(3) status in order to be considered for this program. To apply, complete this online application.

- If you would like to save a copy of your completed application, please **PRINT** one before you hit the **SUBMIT** button. If you submit your application and this page reappears, scroll down to view error messages regarding your responses in **red text**. Make the necessary corrections and click **SUBMIT** again.
- Please don't navigate away from this page by hitting the "back" or "forward" button or any other link, because your information will not be saved.
- We are not able to provide a copy of your application to you later.

All fields are required.

ORGANIZATION INFORMATION

Name of organization:	Legal Services Corporation	
Legal or official name:	Legal Services Corporation	
Mailing address:	3333 K Street NW	*Street*
		Street 2
	Washington	*City*
	District of Columbia *State*	
	20007 *Zip Code*	
Phone number:	202.295.1500	*Example: 555-555-0000*
URL of website:	www.lsc.gov	*Example: http://www.yoursite.com*

CONTACT INFORMATION

Head of organization:	Helaine M. Barnett	
Title:	President	
Email address:	barnetth@lsc.gov	
Organization contact person:	Joyce Raby	
Job title / function:	Program Analyst - Technology Initiativ	
Phone number:	202.295.1554	*Example: (country code) 555-555-0000*
Fax number:	202.337.6813	

ADDITIONAL INFORMATION

Does your organization have 501(c)(3) status?

(●) Yes
( ) No

Employer ID#: 52-1039060

(You must enter the 9 digit federal tax identification number in the following format: XX-XXXXXXX – A dash is required after the first two numbers.)

Organization type: Other

Other, please describe: civil legal services to low inco

Organization Mission Statement / Primary Objective:
(Briefly describe the nature of your organization, your activities, your clientele and the location(s) of the services you provide – character limit 1000.)

The Congress of the United States, in the declaration of purpose of the Legal Services Corporation Act, found that "there is a need to

Does your organization operate solely in the San Francisco Bay Area?

( ) Yes
(●) No

Yes, please describe:

Annual operating budget: $1,000,000 and over

Are you affiliated with political advocacy groups?

( ) Yes
(●) No

If yes, which ones?

Explain how you expect Google AdWords advertising will contribute to your organization. (*Please limit your response to 500 characters.)*

The Legal Services Corporation is applying on behalf of 138 civil legal services programs we fund in the United States and its

Who is your target audience for online advertising? (*Please limit your response to 150 characters.)*

low income individuals and families in need of civil legal asssistance

Please provide a sample of an ad you might run through Google Grants. Reviewing the Google Grants information sheet will help you submit a strong application by following our Editorial Guidelines, and showing an understanding of the way the AdWords program works.

Line 1: 25 character headline
Need Legal Help?

Line 2: 35 character limit
You may qualify for free legal aid.

Line 3: 35 character limit
Find Legal Help in New York

Example:

Save the grizzlies
Find out how you can help.
Sign up for our free newsletter
www.endangeredgrizzlies.org

http://services.google.com/googlegrants/application

Line 4: display URL (35 character limit)
http://lawhelp.org/NY/

Please provide a list of keyword / keyword combinations that you feel are relevant to your organization. Viewing our keyword matching demo will help you choose appropriate keywords for your campaign by understanding our broad match keyword default and other matching options.

```
legal help
legal aid
legal assistance
```

What are your website traffic figures (page views/impressions per month)? 5,001 - 1,000,000

Do you accept online donations? ○ Yes ◉ No

How did you hear about the Google Grants program? Google Employee

Other, please describe:

Legalese we have to mention:

By submitting this application to the Google Grants program, you represent and warrant that you are duly authorized to represent the organization for which you are applying, and agree not to use Google's name or trademark in any news release, public announcement, advertisement or other publicity, or disclose any of the terms of the Google Grants program to any third party, without the prior written consent of Google, except under subpoena duly issued by a court of competent jurisdiction, or as otherwise required by government regulation.

Google may contact any Google Grants recipient in connection with this or other Google non-profit initiatives, advertiser news, or customer surveys. However, any individually identifiable information you provide with your application will not be disclosed to any third party without your permission. To learn more about our commitment to privacy, please read our privacy statement.

Thank you for taking the time to complete the Google Grants application. If you would like to save a copy of this application, please **PRINT** one before you hit **SUBMIT** to complete the application process. We are not able to provide a copy of your application to you later.

SUBMIT

©2006 Google - Home - About Google - Privacy Policy - Terms of Service

http://services.google.com/googlegrants/application

KAREN DOZIER

From: Google Grants [googlegrants-support@google.com]
Sent: Wednesday, January 17, 2007 7:06 PM
To: HELAINE BARNETT
Subject: Google Grant Award Notification

Hello,

Greetings from Google Grants! I am happy to let you know that your organization has been selected for a Google Grants award. We are pleased to have the opportunity to help you get your message out to a targeted audience of Google users.

To help you get off to a successful start in our program, we have created and activated a Google AdWords campaign for Legal Services Corporation.

To access your Google AdWords account and review your ads and keyword lists, log in at https://adwords.google.com/select/main. Please use temp@lsc.gov as the login email address and 'welcome1' as the temporary password.

Please select 'My Account' -> 'Account Preferences' -> 'edit in Google Accounts' to update the password once you access the account.

Currently your AdWords account has a single campaign targeted to the following locations:

- Guam
- Puerto Rico
- United States
- Virgin Islands (U.S.)

Your campaign includes two separate Ad Groups.

- Your 'General' Ad Group links to this page on your website: http://www.lsc.gov/about/grantee_links.php and is targeted to non-location specific (but relevant) keywords.

- Your 'Alabama' Ad Group links here: http://www.lawhelp.org/AL/ and the ad text and keywords are Alabama specific.

Each AdWords account can have up to 25 campaigns -- within each campaign, you can have up to 100 Ad Groups.

- At the campaign level, you will set your country and language targets. For example, if you have Spanish content available, you might set up a second campaign targeted to Spanish speakers. All of the ad text and keywords within would be in Spanish.

- Ad Groups are a list of one or more keywords and corresponding ad (or ads) that are displayed when a user searches on these keywords. Note it is best to arrange your Ad Groups around themes, so your ads that directly relate to the keywords.

Within each Ad Group you can have one or more text ads targeted to a single keyword list. Both ads will rotate evenly until one or more ads begin to outperform the other(s) -- once the system determines which ad gets more clicks, it will show that ad more often. Writing multiple ads is a great way to see which ad text is more compelling to users. For example, you might try different ad titles or different calls to action.

Now that your account is active, you'll need to regularly monitor the performance of your campaign by logging

45653.048

into your account. You may want to make changes, or create additional campaigns / Ad Groups once you see how your initial ads and keywords are performing in our program.

That said, it's important that you're familiar with the way our advertising program works before making change. Please review the information here: http://www.google.com/grants/information.html if you haven't done so already.

Also, it is your responsibility to be familiar with our program guidelines. Please take a moment to review our guidelines now: http://www.google.com/grants/policies.html

Now for the legalese. Per the Google Grants application, we remind you that by accepting this award, you agree not to (i) use Google's name or trademark in any news release, public announcement, advertisement, or other form of publicity without the prior written consent of Google, except under subpoena duly issued by a court of competent jurisdiction, or as otherwise required by law or governmental regulation.

Please be sure to share this information with others in your organization who should be aware of these terms.

That said, you should feel free to include us on your in-kind donor lists (Google Inc.), and if you have an acknowledgments page on your website, you are welcome to display the Google logo available at: http://www.google.com/stickers.html.

Thank you for taking the time to read through this lengthy email. We hope all of this information is helpful to you. Should you have questions or require additional assistance with your Google Grants AdWords account, please contact the Google Grants team at: googlegrants-support@google.com.

We look forward to helping you reach a broader audience with your public service message, as well as providing you with the most effective advertising available.

Sincerely,
Cynthia
The Google Grants Team

Google Grants helps your organization leverage the power of AdWords™ to engage and inform your constituents on Google.com. It is important that you are familiar with our program policies as they will help your organization use its advertising grant effectively.
- For details visit: http://www.google.com/grants/policies.html
- Email us at: googlegrants-support@google.com whenever you have questions regarding your Google Grants AdWords account.

KAREN DOZIER

From: Alan Davidson [adavidson@google.com]
Sent: Wednesday, January 17, 2007 9:47 AM
To: HELAINE BARNETT
Cc: Liz Eraker
Subject: Re: FW: Follow-up

Good morning - Our Google Grant of free advertising to LSC was approved late yesterday. Here are a few talking points about the grant. Let us know if you have any questions. I'm reachable today on cell 650-224-1050. Glad we could make this happen!

Best,
Alan

-The Google Grants program supports organizations sharing our philosophy of community service to help the world in areas such as science and technology, education, global public health, the environment, youth advocacy, and the arts.

-Google Grants is a unique in-kind advertising program designed to help 501(c)(3) organizations inform and engage their constituents online. Google Grant recipients use their award of free advertising through our flagship advertising product, AdWords, to raise awareness and increase traffic to their services online.

-We are please to be able to offer a Grant to Legal Services Corporation and assist in their mission of helping more poor Americans gain equal access to the judicial system.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00088 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.050

KAREN DOZIER

From: Google Grants [googlegrants-support@google.com]
Sent: Wednesday, August 22, 2007 1:00 PM
To: HELAINE BARNETT
Subject: Google Grants Program Update: Response Required

Hello,

Thank you for your ongoing participation in the Google Grants program. We're writing to notify you of a program change that impacts your Google Grants account and requires your response.

Last month, the value of your advertising was $8,837.75 , making you one of our top program recipients. Since joining our program, the Google Grants program has displayed your ads for more than 2,152,044 searches, sending more than 69,123 visitors to your website. The value of this free advertising is more than $51,624 .
To ensure that we can continue to offer this program to even more non-profits, we have implemented monthly budget caps of either $10,000 or $40,000 on all Google Grants recipients.

Moving forward, your account will be automatically capped at $10,000 per month in free AdWords advertising. However, if your organization has a demonstrated need for additional budget, you may be eligible to receive an increased budget of $40,000 per month and be invoiced for 5% of the spend between $10,000 - $40,000 (up to a maximum of $1,500 per month). In addition, you will receive extra program benefits, which may include dedicated support from a Google Analytics specialist, as well as early notification of new features or products of interest.

You must complete an online application to be considered for these additional services. In addition, you need to meet certain eligibility criteria, as well as agree to adhere to requirements listed below.

Qualifying organizations must:
– Submit the online application
– Demonstrate effective use of their current AdWords budget at or
above $9,000 per month for at least 3 consecutive months – Commit to be invoiced for 5% of the spend difference between
$10,000 - $40,000 (up to a maximum of $1,500 per month) – Have installed and be currently using Google Analytics, Google's
free web analytics software (http://www.google.com/analytics/), or
a similar web analytics tool
– Be in good standing with the Google Grants program and abide by
our policies and guidelines listed at
http://www.google.com/grants/policies.html

Accepted organizations must adhere to these program requirements:
– Ongoing analysis of the impact of their Google Grants account
through the use of tools such as Google Analytics or a similar web
analytics tool
– Continued active engagement with the program through the timely
completion of quarterly analytics reports and replies to emails – Timely remittance of quarterly invoice payments – Availability for check-ins with Google Grants team

If you believe that your organization meets the eligibility requirements and would like to apply for these additional services, we encourage you to apply. If your organization does not meet the above requirements, you can take advantage of your account at the current $10,000 monthly budget.

Please respond to this email by September 22, 2007 to let us know which option you prefer and we will follow

45653.051

up with the appropriate instructions. If you don't respond by this date, as a convenience to you, we will automatically reduce your monthly budget to $10,000.

We believe these program changes will encourage all of our Google Grants recipients to be more engaged in their online marketing efforts in order to reach even more people who are interested in their information and services most effectively.

As always, please feel free to email us at googlegrants-support@google.com if you have any questions.

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043

2

free lawyer - Google Search - Mozilla Firefox

File Edit View History Bookmarks Tools Help

http://www.google.com/search?source=ig&hl=en&rlz=&=&q=free+

Web Images Maps News Shopping Gmail more ▾

Google free lawyer Search Advanced Search Preferences

Web

Free Legal Assistance
www.lsc.gov Find **Free** Legal Services for Low Income Families

Find A **Lawyer Free**
www.AttorneyLink.us Injuries, SSD Disability, Criminal Malpractice, Work Comp, Custody.

Find A **Lawyer Free**
www.Attorney-Help.us Nationwide, Criminal/DUI, Work Comp Accident/Injury, Malpractice, SSD.

Free Lawyer
free legal guidance and help @ **freelawyer**. Get online help from virtual **lawyers** on family law, motoring, housing, employment, consumer law and personal ...
www.**freelawyer**.co.uk/ - 29k - Cached - Similar pages - Note this

Free Legal Advice in 100+ Law Topics - Law Attorney
Free Legal Advice is the best law site for consumers, with easy to understand answers to legal questions from expert **lawyers**, attorneys available **Free** to ...
www.**free**advice.com/ - 59k - Cached - Similar pages - Note this

Attachment 9

LEGAL SERVICES CORPORATION
SOLICITORS

Names of All Solicitors:

1. Frank B. Strickland, Board Chairman
2. Helaine M. Barnett, President
3. Karen Sarjeant, Vice President for Programs and Compliance
4. Victor Fortuno, Vice President for Legal Affairs and General Counsel
5. Charles Jeffress, Chief Administrative Officer
6. Wendy Burnette Long, Executive Assistant
7. Karen Dozier, Executive Assistant to the President
8. Cheryl Nolan, Program Counsel III
9. Kathleen Connors, Executive Assistant, GRPA

Contact Information for All Solicitors:

Legal Services Corporation
3333 K Street NW 3rd Floor
Washington, DC 20007
(202) 295-1500

45653.054

Attachment 10

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS
SUNSHINE ACT MEETING
OPEN SESSION

Wednesday, February 20, 2008
3:03 p.m.
3333 K Street, N.W.
Washington, D.C.
3rd Floor Conference Center
Conference Room B

BOARD MEMBERS PRESENT:
Frank Strickland, Chairman
Lillian R. BeVier, Vice Chairman
Jonann C. Chiles
Thomas Fuentes
Herbert S. Garten
Michael D. McKay
Thomas R. Meites
Bernice Phillips
Sarah M. Singleton

45653.055

STAFF PRESENT:
Helaine Barnett, ex officio
Patricia D. Batie, Manager of Board Operations
John Constance, Director, Office of Government Relations and Public Affairs
Victor Fortuno, Vice President for Legal Affairs, General Counsel and Corporate Secretary
Joel Gallay, Special Counsel to the IG, OIG
Charles Jeffress, Chief Administrative Officer
Karen Sarjeant, Vice President for Programs and Compliance
Don Saunders, National Legal Aid and Defenders Association (NLADA)
Terry Brooks, American Bar Association

* * *

CHAIRMAN STRICKLAND: Okay. All right. Then it sounds, unless I'm mistaken, that we have covered all the items in the proposed code and reached a consensus on everything except No. IV, and we referred that back to the taskforce for further action. Is that where we are today? Okay.

I believe that's it. Let's move to the No. III on our agenda is Consider an act on whether to authorize of an application to the District of Columbia for registration to undertake charitable solicitations.

Someone in Washington in that discussion?

MS. PHILLIPS: Excuse me. This is Bernice Phillips. Are you talking about soliciting private contributions?

CHAIRMAN STRICKLAND: Correct.

MS. PHILLIPS: Okay. We got a memo from Vic, right?

CHAIRMAN STRICKLAND: Yes. Telling us that we could do that if we want to.

MS. PHILLIPS: Okay. I have a question for Vic. Vic, are you there?

MR. FORTUNO: Yes, I am.

MS. PHILLIPS: Okay. Is this your legal opinion that you're giving us, that memo that you sent us? -- that Tom Fuentes asked for? Or is this -

MR. FORTUNO: No, that's my legal opinion. That wasn't presented on behalf of management.

45653.056

MS. PHILLIPS: Okay. Okay.

CHAIRMAN STRICKLAND: Okay. Anything further, Bernice? Or can we now move to the discussion?

MS. PHILLIPS: Yes, you can, yes.

CHAIRMAN STRICKLAND: All right. Who's going to lead the discussion there from Washington?

MR. FORTUNO: I guess I will. This is Vic. I think what you have before you is a resolution authorizing application to the District of Columbia for registration to undertake charitable solicitations.

This came up because there was some interest in soliciting for contributions. I think I may have mentioned that my recollection was that in order to undertake solicitations you have to register locally and there have been an assortment of laws that you have to be consulted before you undertake such an effort. So we looked into it, determined that here in the District of Columbia, if you're going to solicit here, you have to register with the District, and one of the requirements to register, the application is to include a resolution of the governing body authorizing application for such registration. So that's why that resolution was submitted for your consideration.

I think that when the notice just before the meeting notice was circulated, or about the same time, I know Director Fuentes asked whether he could have a legal opinion. And I think it was in response to that I had a conversation with Frank, where I said of course I'd be happy to go ahead and provide that. The opinion you received makes the point that the corporation is authorized to accept contributions from non-federal sources. I think that's clear.

The question then is may we solicit? There is nothing that would prohibit our solicitations so long as we are registered and reporting as required by law. And the only other question or point that occurred was that there should be some guidance in terms of how that's conducted. Rather than just say yes, we can accept contributions and no there is no bar to our soliciting for contributions so long as we're registered and reporting appropriately, it seemed appropriate to include in the memo some discussion of ethical considerations. And that is: Should the corporation and its agents be at liberty to solicit from all sources or are there ethical considerations involving conflicts?, and it seemed that there are, and so that was touched on as well. There are typically in the federal sector and in the non-private sector constraints on

45653.057

who you can solicit for contributions, and generally that revolves around constraining your ability to solicit from persons or entities that you do business with, or who would like to do business with you, or whose interests would be impacted by the corporation or the individual agent soliciting performing or not performing a particular duty. So that was touched on in the memo as well, and I think that if you have any questions, I'd be happy to address those, but I think that in a nutshell those are the salient issues.

You have authority to accept, there is nothing that would bar your soliciting, that is, the corporation's soliciting, provided that we meet the legal registration and reporting requirements. The issue that remains, if you want to discuss it, is what I believe to be ethical considerations inherent in a solicitation process.

CHAIRMAN STRICKLAND: Okay. Anybody have any questions at this point about this?

MS. SINGLETON: I have one question. Maybe I just didn't get into it enough, but this appears to limit itself to solicitation within the District of Columbia. If Frank wants to solicit an Atlanta law firm to make a contribution, doesn't he have to register in Georgia?

MR. FORTUNO: Yes. There's a patchwork, but most jurisdictions have their own charitable solicitations statutes which require registration. You have to file an application and get registered, pay a fee, and there are reporting requirements as well. So that this was limited to soliciting in the District of Columbia. If there were going to be solicitations of any persons or organizations outside the District, we would be well advised to research the requirements in those jurisdictions and make sure that we satisfy those requirements as well.

CHAIRMAN STRICKLAND: As far as the -- what you're saying is law, the jurisdiction of which the solicitation is made -- in other words, if I wrote a letter on LSC letterhead and sent it from Washington, D.C., to a firm in Atlanta, Georgia, you're saying that Georgia law and solicitation may also be a factor? Is that right?

MR. FORTUNO: I think the location of the party that you're soliciting. So -

CHAIRMAN STRICKLAND: Similarly, if an Atlanta firm had a D.C. office, then the Georgia law would not be -- even though I might be in Georgia, the solicitation would be from a D.C. corporation to a D.C. entity?

45653.058

MR. FORTUNO: Yes.

CHAIRMAN STRICKLAND: Okay.

MS. PHILLIPS: This is Bernice Phillips. I have a question. I'm just confused to why this topic came before us, because after we gave a reception last month, and if my memory serves me right, it's stated on the invitation that no federal funds were used for the event. So I'm just confused as to why this came before us.

CHAIRMAN STRICKLAND: Well, we had a sponsor for that event.

MS. PHILLIPS: Okay.

CHAIRMAN STRICKLAND: It was Friends of LSC, so -

MS. PHILLIPS: Okay, so is that not the same as soliciting funds?

MR. FORTUNO: Yes. I assume that there was a request of Friends of LSC to make a contribution. My understanding was that it was a contribution in the amount of $1,500, which I believe to be the amount of money that they had set aside in their tenant relations fund. But the D.C. Charitable Solicitations Act does have a $1,500 threshold, but there's a possibility that we may have to report after the fact. But in any event there is a $1,500 threshold, which coincidentally is what Friends of LSC contributed to LSC. I'm not sure of the specifics of that, the particulars in terms of whether there was any paper exchange. But that's my understanding is that the transaction was $1,500, which is right there at the limit.

CHAIRMAN STRICKLAND: So if wanted to solicit more than that from Friends of LSC or anybody else, we'd need to have a resolution authorizing an application to get ourselves registered.

MR. FORTUNO: Yes.

MS. PHILLIPS: So it depends on the amount of money before you can apply for money?

MR. FORTUNO: It's actually a fairly complex statute, and there are exceptions for solicitations where they're in house for you know, like the United Way Campaign. But in terms of soliciting funds from outside private parties, if you're going to solicit for over $1,500, you certainly have to register and report under the statute.

MR. GARTEN: Frank, Herb here.

45653.059

CHAIRMAN STRICKLAND: Yes, sir.

MR. GARTEN: Can I make a suggestion? I think we ought to vote on getting the approval that we need. And before we do any solicitation, this is a very technical area, and I'm sure are all kinds of exceptions, that before we do any actual fund raising that we have a complete report from Vic on what we're legally obligated to do. I find it hard to believe that the burdens are on charities in the United States to the extent that I'm hearing. There must be different rules, there must be exceptions, and I don't feel comfortable in voting on that part of it until we did have a memorandum. But I think we should go ahead and do the filing. I don't think it's a major matter as far as I think we qualify if there's any question. We certainly qualify under the federal rules for contributions as a government agency.

M O T I O N

CHAIRMAN STRICKLAND: Would you like to make a motion?

MR. GARTEN: I want to a motion that we approve the filing.

CHAIRMAN STRICKLAND: All right. Is there a second to that motion?

(No response.)

CHAIRMAN STRICKLAND: I'll second the motion. Any further discussion?

MS. PHILLIPS: I just have another question.

CHAIRMAN STRICKLAND: All right.

MS. PHILLIPS: Who are we soliciting the funds for? Is it for LSC? Is it for the grantees? Who are we trying to --

CHAIRMAN STRICKLAND: To the LSC itself, which I a non-profit D.C. corporation, soliciting funds for itself.

MS. PHILLIPS: Okay. For -

CHAIRMAN STRICKLAND: Such as we did with Friends.

MS. PHILLIPS: Okay. For what? What would it be exactly for?

CHAIRMAN STRICKLAND: Well, it might be another event just like the one we hosted at the Capitol.

MS. PHILLIPS: Okay.

45653.060

CHAIRMAN STRICKLAND: We --

MS. PHILLIPS: You know, I can see if you were -- if management was coming to the Board to ask, to raise funds for grantees for service delivery. That, you know. But to me, if you're coming to the Board to ask for more money to, I don't know, host a party, then I would say let's do some restructuring. Let's look at our budget, and you know, cut out some things that should not be there, or let's not do it at all. That would be my suggestion.

CHAIRMAN STRICKLAND: Okay. Any other comments?

MS. SINGLETON: I have a little bit of a concern that's similar to Bernice's. This is Sarah. I want to make sure that if we're soliciting law firms, we're not taking away from money they otherwise would be donating to their local legal services programs, and I'm not quite sure how you do that, but it seems to me that we ought to recognize that's a possibility and make sure we don't impact on those donations.

CHAIRMAN STRICKLAND: Fine. That could impact that. And I don't know how we could assure that. It would be sort of a challenge for us to sort of meddle in their internal affairs, if you will. Okay. Any other questions or comments on the resolution?

MS. PHILLIPS: I'm sorry, I have one more.

CHAIRMAN STRICKLAND: All right, Bernice. Go ahead.

MS. PHILLIPS: Who will be conducting the fund raising part? Will it be LSC staff? They're already thin. So who will take responsibility for -

CHAIRMAN STRICKLAND: Well, what we're talking about, Bernice, I think would be if we were to write a letter to a law firm saying, "Would you make a contribution to LSC?", that's maybe not a major undertaking by the staff, it's just a letter or two or three letters.

MS. PHILLIPS: Okay.

CHAIRMAN STRICKLAND: So it's not -- we don't expect this to involve any significant staff time.

MS. PHILLIPS: Okay.

45653.217

CHAIRMAN STRICKLAND: Okay. Any other questions?

MR. CONSTANCE: Mr. Strickland, this is John Constance.

CHAIRMAN STRICKLAND: Yes, sir.

MR. CONSTANCE: Thank you for recognizing me. I just wanted to say a couple of things about the specific event that we did have on Capitol Hill. You know, and I understand Bernice's sensitivity, and I share it. I just don't want to leave the impression out there that that was or any subsequent event would be simply a party. I mean that was an effort to honor folks on the Hill, who had for many, many years been supportive of LSC, and I can tell you that in the regulation-rich environment that we live in, in Washington today, the propriety of that event was checked everywhere from our Office of Legal Affairs to the Senate Ethics Office specifically as to its proper carrying out and propriety.

Second of all, we invited -- I mean in that case, while we were going to Friends for the funding of that, we also invited all of the local programs that in future events would probably be those that would also benefit from having direct contact with and an opportunity to explain their programs to members of Congress and staff and folks that would be invited to that. That being said, I want to go back to and reiterate again that it was not a lobbying activity, it was checked from stem to stern here as not being under that definition. So I mean it really does have a benefit to the corporation and a benefit to the individual programs, and the social aspect of it is really secondary.

Thank you.

CHAIRMAN STRICKLAND: Thank you, John, for that explanation. Any other questions on this item?

(No response.)

CHAIRMAN STRICKLAND: All right. The motion is Herb's motion to authorize a filing to the District of Columbia for registration to undertake charitable solicitations. All those in favor of the vote, please say "Aye."

(A chorus of Ayes.)

45653.218

CHAIRMAN STRICKLAND: Okay. The Chair's in doubt. Let's have a roll call on the Ayes and Nays.

Herb Garten?

MR. GARTEN: Yes.

CHAIRMAN STRICKLAND: Tom Meites?

MR. MEITES: Yes.

CHAIRMAN STRICKLAND: I vote yes. Tom Fuentes?

MR. FUENTES: Yes.

CHAIRMAN STRICKLAND: And Sarah?

MS. SINGLETON: Yes.

CHAIRMAN STRICKLAND: Okay. Tom McKay?

MR. MCKAY: Yes.

CHAIRMAN STRICKLAND: Bernice?

MS. PHILLIPS: Yes.

CHAIRMAN STRICKLAND: And Jonann?

MS. CHILES: Yes.

CHAIRMAN STRICKLAND: Gosh. My hearing must have gone out on me.

(Laughter.)

CHAIRMAN STRICKLAND: I thought there was only one or two yes's. Instead, it was unanimous. I beg your pardon.

* * *

CHAIRMAN STRICKLAND: Okay. That's fine. All right, any other business? Otherwise, I'm ready to consider an act on a motion to adjourn the meeting.

MR. FUENTES: Move to adjourn.

CHAIRMAN STRICKLAND: All right. Then hearing no objection, the meeting is adjourned. Thank you very much, everybody.

MR. FUENTES: Thank you. Goodbye.

(Whereupon, at 4:40 p.m., the hearing was adjourned.)

45653.219

Attachment 11

CONFIDENTIAL Executive Session Transcript
Not For Sharing/Dissemination

LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS
MEETING OF THE
FINANCE COMMITTEE
CLOSED SESSION
Saturday, April 26, 2008
10:21 a.m.

The Marriott Hotel
3233 Northwest Expressway
Oklahoma City, Oklahoma

COMMITTEE MEMBERS PRESENT:
Michael D. McKay, Chairman
Lillian R. BeVier
Thomas A. Fuentes (by telephone)
Herbert S. Garten
Thomas R. Meites
Sarah M. Singleton
Frank B. Strickland, ex officio
OTHER BOARD MEMBERS PRESENT:
Jonann C. Chiles
David Hall
Bernice Phillips

45653.067

* * * *

CHAIRMAN McKAY: The resolution passes.
We're still in, of course, closed session. Helaine, you had an issue you wanted to raise?

MS. BARNETT: Actually, it's the chairman of the board who raised it.

CHAIRMAN McKAY: Mr. Chairman?

MR. STRICKLAND: I just have a brief update on our plans to engage in some modest charitable solicitation activities. You may recall from our -- I don't remember whether it was an in-person meeting or a telephone conference meeting, where we talked about the fact that in order for -- LSC is a D.C. nonprofit corporation.

So in order for LSC to attempt to raise some funds from private sources, it's necessary to file a registration application. And we authorized the filing of that with the appropriate office in D.C. And that's been done, but it takes a while for that office to act on our application.

But that process is underway. And once it's approved, the concept is to send some letters to some law firms based in D.C. only, or a firm that has a D.C. office, to raise some modest funds from those firms to do some things that I'd like to ask Vic to come forward and give us the particulars on, federal funds, et cetera. If you would do that, Vic.

MR. FORTUNO: I think from the very outset, it's been contemplated that LSC would accept non-federal contributions. It has not done so to any significant extent over time. It is, however, clear that LSC is authorized to accept contributions from non-federal sources.

What happened here was that the additional point was that it wasn't just accepting, but actively soliciting some contributions. In order to solicit contributions, you have to register with the jurisdiction in which you'll be doing so.

In this case, since it was a modest effort and the focus would have been or would be on the District of Columbia, an application was submitted to the District to register with the District. They have a requirement as to how the solicitation is accomplished, and reporting, and things of that nature.

The application has in fact been submitted. The board at a telecon meeting did adopt a resolution authorizing management to proceed with the filing of an application. When the application is approved, the Corporation is then

45653.088

authorized to engage in solicitation for charitable contributions in the District of Columbia. If there were going to be any solicitations outside the District, we would have to look into registration in those jurisdictions as well.

When funds are received, they have to be accounted for separately. In addition, our appropriations act expressly requires that, if we accept private funds, we notify the donor in writing of the fact that the funds can't be used in a manner that would violate the LSC Act or appropriations act.

And so that would have to be done. And of course, since the contribution is to LSC, they would be LSC funds and have to be used in accordance with LSC's own policies. I was asked about whether contributed funds, for example, private funds, could be used to purchase alcohol. The policy, I think, currently provides that no LSC funds shall be used for that purpose. So as currently written, the answer is no because the funds contributed would be LSC funds. They wouldn't be federal funds, but they'd be LSC funds.

However, that's an internal policy. So, for example, if that policy were amended to provide that no federal funds could be used to purchase alcohol, then it would leave the door open to using privately contributed funds in that manner so long as the use did not violate the LSC Act or the appropriations act.

I don't know if that's sufficient information. But in terms of a quick overview, that may do it.

MS. PHILLIPS: Vic?

CHAIRMAN McKAY: Please. Go ahead.

MS. PHILLIPS: So any funds given to LSC has to be used under the guidelines of LSC rules and regulations?

MR. FORTUNO: Yes. They'd be LSC funds because they're given to LSC. And, for example, when a donor contributes money to LSC, they can actually take a deduction on their taxes because it's a contribution to a 501(c)(3) entity. So there's a tax deduction to the donor. But they have to be accounted for. They have to be accounted for separately because they're not federal funds if they're from a private donor. But they do have to be used in accordance with LSC's own policies.

We can't, because it's a private contribution, take that money and use it in a matter that's inconsistent with the Corporation's own policies. But so long as -- but the policies can be changed so long, of course, as the change would not result in permitting the use of the funds in a

45653.089

manner that violates either the Act, the LSC Act itself, or our appropriations act.

MR. STRICKLAND: So I gather from what you're saying, Vic, that if LSC changed its own policy, that we could, upon receipt of funds such as these, those could be separated from other funds and utilized in accordance with whatever LSC's policy might be at that time.

MR. FORTUNO: That's correct.

MR. FUENTES: Mr. Chairman?

CHAIRMAN McKAY: Tom?

MR. FUENTES: I don't quite understand why we're discussing this in closed session. Is this matter not more appropriate to an open session, discussing the consideration of a board policy not published as an agenda item for closed session? I feel uncomfortable discussing this in closed session. Explain to me why, please?

MR. STRICKLAND: It was intended to be a briefing to update the board on the fact that we have filed that application. We're not asking for any action. It's just a briefing on where we might head with that.

CHAIRMAN McKAY: Anything else? Is that the end of your briefing?

MR. STRICKLAND: Yes.

CHAIRMAN McKAY: All right. Thank you.

45653.070

Attachment 12

EXPENSES FOR EXECUTIVE DIRECTORS MEETING
JUNE 9 - 11, 2008

Account Code	Description	Transaction Date	Description	Amount
5300	Participants Travel	6/10/2008	ED CONFERENCE 6/9-11	80,233.00
5320	Registration & Conference Fees	3/13/2008	REGONLINE FEES FOR ED MTG	531.00
5360	Consultant Travel	6/9/2008	BRODERICK - SPEAKER FOR ED CONF	630.50
5440	Rent Meeting/Conference Rooms	6/10/2008	ED CONFERENCE 6/9-11	3,000.00
5600	Equipment Rental	6/10/2008	ED CONFERENCE 6/9-11	5,596.70
5610	Office Supplies	5/21/2008	REGONLINE FEES FOR ED MTG	18.00
5610	Office Supplies	6/3/2008	IMPACT - PORTFOLIOS FOR ED CONF.	849.00
5610	Office Supplies	6/4/2008	IMPACT - FRAMES FOR ED CONF.	308.50
5610	Office Supplies	6/6/2008	IMPACT - PORTFOLIOS FOR ED CONF.	113.20
5690	Other Supplies	5/21/2008	POSTERS - ED CONFERENCE	535.50
5690	Other Supplies	6/3/2008	IMPACT - AWARD CERT. FOR ED CONF.	112.77
5690	Other Supplies	6/16/2008	IMPACT - RETURN - AWARD CERT. FOR ED CONF.	(57.40)
5690	Other Supplies	6/30/2008	ACC ARNOLD ENGRAVERS FOR PAPER WEIGHTS	1,087.50
5730	Consulting - Training & Tech. Ass't	5/21/2008	TRANSITIONSGUIDE - ED CONF. WRKSHP (Tom Adams)	500.00
5730	Consulting - Training & Tech. Ass't	6/11/2008	ACC TRANSITIONSGUIDE - ED CONF. WRKSHP (Tom Adams)	1,500.00
5780	Indv. Consulting - Training & Tech.	7/9/2008	ACC KELLY CARMODY SPEAKER FEE	1,000.00
Totals				*95,958.27

* This amount does not include the cost of the reception held at the National Archives. The total cost of the reception was $6,095 of which $5,395 was food expenses charged to the President's discretionary fund. The President's discretionary fund was established by a private contribution to LSC and was approved by the Board. The balance of $700 for alcoholic beverages was paid directly to the caterers by two Board members from their personal funds.

Additionally, there are two Program Executive Directors whose airline tickets were purchased by LSC. The directors' programs will reimburse LSC $1,162.92 for the cost of those tickets.

Legal Services Corporation
America's Partner For Equal Justice

June 16, 2008

President
Helaine M. Barnett

Board of Directors
Frank B. Strickland
Atlanta, GA
Chairman

Lillian R. BeVier
Charlottesville, VA
Vice Chairman

Joe Ann C. Chiles
Little Rock, AR

Thomas A. Fuentes
Lake Forest, CA

Herbert S. Garten
Baltimore, MD

David Hall
Boston, MA

Michael D. McKay
Seattle, WA

Thomas R. Meites
Chicago, IL

Bernice Phillips-Jackson
Buffalo, NY

Sarah M. Singleton
Santa Fe, NM

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

In a letter dated June 2, 2008, your office forwarded to me for response the following written questions, posed by Senator Jeff Sessions:

> GAO's August 2007 report identified serious problems in governance at Legal Services Corporation. In that report, GAO found that the Board of Directors has not "incorporate[ed] many practices currently considered necessary for effective governance." (Page 4) As a result, "LSC's Board of Directors is at risk of not being able to fulfill its role of effective governance and oversight." (Page 4). GAO made several recommendations to address these problems.
>
> **When will the board complete its implementation of the recommendations made by GAO in its report?**
>
> **How can the Congress be sure that GAO's recommendations have been implemented effectively to ensure that we are maximizing the benefits to low income Americans?**

By way of background, attached for reference and marked "Exhibit A" is a copy of a letter dated May 20, 2008, sent to Ms. Jeanette M. Franzel, Director, Financial Management and Assurance, U.S. Government Accountability Office, by Ms. Helaine Barnett, Legal Services President. This letter succinctly details progress made by the Board and the Corporation in addressing the GAO recommendations. It also details areas yet to be addressed.

3333 K Street, NW 3RD Floor
Washington, DC 20007-3522
Phone 202.295.1500 Fax 202.337.6797
www.lsc.gov

GAO recommendations made to the Board but yet to be completed are set forth on page 3 of the May 20 letter. In short, these remaining recommendations are that the Board do the following:

(1) Establish charters for the Board and all existing or newly-created committees;
(2) Develop and implement procedures to periodically evaluate key management processes, including at a minimum, processes for risk assessment and mitigation, internal controls, and financial reporting;
(3) Institute an orientation program for new Board members;
(4) Develop a plan for providing regular training program for sitting Board members;
(5) Establish a compensation committee function or rewrite the charter of its annual performance review committee, and
(6) Implement a periodic self-assessment of the Board's, the committee's, and each individual member's performance.

As for the first recommendation set forth above, charters have been approved for all Board committees except for what will be a newly-constituted Governance and Performance Review Committee and for the standing Operations and Regulations Committee. These two remaining charters are being prepared and should be finalized at the next Board meeting, which is to take place in August, 2008. The Board will report to you when these tasks are completed.

As for the second recommendation set forth above, the risk assessment evaluation function has been assigned to the newly-formed Audit Committee. (A copy of the Audit Committee charter is attached to the May 20 letter addressed to Ms. Franzel.) The Audit Committee's evaluation of the Corporation's risk assessment and management processes will take place upon the implementation of that program by the Corporation. It is my understanding that LSC management is studying model programs and is working to create an appropriate program for LSC. A report from LSC management on the status of that work is expected at the next Board meeting. After that meeting, the Board will report to you on the progress made. Although we expect that by the end of August the Corporation will have made significant progress in designing a risk assessment and management program, due to the breadth and depth of this task, I would not expect the program to be fully implemented by the end of August. Please be assured that the Board is committed to seeing a comprehensive and effective risk assessment system put in place at the Corporation.

I expect recommendations 3 through 6 will be delegated to the newly-constituted Governance and Performance Review Committee at the Board's next meeting in August, 2008. Again, the Board will report to you when these tasks are completed. (Note: The charters are an example of one step taken by the Board

towards establishing and implementing a periodic self-assessment of the committees' performance. Each charter contains a requirement that the committee periodically conduct a self-assessment regarding its performance.)

In addition, by September 1, 2008, the Corporation plans to submit to the GAO an update on the Corporation's work addressing the GAO recommendations. We will make certain a copy of that update is delivered to you.

I would be pleased to answer any questions you might have regarding the content of this letter, or to direct you to that person or those persons who might be a better source of information for you. I can be contacted at 501.247.8801 or jecchiles@aol.com.

Sincerely,

Jonann Chiles
With permission by Victor Fortuno

cc: The Honorable Benjamin L. Cardin

Attachment

United States Government Accountability Office
Washington, DC 20548

June 16, 2008

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

Subject: *Response to Posthearing Questions Related to Closing the Justice Gap*

Dear Mr. Chairman:

On May 22, 2008, GAO testified[1] before your committee at a hearing entitled, "Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans." At the hearing, we discussed GAO's recent reviews of Legal Services Corporation's (LSC) governance, accountability, and grants management and oversight practices.

This letter responds to your June 2, 2008, request for responses to posthearing questions for the record related to our May 22, 2008, testimony. Your questions, along with our responses, follow.

Given the findings and recommendations in GAO's August 2007 and December 2007 reports regarding the Legal Services Corporation, how long should it take for LSC to implement those recommendations? What action by GAO, if any, is necessary to be sure that the corrective measures by LSC have adequately addressed the concerns raised in GAO's 2007 reports? When could GAO reasonably complete that verification?

Some recommendations, such as implementing a risk management program and procedures to improve the effectiveness of LSC's fiscal compliance reviews, will not only require that LSC develop policies and implement those policies, but will also require some degree of cultural change within LSC. Due to the number and the nature of the recommendations that were made to LSC's board and management in the August 2007[2] and December 2007[3] reports, we expect successful implementation of all of the recommendations to take one to two years. Certain recommendations,

[1] GAO, *Legal Services Corporation: Improvements Needed in Governance, Accountability and Grants Management and Oversight*, GAO-08-833T (Washington, D.C.: May 22, 2008).
[2] GAO, *Legal Services Corporation: Governance and Accountability Practices Need to Be Modernized and Strengthened*, GAO-07-993 (Washington, D.C.: Aug. 15, 2007).
[3] GAO, *Legal Services Corporation: Improved Internal Controls Needed in Grants Management and Oversight*, GAO-08-37 (Washington, D.C.: Dec. 28, 2007).

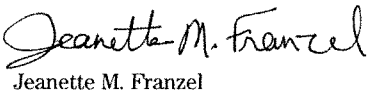
45653.075

such as establishing an audit committee function, can be fully implemented quickly. Others, such as risk-based criteria for selecting grantees for internal control and compliance reviews, will take longer to implement. In order for LSC's Board and management to correct the weaknesses targeted by the recommendations, LSC needs to develop a detailed plan that fully addresses the recommendations and is supported by management and the Board. In addition, LSC management needs to provide oversight and monitoring throughout the process of implementing the plan and ensure that appropriate resources are applied.

As part of closing out the recommendations, GAO will monitor how LSC's Board and management address the recommendations. However, to ensure that LSC's corrective measures adequately address the issues raised in our reports and that other issues have not developed, the Committee may want GAO to perform a more in-depth review of LSC's overall program in the areas of governance, accountability and grants management. We would be happy to discuss with the Committee the scope and timing of such a request.

We are sending a copy of our responses to the posthearing questions to Senator Jeff Sessions, who specifically posed the questions for GAO. Should you have any questions on matters discussed in this response or need additional information, please contact me at (202) 512-9471 or at franzelj@gao.gov or Kim McGatlin at (202) 512-9366 or at mcgatlink@gao.gov .

Sincerely yours,



Jeanette M. Franzel
Director
Financial Management and Assurance

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00111 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.076

SUBMISSIONS FOR THE RECORD

AMERICAN BAR ASSOCIATION

Governmental Affairs Office
740 Fifteenth Street, NW
Washington, DC 20005-1022
(202) 662-1760
FAX: (202) 662-1762

May 29, 2008

The Honorable Ben Cardin
Committee on the Judiciary
United States Senate
Washington, D.C. 20005

Dear Senator Cardin:

On behalf of American Bar Association President William H. Neukom, I want to thank you again for your commitment to ensure access to justice for all persons and for convening last week's Judiciary Committee hearing to address the "justice gap" in America. The ABA looks forward to working with you, the Senate Committee on Health, Education, Labor & Pensions and the Senate Appropriations Committee to strengthen the Legal Services Corporation, which is the lynchpin in ensuring that low-income Americans have the assistance of a lawyer to help resolve basic legal issues, as well as to expand other avenues for providing legal services to those who need but cannot afford them.

We want to take this opportunity to provide more information in response to your exchanges with various witnesses that raised questions whether *pro bono* legal services might be federally mandated or required by the individual states as a way to help close the justice gap. Several witnesses, including the ABA's witness, Judge Lora Livingston, offered views that these options might not be legal, feasible or desirable.

As you well know, the ABA strongly encourages and supports *pro bono* and public service benefiting low-income individuals and organizations that serve the poor. The ABA, however, has examined and thoroughly debated mandatory *pro bono* and most recently rejected such a recommendation when the House of Delegates approved revisions to the Model Rules of Professional Conduct in 2002 [See Attachment 1]. Of course, the Model Rules are only recommendations; it remains up to each state supreme court to adopt rules of professional responsibility, license and regulate its own attorneys.

While some states have now instituted mandatory *pro bono* reporting requirements, they remain simply reporting requirements and do not mandate *pro bono* [See Attachment 2]. Only one state, New Jersey, imposes a modified type of mandatory *pro bono*: for over 20 years, New Jersey attorneys (including non-practicing attorneys) can be assigned one court-appointed case per year unless they are exempt as having provided 25 hours of voluntary service to an approved provider. This requirement is actually half the suggested 50 hours of *pro bono* service recommended by the ABA Model Rules. Nonetheless, even with the mandatory acceptance component and a significant state appropriation, a recent study shows that 99 percent of defendants in housing eviction cases in New Jersey go to court without a lawyer [*People Without Lawyers: The Continuing Justice Gap in New Jersey,* Legal Services of New Jersey, October 2006].

Letter to Senator Cardin
May 29, 2008
Page Two

Even with these participation requirements for the court-appointed system, these lawyers are not doing the types of work that will close the justice gap for this group of low-income clients.

Setting aside potential constitutional arguments, the ABA Standing Committee on *Pro Bono* and Public Service offers the following as among the reasons why mandatory *pro bono* would not constructively help solve the justice gap – and could actually be counterproductive:

- **Mandatory *pro bono* would detrimentally and disproportionately impact small firms, solo practitioners and newer lawyers.** While the larger firms that receive most attention could more easily absorb the impact and already are doing enormous amounts of *pro bono*, America's lawyers are not concentrated in large firms. Lawyers across the country are generally solo or small firm practitioners struggling to run small businesses, serve their clients, pay their student loans, and maintain some type of family life. For example, in Maryland 25% of the lawyers are solo practitioners, while another 25-30% are in small firms of 2 to 5 lawyers. Of the 3,700 law firms in Wisconsin, for example, the vast majority – 92% or about 3,400 – consist of 5 or fewer lawyers, and fully 79% or 2580 of those firms are solo practices. (At the same time, small firm and solo practitioners nonetheless are already voluntarily doing a significant amount of *pro bono* and public service.)

- **Mandatory *pro bono* would hurt lawyers' morale and reduce other altruistic inclinations.** For example, forcing lawyers to do *pro bono* work could result in decreased financial contributions to legal aid programs and bar foundation campaigns.

- **Mandatory *pro bono* would detrimentally impact the quality of service provided to low income clients.** If lawyers (including non-practicing lawyers) must accept cases involving poverty law issues or other matters that are outside of their usual practice or areas of expertise, there is an increased likelihood that they could not give these cases the same level of care they would give to their paying clients.

The ABA agrees with your basic proposition that *pro bono* service is an indispensable element for closing the justice gap. Yet we are also convinced that it can never alone meet the legal needs of the poor. We are pleased that the trend is clearly toward increased *pro bono* participation by: law firms that are now hiring *pro bono* partners and according both associates and partners credit for billable hours for *pro bono* work; law schools that are developing more *pro bono* projects and clinics per the ABA accreditation standards requiring *pro bono* efforts; bar associations that are promoting *pro bono* to their members; judges who are taking a more active role in promoting *pro bono* in their communities; and government attorneys who are doing more *pro bono* work. Currently, 26 state bar associations have staff dedicated to coordinate statewide *pro bono* activities. In addition, there are over 1,000 organized *pro bono* programs in the country, many of which are specialized to focus on certain needs and types of cases (like domestic violence victims, children involved in custody cases, or people living with HIV/AIDS).

Among other means of increasing *pro bono* participation nationwide, the Senate Judiciary Committee recently reported out S. 1515, the National Domestic Violence Volunteer Attorney Network Act, which would establish a national clearinghouse to provide *pro bono* representation

45653.078

Letter to Senator Cardin
May 29, 2008
Page Three

to victims of domestic violence. The ABA closely worked with Senator Biden on this legislation and urges the Senate, and this Congress, to enact this legislation as soon as possible.

Thank you for your ongoing commitment to highlighting the justice gap in America, as well as for your long record of dedication and hard work – both in Maryland and in the Congress – aimed at closing that gap. The ABA looks forward to working with you in the months and years to come to close the justice gap by strengthening the Legal Services Corporation, by developing and expanding other governmental programs designed to accord access to free or reduced-cost legal services for those who need them, and by expanding opportunities for voluntary *pro bono* participation.

Sincerely,

Thomas M. Susman

45653.079

Attachment 1

ABA MODEL RULE 6.1 VOLUNTARY PRO BONO PUBLICO SERVICE

Policies - Voluntary Pro Bono Publico Service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of *pro bono publico* legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Comment

[1] Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay, and personal involvement

45653.080

in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually. States, however, may decide to choose a higher or lower number of hours of annual service (which may be expressed as a percentage of a lawyer's professional time) depending upon local needs and local conditions. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory lawyers' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remained unfulfilled, the remaining commitment can be met in a variety of ways as set forth in paragraph (b). Constitutional, statutory or regulatory restrictions may prohibit or impede government and public sector lawyers and judges from performing the pro bono services outlined in paragraphs (a)(1) and (2).

45653.081

Accordingly, where those restrictions apply, government and public sector lawyers and judges may fulfill their pro bono responsibility by performing services outlined in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide pro bono legal services called for by this Rule.

[12] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

45653.082

Model Code Comparison

There was no counterpart of this Rule in the Disciplinary Rules of the Model Code. EC 2-25 stated that the "basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer . . .. Every lawyer, regardless of professional prominence or professional work load, should find time to participate in serving the disadvantaged." EC 8-9 stated that "[t] he advancement of our legal system is of vital importance in maintaining the rule of law . . . [and] lawyers should encourage, and should aid in making, needed changes and improvements." EC 8-3 stated that "[t] hose persons unable to pay for legal services should be provided needed services."

45653.083

Attachment 2

Standing Committee on Pro Bono and Public Service
http://www.abanet.org/legalservices/probono/

The ABA Standing Committee on Pro Bono and Public Service is the national source of information, resources and assistance to support, facilitate, and expand the delivery of pro bono legal assistance. The Standing Committee and its project, the Center for *Pro Bono*, encourage lawyers to do pro bono work and help them connect with opportunities that meet their needs. Our programs, projects and services help pro bono programs, advocates and policymakers address the legal needs of the poor.

The Committee has been actively involved in the policy arena. Among its initiatives are ABA Model Rule 6.1 (adopted 1983, revised 1993) and the 1995 House Resolution urging bar associations to make the expansion of pro bono legal services a critical priority for the bar. In 1996, the Committee drafted and published Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means. In 1999, the Committee published State Pro Bono Reporting: A Guide for Bar Leaders and Others Considering Strategies for Expanding Pro Bono, designed to assist in the planning and building of successful state legal services delivery systems. The Committee was also instrumental in the 1997 adoption of Conference of Chief Justices' Resolution VII, Encouraging Pro Bono Services in Civil Matters. In addition, the Committee provided input regarding the pro bono policy adopted by the U.S. Department of Justice in 1997, which has been implemented in federal agencies throughout the country. The Committee also drafted language for the ABA's Law School Accreditation Standards (1996) pertaining to pro bono work.

Direct Links of Note:

Pro Bono Policies and Rules -- Pro Bono Policies Across the Nation
http://www.abanet.org/legalservices/probono/policies-rules.html

Pro Bono Volunteer Opportunities
http://www.abanet.org/legalservices/probono/volunteer.html

45653.084

1 of 1 DOCUMENT

Copyright 2006 Associated Press
All Rights Reserved
Associated Press Online

August 15, 2006 Tuesday 7:32 AM GMT

SECTION: WASHINGTON DATELINE

LENGTH: 1461 words

HEADLINE: AP: Legal Aid Program Has Expensive Taste

BYLINE: By LARRY MARGASAK, Associated Press Writer

DATELINE: WASHINGTON

BODY:

The government-backed clinic where Richard Taylor seeks free legal help uses furniture worthy of a second-hand store. The carpets are worn. And the walls lack the standard glut of law books and journals that usually adorn law firm libraries.

Across the country, the neighborhood offices of the Legal Services Corp. where one out of every two poor Americans is turned down for help because the agency lacks resources are a far cry from the federal program's headquarters.

Documents obtained by The Associated Press detail the luxuries that executives of Legal Services have given themselves with federal money from $14 "Death by Chocolate" desserts to $400 chauffeured rides to locations within cab distance of their offices.

"I don't think that's right," Taylor said, as he walked from the program's inner city legal clinic in the nation's capital, covering his head with a towel to protect himself from the searing summer heat.

"They're depriving some others that really need it and that's not good. ... It's supposed to be about the people."

The government-funded corporation boasts a spacious headquarters in Washington's swank Georgetown district with views of the Potomac River and a rent significantly higher than other tenants in the same building.

And board members wrote themselves a policy that doubled the amount they could claim for meals compared with their staff.

Legal Services is a nonprofit corporation run with federal money that was created by Congress to provide legal help in civil matters for Americans who can't afford their own lawyers. It funds neighborhood clinics across the country where lawyers provide such help.

Three congressional committees have questioned the program's spending as has the corporation's own internal watchdog. The chairman of the tax-writing Senate Finance Committee is threatening to withhold future money if the corporation doesn't trim its extravagance.

"It's waste and abuse," said Sen. Charles Grassley, R-Iowa, citing the board's doubling of the meal money as an example. "At 200 percent, it seems to me what we would call in Iowa living high off the hog."

Legal Services officials defend their program, saying administrative expenses are kept separate from money distributed to the local, independently run legal outlets.

Corporation spokesman Tom Polgar said LSC president Helaine Barnett and board chairman Frank Strickland "are aware they are using taxpayer funds and try to operate in a manner that is frugal and appropriate." Barnett is a former legal services attorney. Strickland is an Atlanta lawyer.

Barnett declined to be interviewed. Strickland did not return several phone messages seeking comment.

The scrutiny of Legal Services' spending comes as the corporation says it doesn't have enough resources to meet many poor clients' needs.

Legal Services' own study found last October that for every client who receives service, one applicant is turned away because there are not enough resources to help. Since that study counted only those who contacted the program for assistance, the corporation said it likely underestimated the unmet need.

Nine recent state studies demonstrated that less than 20 percent of the legal needs of low-income Americans were being met, LSC said.

Neighborhood Legal Services, the local program that serves the poor in the nation's capital, is a refuge where a federally funded lawyer can help a client stave off homelessness, fight an unscrupulous landlord, file for divorce or receive help with a host of other legal problems.

The lobby of the inner-city office looks like a doctor's waiting room that has used the same hardback chairs and magazine stand for decades. The carpet is worn and stained. Some offices are barely big enough for a desk.

Unlike Legal Services headquarters' well-stocked library, filled with criminal code books and Supreme Court opinions, the local program library has mostly bare walls. The conference table doubles as a staff lunchroom.

Marie Parran of Washington, a legal services client, wants money supporting Legal Services headquarters to go instead to the field. "There's so many poor people in the Washington, D.C., area who need the help and can't afford a lawyer. I think that's money that should be going to the poor that live in D.C," she said.

Legal Services' own internal watchdog, Inspector General Kirt West, has questioned whether the corporation's headquarters has more space than it needs and whether it pays too much for rent.

The headquarters has multiple conference rooms and kitchen/pantry areas. Yet, the corporation's 11-member board of directors holds its meetings at hotels around the country, including Washington, at costs ranging from $20,145 to $55,125 the latter in San Juan, P.R.

The decision not to use the headquarters conference room was explained in an October 2004 memo from board chairman Strickland. He said board members, who work outside the corporation, preferred the Melrose Hotel in the same upscale neighborhood as the headquarters.

The board members sought "convenience to their rooms" and did not want to "feel confined" to headquarters for two entire days, he said. In addition, he said he was worried that the headquarters lacked privacy because "all meeting rooms at LSC have glass walls."

Bills from the Melrose, with all costs per person, included: a $59 three-entree buffet, an $18 breakfast featuring scrambled eggs with chives, a $17 breakfast including Belgian waffles, a $28 deli buffet, a $13 "high tea" service, a $12

"bagel break," a $12 "Crazy for Cookies" assortment and $14 "Death By Chocolate" desserts.

Legal Services spokesman Polgar and Charles Jeffress, the LSC chief administrative officer, said the headquarters conference room can hold about 80 people, but that was too small to accommodate the 11-member board, the staff, the media and the public.

They also contended that meal costs for board members may be just as expensive if catered at headquarters.

Beyond the hotel-prepared meals at their meetings, it made sense for board members to dine together. The board fashioned for itself an expense policy that permitted members to receive up to 200 percent of the allowable meal expense as long as board members ate together.

"The only time it was ever used was in conjunction with a board meeting," Jeffress said.

The policy recently was rescinded after congressional investigators questioned it.

Barnett, Strickland and another board member have used limousine services.

Strickland had a packed schedule last April 25, so the agency ordered a car and driver to take him and Barnett to meetings on Capitol Hill with lawmakers about a 15-minute ride from headquarters. The car also took them to Arlington National Cemetery for a funeral and to a separate memorial service, also in Arlington all short rides.

Even the Legal Services Corp. comptroller, David Richardson, questioned the expense.

"With cab fares from our office to Capitol Hill costing $20 and the nominal cost of a cab to Arlington Cemetery and return, this $423.99 seems to be an extraordinary cost," he wrote in an internal memo.

Polgar, who acknowledged making the decision to hire the car, said he was concerned that Strickland wouldn't make his schedule.

Barnett also used a hired car and driver to attend a funeral service for a former board member in Harrisburg, Pa., about a two-hour drive. The cost: $400.

Polgar said Barnett, who does not have a car in Washington, wanted to work on the trip rather than rent a car and drive herself. The cost was competitive with train fare and airlines, he said.

Barnett and Strickland both attended the International Legal Aid Group Conference in Killarney, Ireland, in June 2005. To get to Killarney from Shannon Airport, Barnett took a cab for $220 and returned to the airport by taxi for $189, a cost of $409 for a roundtrip of about 160 miles.

Polgar said Barnett was supposed to have a free ride from Shannon, but she was stranded at the airport and had to take the cab. She couldn't find a ride for the return trip, he said.

The Legal Services headquarters in Georgetown was bought by a nonprofit group, Friends of the Legal Services Corp., that was formed to purchase a permanent headquarters.

The board chairman, Thomas Smegal, said the $38 per-square-foot rent charged Legal Services was a good deal even though other tenants were paying less than $30. Nonetheless, he said Legal Services was not getting ripped off.

Smegal said LSC's rent won't change for the 10-year lease, while other tenants' rents rise. The tenants paying low rent already had those leases when Friends took over the building, said Smegal, a San Francisco lawyer.

When the building is paid off, he said, it will be turned over debt-free to the Legal Services Corp.

On the Net:

Legal Services Corporation: http://www.lsc.gov

LOAD-DATE: August 16, 2006

4 of 72 DOCUMENTS

Copyright 2008 Associated Press
All Rights Reserved
The Associated Press State & Local Wire

January 18, 2008 Friday 5:05 AM GMT

SECTION: STATE AND REGIONAL

LENGTH: 1204 words

HEADLINE: AP Exclusive: Legal aid programs spend on booze, loans, lobbying

BYLINE: By LARRY MARGASAK, Associated Press Writer

DATELINE: WASHINGTON

BODY:

Legal aid programs serving poor people spent federal money on booze, interest-free loans for staff, late charges on overdue bills and even lobby registration fees.

The parent organization that distributes grants to programs in all 50 states, Legal Services Corp., failed to monitor how the money was spent by state and local legal aid officials, according to congressional investigators in a new report. It did not specify how much money was misspent but questioned use of more than $1 million in payments.

The new report, obtained by The Associated Press, was based on examination of spending at 14 of 138 legal aid programs financed by the Washington-based Legal Services Corp.

The top officials of the Legal Services Corp. responded, "We have no tolerance for any spending of grantee funds outside the law or the regulations of the LSC, and have formally referred all potential violations noted in the report to our Office of Inspector General."

"We will take whatever actions are warranted when all of the facts are known," said corporation President Helaine Barnett and Board Chairman Frank Strickland.

Among the organizations whose activities were questioned in the report: Nevada Legal Services Inc.; California Indian Legal Services Inc.; Legal Aid and Defender Association of Detroit; Legal Services for New York City; Philadelphia Legal Assistance Center; Wyoming Legal Services; and Laurel Legal Services Inc. of Greensburg, Pa.

Some of those groups were not identified in the GAO report, but congressional offices disclosed they were among the ones targeted by GAO investigators.

After an April 2006 visit to the Las Vegas office of Nevada Legal Services, the GAO cited the conclusion of inspectors' checking the program's performance: "Overall, this program is in very good shape. Its delivery structure is sound, its management is excellent, and its case handling staff are performing at a high level."

But less than one year later, during a February 2007 visit by compliance inspectors and congressional investigators, federal officials decided to investigate questionable transactions, including a complex $3.6 million real-estate deal.

The Legal Services Corp., a nonprofit corporation that is funded by Congress, distributes grants to legal aid groups in all 50 states. The state and local groups help poor people involved in civil cases, including domestic violence, child custody, housing foreclosures, veterans and Social Security benefits, consumer problems and health issues. Three of four clients are women, mostly mothers.

Congress gave the group $348.6 million for the last fiscal year.

The Associated Press previously reported on extravagant spending on hotels, meals, limousines and other perks by the corporation's presidentially appointed board of directors and top staff in the Washington headquarters.

The latest report angered two lawmakers who have been monitoring the program's problems.

"It is not acceptable to Congress or the taxpayers for scarce funds to be spent on the enrichment of others instead of on legal services," said Sen. Mike Enzi, R-Wyo., senior Republican of the Committee on Health, Education, Labor and Pensions.

Sen. Charles Grassley, R-Iowa, senior Republican on the Senate Finance Committee, said the findings were "more documentation of abusive and wasteful spending that is jeopardizing the ability of the Legal Services Corporation to provide legal assistance to people in need."

Among the findings:

The New York City, Detroit and California Indian Legal Services programs used federal money to buy liquor. Federal guidance for nonprofit corporations states that costs of alcohol are unallowable with no exceptions.

The New York officials did not return telephone messages by the AP requesting interviews. An official in Detroit declined to comment.

The California program didn't violate any rules, its executive director, Devon Lomayesva, told the AP. She said her group was willing to discuss the matter with the parent corporation's inspector general.

The GAO said the Detroit executive director acknowledged her program paid another organization for beer and wine costs for a reception.

The New York City executive director told GAO investigators, "LSC funds are no longer used to purchase alcohol."

In Detroit, a contractor was paid far more than staff members, about $750,000 between 2004 and 2006, to operate computer servers and maintain the computer network. When asked by investigators why he was not an employee, with a commensurately lower salary, "he stated that there were benefits to being an independent contractor," the GAO said. The GAO said there appeared to be little distinction between the contractor and other legal aid employees in the same office.

The Philadelphia office gave employees the perk of interest-free loans, which were used for college tuition, downpayments on homes and purchases of personal computers. The GAO said there are no rules that would permit such loans.

The Philadelphia office did not return telephone messages left by the AP.

In New York, the group used grant money to pay for lobbyist registration fees. With only limited exceptions, recipients cannot use grant money for lobbying. Each payment was only $50, but the executive director there agreed the payments violated its rules and promised it will not happen again, the report said.

California Indian Legal Services, the New York City program and Wyoming Legal Services used funds to pay late fees on overdue accounts. In Wyoming, a vendor who was angry over unpaid office rent "threatened to place a lien against the goods in the unit and sell them at a public auction," the GAO said.

Wendy Owens, executive director of the Wyoming organization, told the AP, "Those late payments occurred under the tenure of a previous executive director and we have long since corrected those issues."

The GAO said all three executive directors agreed there was no excuse for failure to make payments on time.

In Greensburg, Pa., the executive director as questioned by GAO about a $30,000 payment to another organization. The director "stated that the previous executive director entered into the agreement and that she did not know anything about the agreement, other than the fact that she continued to pay the bill every year," the GAO said.

The executive director, Cynthia Sheehan of Laurel Legal Services Inc., disputed the investigators' conclusion, saying the money went to a bar association's free legal help program.

"I can assure you I did know what it was and that the Legal Services Corporation approved the contract every year," she told the AP.

The Las Vegas office purchased its building with federal and non-federal funds and then agreed to sell it to a developer for $3.6 million, the GAO found.

When the sale fell through, the organization was able to keep $280,000 that the developer placed in an escrow account as "earnest money."

However, the $280,000 was placed in an account that was immune from any controls by the Legal Services Corp.

Investigators described the deal as an "unusual transaction." Legal Services officials eventually concluded the funds should have gone to a restricted account and kept under their scrutiny.

Nevada Legal Services officials declined to comment.

LOAD-DATE: January 19, 2008

Submitted May 20, 2008

Testimony of

Helaine M. Barnett
President, Legal Services Corporation
Before the Committee on the Judiciary
United States Senate

May 22, 2008

Good afternoon, Senator Cardin, Senator Specter, and members of the committee. I am Helaine Barnett, President of the Legal Services Corporation, and it is my pleasure to be with you this afternoon.

First of all, Senator Cardin, I want to thank you for holding this hearing today and for giving us an opportunity to talk about LSC's groundbreaking report on the justice gap in America and the work that LSC-funded programs are doing to serve the civil legal needs of the poor. I know of your long-standing public support and hard work for civil legal aid in Maryland, your Chairmanship of the Maryland Legal Services Corporation, and your association and friendship with Herb Garten, a true champion for equal justice and a member of our Board. Now we are able to thank you for your national leadership on this important issue.

I am accompanied today by a distinguished member of the LSC Board of Directors and former Assistant Attorney General of Arkansas, Jonann C. Chiles. She was nominated by President George W. Bush to the Board of Directors of the Legal Services Corporation in March of 2006 and her nomination was confirmed by the United States Senate on June 29, 2006. Mrs. Chiles recently served as a member of the *ad hoc* committee of the Board charged with addressing the recommendations of the GAO reports on the Corporation.

The Legal Services Corporation

My entire legal career has been devoted to providing legal aid to low-income persons. I am honored to be the first legal aid attorney to hold the position of President of the Corporation in its 34-year history. Prior to my appointment as LSC's President, I spent 37 years at the Legal Aid Society of New York City, with three decades of service in the management of its Civil Division and ten years as its Attorney In Charge. I know first hand what our mission means to the lives of our clients and have a deep personal commitment to the mission of providing high quality civil legal services to eligible low-income Americans.

The Legal Services Corporation is the single largest source of funding for civil legal aid for low-income individuals and families. We fund 137 programs with more than 920 offices serving every Congressional district.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00127 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.092

Submitted May 20, 2008

LSC distributes more than 95 percent of its appropriation directly to these programs and provides guidance, training, and oversight to ensure that programs provide high-quality legal services and comply with Congressional requirements and restrictions, LSC rules, and regulations. Administrative expenses are only about 4 percent of LSC's budget--low by any standard.

Our programs' clients, the most vulnerable among us, live at or below 125 percent of the federal poverty level--an income of about $25,000 a year for a family of four. Three out of four are women, many of whom are mothers struggling to keep their families together and their children safe, fed and housed.

The clients of LSC-funded programs are all races and ethnicities, young and old, the working poor, people with disabilities, families with children, veterans, victims of domestic violence, victims of natural disasters such as Hurricane Katrina, and victims of the recent, ever growing foreclosure crisis. LSC-funded programs make a meaningful difference in the lives of their clients--helping them secure basic human needs such as safe and habitable housing, access to needed health care, protection from abusive relationships, an adequate source of income, and assistance in preventing foreclosures.

Fifty million Americans are eligible to receive civil legal aid from LSC-funded programs, including more than 13 million children -- one in five. The stark reality that we face today is the demonstrable fact that the need for civil legal aid is much greater than the resources available.

The Justice Gap

In September 2004, the LSC Board asked the staff to try to document the extent to which civil legal needs of low-income Americans were not being met, taking into account all the changes in the civil justice system in the last decade, including both LSC-funded services and non-federal resources. As a result, I convened a Justice Gap Committee which included individuals from both within and outside LSC with experience in documenting unmet legal needs. Based on the advice of this Committee, LSC conducted a year-long study culminating in the 2005 report entitled "*Documenting the Justice Gap in America—The Current Unmet Civil Legal Needs of Low-Income Americans.*" The report was unanimously approved by the LSC Board of Directors.

The study used three different methodologies to examine the extent of unmet civil legal needs. First, LSC asked its grantees over a two-month period, from March 14, 2005 to May 13, 2005, to document the number of potential clients that came to their offices that the programs were unable to serve due to lack of program resources. Second, it carefully analyzed the nine individual state studies[1] from 2000 to 2005 regarding the civil legal

[1] *Legal Needs of Low-Income Households in Montana*, State Bar of Montana, 2005. *The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans*, Chicago Bar Foundation, February 2005. *Statewide Comprehensive Legal Needs Survey*, Tennessee Alliance for Legal Services, 2004. *The Washington State Civil Legal Needs*

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00128 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.093

Submitted May 20, 2008

problems faced by low-income residents and examined them for national implications. These studies were also compared to the results of the 1994 American Bar Association national study on the subject. Finally, it totaled the number of legal aid lawyers, those in both LSC and non-LSC funded programs available to the low-income population, and compared that to the total number of attorneys providing civil legal assistance to the general population in our nation.

These three methodologies demonstrated that at least half of the need is unmet. The LSC "unable to serve" study, the first comprehensive national statistical study ever undertaken, established that for every client who receives service, one eligible applicant is turned away, indicating that 50 percent of the potential clients requesting assistance from LSC grantees were turned away for lack of adequate program resources. As lawyers and those committed to a civil society, turning away half of the people who seek legal assistance is not acceptable. Equal justice under law is a bedrock principle and these numbers do not reflect equal justice.

LSC's "unable to serve" study only documented those that actually sought assistance from an LSC-funded program, but we know that the need is much greater due to the fact that on average many eligible people do not contact a program either because they are unaware they have a legal problem, they do not know that the program can help them, or they do not know that they are eligible for free civil legal assistance.

The nine state studies demonstrated that less than 20 percent of the civil legal needs of low-income Americans were being met in those states. Eight of the nine studies found an unmet civil legal need greater than the 80 percent figure determined by the ABA in its 1994 national survey. Finally, in adding up the number of civil legal aid attorneys serving the poor and comparing that to the LSC-eligible population, it was determined that there is one civil legal services attorney for every 6,861 low-income persons. By contrast, the ratio of attorneys delivering civil legal assistance to the general population is approximately one for every 525 persons, or thirteen times more.

While our study is now two-and-a-half years old, other state legal needs studies and reports since the release of the *Justice Gap Report* have not only affirmed the findings but found that the unmet need for civil legal assistance remains unacceptably high, ranging up to 87 percent in Utah. The following statewide civil legal needs studies have concluded that:

Study. Supreme Court Civil Equal Justice Funding Task Force, 2003. *Massachusetts Legal Needs Survey*, Massachusetts Legal Assistance Corporation, 2003. *Civil Legal Needs Among Low-Income Households in Connecticut*, Connecticut Bar Foundation, 2003. *Legal Problems, Legal Needs: The Legal Assistance Gap Facing Low-Income People in New Jersey*, Legal Services of New Jersey, 2002. *Legal Needs Assessment Study*, Vermont Committee on Equal Access to Justice, 2001. *The State of Access to Justice in Oregon*, Oregon State Bar, 2000.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00129 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.094

Submitted May 20, 2008

- **Wisconsin,** 80 percent of poor households facing a legal problem do so without an attorney.[2]
- **California,** more than 66 percent of the legal services needs of low-income Californians are unmet.[3]
- **Nebraska,** 86 percent of eligible clients with a legal problem are unable to receive help from Legal Aid of Nebraska.[4]
- **Utah,** 87 percent of poor households facing a legal problem do so without an attorney.[5]
- **New Mexico,** more than 80 percent of the legal needs of low-income New Mexicans are unmet.[6]
- **Hawaii**, 80 percent of low- and moderate-income residents have unmet legal needs.[7]
- **Arizona**, 75 percent of Arizonans with civil legal needs are not represented by an attorney.[8]
- **Alabama,** soon to be released study by the Alabama Law Foundation found that 84 percent of the civil legal needs of low-income households are unmet.[9]
- In another related study, it has been shown that in **New Jersey** 99 percent of defendants in housing eviction cases go to court without a lawyer.[10]

---

[2] *Bridging the Justice Gap: Wisconsin's Unmet Legal Needs,* State Bar of Wisconsin Access to Justice Committee, March 2007.
[3] California Commission on Access to Justice, March 2007.
[4] *State Needs Assessment,* Legal Aid of Nebraska, February 15, 2007.
[5] *The Justice Gap: The Unmet Legal Needs of Low-Income Utahns,* Utah Legal Services, January 31, 2007.
[6] *New Mexico Commission on Access to Justice Report to the Supreme Court of New Mexico*, March, 2006.
[7] *Achieving Access to Justice for Hawaii's People,* Access to Justice Hui. November 2007.
[8] *Voicing a Need for Justice,* Arizona Foundation for Legal Services and Education. January 2008.
[9] *An Assessment of the Legal Needs of Low-Income Alabamians,* Alabama Law Foundation..
[10] *People Without Lawyers: The Continuing Justice Gap in New Jersey,* Legal Services of New Jersey, October 2006.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00130 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.095

Submitted May 20, 2008

In addition, programs are experiencing an alarming increase in the demand for services due to the foreclosure crisis and impact of natural disasters. The recent national crisis in sub-prime lending and foreclosures has overtaken our clients and flooded many of our programs with requests for assistance. Renters and senior citizens with fixed incomes are especially vulnerable to being displaced by foreclosure. Our programs across the country are seeing a dramatic increase in calls from people seeking assistance with housing and predatory lending matters. In some instances, the number of foreclosure-related cases handled by our programs has doubled. Many of our programs have also established special projects specifically dedicated to addressing foreclosure-related cases. We expect this demand for legal assistance to continue to grow, including the collateral needs that inevitably follow the loss of a home. Without additional funding, these programs will be unable to meet this increasing demand related to foreclosures and evictions.

The *Justice Gap Report* analysis was concluded before Hurricane Katrina which instantly expanded the needs of many existing clients and created a new group of eligible clients. LSC-funded programs continue to provide civil legal assistance as part of the recovery process to victims of Hurricane Katrina, as well as other natural disasters, such as the fires in southern California, the floods in the Midwest and Northwest, and the recent tornadoes throughout the country. Problems for victims of natural disasters continue in their wake. More than two-and-a-half years after Hurricane Katrina, LSC grantees continue to help people with the loss of their homes, jobs and healthcare benefits. I know from my own experience in New York City with the impact of 9/11 that the need will continue for many years to come.

Just as the need for legal aid is growing, the number of poor Americans eligible to receive civil legal aid is growing. Eight years ago, 44 million Americans qualified for LSC-funded services. Today, nearly 50 million poor Americans qualify. In addition, the recent downturn of the overall economy disproportionately impacts the poor with fast-rising food and gas prices.

These are not just numbers. Legal aid lawyers help people with basic human needs—shelter, protection from domestic violence, access to health care, and income protection. Families, and particularly children, are depending on us daily to ensure safety, adequate food, and appropriate housing.

Strategies to Close the Justice Gap

LSC is committed to ensuring that our programs operate efficiently, effectively, and that they use their funds as Congress intends them to be used. That is the first step in ensuring that we do all that we can with the resources provided to close the justice gap in America.

Technology is a vitally important tool to increase the efficiency of programs, to improve access to justice, and to provide self-help options for those that we are unable to directly serve. Technology improvements allow LSC grantees to deliver more assistance at a

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00131 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.096

Submitted May 20, 2008

lower cost. In FY 2009 for example, we plan to use past successes as a guide to expand intake through online systems; expand assistance for *pro se* litigants through the development of additional automated forms; explore innovative uses of new technologies; and provide support for replication of other technologies that have been demonstrated to both improve and expand client services.

Private attorney involvement is another important element of the strategy to close the justice gap. The LSC Board has taken a leadership role and is using LSC's national voice to encourage a culture of private attorney involvement as an effective tool for providing legal services to more persons in need. Today, 88 LSC-funded programs have adopted pro bono resolutions in support of enhanced private attorney involvement. Last year, private attorneys handled more than 97,000 cases for LSC-funded programs. All LSC-funded programs are required to expend the equivalent of 12.5 percent of their Basic Field Grant to recruit and train private attorneys and to refer and screen cases for them. While an important element of the strategy, all agree that private attorneys alone cannot close the justice gap.

Technology tools can increase our efficiency and extend self-help assistance and private attorneys can expand the pool of resources, but we know that LSC cannot fully realize its mission without more resources from both the public and the private sectors. In this effort, the federal government must lead the way, consistent with its role in maintaining the formal civil justice system, providing an orderly forum for the resolution of disputes, and providing an avenue to equal justice for all. State and local governments, private funding sources, and the private bar are also critical partners and share the responsibility for increasing their contributions of both funding and services.

Our *Justice Gap Report* concluded that to serve just those who actually sought help and were eligible to receive it, LSC's funding for Basic Field Grants would have to more than double, as would state, local, and private funding. Recognizing the political and fiscal realities at the time, the Board elected to request that the increase in Basic Field Grants be spread over five years.

LSC Appropriations

For FY 2007, the first step of the five-year plan, LSC requested a 20 percent increase in Basic Field Grants funding to $386.6 million, and received $330.8 million, a $22 million or 7 percent increase. This outcome, a product of broad, bipartisan support, was the Corporation's first increase in 4 years, and resulted in 11,000 additional closed cases for the year. For FY 2008, while funding made great strides in both the individual House and Senate bills, the final funding increase for Basic Field was only one-half of one percent or $332.4. For FY 2009, the Board has requested another 20 percent increase over last year's Senate mark, for a total LSC request of $471 million. I should note that if LSC funding had kept pace with inflation on our FY 1995 appropriations of $400 million, our funding level today would be $555.6 million.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00132 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.097

Submitted May 20, 2008

Federal funding increases are only a part of the story and a part of the need. Nationwide, LSC funds have been leveraged to accelerate state, local, and private fundraising. The amount of non-LSC funding for LSC grantees has shown a $100 million increase in the period between 2005 and 2007. However, while state, local, and private funding have been increasing, state budget deficits and the drop in federal interest rates are placing some of those increases at serious risk. Interest on Lawyers Trust Accounts (IOLTA) funding, for example, is an extremely important source of revenue for LSC-funded programs. In 2006, it was the third largest funding source for LSC grantees, following LSC funds and grants from state and local governments. However, the falling federal interest rates are leaving IOLTA programs experiencing drastically smaller increases in 2008, or even funding cuts in some states. New Jersey, for example, is expecting a $10 million cut in IOLTA revenue in 2008, while Maryland is expecting to just break even.

GAO Update

As you know, the Government Accountability Office (GAO) issued two reports, one in September 2007 on the Corporation's governance and accountability and another in January 2008 on our grants management and oversight. We appreciated both of these reviews of our policies and practices and cooperated fully with GAO throughout the audits. Further, we accepted all of the recommendations and have made it a top priority to address the recommendations of both reports and have implemented or gone beyond nearly all the recommendations of both reports. With regard to the Governance and Accountability Report, the Corporation has:

- Approved a Code of Ethics and Conduct for directors, officers and employees of the Corporation, and scheduled training for next month.
- Established a separate Audit Committee of the Board and approved a charter for the Committee. Among other responsibilities, this committee will conduct periodic evaluations of key management processes, including risk management and mitigation, internal controls and financial reporting.
- Approved the continued use of the Government Accounting Standards Board guidelines for LSC's financial reports.
- Completed a Continuity of Operations Plan for the Corporation, which has been disseminated to all LSC staff.

In addition, LSC management has begun the process of establishing a more formal and rigorous risk management program at the Corporation. Management has researched a variety of risk management programs and best practices, identified the risk environment for the corporation, and begun an office-by-office risk assessment process. We plan to implement a risk management program this year commensurate with the size and budget of LSC.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00133 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.098

Submitted May 20, 2008

The Board has had regular updates from management on compensation, personnel policy, compliance, and financial issues. The Board directed the Office of Inspector General to deliver the 2007 audit report from LSC's independent public accountant earlier than last year when it was delivered in April. The audit was delivered this year on January 7. To date, the Board has drafted charters for all Board committees, and approved formal charters for the Audit, Finance, and Provisions committees. Approval of a final charter for the Operations and Regulations committee and a newly constituted Governance and Performance Review committee is pending. The Governance and Performance Review committee will then have responsibility for taking action on the final governance recommendations from GAO. These recommendations include:

- Orientation for new Board members to familiarize them with LSC's programmatic roles and governance and accountability issues.
- Providing a regular training program for board members.
- Implementing a formal means by which the Board can evaluate its collective performance and the performance of individual members.

With regard to the GAO report on LSC's grants management and oversight, as evidence of its commitment, the Board of Directors at its January 2008 meeting established a three-member *ad hoc* committee, including a Board liaison, to work directly with LSC management and its Office of Compliance and Enforcement (OCE), the Office of Program Performance (OPP), and the Office of Inspector General (OIG) to implement the recommendations of the GAO reports.

The Board liaison held two day-long meetings with representatives from each of those offices to discuss areas where improvement could be made with respect to communication, information sharing and fiscal oversight. At its April 2008 meeting, the Board of Directors adopted a clear delineation of the roles and responsibilities of the various offices based on the recommendations of the ad hoc committee.

To date, LSC management has:

- Established working groups, held many hours of joint staff meetings to work on the roles and responsibilities of the various oversight offices, and is reviewing a draft memorandum of understanding for information sharing among OCE, OPP, and the OIG, while ensuring the OIG's independence.
- Established new protocols for information sharing and coordination of all work between OCE and OPP, including program visits.
- Completed four in-depth training sessions for LSC's oversight staff.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00134 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.099

Submitted May 20, 2008

- Reviewed and expanded the current risk factors for selection of grantees for program visits and updated procedures in manuals. In addition, the Corporation revised procedures to ensure that they reflect our current practice of using information and results from oversight and audit activities and other risk criteria in planning internal control and compliance reviews, which also are being included in our manuals.

- Revised and created written guidelines for the fiscal component of OCE's regulatory compliance reviews and established written guidance for follow-up on grantee interviews.

- Established set timeframes for report preparation for program visits. Final reports for most visits must be provided to the grantees within 90 days from an on-site program visit, and draft reports must be provided 60 days after a program visit. For large programs with multiple offices, the timeframes are 90 days for drafts and 120 days for final. These and other procedures have all been reduced to writing in manuals.

In fulfillment of a commitment to go beyond the GAO recommendations to make related improvements, LSC suspended routine on-site program visits in February and March to complete all 2007 outstanding reports, and has now completed and provided to LSC grantees all program visits reports, in draft or final form, through 2007. With new procedures in place, LSC has set a new program visit schedule for the remainder of 2008.

The report on grants management contained troubling references to potentially improper use of grant funds by nine LSC-funded programs. I referred eight of the nine programs identified in the GAO report to the Acting Inspector General for follow-up on November 20, 2007. The ninth program, Nevada Legal Services, Inc., was retained by management for follow-up since the Office of Compliance and Enforcement already commenced a compliance review of the program prior to the GAO visit. LSC is taking action to terminate the current grant to Nevada Legal Services and replace it with month-to-month funding with strict special conditions that require monthly action and reporting to LSC. Should the program be unable to meet the special conditions, LSC will terminate the month-to-month funding and seek a different provider through a new competition pursuant to the LSC regulations.

The OIG has completed field work at all 8 of the programs referred to them with issuance of reports anticipated to be completed by the end of June. The OIG has reported that "for the first three sites reviewed and based on the OIG's preliminary analysis, management at the grantees have taken corrective actions based on the GAO recommendations, and have or are implementing additional controls to prevent those issues from recurring."

In addition, I sent an Advisory to all LSC-funded programs on March 20, 2008 reminding Executive Directors of the need for appropriate documentation of expenditures of LSC funds, the regulations regarding unallowable costs, and specifically stressing the

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00135 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.100

Submitted May 20, 2008

prohibition of expenditures for alcohol and lobbying, the need for written policies governing salary advances, and a reminder of the regulation governing derivative income.

In summary, I want to assure you that we truly embrace these reviews, take them with the utmost seriousness, and welcome the opportunity that they afford us to do our job even better. We are working diligently and expeditiously to implement the GAO's recommendations and are even going beyond what was specifically recommended in the reports.

Conclusion

The *Justice Gap Report* is as compelling today as it was when it was released in September, 2005. The most current studies conducted by LSC-funded programs, state bars, and Access to Justice Commissions, and the clear impact of the current economic conditions as evidenced by the foreclosure crisis, have documented the expanded numbers in need. While the statistics are daunting, numbers alone do not tell the whole story of the impact that the lack of resources for providing high-quality civil legal assistance has on the lives of low-income individuals and families.

I would like to offer two brief stories to put a human face on what we are talking about today:

Julie remembers with vivid detail the event that would mark the beginning of her abusive relationship with Robert, her husband. After an intense argument during a family trip to the grocery store, Julie confronted Robert who had endangered their daughter in the ensuing angry melee. A fistful of hair. A bathroom mirror. Robert made use of both, grabbing her hair and slamming her face into the mirror. A phone call. An arrest. Three days later, Robert returned home begging for forgiveness through tears, promising nothing similar would ever happen again. What followed was a 15-year cycle of violence characterized by conflict and empty reconciliation. Finally, on one fateful day in 2006, Robert beat Julie repeatedly with a baseball bat until she was rendered unconscious. When she came to she finally made a run for it, escaping to the Guadalupe Family Violence Shelter which in turn contacted Texas RioGrande Legal Aid (TRLA). The shelter's legal advocate and TRLA staff worked with Julie to move her life forward. Months later, Julie followed through on her divorce, and she left Robert for good. Julie says, "Without the help of TRLA, my legal advocate, and my attorney, I have no doubt that I would still be running and hiding from Robert and searching for a way out."

"Betty" took two part-time jobs and sold her furniture last spring while trying to save her home from foreclosure. Now she thanks God and her legal aid attorney at the Community Legal Services of Mid-Florida, for saving her home from predatory lenders. Betty, now 64, and her husband received a no-interest mortgage loan in 1989 to make improvements to their house. The monthly payments were manageable, but when her husband died and his pension ran out last year, she began having trouble making ends meet. When a card showed up in her mail advertising a refinancing plan that promised to solve all her financial woes, Betty thought she had found her solution. She applied for and received an

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00136 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.101

Submitted May 20, 2008

adjustable rate mortgage that quickly burdened her with monthly payments in excess of her income. Even when she took a second job as a Salvation Army bell-ringer during the Christmas holidays, she could not earn enough to make the payments. Foreclosure proceedings began. When Betty arrived at the offices of Community Legal Services of Mid-Florida, she was two days away from losing her home for good. Her attorney immediately filed an objection with the court and entered into negotiations with the mortgage company, which agreed to offer Betty a reverse mortgage that would allow her to stay in her home. She also received money to repurchase the furniture she sold. Community Legal Services has also filed suit against the mortgage broker for engaging in deceptive practices.

For these individuals and the hundreds of thousands of others that we serve, civil legal assistance is not just an abstract concept, but the key to their shelter, safety, health, and self sufficiency. It all flows from our founding principle of equal access to justice, a principle promised in the preamble to the Constitution and the Pledge of Allegiance. As U.S. Supreme Court Justice Lewis Powell said, "Equal Justice under Law" is not merely a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society ... it is fundamental that justice should be the same, in substance and availability, without regard to economic status." That is the mission that LSC and our grantees across the country seek every single day to fulfill.

Thank you and I would be happy to respond to your questions.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00137 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.102

STATEMENT BY
KENNETH F. BOEHM
CHAIRMAN, NATIONAL LEGAL AND POLICY CENTER
TO THE
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

HEARING: "CLOSING THE JUSTICE GAP: PROVIDING CIVIL LEGAL ASSISTANCE TO LOW-INCOME AMERICANS"

May 22, 2008

Good afternoon, Mr. Chairman and distinguished members of the Committee on the Judiciary. My name is Ken Boehm and I serve as Chairman of the National Legal and Policy Center. From 1991 to 1994 I served as Assistant to the President and Counsel to the Board of the Legal Services Corporation. It is an honor to appear before you today and offer my views on providing civil legal assistance to low-income Americans.

I would like to focus on two observations.

First, any discussion of meeting the civil legal needs of the indigent that fails to consider any models of delivery other than just giving more funding to the Legal Services Corporation, fails to appreciate the fact that most help in providing for such legal needs does not come from LSC-funded lawyers and never has.

Second, there is ample evidence to suggest that the LSC model of delivering legal assistance is deeply flawed and dysfunctional. There have been decades of failed attempts by Congress to reform the program. The most recent negative GAO reports, calls for investigation by Congress, national media reports of mismanagement and wasted funds are hardly new. The fact that LSC's last reauthorization expired in 1980 and in the almost 28 years since no Congress has been able to reauthorize LSC speaks for itself.

In Washington, there is nothing surprising about federally funded programs producing studies showing the need for huge amounts of additional funding for the program producing the study. The legal needs study produced by the Legal Services Corporation, Documenting the Justice Gap in America, is no exception.

This "study" was hardly independent in any sense of the word in that it was produced by LSC with the active help of the programs funded by LSC. The conclusion was that more funding was needed for LSC with the helpful suggestion that an increase to $1.6 billion annually - five times the current appropriation – might be a good start.

45653.103

Aside from the very predictable conclusion and the obvious lack of independence, the study provides almost nothing in addressing what might be more cost-effective ways of assisting low-income individuals with legal needs.

Anyone reading the study might very well conclude that LSC-funded programs are virtually the only way the poor can get any access to justice. This is false and always has been. One 1995 study showed that the estimated number of hours of *pro bono* legal assistance to the poor was approximately five times greater than the hours worked by LSC-funded lawyers. *See:* "Private Alternatives to the Legal Services Corporation," *Alternatives in Philanthropy,* October 1995, page 5

LSC could have updated the same study but that would have undercut their position that the best way to solve the legal needs issue is simply a five-fold increase in their budget by Congress.

The real weakness in limiting any inquiry to addressing the civil legal needs of the poor to the LSC model is that certain legal reforms would far more efficiently provide justice in a more cost-effective way. Consider the assumption that legal needs are always best met by use of attorneys. Many of the legal needs of the poor involve relatively modest amounts in controversy yet all too often the LSC model calls for a lawsuit with attorneys on both sides. Reforms in recent years have been addressing just this problem.

Increasing the jurisdictional amount of cases allowed in small claims courts

The trend in recent years is to allow individuals to resolve disputes in small claims courts in cases involving increasing amounts in controversy. These small claims courts are fact-based and typically no lawyer is needed. Justice also comes swifter and with far less cost.

Increased mediation

Many jurisdictions – including Washington, D.C. – have instituted reforms calling for increased mediation of civil disputes. Mediation is far more cost-effective than a lawsuit and generally results in fast resolution of disputes.

Increased use of ombudsmen

In recent years states have initiated ombudsmen programs to resolve relatively minor disputes with state agencies and some regulated industries. Again, this method is far more cost-effective than a lawsuit and generally delivers results quicker.

More justice does not automatically mean more lawyers

So why doesn't LSC advocate more reforms that make justice for everyone less dependent on lawyers and lawsuits? The famous line from Bleak House by Charles Dickens may explain part of the reason:

45653.104

> "The one great principle of English law is to make business for itself."

A huge increase in LSC funding would not only decrease the perceived need by lawyers in private practice to provide *pro bono* assistance to the poor but it would generate a large increase in litigation. Those sued by LSC-funded lawyers would have to hire lawyers of their own, thus generating lots more business for the organized bar. All too often many of those on the receiving end of such lawsuits are middle class or working poor. The old saying that the average small business person is one lawsuit away from bankruptcy is true of many sued by legal services lawyers.

Over the years, numerous farmers have complained to Congress that they settled meritless or trumped up legal complaints by legal services lawyers for one reason: they could not afford to pay for a lawyer. In one case, a 70-year old Ohio vegetable farmer, Russell Garber, was sued by a program funded by LSC under a federal law that clearly did not apply to small family farmers. Mr. Garber decided to fight for his rights in federal court. Here's part of the news account of that fight:

> "I didn't do anything wrong," Garber said. So he fought the case, on principle. And won. A lower court summarily dismissed the case, and last year a unanimous three-judge federal appeals court decision affirmed the dismissal, saying Garber is a family farmer not covered by the law cited in the suit.
>
> The price tag of victory was more than $100,000, he said.
>
> "That's a chunk of change for an old farmer," he said. "I had to borrow money. I don't have that kind of money lying around."
>
> *See:* "Principled Planter; Venerable farmer's roots are set in hard work, fairness," *Dayton Daily News,* July 21, 2004, Page E1.

For anyone interested in promoting better access to justice, a more useful study might be based on the broader question: what are cost-effective ways to increase access to justice by decreasing the need for expensive lawyers and lawsuits? I would not expect the organized bar to support any such study nor would I expect LSC or its programs to advocate anything that expanded access to justice by eliminating the need for lawyers and lawsuits to solve everyday common legal problems for the poor.

While much has been written about how over-lawyered the United States has become, it is important to keep in mind that most of the developed world finds creative ways to address basic legal needs without resorting to anything near the number of lawyers and lawsuits found in our country.

45653.105

My second observation is that the more than several decades LSC has been operating have provided plenty of evidence to suggest that the model of legal services delivery it promotes is prone to inefficiencies, abuses, lack of accountability and wasted funds.

In just the last two years, LSC has been the subject of two GAO inquiries which exposed serious management and accountability problems, calls for investigation and reform by Congress, national media allegations of funds wasted on limos, over-priced hospitality and travel, a poisonous relationship between LSC and its Inspector General, and other problems. Just the fact that Congress over almost the last 28 years, regardless of which party was in power in the White House or Congress, has failed to reauthorize LSC and made numerous attempts to reform its abuses underscores the institutional problems with the current model.

GAO Report: Legal Services Corporation: Governance and Accountability Practices Need to be Modernized and Strengthened, GAO-07-993, August 2007

The GAO found:

- LSC's "governance and accountability requirements are weaker than those of independent federal agencies and U.S. government corporations."
- The LSC board had no committees specifically targeted at "providing critical audit, ethics, or compensation functions..."
- LSC is "at increased risk of conflicts of interest," and "has not kept up with current management practices"

GAO Report: Legal Services Corporation: Improved Internal Controls Needed in Grants management and Oversight, GAO-08-37, December 2007

The GAO found:

- "weaknesses in LSC's internal controls over grants management and oversight of grantees that negatively affects LSC's ability to provide assurance that grant funds are being used for their intended purpose."
- "lack of clear definition in thee responsibilities of two of the three organizational units that oversee the work of the grantees."
- "monitoring of grantee internal control were insufficient in scope to achieve effective oversight."
- "Among the questionable expenditures GAO found were grantee use of funds for expenditures with insufficient supporting

45653.106

documentation, unusual contractor arrangements, alcohol purchases, employee interest-free loans, lobbying fees, late fees and earnest money."

Strained Relationships with Congress and LSC Inspector General

Over the years, LSC has frequently had strained relationships with both Congress and its own Inspector Generals. During the last two years, this has only worsened – with sometimes the two problems intertwining. A case in point was September 26, 2006 hearing before the House Judiciary subcommittee overseeing LSC. After LSC Inspector General had issued audits detailing excessive spending by LSC officials (including first-class airfares, lavish meals, pricey hotels, and other perks), Rep. Chris Cannon called for a hearing. LSC President Helaine Barnett failed to appear for the hearing leading Rep. Cannon to write her a letter threatening a subpoena if necessary to get her attendance.

An Associated Press story quoted LSC board transcripts of LSC directors critical of the LSC IG for investigating waste, fraud and abuse and hinting that the IG would be fired if he didn't "shape up."

Upon Congress learning that the LSC was considering firing the IG, a congressional aide hand-delivered a letter signed by Senators Grassley and Enzi as well as Rep Cannon warning the LSC Chairman that firing the LSC IG "would be an egregious act in light of the fact that Mr. West is investigating you, the LSC board as well as your president."

The overall picture is one of a highly dysfunctional federal program with a long history of failing to meet even minimal standards for management, accountability and ethics. This is hardly the type of program deserving a five-fold increase in appropriations.

45653.107

Written Congressional Testimony for Senate Judiciary Committee Hearing on May 22, 2008

Submitted by F. Vernon Boozer, Chair, Maryland Legal Services Corporation

Funding for Civil Legal Services in Maryland – A Brief History of the Maryland Legal Services Corporation

When President Reagan submitted his first budget to Congress in early 1981, he proposed to eliminate funding for civil legal services to the poor, despite the support that the federal government had been providing since 1964. In Maryland, legal services supporters – judges, state and local bar associations, legislators, legal aid lawyers, community services providers and clients – came together to meet this threatened crisis to create a new funding model that had only recently been implemented in three other states, but was widely used in Canada and Australia.

Legislation was quickly developed and enacted by the Maryland General Assembly in early 1982 to create the Interest on Lawyer Trust Accounts (IOLTA) program (Maryland Code Business Occupations, §10-303), which requires banks to pay interest to the Maryland Legal Services Corporation on nominal or short-term attorney escrow account deposits that would not generate net interest for individual clients, but when placed in pooled accounts generate substantial funds to be used for civil legal services to the poor.

At the same time, another bill established the Maryland Legal Services Corporation (MLSC) as the entity to administer the IOLTA funds and provide grants to civil legal services programs in the state. MLSC is governed by a nine-person Board of Directors appointed by the Governor of Maryland and confirmed by the Maryland Senate. (Maryland Code, Human Services, Title 11, §11-101-11-801). The MLSC Act states, "There is a need to provide equal access to the system of justice for individuals who seek redress of grievances. There is a need to continue and expand legal assistance to those who would otherwise be unable to afford adequate legal counsel."

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00143 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.108

Other major funding for civil legal services in Maryland is from surcharges on court filing fees, first enacted by the Maryland General Assembly in 1998 and increased in 2004. The federal Legal Services Corporation (LSC) provides funding to one organization in Maryland, the Legal Aid Bureau (LAB), but this funding has fluctuated over the years, from $4.3 million in 1995, to $2.86 million in 2002 and to $3.95 million in 2007. Given the rate of inflation over the past years and increases in expenses, LSC funding to the Legal Aid Bureau has decreased significantly in real dollars. A recent study found that approximately half of the people seeking services from LSC grantees are turned away due to lack of resources (*Documenting the Justice Gap in America*, Legal Services Corporation, September 2005).

From its inception, MLSC has made grants totaling over $108 million to help provide services in more than 1.5 million legal matters for Maryland's families in areas of family, housing, consumer, employment, health care and other civil legal matters. MLSC currently funds 38 organizations, with 60% of its funding for the Legal Aid Bureau. The existing legal services delivery system in Maryland is characterized by creativity, innovation and collaboration. It offers a triage system that provides a continuum of service from brief advice to representation in complex litigation. Services are provided through a variety of delivery mechanisms and models, including self-help centers, hot-lines, and workshops, as well as staff attorney, pro bono, private attorney/reduced-fee, and assisted pro se delivery programs.

The Need for More Federal Funding of Civil Legal Services

IOLTA Revenues Are Volatile

Despite the successes of MLSC over its 25-year history of expanding civil legal services in the state, its primary revenue source is highly volatile. IOLTA revenues are by nature unstable, characterized by fluctuating interest rates and principal balances of escrow accounts, making the availability of funds for Maryland legal services providers uncertain from year to year. The high interest rates of the 1990s plummeted in the early 2000s, rising again over the last several years, only to drop again precipitously over the past several months. For example, in 2004 Maryland faced a crisis with a significant loss of IOLTA income, which resulted in

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00144 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.109

significant hardship to many small providers, as well as leaving Maryland's statewide Legal Aid Bureau in a position where it would have been unable to meet its financial obligations, ongoing operating costs, and the ability to keep all of its offices open. The securing of additional filing fee surcharge revenue through action of the Maryland General Assembly along with the rebounding of IOLTA rates averted the crisis at that time, but now IOLTA rates have again dropped significantly. Given the vagaries of the economic environment, IOLTA revenues will never be a reliable, stable source of funding to meet the critical legal needs of Maryland's poor.

Poverty Population and Legal Needs in Maryland

The Maryland Legal Services Corporation's income eligibility guidelines are statutorily defined as 50% of the state's median income, resulting in a much higher threshold for service than the federal guidelines permit. Given Maryland's high median income, a family of four may earn about $47,000 to be eligible for legal services under MLSC guidelines, which includes many of the state's working poor. That same family of four may earn no more than $26,500 to be eligible for services from the Legal Aid Bureau, which adheres to federal LSC guidelines. Because of these two sets of financial eligibility criteria, approximately 500,000 Marylanders are eligible under LSC guidelines, while an additional half million people are eligible under MLSC income guidelines. In contrast to the eligible population, MLSC-funded legal services programs provided assistance with 104,000 civil legal matters in 2007.

Numerous studies document the unmet need for legal services at approximately 80%. Self-represented litigants, especially in family matters, present a particular hardship for litigants as well as significant challenges for the courts and the administration of justice. Seventy to eighty-five percent of family law cases in Maryland have at least one litigant who is unrepresented. In approximately 40% of trials, both parties appear unrepresented.

A Case Example

In a recently reported case by one of MLSC's grantees, an IOLTA-funded attorney helped a single mother get custody of her two children. The father, to whom she was never

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00145 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.110

married, was subject to a protective order and incarceration for significant violence during the relationship. The children had witnessed the domestic violence and required therapy. The father, represented by an attorney, filed for joint physical and legal custody or alternatively open and reasonable visitation. The mother was fearful of him, and although a good witness when prepared, she really needed the assistance of an attorney to keep her focused on the proper issues when on the stand. The mother's attorney was able to convince the court that joint legal or physical custody was not proper or in the best interests of the children in this case, and that supervised visitation was appropriate given that the children had not seen their father in three years, coupled with their witnessing the domestic violence and the therapy needed as a result. The court ordered one-day-a-week supervised visitation with a review by the court in six months.

Although this is a fairly routine case for a family law attorney, a self-represented litigant would have terrible difficulty navigating such a trial and would likely not achieve a fair result when up against an experienced attorney representing the opposing party. These situations occur every day, in every state and every courthouse in the country, endangering the health and well-being of children and families. Unrepresented litigants also place an undue burden on our judges, who must be neutral decision makers yet struggle to ensure a fair process in such situations. Recently, the Maryland Judiciary established a work group on self-representation and issued a report with recommendations, including the establishment of the Maryland Access to Justice Commission, to address this ever-growing problem.

Conclusion

Failure to provide adequate funding for civil legal services creates tremendous hardships and additional burdens for our citizens, communities and society at large. The social and economic costs of failing to provide adequate revenue for civil legal assistance are immeasurable. In a government of laws, not of men, such denial of representation undermines the very principles on which our nation was established, and is a fundamental failure of our justice system. Despite the growth in MLSC's budget, the demand for services has far outstripped the resources to provide civil legal services to the majority of Marylanders who desperately need such assistance. IOLTA revenues are inherently unstable. The cost to society of unmet legal needs of the poor is high, and a commitment on the part of the federal government to adequate, stable funding is essential.

45653.111

OPENING STATEMENT OF

SENATOR BENJAMIN L. CARDIN

SENATE JUDICIARY COMMITTEE

HEARING

**"CLOSING THE JUSTICE GAP:
PROVIDING CIVIL LEGAL ASSISTANCE TO LOW-INCOME AMERICANS"**

Thursday, May 22, 2008

The Committee will come to order. I want to thank Chairman Leahy for allowing me to chair this Senate Judiciary Committee hearing today, entitled "Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans."

Today's hearing will highlight the growing access to justice gap, and to explore what actions Congress can take to remedy this critical problem.

Access to justice for Americans is critical to justice in a democracy. When federal judges take their judicial oath prescribed in the United States Code, they swear to "administer justice without respect to persons, and do equal right to the poor and to the rich…" I am gravely concerned that our current civil justice system makes it difficult for judges to perform their proper function, when either one of both of the parties do not have access to a lawyer or legal assistance for serious cases.

Let us begin with some statistics. Americans are eligible for civil legal assistance provided through Legal Services Corporation (LSC) funded programs if their household income does not exceed 125% of the federal poverty guidelines. In 2007, 125% of the federal poverty guidelines amounted to $25,813 for a household of four. Fifty million Americans are therefore eligible to receive civil legal aid for LSC-funded programs – including 13 million children, which is one in five children in the United States.

How do we measure equal justice under the law?

LSC issued a comprehensive report in 2005 entitled "Documenting the Justice Gap in America – The Current Unmet Civil Legal Needs of Low-Income Americans." The report found that half of all individuals who qualify for and actually seek assistance from Corporation-funded programs are denied help because of the lack of resources. This means that LSC turns away one million cases per year due to lack of funding. This figure does not include: those who do not seek out help because they believe they will be turned away; those who only received limited advice, but require full representation to address their legal problem; and those that are turned away from non-LSC-funded legal aid providers.

45653.112

A 1993 American Bar Association study and recent state studies consistently report that – despite the combined efforts of the federal program, state, local, and private funding, and pro bono support – between 70 and 80 percent of the legal needs of the poor are unmet.

Studies have shown that poor households will on average face from 1 to 3 legal problems a year. This lack of civil legal assistance disproportionately affects those groups most in need of assistance: low-income individuals, minorities, the elderly, as well as individuals living in rural areas or on Native American reservations.

What happens when individuals do not have access to civil legal assistance? I submit that inevitably justice suffers. Judges are put in the position of trying to provide some assistance and advice – while remaining impartial – to one or two unrepresented parties before them. Social service agencies absorb additional costs from those that are unfairly denied health care or social services benefits. Neighborhoods and communities are damaged due to unjust evictions. Families are torn apart, and domestic violence and abuse continues unabated. Public health and law enforcement costs rise. The rule of law is undermined, and Americans come to believe that justice is only for the rich, not the poor.

Let me also say a word about the Legal Services Corporation. Of course any government program can be made better. And that does not exclude the operations of the legislative branch of government. Congress itself has not done its job here, as the last authorization for LSC lapsed during the presidency of Jimmy Carter. I am pleased that LSC has taken a number of strong steps to address the recent problems identified in the GAO reports. I want to work with my colleagues to strengthen and improve the LSC. We need to comprehensively reexamine the LSC to meet the challenges of the 21st century, which will include examining the funding authorization levels for LSC and the current restrictions on the use of LSC funds.

But I must tell you that the funding for LSC has been anemic at best. The value in real dollars of the funding appropriated by Congress to LSC has declined dramatically over the past quarter-century. Congress created a "minimum access level" of funding for LSC in 1981 of $321 million, which is the level arguably needed to provide a minimum level of access to legal aid in the United States. Adjusted to inflation, this level would have to be over $687 million in 2005 dollars. However, LSC was only allocated $348 million by Congress in FY 2007.

Let me also personally thank Senator Kennedy for his tireless work on behalf of civil rights. I will include in the record the letter to the Appropriations Committee which has been circulated by Senator Kennedy, and signed by a large, bipartisan group of Senators, calling for a minimum of $400 million in LSC funding for Fiscal Year 2009. Senator Barbara Mikulski, the Chairman of the Appropriations Subcommittee on Commerce, Justice and Science has also been a strong advocate for LSC funding. And Senator Tom Harkin has been a steadfast friend of LSC, as a former Legal Aid attorney and a senior member of the Health, Education, Labor, and Pensions (HELP) Committee,

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00148 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.113

which oversees the LSC program. Senators Mikulski and Harkin have been tireless advocates for LSC, and I look forward to working with them in my role on the Judiciary Committee in strengthening access to justice and civil legal assistance for low-income Americans.

Let me close with a final statistic: according to one study, each Legal Aid attorney serves over 6,800 people, while there is one private attorney for every 525 people in the nation.

This is not "Equal Justice Under Law", as promised by the etching at the entrance to the United States Supreme Court, which sits just across the street from us. Nor have we as a nation fully "established justice," as called for in the preamble to the Constitution. The next Congress, and a new Administration, must take aggressive action to close this justice gap, and I look forward to working with my colleagues on this issue.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00149 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.114

BRENNAN
CENTER
FOR JUSTICE

Brennan Center for Justice
at New York University School of Law

161 Avenue of the Americas
12th Floor
New York, New York 10013
212.998.6730 Fax 212.995.4550
www.brennancenter.org

Committee on the Judiciary
United States Senate
Statement of
Rebekah Diller
Deputy Director, Justice Program
Brennan Center for Justice at NYU School of Law
May 22, 2008

On behalf of the Brennan Center for Justice at NYU School of Law,[1] I thank the Committee on the Judiciary for holding this hearing and for providing this opportunity to discuss the Justice Gap in America – a crisis that threatens one of our nation's proudest traditions: "equal justice for all."

Last year, our White Paper titled "Access to Justice: Opening the Courthouse Door," documented the many ways in which meaningful access to the courts is increasingly out of reach for low-income Americans. One of our major findings was that low income people in this country cannot secure legal representation in civil cases: mortgage foreclosures, housing evictions, child custody disputes, to name three important categories. I will testify today on the causes of the shortage of lawyers to represent the poor and on the harmful consequences for American communities and for our system of justice.

I. Most Low-Income Individuals Cannot Obtain Counsel to Represent Them in Civil Matters.

The crisis of representation for low-income people in civil cases is thoroughly documented. Yet notwithstanding widespread acknowledgment of the problem, the crisis persists, and grows worse, because of three factors: 1) chronic funding shortages, 2) funding restrictions, and 3) shortfalls in pro bono help.

a. LSC, the largest source of legal aid funds, is underfunded.

The major source of funding in the United States for legal aid in civil matters is the federal Legal Services Corporation (LSC), established by Congress in 1974.[2] The value in real dollars of the funding appropriated by Congress to LSC has declined dramatically over the last twenty-five years. In fiscal year 1981, Congress allocated $321.3 million to LSC, which at the time was seen as the level sufficient to provide a minimum level of access to legal aid in every county, although not enough to actually

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00150 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.115

meet all the serious legal needs of low-income people.[3] Adjusted for inflation this "minimum access" level of funding would need to be about $687.1 million in 2005 dollars; yet Congress's LSC appropriation for fiscal year 2008 was a mere $350.5 million. On average, every legal aid attorney, funded by LSC and other sources, serves 6,861 people. In contrast, there is one private attorney for every 525 people in the general population.[4]

As a result of money shortfalls, in 2004 LSC-funded programs turned away at least one person seeking help for each person served.[5] This means that approximately one million cases per year are turned away due to lack of funding.[6] As striking as these figures are, they understate the real number of low-income people who go unserved because they do not include those who do not seek out help, those who were turned away from non-LSC-funded legal aid providers, or those who received limited advice but required full representation.

b. Outdated, ill-conceived, and wasteful funding restrictions prevent LSC grantees from helping people solve legal problems.

In addition to funding shortages, the capacity of legal aid programs to help the poor is impeded by outdated, ill-conceived and wasteful funding restrictions created by Congress in 1996. These restrictions cut deeply into low-income people's capacity to secure meaningful access to the courts.

First, Congress restricted the legal tools of LSC-funded lawyers for the poor. Specific restrictions prohibits the poor from relying on these lawyers: 1) to participate in class actions; 2) to bring claims for court-ordered attorneys' fee awards; 3) to learn about and enforce their rights; and 4) lobby policymakers or legislators (except under very narrow circumstances).[7]

Second, Congress limited the categories of people who can rely on LSC-funded lawyers, excluding: 1) certain populations of legal immigrants, 2) all undocumented immigrants, 3) people in prison, even those about to reenter society, 4) people charged with illegal drug possession in public housing eviction proceedings.[8]

Finally, Congress imposed an extraordinarily harsh restriction on LSC-funded programs -- a poison pill restriction -- that extends the federal funding restrictions to cover the privately financed activities of LSC recipient programs as soon as they accept their first dollar in federal LSC funds. As a result, more than $450 million in funding from state and local governments, private donations, and other non-LSC sources is restricted under the same terms as the LSC funds.[9]

This "restriction on state, local and private funds" – all the money possessed by LSC recipient programs from sources other than LSC – is virtually unprecedented in its sweep. It is common for government to restrict the activities it funds; but, it is extremely rare and raises grave constitutional concerns when Congress restricts the advocacy that organizations engage in with their own private funds.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00151 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.116

Acknowledging that the restriction overreached, LSC issued a "program integrity regulation" to provide grantee programs – at least in theory – with some opportunity to spend their own funds in support of the restricted activities.[10] However, LSC's regulation, itself, imposes conditions so onerous that almost no program in the country has been able to comply. To spend non-LSC funds on restricted work, grantees must create a new organization run out of a physically separate office, with separate staff and equipment.

This model is wholly out of line with the way the federal government treats other non-profit grantees, including, most notably, faith-based organizations. Many non-profits must strictly account for government funds, but virtually none are forced to operate dual systems, isolating their publicly funded activities from their privately funded activities, out of separate offices.[11]

The restriction on state, local and private funds also undercuts the important function that state and local governments, and private donors, can play in closing the Justice Gap – the restriction prohibits these local authorities from running their own justice systems in the way that they, and their local partners, deem best. In certain states with relatively greater amounts of non-LSC funding, justice planners have sought to create entirely separate organizations and law offices, funded by state and local public funders and private charitable sources, and dedicated performing the categories of work that LSC-funded programs cannot do. But, because the restriction requires this work to be done through completely separate organizations, overhead, personnel, and administrative costs are wasted. Dollars that could finance more services urgently needed by families across the country are eaten up by the costs of running duplicate offices.

To illustrate this problem, consider the example of Oregon, where legal aid programs spend approximately $300,000 each year on duplicate costs to maintain physically separate offices throughout much of the state. If the restriction on state and local public funds and private money were lifted, the redundant costs could be eliminated. The significant savings from ending the dual operating systems would enable the legal services organizations to provide coverage for conventional legal services cases – evictions, domestic violence cases, predatory lending disputes – in underserved rural parts of the state where there is limited access to legal assistance. More private donors could be brought into the system as well.

Nowhere is the impact of the restriction on state, local and private funds more profound than in the nation's burgeoning subprime mortgage crisis. Communities around the country are reeling from the effects of foreclosures initiated by predatory lenders. Many predatory lending schemes rely on complex and deceptive lending practices - such as padding mortgages with excessive and illegal fees - that require legal assistance to combat. And many of the victims are particularly vulnerable; predatory lenders often target elderly or disabled homeowners living on fixed incomes for their schemes. Legal aid offices report being flooded with homeowners needing assistance. Yet the restriction

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00152 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.117

dramatically undercuts the ability of subprime victims to obtain legal help that could enable them to keep their homes.

First, because of the restriction on state, local and private funds (in combination with the restriction on claiming attorneys fee awards), legal services offices are entirely unable to demand court-ordered attorneys' fee awards, even though Congress and state legislatures have long recognized, in many statutes, that these fee awards are necessary to deter consumer fraud. As a result, mortgage victims who look to the legal services bar for help, lack the bargaining power needed to deter predatory lenders from engaging in improper practices. Moreover, the legal services bar is denied this revenue that not only punishes bad actors, but that could be used, in turn, to provide urgently needed legal help to additional victims of the crisis.

Second, victims represented by LSC-funded lawyers are barred from participating in class actions, and cannot pursue the class-wide relief that is so obviously necessary when a predatory lender targets a whole neighborhood with an illegal scheme. Instead, individuals are limited to proceeding on a substantially less efficient case-by-case basis.

And, third, the legal services programs are unable to reach out and offer to help to other affected homeowners victimized by same predatory lender, and unable to invite them to join the request for relief being advanced in a pending case.

c. Pro bono assistance provides relief but cannot fill the gap.

Pro bono – legal assistance provided by private law firms for free, or at low cost – provides urgently needed relief to families in need of assistance, but does not, and cannot, substitute for the unique role of the legal services bar.

First, pro bono simply cannot meet the need. Notwithstanding the considerable efforts that have been made to increase pro bono, and despite the vast resources of the major law firms and the large number of attorneys working in the United States, pro bono participation remains low. The average attorney donates less than a half-hour per week to pro bono service, and financial contributions average less than fifty cents per day.[12] Less than one-third of the nation's major law firms even meet the ABA's pro bono challenge of donating three to five percent of total revenues.[13] Moreover, a substantial proportion of pro bono is done for family or friends, not for low-income communities.[14] Fewer than one in ten attorneys accepts referrals from legal services programs or from other organizations that serve the legal needs of low-income communities.[15]

But, more fundamentally, even if law firm pro bono were to increase substantially, it would not supplant the federal government's role, which the Legal Services Corporation Act, nearly thirty-five years ago, described as: promoting equal access to justice, providing representation as a means of improving opportunities for low-income people, and reaffirming faith in the rule of law.[16] Despite the plain strengths of the law firms, a permanent gulf exists between the role of the firms in doing pro bono, and nature of the work that consumes the resources of the legal services bar.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00153 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.118

The legal services bar possesses highly specialized knowledge that the private bar does not possess. Most legislators know this first-hand because, on a daily basis, they hear from constituents who need legal assistance. Legislative staff routinely refer people with domestic violence cases to organizations specializing in domestic violence, and people with eviction cases to attorneys who possess housing court expertise. Nor is the private bar likely to acquire this expertise – the imperatives of business preclude it.

But, even in the rare cases in which uniquely dedicated firms express a deeper interest in specific areas of poverty law, their contribution is done in partnership with legal services programs that possess broader and deeper knowledge of the subject matter. A random law firm or attorney with a bankruptcy practice, for example, cannot provide the appropriate level of assistance on these other issues without training and experience. The legal services programs that deal with the problems of low-income people day in and day out are the repository of knowledge for the types of cases they encounter and are the lynchpin for most local pro bono efforts.

Finally, the number of poverty law cases is massive – literally, millions of cases a year. There is absolutely no possibility that the private bar, even if it were to possess the relevant expertise, would ever be able to begin to meet the level of need that comprises the Justice Gap.

II. Lack of Representation Has Dire Consequences.

The shortage of legal assistance that results from all these factors can have devastating consequences for the court system's attempt to mete out equal justice and for the lives of low-income people.

a. Lopsided Justice

Our adversarial system depends on vigorous representation by both sides to arrive at the just result. When one side of a dispute is unrepresented, the result is lopsided justice. In many civil courts, low-income people are overwhelmingly unrepresented. A Brennan Center study of New York City's Housing Court, for example, found that tenants facing eviction were unrepresented at least 76 percent of the time.[17] In contrast, most observers estimate that landlords are represented 90 percent of the time. As we have seen from the subprime crisis, default judgments – in which the homeowner does not even appear in a proceeding – are the norm,[18] often because the homeowner has no representation and does not know how to navigate the court system.

Studies have found that lawyers make a substantial difference in the outcome of civil cases. Stanford social scientist Rebecca Sandefur has analyzed every known published quantitative analysis of the relationship between attorney representation and civil trial or hearing outcomes in the United States. She concluded that "lawyer-represented cases are more than 5-times more likely to prevail in adjudication than cases with self-represented litigants."[19] An earlier survey of New York Family Court judges,

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00154 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.119

cited by the Supreme Court, found that representation made a critical difference in proceedings to terminate their parental rights: "72.2% of [Family Court judges presiding over termination of parental rights hearings] agreed that when a parent is unrepresented, it becomes more difficult to conduct a fair hearing (11.1% of the judges disagreed); 66.7% thought it became difficult to develop the facts (22.2% disagreed)."[20]

This phenomenon is playing out over and over again in the subprime crisis that is costing hundreds of thousands of families their homes. To be sure, there are homeowners who owe staggering amounts who will not be able to save their homes merely through legal representation. But there are many others – victims of predatory lenders and other unscrupulous scam artists – who have valid legal defenses that they cannot assert without legal help. Because of lack of homeowner representation, lenders are rarely put to the test of meeting the most basic legal requirements for one of the courts' most extraordinary remedies--taking someone's home. As a result, a federal judge in Cleveland recently wrote, legal proceedings have become a "quasi-monopolistic system where financial institutions have traditionally controlled, and still control the foreclosure process."[21]

Perhaps nowhere can the impact of legal assistance be seen more dramatically than in the context of domestic violence cases. Take, for example, the case of Mariella Batista, a Cuban immigrant who had suffered for years from domestic violence by an abusive partner. Ten years ago, Batista sought help from a local legal services program. Even though she feared for her life, the program had to turn her away due to the 1996 LSC restriction that prohibited representation of most immigrants. The next week, Batista was killed by her abuser outside the family court building.[22]

Although Congress has since amended the LSC restrictions to allow for representation of domestic violence victims regardless of immigration status,[23] the lesson persists: denial of access to a lawyer can have tragic consequences. In contrast, when legal services are made available, survivors of domestic violence have assistance obtaining protective orders, custody of their children, child support, and sometimes public assistance. Legal services programs help women achieve physical safety and financial security and thus empower them to leave their abusers. In fact, one recent study found that access to legal services was one of the primary factors contributing to a twenty-one percent decrease nationally in the reported incidence of domestic violence between 1993 and 1998.[24]

b. Societal costs

The consequences of inadequate access to the courts affect not just the individuals directly involved, but also society at large. When families are evicted from their homes because they cannot obtain counsel in a housing proceeding, for example, their resultant homelessness costs taxpayers in the form of public services.[25] In New York City, the average cost of sheltering a single homeless adult is $23,000 annually—far more than providing counsel to prevent an eviction.[26] Medical and other costs rise, too, when individuals, particularly senior citizens, lose their homes because they lack access to a lawyer. When victims of domestic violence are unable to obtain help, the health care,

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00155 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.120

criminal justice, and social welfare systems bear the strain.[27] Employers, too, suffer from decreased productivity and increased absenteeism.[28] When family homes are foreclosed upon, communities lose up to $20,000 in tax revenue, unpaid utility bills, and added costs of policing, maintenance and other services.[29] Additional costs are borne by neighbors, whose property values fall when a nearby home is foreclosed. Many of these societal costs could be ameliorated if low-income individuals had access to counsel to assist them in resolving their legal problems.

III. Conclusion

For all these reasons, the Brennan Center urges Congress to maintain a fully funded LSC and to remove the wasteful and counterproductive restriction on state, local and private funds.

---

[1] The Brennan Center is a nonpartisan think tank and advocacy organization that focuses on justice and democracy. Through advocacy, research and litigation, the Brennan Center has been deeply involved over the last decade in efforts to ensure equal justice for all in our courts. Our Access to Justice Project is one of the few national initiatives dedicated to helping ensure that low- and moderate-income families have effective and unobstructed access to the courts.
[2] *See* 42 U.S.C. § 2996 *et seq.*
[3] LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 2 (2005).
[4] LEGAL SERVS. CORP., *supra* note 3, at 18.
[5] LEGAL SERVS. CORP., *supra* note 3, at 5.
[6] *Id.*
[7] *See* Omnibus Consolidated Rescissions & Appropriations Act of 1996, Pub. L. No. 104-134, § 504(a), 110 Stat. 1321, 1321-53 to -56. Congress has carried forward these restrictions each year by incorporating them in the annual appropriations rider for LSC.
[8] *See id.* at 1321-55 to -56.
[9] *See* Legal Servs. Corp., Fact Book 2006, at 14 (2007), *available at* http://www.rin.lsc.gov/Rinboard/2006FactBook.pdf.
[10] 45 C.F.R. § 1610.8.
[11] The contrast with how faith-based organizations are treated is particularly striking because the Establishment Clause of the federal Constitution bars the federal government from subsidizing or endorsing a grantee's religious activities. *See, e.g., Lee v. Weisman*, 505 U.S. 577, 609 (1992) ("[O]ur cases have prohibited government endorsement of religion, its sponsorship, and active involvement in religion, whether or not citizens were coerced to conform."). Yet, President Bush's Faith-Based Initiative permits religious organizations to run federally funded programs in the same physical space and with the same personnel used for religious activities, such as worship and proselytization.
[12] DEBORAH L. RHODE, ACCESS TO JUSTICE 17 (2004).
[13] *Id.* The ABA Model Rules on Professional Conduct establish an aspiration that lawyers will "render at least (50) hours of pro bono publico legal services per year," a "substantial

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00156 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.121

majority" of which should be without fee to low-income communities. MODEL RULES OF PROF'L CONDUCT R. 6.1 (2002). However, Rule 6.1 is non-binding.

[14] *See* RHODE, *supra* note 12, at 17.

[15] *Id.*

[16] 42 U.S.C. § 2996.

[17] Kira Krenichyn & Nicole Schaefer-McDaniel, *Results From Three Surveys in New York City Housing Courts* 7 (2007), available at http://www.brennancenter.org/content/resource/results_from_three_surveys_of_tenants_facing_eviction_in_new_york_city_hous/.

[18] In Brooklyn, New York, an expert estimates that 75 percent of foreclosure cases are resolved by default judgment. *See* Sarah Riley, Solution to Foreclosure Crisis for Low Income, Brooklyn Daily Eagle, May 21, 2008, *available at* http://www.brooklyneagle.com/categories/category.php?category_id=27&id=18111.

[19] Rebecca L. Sandefur, *Elements of Expertise: Lawyers' Impact on Civil Trial and Hearing Outcomes* (forthcoming 2008) (manuscript at 3, on file with the Brennan Center).

[20] *Lassiter v. Dept. of Social Svcs. of Durham Cty.*, 452 U.S. 18, 29 n.5 (1981).

[21] *In re Foreclosure Cases*, 2007 WL 3232430, at *3 n.3 (N.D. Ohio 2007).

[22] *See* Leslye Orloff et al., *Opening a Door to Help: Legal Services Programs' Key Role in Representing Battered Immigrant Women and Children*, CLEARINGHOUSE REV., May–June 2003, at 36, 36.

[23] Violence Against Women & Dep't of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 104, 119 Stat. 2960, 2978–79 (2005).

[24] Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 CONTEMP. ECON. POL'Y 158, 169 (2003).

[25] *See* NANCY SMITH ET AL., VERA INST. OF JUSTICE, UNDERSTANDING FAMILY HOMELESSNESS IN NEW YORK CITY: AN IN-DEPTH STUDY OF FAMILIES' EXPERIENCES BEFORE AND AFTER SHELTER, § 3, at 13–14, 28 (2005) (finding that almost half of all families in the New York City homeless shelter system had experienced an eviction in the five years preceding their admission to a shelter, and that being evicted made it seven times more likely that a household would enter a shelter that same month).

[26] Coalition for the Homeless, Research, Basic Facts about Homelessness, http://www.coalitionforthehomeless.org/advocacy/basic_facts.html.

[27] *See* S. REP. NO. 103-138, at 41 (1993) ("[E]stimates suggest that we spend $5 to $10 billion a year on health care, criminal justice, and other social costs of domestic violence.").

[28] *See* H.R. REP. NO. 103-711, at 385 (1994) (Conf. Rep.), *reprinted in* 1994 U.S.C.C.A.N. 1839, 1853 ("[C]rimes of violence motivated by gender have a substantial adverse effect on interstate commerce, by deterring potential victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business, and in places involved, in interstate commerce . . . [,] by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products . . . .").

[29] Special Report From the Joint Economic Committee, Sheltering Neighborhoods From the Subprime Foreclosure Storm, p. 14 (2007), available at http://www.jec.senate.gov/Documents/Reports/subprime11apr2007revised.pdf.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00157 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.122

Statement of U.S. Senator Russ Feingold
Senate Judiciary Committee Hearing
"Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans"
May 22, 2008

Mr. Chairman, I commend you for holding this hearing on such an important topic. Access to civil justice is one of the most significant challenges facing low-income Americans today. The interests at stake in civil cases can be just as compelling as the interests at stake in a criminal case, and representation by counsel is just as important to vindicating those interests. Yet people accused of committing crimes are guaranteed access to a lawyer, while people who must go to court to secure housing, health care, or custody of a child may be left to fight their way through the system on their own.

We have not fulfilled our responsibility to protect low-income Americans' access to the civil justice system. In real terms, federal legal aid funding in this country has fallen sharply over the past twenty-five years. The United States now spends far less per person on legal aid than other industrial democracies. Moreover, federal funding is available only for people who earn less than 125% of the Federal Poverty Guidelines. That means a family of four with a household income of $27,000 would be considered too wealthy to qualify for assistance.

Just as troubling, Congress has placed politically motivated restrictions on the types of cases that legal aid organizations may handle, the categories of people who are eligible for representation, and the ability of legal aid lawyers to recoup fees. These restrictions effectively bar the courthouse doors to low-income Americans in cases where those same doors remain wide open to the wealthy and the privileged.

The effect of underfunding and politically motivated restrictions on the availability of legal services is predictable. Currently, there is only one legal services attorney for every 6,861 low-income persons. The American Bar Association has found that less than 30% of the serious legal needs of the indigent in this country are being met, and the Legal Services Corporation has determined that at least 80% of people who are eligible for LSC services do not have access to those services when they need them.

The effect of the lack of legal services on the ability to obtain justice is equally predictable. In a study of domestic violence cases in Baltimore, 83% of those who had counsel were able to secure a protective order to shield them from further violence, compared with only 32% of those who were unrepresented. In the immigration context, immigrants are four to six times more likely to obtain

45653.123

asylum – which is often a matter of life and death for the immigrant – if they are represented by counsel. And these disparities are felt most by women and minorities, since they are more likely to be poor.

The costs of this lack of access are borne by all of us. When people become homeless because they didn't have lawyers to help secure housing, society pays to shelter them. When they face legal barriers to obtaining basic health care, society pays for care in the emergency room. When a parent loses custody of a child for lack of legal representation, society pays for foster care. More fundamentally, the moral standing of our society is weakened when civil justice is dispensed based on the ability to pay.

The American Bar Association unanimously adopted a resolution in 2006 urging federal and local governments to provide legal counsel to low-income persons as a matter of right in civil cases involving basic human needs such as shelter, sustenance, safety, health, or child custody. Some states have already taken steps in this direction. The federal government should not lag behind. When it comes to basic needs and rights, we should ensure that low-income people in this country have access to civil justice on the same terms as wealthy Americans. Only if we do so can we truly have a system of "equal justice under the law."

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00159 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.124

United States Government Accountability Office

GAO

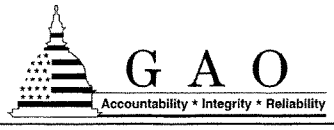
Testimony
Before the Committee on the Judiciary,
U.S. Senate

For Release on Delivery
Expected at 2:00 p.m. EDT
Thursday, May 22, 2008

LEGAL SERVICES CORPORATION

Improvements Needed in Governance, Accountability, and Grants Management and Oversight

Statement of Jeanette Franzel, Director
Financial Management and Assurance



GAO-08-833T

45653.125

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss our recent reviews[1] of Legal Services Corporation's (LSC) governance, accountability and grants management practices. LSC's mission is to make federal funding available to provide legal assistance in civil matters to low-income people throughout the United States on everyday legal problems. LSC pursues this mission by providing financial assistance, mostly through grants to legal service providers (grant recipients or grantees) who serve low-income members of the community who would otherwise not be able to afford legal assistance (clients). Established by a federal charter in 1974 as a federally funded, private nonprofit corporation,[2] LSC is highly dependent on federal appropriations for its operations. LSC received $348.6 million in appropriations for fiscal year 2007, which made up about 99 percent of its total funding. In 2007, LSC served clients through 137 grantees with more than 900 offices serving all 50 states, the District of Columbia, and current and former U.S. territories.

LSC uses the majority of its funding to provide grants to local legal-service providers. Funds are distributed based on the number of low-income persons living within a service area,[3] with some grantees maintaining several offices within their service area. LSC management is responsible for ensuring that grant funds are used for their intended purposes and in accordance with laws and regulations. Thus, LSC is accountable for the effectiveness of its own internal controls and for providing oversight and monitoring of grantees' internal controls, use of grant funds, and compliance with laws and regulations. LSC's Board of Directors is responsible for carrying out fiduciary responsibilities in overseeing LSC management's operations and use of appropriated funds.

In recent years, governance and accountability processes have received increased scrutiny and emphasis in the nonprofit, federal agency, and

[1] GAO, *Legal Services Corporation: Governance and Accountability Practices Need to Be Modernized and Strengthened*, GAO-07-993 (Washington, D.C.: Aug. 15, 2007) and GAO, *Legal Services Corporation: Improved Internal Controls Needed in Grants Management and Oversight*, GAO-08-37 (Washington, D.C.: Dec. 28, 2007).

[2] Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378 (July 25, 1974), *codified, as amended, at* 42 U.S.C. §§ 2996 – 2996l (LSC Act).

[3] Under 45 C.F.R. § 1634.2(c), the service area is the geographic area defined by LSC to be served by grants or contracts to be awarded on the basis of a competitive bidding process.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00161 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.126

public company sectors as a result of governance and accountability breakdowns, most notably in the public company financial scandals that led to the enactment of the Sarbanes-Oxley Act of 2002. Public companies now operate under strengthened governance and accountability standards, including requirements for ethics policies and improved internal controls. The federal government and nonprofit sectors have followed this lead and established new standards and requirements for improved internal control reporting and governance and accountability. For nonprofit corporations using funding from taxpayers and donors, effective governance, accountability, and internal control are key to maintaining trust and credibility. Governance and accountability breakdowns result in a lack of trust from donors, grantors, and appropriators, which could ultimately put funding and the organization's credibility at risk.

The current period of economic hardship for many workers and their families' highlights the importance of LSC's mission and the efficient and effective use of taxpayers' dollars to achieve that mission. Today I will highlight our key findings on LSC's governance and accountability practices, as well as the internal control improvements needed in LSC's grants management and oversight to increase assurance that federal funds are being properly spent and its operations are effectively carried out to meet its mission of providing legal assistance to low-income people.

Our conclusions are based on work performed for our August 2007 report on LSC's governance and accountability practices[4] as well as our December 2007 report on LSC's grants management and oversight.[5] We conducted that work in accordance with Generally Accepted Government Auditing Standards. More detailed information on our audit scope and methodologies can be found in these two reports.

Summary

Although LSC has stronger federal accountability requirements than many nonprofit corporations, it is subject to governance and accountability requirements that are weaker than those of independent federal agencies and U.S. government corporations. Congress issued LSC's federal charter over 30 years ago. We found that LSC has not kept up with evolving reforms aimed at strengthening internal control over an organization's financial reporting process and systems. As noted in our reports, a

[4] GAO-07-993.

[5] GAO-08-37.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00162 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.127

properly implemented governance and accountability structure may have prevented recent incidents of compensation rates in excess of statutory caps, questionable expenditures, and potential conflicts of interest. In addition, LSC has not kept up with current management practices. Of particular importance are key processes in risk assessment, internal control, and financial reporting. Also at the time or our review management had not formally assessed the risks to the safeguarding of its assets and maintaining the effectiveness and efficiency of its operations, nor had it implemented internal controls or other risk-mitigation policies.

We also found weaknesses in LSC's internal controls over grants management and oversight of grantees that negatively affect LSC's ability to provide assurance that grant funds are being used for their intended purposes in compliance with applicable laws and regulations. Effective internal controls over grants and grantee oversight are critical to LSC as its very mission and operations rely extensively on grantees to provide legal services to people who otherwise could not afford to pay for adequate legal counsel. We also found poor fiscal practices and improper and potentially improper expenditures by grantees.

As a result of our two reviews, we made a total of 9 recommendations to LSC's Board of Directors and 8 recommendations to LSC management. Those recommendations dealt with fundamental management and governance practices needed in the current environment in light of LSC's mission. Both LSC's Board and management accepted our recommendations and expressed a commitment to move diligently to implement the recommendations. LSC's most recent progress report indicates that LSC is starting to take action to address many of our recommendations and is planning to take action on the remaining recommendations with responsibility for corrective action already assigned. LSC has indicated that it will provide us with a final update by September 1, 2008 to document completion of its implementation of our recommendations. We look forward to receiving LSC's final report and reviewing the progress LSC Board and management have made on these issues.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00163 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.128

LSC's Governance and Accountability Practices Need to be Modernized and Strengthened

We found that since its inception over 30 years ago, LSC's governance and accountability requirements, including its financial reporting and internal control, had not changed significantly. Further, LSC's board and management had not kept pace with evolving governance and accountability practices. As a result, LSC's current practices have fallen behind those of federal agencies, U.S. government corporations, and other nonprofit corporations.

For both governmental and nonprofit entities, governance can be described as the process of providing leadership, direction, and accountability in fulfilling the organization's mission, meeting objectives, and providing stewardship of public resources, while establishing clear lines of responsibility for results. Accountability represents the processes, mechanisms, and other means—including financial reporting and internal controls—by which an entity's management carries out its stewardship and responsibility for resources and performance. Strengthened governance and accountability structures within LSC will increase assurance that federal funds are spent properly and effectively in order to meet the needs of the clients receiving legal assistance.

Governance and Accountability Requirements

Because LSC is a unique federal entity, we compared its governance and accountability requirements to other federal entities. We found that although LSC has stronger federal accountability requirements than many nonprofit corporations, its governance and accountability requirements are weaker than those of independent federal agencies headed by boards or commissions and those of U.S. government corporations. The LSC Act provides that LSC be treated like a federal agency for purposes of specified statutes that existed in the 1970s. LSC's authorizing legislation was last comprehensively reviewed and reauthorized in the Legal Services Corporation Amendment Act of 1977, and LSC's governing statutes have undergone only limited changes since then.

In 1988, Congress created an Office of Inspector General (OIG) within LSC. Therefore, LSC is subject to IG oversight. However, in other respects, LSC has not kept up with evolving management reforms aimed at strengthening internal control over an organization's financial reporting process and systems. For example

- LSC's statutory requirements for internal control systems are less rigorous than those for independent federal agencies or U.S. government corporations. The LSC Act requires LSC to account for federal funds separately from nonfederal funds, but otherwise includes no specific

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00164 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.129

requirements for the establishment of accounting and internal control systems. Although the LSC Act includes program management requirements, these are much less rigorous than requirements for systems of internal control for other federal entities.[5]

- LSC is not subject to federal funds control laws that generally apply to independent federal agencies and many U.S. government corporations. Like many independent federal agencies and wholly owned government corporations, most of LSC's annual revenues come from federal funds made available through annual appropriations; however, LSC is not required by law to control its use of those funds as are independent federal agencies and wholly owned U.S. government corporations. Further, the accountable officers of most federal agencies and some wholly owned U.S. government corporations are financially liable for improper or illegal payments. However, this is not the case for LSC. The LSC Act does contain a number of provisions that restrict the use of LSC's appropriated funds for certain purposes, such as an activity that would influence the passage or defeat of any legislation at the local, state, or federal level or that would support any political party or campaign of any candidate for public office.
- Although the LSC Act requires LSC to submit a budget request to Congress, it provides no requirements related to the form and content of the budget request. For federal agencies and wholly owned U.S. government corporations, OMB prescribes the form and content of budget requests, consistent with specified statutory requirements that are submitted through the President to Congress. Under the LSC Act, LSC submits that budget request directly to Congress, with OMB's role limited to submitting comments to Congress if it chooses to review LSC's budget.

Governance Practices

During our review, we found that the governance practices of LSC's board fell short of the modern practices employed by boards of nonprofit corporations and public companies. Although the board members have demonstrated active involvement in LSC through their regular board meeting attendance and participation, we found several areas where LSC's governance practices could be strengthened. Those areas included a more comprehensive orientation program for new board members and an ongoing training program that enables board members to stay current on

[5] The legislative requirements that promote effective internal control include Federal Managers' Financial Integrity Act of 1982 (31 U.S.C. § 3512(c), (d)); Chief Financial Officers Act of 1990, as amended by the Government Management and Reform Act of 1994 and the Accountability of Tax Dollars Act of 2002 (31 U.S.C. § 3515); and Federal Financial Management Improvement Act of 1996 (Pub. L. No. 104-208, div. A., § 101(f), tit. VIII, 110 Stat. 3009, 3009-389 (Sept. 30, 1996) (*reprinted in* 31 U.S.C. § 3512 note)).

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00165 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.130

governance practices, the regulatory environment, and key management practices. Keeping current with governance practices is especially important for the LSC board because the board composition changes significantly with each new presidential administration, and thus the board does not generally have the benefit of experienced board members. Although the LSC board had four committees, including finance and operations and regulations, it did not have audit, ethics, or compensation committee, important governance mechanisms commonly used in corporate governance structures. Finally, the board has not assessed the performance, collectively or individually, of its board members.

Management Practices

LSC's management practices have not kept up with the current practices for key processes in the areas of risk assessment, internal control, and financial reporting. We found that management has not implemented a systematic or formal risk assessment that evaluates the risks the corporation faces from both external and internal sources. Such an assessment provides a structure for implementing internal control and other risk mitigation policies. Without an effective program of risk assessment and internal control, LSC management does not have adequate assurance that it is using organizational resources effectively and efficiently, nor reasonable assurances that LSC's assets and operations are protected. In addition, senior management has not established comprehensive policies or procedures regarding conflicts of interest or other issues of ethical conduct. Without such policies and procedures, LSC is at risk of not identifying potential conflicts of interest and not taking appropriate actions to avoid potentially improper transactions or actions on the part of LSC personnel. Such issues, if they occur, could result in loss of credibility to LSC as an organization. Also, management has not conducted its own assessment or analysis of accounting standards to determine the most appropriate standards for LSC to follow. Consequently, it is not clear which standards are most relevant to LSC's operations and which would provide the best financial information to LSC's management and financial statement users.

Improved Internal Controls Needed Over Grants Management and Oversight

In our review of grants management and oversight at LSC, we found weaknesses in LSC's controls over grants management and oversight that negatively affected LSC's ability to monitor and oversee grants and left grant funds vulnerable to misuse. At grantees we visited, we also found poor fiscal practices and improper or potentially improper expenditures that LSC could have identified with more effective oversight.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00166 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.131

Internal control is an integral component of an organization's management that provides reasonable assurance that the objectives of effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations are being achieved.[7] Internal controls also serve as the first line of defense in safeguarding assets and preventing and detecting errors and fraud. Organizations that award and receive grants need good internal control systems to ensure that funds are properly used and achieve intended results. Effective internal controls over grants and grantee oversight are critical to LSC as its very mission and operations rely extensively on grantees to provide legal services to people who otherwise could not afford to pay for adequate legal counsel. For LSC and other organizations that award grants, ensuring effective internal control over grant funds requires a two-prong approach. LSC management, in addition to being held responsible for its own internal control system, needs to provide oversight to help ensure that its grantees' internal control systems provide reasonable assurance that grant funds are properly used and achieve intended results.

We found weakness in LSC's control environment regarding the lack of a clear definition of the authority and responsibilities between two of the three organizational units that oversee the work of grantees. Currently, LSC management shares with the OIG fiscal oversight and monitoring of grantees. Management's oversight role is conducted through two offices — —the Office of Program Performance (OPP) and the Office of Compliance and Enforcement (OCE). We found that the roles and the division of responsibilities were not clearly communicated between the OIG and OCE. The result has been staff confusion about the types and scope of grantee fiscal reviews that LSC management can undertake on its initiative and strained relations between management and the OIG. In addition, communication and coordination between OCE and OPP was not sufficient to prevent gaps and unnecessary duplication between the offices' respective oversight activities.

Regarding its oversight of grantees, we found that the scope of LSC's control activities for monitoring grantee fiscal compliance was limited, and feedback to grantees not timely. In determining the timing and scope of grantee oversight visits, LSC does not employ a structured or systematic approach for assessing the risk of noncompliance or financial control

[7] GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (November 1999).

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00167 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.132

weaknesses across its 137 grantees. Without an analytically sound basis for assessing risk and distributing its oversight resources, LSC does not have a basis for knowing whether its oversight resources are being used effectively to mitigate and reduce risk among its grantees.

LSC's monitoring of grantee internal control systems needs to be strengthened. We found that the scope of work in OCE's fiscal reviews was not sufficient in assessing grantee internal control and compliance for purposes of achieving effective oversight. In the OCE site visits we observed, staff did not follow up on questionable transactions and relied heavily on information obtained through interviews. LSC also was not timely in follow up on an investigation into an alleged instance of noncompliance referred to it by the OIG. Feedback to grantees was often slow. As of September 2007, LSC had not yet issued reports to grantee management for almost 19 percent (10 out of 53) of the 2006 site visits. Without timely communications about the results of site visits, grantee management does not have information about deficiencies and the related corrective actions needed. In a grantee exit conference we observed, the LSC review team did not communicate a number of findings they had concluded were significant and in need of immediate attention. Effective grantee monitoring is especially important for LSC because LSC has limited options for sanctioning poorly performing grantees due to the recurring nature of many of its grants.

In the limited reviews we performed at 14 grantees, we identified internal control weaknesses at 9 grantees that LSC could have identified with more effective oversight reviews. We also found improper expenditures at some of the grantees we visited. While control deficiencies at the grantees were the immediate cause of the improper expenditures we found, weaknesses in LSC's controls over its oversight of grantees did not assure effective monitoring of grantee controls and compliance or prevent the improper expenditures. We identified the following weaknesses and improper expenditures at grantees we visited:

- Expenditures with insufficient supporting documentation – At 7 out of the 14 grantees we visited, we identified systemic issues involving payments that lacked sufficient supporting documentation that made it impossible to determine whether the expenditures were accurate, allowable, and appropriate.
- Questionable independent contractor – One grantee paid an individual approximately $750,000 between 2004 and 2006 for information technology services. Several factors including the following caused us to question the contractor arrangement:

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00168 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.133

- The contractor's office and mailing address were located in the same office space as the grantee.
- The grantee could not locate its contract with the individual for 2005 and 2006.
- The contractor's business card was identical to that of other employees working at the grantee.

- Alcohol purchases – We identified three grantees that used LSC funds to purchase alcoholic beverages.
- Employee interest-free loans - One grantee that we visited was using grant funds to provide interest-free loans to employees upon request as an employee benefit. The loans were used to pay college tuition, make down payments on homes, and to purchase computers.
- Lobbying fees – We identified two instances in which one grantee was using LSC funds to pay lobbyist registration fees.
- Late fees – Three of the grantees that we visited used grant funds to pay late fees on overdue accounts for goods and services purchased.
- Earnest money – We discovered an improper transaction at one grantee involving the sale of a grantee building using both LSC and non-LSC funds. The grantee transferred the escrow account funds into an unrestricted general funds account to avoid the funds being subjected to LSC regulations.

Conclusions and GAO's prior recommendations

Effective governance and accountability practices are necessary to provide strong board oversight and effective day-to-day management of LCS's performance in carrying out its mission of promoting equal access to the system of justice in our nation and providing high-quality civil legal assistance to low-income persons. Effective internal controls over grants and grantee oversight are also critical to LSC, as its very mission and operations rely extensively on grantees to provide legal services to people who otherwise could not afford to pay for adequate legal counsel. Effective grants-oversight procedures and monitoring, including a structured, systematic approach based on risk, are necessary given LSC's limited resources and the scope of its responsibilities for many widely dispersed entities. In addition, the shared responsibilities for grantee oversight between LSC management and OIG presents risks that can be mitigated with clear lines of authority and responsibility and effective communications and coordination across oversight offices to avoid unnecessary duplication where possible. Finally, given the number of grantees, a sound risk-based approach for determining timing and scope of site visits is key to prioritizing resource allocations to reflect the varying risks presented by the grantees.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00169 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.134

To maximize the effectiveness of each site visit, LSC needs to conduct its oversight visits with sufficient scope to target areas of greatest risk, follow up on information and results of prior reviews and audits, and employ a review scope and approach that is tailored to specific risks. With high-quality targeted reviews and management that promptly informs grantees about findings and provides them an opportunity to correct them, risk can be mitigated.

In our August 2007 report,[8] we made recommendations to LSC's board for modernizing and strengthening its governance and oversight, including action directed at formalizing a comprehensive orientation program and an ongoing training program, conducting a performance assessment, creating audit and compensation committees, developing and implementing an approach to periodically evaluate certain key management processes, and ensuring that LSC's audited financial statements are issued more promptly. We also made recommendations to LSC management directed at improving its accountability by conducting a risk assessment and implementing a corresponding risk management program as part of a comprehensive evaluation of internal control, including establishing policies for handling conflicts of interest (ethics) and evaluating accounting standards.

In our December 2007 report,[9] we made five recommendations to LSC to improve its internal control and oversight of grants by clarifying organizational roles and responsibilities for overseeing grantee internal controls and compliance among LSC units, improving information sharing and coordination among LSC oversight organizations, using risk-based criteria to select grantees for internal control and compliance reviews, improving the effectiveness of the current fiscal compliance reviews, and following up on each of the improper or potentially improper uses of grant funds that we identified.

In response to both of our reports, we received written comment letters from the Chairman on behalf of LSC's Board of Directors and the President on behalf of LSC's management. Both the Chairman and President expressed their commitment to achieving strong governance and accountability and outlined actions that LSC's board and management plan to take in response to the recommendations we made in our August 2007

[8] GAO-07-993.

[9] GAO-08-37.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00170 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.135

report. The Chairman and the President also expressed their full commitment to making the improvements in controls over grants management and oversight noted in our December 2007 report, accepted all of our recommendations, and outlined the actions that LSC's board and management plan to take in response to our recommendations. LSC's most recent progress report on implementing our recommendations is highly encouraging. LSC has indicated that it is taking action to address many of our recommendations and is planning to take action on the remaining recommendations with responsibility already assigned. LSC has indicated that it will provide us with a final update by September 1, 2008 to document completion of its implementation of our recommendations. We look forward to receiving LSC's final report and reviewing the progress LSC Board and management have made on these issues.

In our August 2007 report, we also included a matter for congressional consideration concerning whether LSC should have additional legislatively mandated governance and accountability requirements modeled after what has worked successfully at federal agencies or U.S. government corporations. These requirements could be established either by amending LSC's current governing statutes or by converting LSC to a federal entity, such as a U.S. government corporation or an independent federal agency. LSC's Chairman and President commented on the matter that we presented for congressional consideration and provided their views that LSC's governing statutes are appropriate and have worked well and stated that many of the governance recommendations could be accomplished without changing the statutory framework of LSC.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00171 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.136

Appendix I: GAO Contact and Staff Acknowledgments

GAO Contact

For further information about this testimony, please contact Jeanette M. Franzel, Director, Financial Management and Assurance at (202) 512-9471 or FranzelJ@gao.gov . Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony.

Acknowledgments

In addition to the person named above, Kim McGatlin; Bonnie Derby; F. Abe Dymond; Lauren Fassler; Cheryl Clark; Maxine Hattery; and, Matt Zaun made key contributions to this report.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00172 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.137

Written Testimony for Senate Judiciary Hearing on "Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans"

May 22, 2008

Prepared by Sharon E. Goldsmith, Esq.
Executive Director, Pro Bono Resource Center of Maryland

Introduction

Justice—without equal access to the justice system—is not justice.

It is well-recognized that the poor and disadvantaged cannot expect equal protection under the law without adequate legal representation. Pro bono legal services have therefore necessarily been an integral part of our American legal system. By the early 1900's, a number of charities, faith-based organizations and bar associations created mechanisms to match needy clients with volunteer lawyers. . Attorneys represented those without means or capacity because they believed firmly in the fundamental notion of equal access to the justice system. A series of more formalized processes developed over time, to refer the unrepresented to legal counsel as our system of justice became more sophisticated and accessing legal assistance became more difficult.

By the turn of the century, the federal government recognized the need for the establishment of staff legal services programs to ensure more efficient, accessible and equitable representation of the impoverished. Volunteer lawyers were able to supplement that structure and fill in certain gaps. Federal funding in the 1960's helped expand the reach of the staff programs which were providing essential, core legal services. Yet, in the early 1980's, significant cutbacks in funding for these federal programs resulted in a crisis for the indigent in need of legal services. In response, the nation witnessed a renewed emphasis on the creation of organized pro bono referral programs.

45653.138

Since that time, the organized pro bono effort has grown dramatically with the effective integration of pro bono lawyers through a variety of legal and human services agencies nationwide. Currently, approximately 900 pro bono referral programs exist in the U.S. to serve the vast and diverse legal needs of the underrepresented.[1] Despite some very real successes in the development and delivery of pro bono legal services, it is not by itself—and will not be--sufficient to adequately and fairly address the most basic legal needs of our citizens.

A Case Study: Maryland's Success

Maryland has, arguably, one of the strongest and most structured pro bono delivery systems in the country. With tremendous support and leadership from the bar, bench and legal services community, Maryland lawyers are continuously reminded of their professional responsibility to engage in pro bono work and are presented with a wide range of opportunities to do so. As a result, close to sixty (61%) of the full-time licensed attorneys practicing in the state reported rendering some type of voluntary pro bono legal service in 2006.[2]

The Maryland Legal Services Corporation (MLSC) was created in 1982 by statute for the purpose of distributing grant funds to state legal services providers serving the poor. The majority of its funding stemmed from the newly created Interest on Lawyers Trust Accounts (or IOLTA) program. When MSLC first began funding programs in the early 1980's, only a few programs were in the business of making pro bono referrals. By 1989, while staff programs were proliferating, MLSC reported the placement of 1800 pro bono cases with private lawyers through a handful of its funded providers.

Despite these efforts, the 1988 MLSC Advisory Council's Action Plan for Legal Services to Maryland's Poor legal needs study found that 80% of the low-income population was unable to access assistance for critical civil legal problems. The Plan

[1] *See* The ABA Standing Committee on Pro Bono and Public Service, August 2005 report entitled: *Supporting Justice: A Report on the Pro Bono Work of America's Lawyers*, p. 6.
[2]This statistic was gleaned from the 2007 Report prepared by ANASYS for the Administrative Office of the Courts, and entitled: *Current Status of Pro Bono Service Among Maryland Lawyers, Year 2006.* This report is the most recent one compiled on behalf of the Court.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00174 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.139

enumerated a number of recommendations to reduce the justice gap while acknowledging that the status quo was unacceptable. One of the many recommendations proposed included a mandatory pro bono rule for licensed practitioners. In lieu of such a rule, the Maryland State Bar Association (MSBA) developed a multi-faceted plan for instituting a more comprehensive voluntary pro bono delivery system. The Court of Appeals of Maryland adopted the plan and mandated that the state bar "superintend" its implementation.

The MSBA leadership dedicated itself and its resources to the implementation of the pro bono plan. With assistance from the Court, it embarked on a highly publicized recruitment campaign to solicit volunteer lawyers and integrate them into the legal services delivery system. It also pledged to sustain the effort and created the Pro Bono Resource Center of Maryland (PBRC) in 1990 to manage the overall plan.

PBRC was established as a separate non-profit to serve as the "pro bono arm" of the state bar. With the support of the Court, MLSC, and the MSBA, PBRC assumed responsibility for matching thousands of potential volunteers with appropriate legal services providers and providing training, recognition and support services for them. By 1998, MLSC programs were placing *four* (4) times as many cases with *twice* as many volunteer lawyers. Today, pro bono case placements average around 7,000 to 8,000 per year through MLSC grantees. Pro bono service through legal services providers, however, only represents part of the work being donated. Thousands of lawyers across the state also provide counsel directly to individuals, neighborhood groups, and non-profit entities assisting the disadvantaged.[3]

While the success of the voluntary program was evident, Maryland sought to raise the bar even higher. The Court of Appeals adopted rules in 2002 which refined the definition of pro bono legal services to focus more specifically on legal services to the indigent, created local pro bono committees in each county and a Court of Appeals' Standing

[3] This is evident from the report filed by the Administrative Office of the Courts report compiled for the Administrative Office of the Courts entitled: *Final Report: Current Status of Pro Bono Service Among Maryland Lawyers, Year 2006*

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00175 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.140

Committee on Pro Bono Legal Service, and instituted an annual pro bono reporting requirement. The data from the annual reports are compiled by the Administrative Office of the Courts and used to more accurately gauge the level of pro bono service. Maryland was the second state in the nation to institute such a requirement (after Florida).[4] Compliance with the reporting rule is nearly 100%.

The reporting statistics reveal an extremely high rate of involvement. Since the institution of mandatory reporting of pro bono hours in 2002, the number of reported hours has risen from some 995,000 hours to close to 1.5 million hours in 2006. The vast majority of those hours are spent assisting people of limited means or organizations serving low-income communities. An impressive 60.8% of the lawyers practicing in the state full-time render pro bono service.[5] Nationally, 66% of the American bar claims to provide some type of pro bono legal service to people of limited means or organizations serving the poor[6] In brief, more lawyers are engaging in pro bono service for those in need and spending a greater number of hours doing so.

The value of pro bono work goes beyond the number of lawyers involved and hours donated. Private practitioners are able to offer expertise in areas not traditionally handled by many legal services lawyers, such as particularly complex tax, bankruptcy, real estate and pension issues. They can also work on cases without the same restrictions or constraints placed upon staff lawyers. The private bar has succeeded in making significant strides regarding law reform, civil rights, and systemic work to improve the lives of entire communities and populations. Finally, law firms and bar associations bring financial and political resources that impact the poor and underserved in ways that legal services providers simply cannot.

---

[4] Four additional states have since instituted mandatory *reporting* of pro bono hours (as opposed to mandatory service). According to the ABA Center for Pro Bono, Maryland maintains the highest percentage rate of pro bono participation among those reporting.
[5] *See* the 2007 report, *Current Status of Pro Bono Service Among Maryland Lawyers, Year 2006.*
[6] *See* The ABA Standing Committee on Pro Bono and Public Service, August 2005 report entitled: *Supporting Justice: A Report on the Pro Bono Work of America's Lawyers,*

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00176 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.141

Limitations of Pro Bono Service

Despite the enormous value and scope of pro bono service, it is not sufficient to address the poverty needs of most vulnerable Americans. Maryland's reporting statistics shed some light on the limitations of pro bono engagement. A significant number of licensed attorneys (approximately 3,000 in Maryland) are employed by the government and are therefore prohibited from the outside practice of law by statute, rule or policy.[7] For those in private practice, there is a notable mismatch between the areas in which they practice and the areas of legal need of the poverty population. For instance, while the highest area of pro bono service was in family/domestic law, family law practice ranked seventh in terms of primary practice area of the Maryland bar. Similarly, the hundreds of cases that come through legal services entities in the realm of consumer, housing and public benefits are not the types of cases typically handled by the private bar.

In reality, many law firms and lawyers cannot accept specific pro bono cases because of the conflicts of interest they pose for the lawyers' own clientele. Private bar members frequently lack the ability to respond quickly to emergency situations as other client demands require their time. The elderly, disabled, rural, and poorest clients in most desperate need of legal assistance cannot access most of these lawyers or firms for pro bono legal help without mechanisms for outreach, communication, and transportation.

The sheer volume of the need, however, presents perhaps the most significant obstacle to greater reliance on volunteers. As noted above, even with Maryland's high level of participation, the available cadre of lawyers still does not meet the need. In fiscal year 2007, all MLSC programs combined handled over 104,000 cases for the low-income population in the state. Even if all licensed lawyers with offices in the state agreed to accept one case per year, it would amount to only 20,000 cases.[8] Clearly, the number and type of cases and clients requiring assistance demands a staff legal services model.

---

[7] That substantially reduces the pool of potential lawyers available to engage in pro bono work.

[8] The 2007 report, *Current Status of Pro Bono Service Among Maryland Lawyers, Year 2006*, also indicates that only 60% of the licensed attorneys have offices in the state. That fact significantly reduces the number of available volunteer lawyers. Of those, over 10,000 lawyers rendered some pro bono service. If the

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00177 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.142

Why Mandatory Pro Bono Service Will Not Work

No state in the country mandates pro bono legal service—and for good reason. A number of state and local bar associations and courts have debated the idea but ultimately rejected it. Common arguments against such a measure range from it being unconstitutional and, inappropriate to inefficient and ineffective. Forcing lawyers to represent or counsel clients without compensation contravenes basic democratic principles of freedom. It would be no less onerous or inequitable than forcing doctors, plumbers, teachers or pilots to work without pay. Clients on the receiving end of the "forced labor" would undoubtedly be disadvantaged as their lawyers would often not be motivated or equipped to provide the best quality service possible. It would also be ineffective and inefficient as such a system would require enormous investments of time and resources to track the participation and ensure compliance. Finally, the number of lawyers licensed and practicing in the various jurisdictions would not come close to meeting the existing legal needs.

Conclusion

Decades of experience prove that pro bono services work most effectively and efficiently when integrated strategically into the staff legal services delivery model. The private bar brings certain skills, areas of expertise, and resources which complement and supplement the staff legal services programs. An integrated and valued culture of pro bono should serve as an important component to the overarching goal of ensuring equal access to justice for the economically disenfranchised. Yet, an effective and vibrant pro bono program hinges on the strength and capacity of the legal services delivery system. Funding the core staff programs at a level that is consistent with ensuring a fair and equitable justice system should, and must, be a priority.

---

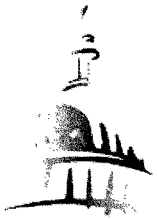
number of lawyers in government practice and those sitting on the bench are deducted from the potential pool, the number of available lawyers is reduced even further.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00178 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.143

United States Senator Chuck Grassley
Iowa

http://grassley.senate.gov



Prepared Statement of Senator Chuck Grassley of Iowa
U.S. Senate Committee on the Judiciary
Closing the Justice Gap:.Providing Civil Legal
Assistance to Low-Income Americans
Thursday, May 22, 2008

Mr. Chairman, I appreciate your calling this important hearing to discuss legal assistance to low-income Americans. During my time in the Senate I have supported efforts to ensure that indigent clients have access to the highest quality legal assistance and representation that is available and I have supported funding these programs. In doing so, we allow all Americans adequate representation to our judicial system. While I have supported these efforts to ensure access to legal aid, I have also staunchly opposed the use of federal funds by legal aid grantees for political or other non legal aid related work. I have insisted that the legal services community be—just like any other government funded operation—accountable to each other, to the national organization, and most importantly, to the American taxpayer.

Working with the Government Accountability Office and the various Inspectors General, I have learned the importance of keeping agencies on their toes. As members of Congress, we owe it to the taxpayers to make sure that tight fiscal resources are spent according to the law. This interest is especially heightened when you have an entity such as the Legal Services Corporation which is a not a government entity but receives a vast majority of its funding from federal appropriations—over $300 million annually.

Past abuses of federal legal aid funding by individual legal aid grantees led to Congress enacting laws that restricted Legal Services Corporation from providing funds to grantees who undertake class actions, represent individuals in criminal cases, represent individuals in fee-generating cases, advocate for a specific public policy, participate in litigation related to abortion, collect and retain attorney's fees, and encourage political activities. Congress also enacted laws that require Legal Services Corporation grantees to make available to auditors financial records, time records, retainer agreements, client trust fund records, and client names—except for those protected by the attorney-client privilege. These laws and regulations were passed to ensure that funds provided by Legal Services Corporation to grantees are spent on legal services for low income individuals.

Congress has continually supported these restrictions on Legal Services Corporation funding. However, recent reports issued by the Government Accountability Office (GAO) and the Legal Services Corporation Inspector General have called into question the effectiveness of the Corporation's controls over the management of grants. For instance, last December the GAO issued a report titled, "Legal Services Corporation: Improved Internal Controls Needed in Grants Management and Oversight". This report found, among other things, that "Weaknesses in Legal Services Corporation's controls over grants management and oversight…negatively affected Legal Services Corporation's ability to monitor and oversee grants and left grants vulnerable to misuse."

45653.144

GAO also issued a report on Legal Services Corporation last August regarding governance and accountability within Corporation headquarters. Among the many findings, GAO noted, "The governance practices of Legal Services Corporation's board fall short of the modern practices employed by boards of nonprofit corporations and public companies." GAO also found that Legal Services Corporation has governance and accountability requirements that are "weaker than those of independent federal agencies headed by boards or commissions and those of U.S. Government Corporations." The GAO added that "Governance and accountability breakdowns result in a lack of trust from donors, grantors, and appropriators, which could ultimately put funding...at risk."

The GAO has not been the only office raising concerns about Legal Services Corporation's oversight of grantees. In March 2006, the Legal Services Corporation Inspector General issued an audit report of Legal Services Corporation's Office of Compliance and Enforcement. The Inspector General found that Office of Compliance and Enforcement's operations needed to be improved and that a majority of the work completed by the Office was duplicative to that of other Legal Services Corporation entities. Further, the Inspector General has issued other audit reports over the last few years that detailed excessive spending by Legal Services Corporation officials, including first-class airfares, limousine services to Capitol Hill, and other excessive conference expenses such as $14 cookies.

The Legal Services Corporation Act and subsequent appropriations for Legal Services Corporation clearly state that entities who receive federal funding under the Act are bound by reporting requirements and are subject to audits by Legal Services Corporation and the Legal Services Corporation Office of Inspector General. Legal Services Corporation grantees are also required to make their financial records, client names, retainer agreements, and trust fund records available to Legal Services Corporation and Legal Services Corporation Office of Inspector General with an exception for reports protected by the attorney client privilege. However, one Legal Services Corporation grantee, California Rural Legal Assistance, has declined to allow access to its records. The Legal Services Corporation Office of Inspector General has issued a subpoena for these records and has now had to file a lawsuit in federal court seeking an order for access to these documents. If the Legal Services Corporation Office of Inspector General has had to go to court to get records they are entitled to from a grantee, it raises the suspicion about what those records might show.

Taken together, the reports by GAO, Office of Inspector General, and the current Office of Inspector General lawsuit clearly point to outstanding problems at Legal Services Corporation and Corporation grantees that need to be addressed. It is also important to note that Congress has not expressly reauthorized Legal Services Corporation funding since 1977. Should Congress undertake the task of reauthorizing Legal Services Corporation, it would be wise to listen to the GAO and consider whether or not to, "enact legislation to convert Legal Services Corporation to a federal entity or an independent agency so that the Corporation would be required to follow the same laws and regulations as executive branch agencies." It is apparent to me that this needs to be done just based upon the reports from the GAO and the Inspector General, as well as my own independent investigations into Legal Services Corporation operations.

In closing, I look forward to working in Committee to address this to ensure that legal aid services offered by Legal Services Corporation grantees can reach as many individuals in need as possible while ensuring a judicious use of taxpayer dollars. The American taxpayers deserve an accountable, open, and transparent Legal Services Corporation that properly oversees federal tax dollars that are provided to grantees.

45653.145

CLOSING THE JUSTICE GAP: PROVIDING CIVIL LEGAL ASSISTANCE TO LOW-INCOME AMERICANS

Senate Judiciary Committee
May 22, 2008

Testimony of Maryland's Legal Aid Bureau, Inc.
Wilhelm H. Joseph, Jr.
Executive Director

Introduction

Senator Cardin, Members of the Committee, thank you for inviting me to testify today on the issue of providing civil legal assistance to low-income Americans. The Legal Aid Bureau, Inc. (Maryland Legal Aid) was founded in 1911 by visionaries who understood the vital importance of civil legal representation for those individuals and families with the fewest resources and the least influence and power in our society.

Maryland Legal Aid is a non-profit, private law firm that provides free civil legal assistance to low-income residents from thirteen offices throughout Maryland. We have a staff of 260, including 140 attorneys and 56 paralegals. We receive funding from the federal Legal Services Corporation, the Maryland Legal Services Corporation, the State of Maryland (for representation of children in the foster care system), various foundations, private law firms, and individuals.

Maryland Legal Aid provides assistance to low-income[1] individuals, families and community-based organizations across Maryland, focusing on the most pressing and essential needs of our clients and the most isolated and vulnerable members of our population. We pay particular attention to the needs of youth (including those in the foster care system), seniors, disabled persons, low-wage workers, ex-offenders and migrant and seasonal farmworkers. Our expansive practice encompasses advocacy in the areas of housing, public benefits, access to healthcare, consumer, family, education and employment law. We attempt to achieve our clients' goals through a broad continuum of services, ranging from brief advice and service, pro se assistance and targeted referrals, to community education, policy advocacy, transactional work, collaborative endeavors with other organizations, litigation in state and federal trial and appellate courts and systemic advocacy.

We appreciate the opportunity to share with this Committee information about the complex legal needs of low-income Maryland residents, the challenges of trying to

45653.146

provide those services with woefully inadequate resources and the benefits flowing to both clients and our larger communities as a result of our work. We particularly applaud the attention of Senator Cardin and others to the need to increase resources so that legal services programs across the county are able to help our low-income neighbors obtain basic necessities, stabilize their lives, and overcome barriers that keep them in poverty and crisis.

Our testimony will first focus on the clients we serve and the complexity of the legal problems they face. We will also explain the challenge of meeting the demand for our services with grossly inadequate resources and illustrate the consequences of successful advocacy and, conversely, those that occur when advocacy is not available.

Legal Aid clients include a diverse spectrum of vulnerable persons throughout all of our communities.

The demographics of Maryland are complex and changing and mirrored in Legal Aid's statewide practice. The new challenges we face are daunting: we are called upon to serve many new and culturally and linguistically diverse communities.[2] Laws upon which we have historically relied to vindicate clients' basic rights have been severely narrowed[3]; and new technology presents both new opportunities and new obstacles for low-income persons.[4] Our senior population is rising rapidly;[5] and Maryland has almost 300,000 impoverished children.[6] The number of poor Maryland residents has increased.[7]

Our communities are changing: rural areas are rapidly becoming suburban.[8] Lacking training for new "good" jobs, many people are relegated to low-wage, dead-end employment, without essential workplace benefits.[9] The drastic lack of affordable housing statewide means that homelessness is a constant threat for the hard-working poor.[10] Physically and mentally damaged veterans returning from Iraq and Afghanistan, unable to get adequate help, presage a serious surge in demand for our assistance.[11] Many children are still leaving school without mastery of basic skills.[12] Often, non-performing schools, sub-standard housing and few employment opportunities cluster in low-income, African-American communities, reinforcing the continued shameful correlation between race and poverty.

Many of the clients who contact us do so after a major family crisis or economic hardship such as a death in the family, loss of a job or other source of income, serious illness or divorce. Many of our clients are low-wage workers who have difficulty affording basic needs such as housing, food, childcare, transportation and medical services. A job layoff or illness can push a low-income family into a crisis, such as a tax sale foreclosure. Legal Aid provides legal assistance that directly addresses the most basic and essential needs of individuals and families including obtaining needed healthcare and disability benefits, preventing foreclosures, recovering unpaid wages, restoring utilities, preventing wage garnishments, preventing unlawful evictions, and improving substandard and dangerous housing conditions. The attached newspaper articles explain in more detail our efforts on behalf of elderly clients and provide an example of a recent case filed to prevent the unlawful eviction of low-income tenants.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00182 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.147

The facts of two recent cases handled by Legal Aid highlight our clients' dire need for legal assistance and the complexity of their legal problems. We represented an 87-year-old man who has cardiac arrhythmias, significant dementia, osteoarthritis, gout, is hearing impaired and legally blind, has a sleep disorder and is incontinent. He takes numerous medications that he cannot keep track of by himself. He requires assistance with bathing, dressing, and has problems with his balance. His application for home health care benefits through Medicaid was denied on the basis that he was not medically eligible for services. Legal Aid challenged the state's overly restrictive interpretation of the medical eligibility criteria and after numerous legal proceedings over a two year period, the client was granted benefits. Subsequently, Legal Aid won an appellate court decision on the same issue, which resulted in a number of other clients being granted home health care benefits. [13]

Another compelling and complex case handled by Legal Aid involves a 62-year-old widow with serious health problems who was the victim of a foreclosure rescue scam and as a result was threatened with eviction from her home. The client was approached by a "foreclosure rescue agent" who convinced her to enter into an agreement in order to "save" her house. The widow was assured that the agreement would help her keep her house, but, in fact, it transferred title to the house to the agent for less than one-third of the value of the house and required her to make monthly "rental" payments that far exceeded her income. When the agent attempted to evict the client from the house, Legal Aid was able to prevent the eviction. We filed a lawsuit against the individuals involved in the foreclosure rescue scam and have obtained judgments against them, which rescinded the transfer of title to the house and kept our client from becoming homeless.

Legal assistance provides untold benefits to low-income individuals, families and communities and the inability to obtain assistance can be devastating.

Effective and timely legal assistance can help individuals and families stabilize their lives and provide people with a chance to get out of poverty. The benefit to individual clients of legal assistance can be tremendous and is usually obvious. What is not as obvious are the incalculable benefits, including cost savings, to communities and society. Some examples of the benefits that Legal Aid regularly obtains for clients and for the greater community include:

- Keeping families in their homes by preventing unlawful evictions and foreclosures – which helps to prevent homelessness and the costs associated with it[14] and benefits neighborhoods by reducing the number of vacant houses.[15]

- Helping people obtain needed health care benefits – which reduces the cost of medical care to society by allowing individuals to obtain preventive care and reduces the number of expensive emergency room visits.[16]

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00183 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.148

- Protecting children from abuse and neglect and advocating for the needs of children in foster care -- which provides children a voice in the potentially life altering decisions being made about them. [17]

- Helping families live in safe and sanitary housing, free of lead paint and other hazards -- which improves the health of family members and provides stability for families and communities.[18]

- Recovering unpaid wages for workers -- which reduces the need for them to obtain government assistance for survival and discourages unscrupulous employers from shortchanging other workers.

- Obtaining releases of bank account attachments for elderly and disabled clients -- which allows them to pay for food, rent, utilities, medicine and other basic needs and helps protect them from evictions, illnesses caused by inability to obtain medicine and the other consequences of loss of income.[19]

When low-income Americans are unable to obtain legal assistance to address their crucial legal needs, many suffer dire consequences such as suffering serious medical problems, even death, losing their homes to foreclosure, becoming homeless, living in unhealthy and unsafe conditions or being physically abused. The cost to society of failing to address these critical needs is untold, but clearly tremendous. The benefits of civil legal assistance to individuals, families and society, far outweigh its cost.

A significant increase in funding is needed in order to meet the need for civil legal service.

A recent report found that legal service programs only meet 20% of the need for civil legal services.[20] In Maryland, approximately 500,000 persons are financially eligible for legal services under LSC guidelines (up to 125% of federal poverty guidelines). In 1996, Maryland Legal Aid helped 32,000 individuals. In 2007, we served 53,000 people, still just a fraction of those who need legal assistance. As mentioned earlier, the dynamics of low or no wages, coupled with other precipitous events such as the sudden loss of employment, illness or disability often give rise to a real need for legal assistance. It is not surprising then that an average low-income person experiences a need for civil legal assistance (information, advice or representation) at least once per year.[21] In Maryland, as elsewhere, these factors produce an overwhelming need for legal services that cannot be satisfied with the current level of available resources.

Our program is constantly striving to meet the demand for our services, as are all other legal services programs around the country. We attempt to maximize our resources to serve as many people as possible, but we are woefully short of being able to meet the demand. We have stringent case acceptance guidelines and priorities, which proscribe the types of cases that we will take for full representation. In order to use our limited resources in the best possible way, we represent those clients with the most urgent need for legal assistance to protect their shelter, food, health care and other basic needs.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00184 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.149

Unfortunately, we are unable to represent many others who need legal assistance, but whose matters are not as pressing.

We attempt to address the unmet need by providing pro se classes and assistance at court houses, so that clients can represent themselves; conducting extensive education and outreach to potential clients so they can learn their rights and avoid legal problems; operating telephone hotlines in order to provide brief legal advice, assistance and referrals for clients; and working extensively with the private bar to encourage private attorneys to take pro bono cases. In Maryland, lawyers are required to submit annual reports setting forth the nature and number of their pro bono hours. In 2006, over 1 million hours of pro bono service were reported.

These efforts provide some help, but will never be able to meet the need for full representation by an attorney. Without additional funding, legal services programs will continue to be unable to meet the demand for critical legal services.

Legal services programs face serious fiscal and operational challenges.

Legal services programs face many of the same fiscal and operational challenges as other organizations, such as how to pay for the steady inflationary increase in the cost of facilities, utilities, supplies and travel, when funding levels remain stagnant, or even decline. In the face of declining federal support, legal services programs have needed to devote some of their precious resources to fundraising and resource development. Legal services programs also face some unique challenges, such as staff recruitment and retention. In most parts of the country, legal services salaries are lower than those in comparable positions, such as with the public defender, state attorney general, or other government positions. The starting salary for attorneys at Maryland Legal Aid is $45,475 -- $8,000 to $10,000 less than comparable positions in the public sector and significantly lower than those in the private sector. When attorneys are faced with high student loan debt burdens (many of our attorneys have student loan debts of $80,000 to $100,000), it is often impossible for them to afford to work at a legal services program or if they do accept a legal services job, they are lured away after a few years by the higher salaries they can make in the private sector or with other public interest entities.

Conclusion

We at Legal Aid have the most exciting and satisfying jobs in the world. In a society that stresses individual achievement—where you pull yourself up by your bootstraps—Legal Aid helps those without boots.

By providing access to justice to tens of thousands of Marylanders each year, Legal Aid attorneys and support staff bring equity, order and stability to society, but we could do much more if we had additional resources.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00185 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.150

[1] Our eligibility guidelines for most of our services require clients to be at or below 125% of the federal poverty guidelines. That means a family of 3 with an income of over $22,000 is ordinarily not eligible for our services and a single person must have an income that does not exceed $13,000 to be eligible for services.

[2] Based on census data, Maryland's Department of Planning reports that the total foreign born population in Maryland jumped from 313,494 in 1990 to 518,315 in 2000. The number of Marylanders who speak English less than very well increased from 148,493 to 246,287. http://www.mdp.state.md.us/msdc/census/cen2000/sf3/foreing_Born/foreign-born-md.ppt. It is safe to assume that a high percentage of those who speak English less than very well are poor. *See* *http://www.mdp.state.md.us/msdc/income_inequality/incomeinequality_1980_2000.pdf.*: "Income Inequality Continues to Grow in Maryland" (foreign immigrants filling many low wage jobs). These statistics undoubtedly undercount undocumented English speakers whose status makes them particularly vulnerable to workplace and other exploitation. *See also,* University of Maryland Law Journal of Race, Religion, Gender and Class, "Legal Services: Meeting New Challenges with Delivery Systems that Promise Lasting Impact for Maryland's Poor" (publication pending, Fall 2008 issue).

[3] *See, e.g., Gonzaga University v. Doe*, 536 U.S. 273, 122 S. Ct. 2268 (2002) (only "unambiguously conferred rights will support a cause of action under 42 U.S.C. § 1983); *Blessing v. Freestone,* 520 US 329, 117 S. Ct. 1353 (1997); *Seminole Tribe of Florida v. Florida,* 517 US 44, 116 S.Ct. 1114 (1996) (sovereign immunity barriers to obtaining redress for State violations of federal law).

[4] Telephone "hotlines" and intake systems, together with remote access to legal assistance via computer may make legal services providers more accessible to rural and home-bound persons. *See also* Commentary to ABA Standard 2.2 on use of technology to deliver services. More legal information is available over the Internet, but many low-income persons lack both basic and computer literacy skills to use computerized resources.

[5] The Maryland Department of Aging estimates that Maryland's over-60 population increased from 801,036 to 896,760 between 2000 and 2005. The Department expects the number to reach more than one million by 2010. The Department estimated that, as of 2000, almost 64,000 lived in poverty. http://www.mdoa.state.md.us/demographicsn.html. Other estimates are higher. The Kaiser Family Foundation reports that, of Maryland's' seniors aged 65 and older, 13%, or 87,563 live in poverty. http://www.statehealthfacts.org/profileind.jsp?ind=10&cat=I&rgn=22.

[6] The Kaiser Family Foundation reports that approximately 270,543 -- 19% of Maryland's total under-18 population -- live in poverty. This is a significantly higher percentage than that the 13% of adults in the State who are impoverished. *See* http://www.statehealthfacts.org/profileind.jsp?ind=10&cat=I&rgn=22.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00186 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.151

[7] According to the Maryland Budget & Tax Policy Institute, approximately 417,207, or 8% of Maryland's population was poor in 1990. http://www.maryolandpolicy.org/html/research/POVERTYfaq2002.asp. ; Another of its reports indicated that 8.2%, or 544,000 of a growing population lived at or below federal poverty levels as of 2006. "The Great Divide: Poverty and Prosperity in Maryland, by Joanna Shoffner, Associate Director, at http://www.marylandpolicy.org/documents/PovertyPersistsDespiteEconomic Growth.pdf. Census estimates for 2004 were higher, indicating that 9.2 of Maryland's population was poor. http://www.quickfacts.census.gov/qfd/states/24000.html.

[8] *See, e.g.,* http://www.mdp.state.md.us/msdc/census/cen2000/Urban_rural/ua_rural2k_cnty.pdf (reflects over 17% decline in rural population between 1990 and 2000).

[9] *See, e.g.,* "Income Inequality Continues to Grow in Maryland" (shift from manufacturing to service jobs caused drop from good to inadequate wages for blue-collar and semi-skilled workers, many of whom had no more than a high school education). http://www.mdp.state.md.us/msdc/income_inequality/incomeinequality_1980_2000.pdf.

[10] *See* "Affordable Housing in Metropolitan Maryland: A Policy Analysis", Capstone in Public Policy, Department of Public Policy, University of Maryland, Baltimore County (2004), at http://www.umbc.edu/mipar/documents/FinalAffordableHousingAnalysis2.pdf.

[11] Bilmes, Linda, "Soldiers Returning from Iraq and Afghanistan: The Long-term Costs of Providing Veterans Medical Care and Disability Benefits", Faculty Research Working Paper Series, Harvard University, John F. Kennedy School of Government (January, 2007), at http://ksgnotesl.harvard.edu/Research/Wpaper.nsf/rwp/RWP07-001/$File/rwp_07_001_bilmes.pdf.

[12] *See, e.g.,* http://www.maaccemd.org/factsheet.html (20% of Maryland adults function at the lowest literacy rates; 959,000 residents need basic skill instruction; 632,000 persons without high school diplomas are unemployed).

[13] *Department of Health & Mental Hygiene v. Ida Brown,* 177 Md. App. 440 (2007). A Petition for *Certiorari* was granted by Maryland's Court of Appeals on March 12, 2008, (the highest court in the State), with argument scheduled for June 5, 2008.

[14] Brennan Center for Justice, *Access To Justice: Opening the Courthouse Door,* (2007), available at www.brennancenter.org for discussion of broad impact of homelessness on communities.

[15] The cost of foreclosures to neighborhoods and local governments has been widely noted. See Federal Reserve Board Governor Randall S. Kroszner's speech at the

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00187 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.152

NeighborWorks America Symposium on Stabilizing Communities in the Wake of Foreclosure, Cincinnati, Ohio, May 7, 2008. Available at http://www.federalreserve.gov/newsevents/speech/kroszner20080507a.htm

[16] National Academy of Science, *Hidden Costs, Value Lost: The Cost of Uninsurance in America* (2003). Available at http://www.nap.edu/catalog/10719.html

[17] ABA, Child Law Practice, *Seen and Heard: Involving Children in Dependency Court*, Vol. 25, No. 10 (Dec. 2006).

[18] Report To Congress For Fiscal Years 2001–2002, U.S. Department of Health and Human Services Centers for Disease Control and Prevention , *Childhood Lead Poisoning Prevention Activities Under The Lead Contamination Control Act Of 1988*, available at http://www.cdc.gov/nceh/lead/Legislation%20&%20Policy/Reporttocongress(2001-2002).pdf.

[19] National Consumer Law Center, *Frozen Out: A Review of Bank Treatment of Social Security Benefits*, Testimony before the Committee on Finance, U.S. Senate, September 20, 2007, available at http://www.nclc.org/issues/banking/content/Testimony_Frozen_Out.pdf

[20] Legal Services Corporation, *Documenting the Justice Gap In America*, p. 4 (September 2005).

[21] *Id.* at p. 11.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00188 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.153

www.baltimoresun.com/business/realestate/bal-md.ci.housing17may17,0,6903435.story

baltimoresun.com

Families hope suit stops eviction

Action says city housing authority illegally forces public housing residents from homes

By Nick Madigan

Sun Reporter

May 17, 2008

Samantha Johnson hasn't had an easy time of it.

A year ago today, she was hospitalized in a psychiatric ward after attempting suicide, according to court documents, and was later fired from her job at Wal-Mart for missing too much work. One of her two sons, Timothy, 11, has severe asthma.

Now Johnson and her boys face eviction from their apartment in a Cherry Hill public housing project because she's behind on the rent. Had it not been for a lawsuit filed Thursday by the Legal Aid Bureau on her behalf and that of three other families, Johnson, 31, might have been on the street as soon as next week.

"I was on pins and needles trying to find somewhere to go," she said yesterday. "My sister's house is too crowded, my mum lives with a friend, and my father is on drugs, so there's nowhere to go."

The lawsuit seeks to force the housing authority to stop what Legal Aid calls "an illegal policy and practice of authorizing mass evictions of public-housing families" through a process that denies them the right to satisfy rental debts at the last minute.

If the practice is allowed to continue, the suit says, thousands of public-housing families "face the prospect of homelessness and the loss of their irreplaceable, low-income housing on entirely unlawful grounds."

Housing authority officials say they are only evicting people who are routinely late with their rent. But Theda Saffo, a lawyer for Legal Aid, which provides free civil legal services for low-income people, said the housing authority is using the practice as "an expeditious means of clearing out their housing stock."

In response to the lawsuit, housing authority officials backed off yesterday from enforcing eviction orders next week against the four families named as plaintiffs,

45653.154

including Johnson's, until the outcome of a hearing in federal court. Four other families face eviction next month.

A spokeswoman for the housing authority, Cheron Porter, said such "chronically late" tenants were warned as long ago as October of the stricter enforcement. At that time, however, "everyone's slate was wiped clean," she said, meaning that the housing agency decided not to count tenants' previous tardiness against them. Tenants who are facing eviction now have failed to pay or been late in paying rent for at least five months since then, she said.

"There's really not a whole element of surprise here," Porter said. "It didn't just come out of the blue."

There are about 11,000 residents in what Porter called conventional public housing in Baltimore, and an average of 1,300 fail to pay their rent on time each month.

Porter said tenants may have up to four late-payment judgments against them without imminent eviction. On the fifth instance, however, the agency reserves the right to terminate a lease without giving the tenant any more chances. Under a local law the housing authority is invoking, tenants can be evicted after the fifth missed or late payment even if they later come up with the money.

But that's illegal, said Reena Shah, a lawyer for Legal Aid.

"The local law doesn't apply to public housing tenants because they have constitutional safeguards," Shah said. "They're protected by due process clauses under the Fifth and Fourteenth Amendments."

Shah said tenants must be able to present extenuating circumstances - whether related to health, employment or other problems - during a properly convened hearing. Porter responded by saying that agency officials personally inform tardy tenants what they face and that the housing authority is doing nothing illegal.

In Johnson's case, her rental debt has ballooned to about $1,400. Johnson, who receives no child support and is ineligible for food stamps, has found a job at another Wal-Mart and was recently hired to help care for an 87-year-old woman, but only temporarily. A baby sitter takes care of the boys.

Yesterday, Johnson seemed fatalistic.

"I'm just taking it one day at a time," she said. "Dealing with housing, you don't know what you're going to get."

nick.madigan@baltsun.com

Copyright © 2008, The Baltimore Sun

THE DAILY RECORD

Law

Of Service: Elder law practice gets ready for the boomers

JOE SURKIEWICZ
Special to The Daily Record
May 19, 2008

In keeping with its mission of helping the most vulnerable residents in the state, Maryland Legal Aid focuses on low-income people, abused and neglected children, and folks 60 and older.

As baby-boomers move toward retirement, the state's largest nonprofit serving the civil legal needs of the elderly is marshalling its forces — and, not surprisingly, that includes hiring more attorneys to beef up what AARP Maryland Senior State Director Joseph DeMattos Jr. called a "service of immeasurable value to older Marylanders."

"These individuals deserve a voice and an advocate not because they are inherently vulnerable, but because of their intrinsic value to a vibrant and thriving Maryland," DeMattos said. "It is vital that they have access to legal representation on issues like health and long-term care, predatory lending, age and disability discrimination."

Last month, with the help of a major new grant, Legal Aid promoted Jennifer Goldberg into the newly created position of assistant director of advocacy for elder law and healthcare.

"We already have a very active elder law practice, but until recently we didn't have anyone to coordinate efforts statewide," said Cheryl Hystad, Legal Aid's director of advocacy. "With Jennifer, we'll be able to help more clients because she can coordinate our outreach, collaborate on casework and share pleadings, provide more training, and provide more case-consultation support for staff attorneys."

Goldberg, formerly a supervising attorney in the elder law unit of the Metropolitan Maryland office (which serves Prince George's, Montgomery and Howard counties), described her new job as "connecting the dots by supplying support to our attorneys and paralegals in all 13 of our offices who work with seniors."

Topping the list of concerns is health care: "Combined with fixed incomes, health problems can create a wide variety of legal services needs, which they should get without leaving their community," Goldberg said.

Some Legal Aid offices are partially funded by Title IIIB (through the Older Americans Act, which is funneled through various county governments), which pays for services that include advice, counsel and representation to access needed medical services, including nursing homes and assisted living facilities, Medicare, Medicaid and Social Security benefits.

Another critical issue for the elderly is housing.

"It's the one thing that spans everything, both tenants and homeowners, as well as senior subsidized housing," Goldberg noted. "If a senior is living on a fixed income of $643 a month, then obviously that person can't rent an apartment unless it's subsidized. Usually, they pay about a third of their income on rent. If the loss of that housing is threatened, Legal Aid helps maintain that housing."

Goldberg will also supervise Legal Aid's long-term care project for residents in nursing homes and assisted living facilities. "I'll be strengthening that project as well," she added. "We'll also be producing brochures and other materials aimed at clients for greater community education and awareness of the services we provide."

Seniors are also adversely affected by the subprime loan crisis, which is especially acute in Prince George's Co. and Baltimore City. "We've seen a drastic increase in foreclosures and victims of scams — for example, the senior didn't understand the refinancing documents — so we help them," Goldberg said.

Consumer law is another category that affects seniors, who are more likely to be victims of scams or exploited financially.

"We handle consumer cases, particularly for clients facing the garnishment of Social Security benefits, which are exempt from garnishment," Goldberg said. "We're also addressing that problem on a policy level. But many attorneys representing creditors don't know those benefits are exempt. It's scary if you're bank account gets frozen, you can't do basic things like pay the rent."

While Social Security helps people avoid being completely destitute, many seniors live on small fixed incomes: "They need help with food stamps, to stay in their homes," Goldberg said. "They are all essential to help provide for basic

human needs."

Another aspect of Goldberg's job will be to increase training of staff who serve seniors, including those who don't receive Title IIIB funding. "I'll be working with Legal Aid's new training coordinator and the new senior attorney for elder law and the new senior attorney for training," she said.

The goal: to serve more senior clients.

"We've always had a substantial number of elderly clients," noted Hystad, the director of advocacy. "With our new focus and the coordination of existing services, we will be able to serve more — and I anticipate the need will only grow with the aging of the baby boomers."

(Joe Surkiewicz is the director of communications at Maryland Legal Aid. His e-mail is jsurkiewicz@mdlab.org.)

United States Government Accountability Office
Washington, DC 20548

B-308037

September 14, 2006

The Honorable Charles E. Grassley
Chairman, Committee on Finance
United States Senate

Subject: *Legal Services Corporation—Lease with Friends of Legal Services Corporation*

Dear Mr. Chairman:

This responds to your July 18, 2006, request for an opinion regarding activities of the Legal Services Corporation (LSC) and Friends of the Legal Services Corporation (Friends). LSC created Friends in 2001 in an effort to lower its costs of renting office space in the Washington, D.C., rental market. In this opinion, we address whether LSC had the legal authority to create Friends and to lease property from Friends. We address also whether LSC violated the Antideficiency Act in certain transactions with Friends, including a 10-year lease and the possibility of assuming Friends' assets if Friends' were to dissolve.[1] As explained below, Congress established LSC as a private, nonprofit corporation, and, as such, conferred broad powers on LSC enabling it to establish Friends and to lease property from Friends for LSC's operations. For the same reason, the Antideficiency Act is not applicable to LSC and therefore does not restrict LSC's ability to execute a 10-year lease or to assume assets of Friends, if it so chooses, were Friends to dissolve its corporate charter. Our opinion goes to the legal authority of LSC and is not an evaluation of the appropriateness of LSC's actions.

In reaching our conclusion, we developed our record from publicly available sources, including Inspector General reports, hearing testimony, and relevant financial information. Additionally, we solicited and received legal views and other information from LSC and its Office of General Counsel.

---

[1] In your letter, you also expressed concern that LSC might assume Friends' liabilities if Friends were to dissolve. Friends' Articles of Incorporation do not provide for LSC to assume Friends' liabilities upon dissolution. Instead, the Articles provide for the possibility that LSC will assume Friends' assets, but only after Friends' liabilities are extinguished. *Articles of Incorporation of Friends of the Legal Services Corporation,* Apr. 6, 2001, article 7, at 2 (Articles). Therefore, we do not address the possibility of LSC's assumption of Friends' liabilities.

45653.158

BACKGROUND

Congress established LSC under the Legal Services Corporation Act of 1974, "for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance." Pub. L. No. 93-355, § 2 [§1003], 88 Stat. 378, 379 (July 25, 1974), *codified at* 42 U.S.C. § 2996b(a). LSC provides financial assistance to programs furnishing legal assistance to eligible disadvantaged clients. 42 U.S.C. § 2996e.

LSC created Friends in 2001 as part of an effort to find an alternative to the high costs of renting office space in the Washington, D.C., rental market.[2] Letter from Victor M. Fortuno, Vice President and General Counsel, LSC, to Susan A. Poling, Managing Associate General Counsel, GAO, at 1, 3, Aug. 10, 2006 (Fortuno Letter). Friends was incorporated as a nonprofit corporation[3] for multiple purposes, including "raising funds to provide funds to support all aspects of the missions of [LSC]" and "[a]cquiring, holding and managing assets for use by LSC where doing so may result in lower costs or greater efficiencies for Legal Services Corporation." Articles, article 4, at 1.

In 2002, Friends and LSC identified a 65,000 square foot building for purchase in the Georgetown section of the District of Columbia, located at 3333 K Street, N.W. The Bill and Melinda Gates Foundation provided a $4 million grant to Friends toward the purchase of this building. Additionally, to help Friends secure a mortgage, LSC signed a 10-year lease at an annual fixed rent with Friends. Fortuno Letter, at 3. The lease contains a termination clause providing LSC the right to terminate the lease in the event that LSC does not receive its annual appropriation from Congress. *3333 K Street, N.W., Washington, D.C., Office Lease Agreement,* July 1, 2002, article 26, at 21 (Lease). Friends leases space at 3333 K Street to several other tenants, in addition to LSC. *Oversight Hearing on Legal Services Corporation: Leasing Choices and Landlord Relations Before the House Subcomm. on Commercial and Administrative Law, Comm. on the Judiciary,* 108th Cong. 27–28 (testimony of Thomas Smegal, Chairman of the Board, Friends). LSC took possession of its leased premises in 2003.

At its inception, Friends' Board of Directors consisted solely of officers of LSC. Fortuno Letter, at 3–4. LSC officers continued to occupy half of the seats of Friends' Board of Directors until 2004 when LSC and Friends made a concerted

---

[2] By law, LSC must maintain its principal office in the District of Columbia. 42 U.S.C. § 2996b(b).

[3] Both LSC and Friends are tax-exempt organizations under 26 U.S.C. § 501(c)(3). Application of the tax laws is outside the scope of this opinion.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00194 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.159

effort to ensure Friends' independence from LSC.[4] Fortuno Letter, at 3. LSC and Friends share a common business address. *See* Articles, at 3; *Bylaws of Friends of Legal Services Corporation*, Aug. 27, 2002, at 2 (Bylaws). Until May 2005, LSC employees satisfied some of Friends' staffing needs on a volunteer basis. Fortuno Letter, at 3–4. Friends' Articles of Incorporation state that if Friends ceases to exist, Friends' remaining assets, after Friends' liabilities are extinguished, would be contributed to LSC. Articles, article 7, at 2.

DISCUSSION

Congress established LSC as a private, nonprofit corporation in the District of Columbia, authorizing LSC to exercise the powers conferred upon corporations by the District of Columbia Nonprofit Corporation Act,[5] to the extent consistent with its authorizing statute. 42 U.S.C. §§ 2996b(a), 2996e(a). Although a private corporation, LSC is similar to a federal agency in some respects. It is funded through annual appropriations;[6] its Board of Directors is appointed by the President and confirmed by the Senate;[7] its employees are eligible to receive some federal employee benefits;[8] and it is subject to provisions of title 5 of the United States Code regarding freedom of information and open meetings.[9] LSC is a designated federal entity for purposes of the Inspector General Act and has had an Inspector General since 1988. 5 U.S.C. app. § 8G(a)(2). These attributes of a federal agency notwithstanding, Congress in the Legal Services Corporation Act, as amended, clearly specified that, unless otherwise provided, "the Corporation shall not be considered a department, agency, or instrumentality of the Federal Government." 42 U.S.C. § 2996d(e)(1).

GAO has previously had occasion to consider LSC's relationship to the United States government. In the past, we have determined that LSC is not an agency or establishment of the government subject to GAO accounts settlement authority,

---

[4] LSC's and Friends' operational and fiscal relationship has changed significantly since 2004. According to LSC, it no longer has operational control of Friends. *See* Fortuno Letter, at 3.

[5] D.C. Code §§ 29-301.01–29-301.114 (2001) (D.C. Nonprofit Corporation Act).

[6] *See, e.g.*, Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-108, title V, 119 Stat. 2290, 2330 (Nov. 22, 2005) ("For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, $330,803,000 . . .").

[7] 42 U.S.C. § 2996c(a).

[8] 42 U.S.C. § 2996d(d), (f).

[9] 42 U.S.C. §§ 2996d(g), 2996c(g).

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00195 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.160

B-204886, Oct. 21, 1981, and that LSC, as an independent, nonprofit corporation outside the executive branch, is not subject to Office of Management and Budget circulars, B-241591, Mar. 1, 1991. We have also found that even though it is a private, nonprofit corporation, by the terms of its authorizing statute, LSC may not expend appropriated funds to lobby in support or defeat of legislation. 60 Comp. Gen. 423 (1981); B-163762, Nov. 24, 1980. With this legal landscape, we turn to the questions presented.

Authority to Create Friends and Enter into a Lease with Friends

As part of the annual appropriations process, Congress appropriates amounts for an annual "payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974."[10] *E.g.*, Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-108, title V, 119 Stat. 2290, 2330 (Nov. 22, 2005). Since Congress has limited this payment to the purposes of the Legal Services Corporation Act, our analysis of LSC's authority to use its federal funds must focus on the authorities Congress granted LSC in the Act.

Section 2996e of title 42 of the United States Code defines the powers, duties, and limitations of LSC under the Legal Services Corporation Act. The powers relevant to the issues we address in this opinion are those Congress conferred on LSC by reference to the D.C. Nonprofit Corporation Act. Section 2996e states, "To the extent consistent with the provisions of this [Act], the Corporation shall exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act." 42 U.S.C. § 2996e(a). Section 29-301.05 of the District of Columbia Code defines the general powers of each nonprofit corporation under the D.C. Nonprofit Corporation Act. Exercising these powers, LSC can purchase, take, receive, and lease real property, D.C. Code § 29-301.05(4), and "subscribe for, or otherwise acquire . . . use and deal in and with, shares or other interests in . . . domestic or foreign corporations, whether for profit or not for profit." D.C. Code § 29-301.05(7). Additionally, the D.C. Nonprofit Corporation Act authorizes LSC "to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized." D.C. Code § 29-301.05(16). In our opinion, LSC, exercising powers authorized by the D.C. Nonprofit Corporation Act, may create a corporation.

Congress provided, however, that LSC may exercise such powers only "to the extent consistent with" the Legal Services Corporation Act. 42 U.S.C. § 2996e(a). In circumstances similar to this case, B-219801, Oct. 10, 1986, we examined whether the National Consumer Cooperative Bank (Bank) was authorized to

---

[10] Under 31 U.S.C. § 1310, "The Secretary of the Treasury shall credit an appropriation for a private organization to the appropriate fiscal official of the organization. The credit shall be carried on the accounts of —(1) the Treasury; or (2) a designated depositary of the United States Government."

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00196 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.161

incorporate three subsidiaries to engage in corporate activities related to the Bank's statutory mandate. Congress created the Bank to encourage development of cooperative banks, authorizing the Bank to provide specialized credit and technical assistance to cooperatives. Although federally chartered, the Bank was owned and controlled by cooperative stockholders. Pub. L. No. 97-35, §§ 396(b), (h), 95 Stat. 357, 439–40 (Aug. 13, 1981). The purposes of the subsidiaries were to provide debt and equity financing and leasing services for cooperatives, and to develop sources of funding for the Bank's lending activities. While the Bank had no specific statutory authority to create the subsidiaries, the creation of subsidiaries was consistent with the Bank's broad authority to exercise "all such incidental powers as shall be necessary to carry on the business of banking."

In this case, we see no inconsistency between LSC's creating Friends and the purposes Congress set out in the Legal Services Corporation Act. Congress established LSC to provide "financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance." 42 U.S.C. § 2996b(a). LSC, in turn, established Friends to obtain financial support to further LSC's purposes. In incorporating Friends, LSC set out as the objects and purposes of Friends, "[r]aising funds to provide funds to support all aspects of [LSC's] mission"; educating the public "as to the wisdom and need (a) to provide equal access to the system of justice in our nation . . . ; (b) to provide high quality legal assistance to those who would otherwise be unable to afford adequate legal counsel; and (c) to provide legal counsel to those who face an economic barrier to adequate legal counsel"; and "acquiring, holding and managing assets for use by LSC where doing so may result in lower costs or greater efficiencies for LSC." Articles, article 4, at 1–2.

We do not view Friends' purposes as materially different from those of the National Consumer Cooperative Bank's subsidiaries that we considered in our 1986 opinion. The purposes outlined in Friends' Articles of Incorporation serve in various ways to advance LSC's mission of affordable legal assistance. Indeed, all of the activities permitted in the Articles of Incorporation are activities that LSC itself may perform. *Cf.* B-219801 (noting that the Bank's subsidiaries could not perform any activities that the Bank could not perform directly). We conclude therefore that LSC acted within its powers when it created Friends.

For the same reasons, we have no objection to LSC's lease of office space from Friends. As explained above, LSC's authorities permitted it to create Friends to assist LSC in performing activities that LSC itself may perform. Clearly, LSC has the authority to acquire office space by either purchase or lease. D.C. Code § 29-301.05(4), as incorporated by reference into the Legal Services Corporation Act. 42 U.S.C. § 2996e(a). Among the purposes set out in Friends' Articles of Incorporation is "[a]cquiring, holding and managing assets for use by LSC." Articles, at 1. In this regard, Friends acquired the Georgetown property for LSC's use, and the lease is the vehicle that helped finance Friends' acquisition of the property.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00197 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.162

Long-Term Lease and Assumption of Assets

Whenever a federal agency, operating with fiscal year appropriations, enters into a 10-year lease, as LSC did, questions arise whether the lease violated the Antideficiency Act.[11] At issue here is whether the Antideficiency Act applies to LSC.

The Antideficiency Act provides, in relevant part, the following:

> "An *officer or employee of the United States Government* or of the District of Columbia government may not—
>
> "(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;
>
> "(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."

31 U.S.C. § 1341(a)(1) (emphasis added). Clearly, one of the touchstones for application of the Antideficiency Act is an action or actions of "an officer or employee of the United States Government." *Id.*

As noted above, LSC, by law, is not a federal agency. Section 2996d(e)(1) of title 42 of the United States Code states that "[e]xcept as otherwise specifically provided . . . the Corporation shall not be considered a department, agency, or instrumentality of the Federal Government." Its officers and employees, except for limited purposes not relevant here, are not officers or employees of the United States government. *Id.* ("Except as otherwise specifically provided . . . officers and employees of the Corporation shall not be considered officers or employees . . . of the Federal Government."). As violations of section 1341 are predicated upon an obligation of federal funds by an officer or employee of the United States government, LSC's transactions are not subject to the Antideficiency Act.[12] Indeed, by creating LSC as a private, nonprofit entity, Congress provided LSC with certain freedoms and independence to act in a manner similar to other private,

---

[11] Unless a federal agency has specific statutory authority to enter into long-term leases, as a fiscal law matter, the Antideficiency Act issue is whether the agency incurred a firm, fixed 10-year obligation in advance of appropriations for years 2 through 10. Also, if an agency were to assume the assets of another entity, without statutory authority to do so, the agency may have augmented its appropriation.

[12] Given our conclusion, we need not address whether other elements of the Antideficiency Act may apply to the LSC.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00198 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.163

nonprofit corporations.[13] *See* B-241591, Mar. 1, 1991 (holding that LSC was not subject to requirements in Office of Management and Budget circulars). *See also* B-131935, July 16, 1975 (stating that the Corporation for Public Broadcasting, as a private, nonprofit corporation, is generally not subject to the same restrictions and controls on its expenditures as are federal agencies and establishments); B-307317, Sept. 13, 2006 (State Justice Institute, as a private, nonprofit corporation, is not subject to the miscellaneous receipts statute and thus could retain fees for use of advertising space in its newsletter).

Because LSC's transactions are not subject to the Antideficiency Act, LSC's authority to enter into a 10-year lease is not governed by federal fiscal law.[14] LSC's authority to assume Friends' assets, as provided in Friends' Articles of Incorporation if Friends were to dissolve, is governed by the Legal Services Corporation Act. The Act authorizes LSC to accept money and property "in furtherance of the purposes of" the Act, 42 U.S.C. § 2996e(a)(2), i.e., to provide "financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance." 42 U.S.C. § 2996b(a).

CONCLUSION

This opinion does not address the appropriateness of LSC's actions but only whether LSC acted within the confines of its legal authority. Congress created LSC as a private corporation conferring broad powers upon its Board of Directors to make business decisions. *See* 42 U.S.C. §§ 2996a, 2996b; D.C. Code § 29-301.05. Although it receives payments in annual appropriations, LSC, as a private,

---

[13] Congress, of course, could choose to subject LSC to the Antideficiency Act by amending the Legal Services Corporation Act or imposing restrictions specifically when it appropriates funds to LSC. For an example of a restriction in an annual appropriations act subjecting specific appropriations received by private entities to the restrictions of the Antideficiency Act, see Department of Transportation and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-66, 111 Stat. 1425, 1435 (Oct. 27, 1997) ("any obligation or commitment by [Amtrak] for the purchase of capital improvements with funds appropriated herein which is prohibited by this Act shall be deemed a violation of 31 U.S.C. § 1341").

[14] Were LSC a federal agency, without long-term leasing or contract authority, LSC's 10-year lease, in all likelihood, would have violated the Antideficiency Act. Generally, a federal agency using fiscal year funds may enter into such a multiyear lease only so long as the contract includes options to renew after the first fiscal year that may be exercised only by the agency, not the contractor, and require affirmative action by an authorized agency official. *See Leiter v. United States,* 271 U.S. 204, 206-07 (1926). While LSC included a clause in the lease reserving a right to terminate subject to the availability of appropriations (Lease, article 26, at 21), the lease does not include an option to renew exercisable only by LSC.

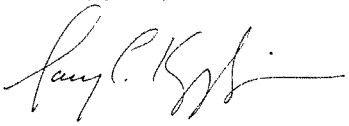
VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00199 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.164

nonprofit corporation, is not subject to many of the fiscal restrictions imposed on federal agencies. LSC's broad discretion is constrained only by the limitations Congress imposes in the Legal Services Corporation Act and its annual appropriations acts.

The Legal Services Corporation Act and the D.C. Nonprofit Corporation Act confer broad investment authority and discretion, allowing LSC to establish Friends and to enter into a lease with Friends for office space. While Congress has imposed some limitations in the Legal Services Corporation Act and in annual appropriations acts, it has not made the Antideficiency Act applicable to LSC's transactions. Accordingly, LSC's transactions at issue here do not violate the Antideficiency Act.

Sincerely yours,



Gary L. Kepplinger
General Counsel

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00200 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.165

U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
"Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans"
May 22, 2008

I thank Senator Cardin for chairing today's hearing. Navigating the judicial system without representation can be a daunting, and sometimes insurmountable challenge. Yet many Americans find themselves in this position due to the inability to afford representation. Today's hearing will highlight the efforts being made by the Legal Services Corporation ("LSC") to close this gap and ensure that more low income Americans have access to adequate legal representation.

When I was in law school, my wife Marcelle and I had the opportunity to have lunch with Justice Hugo Black. It was one of the most memorable experiences during my time in law school, and during a discussion of the Sixth Amendment I recall that Justice Black said it was an obvious truth that anyone who was too poor to be represented by counsel could not be assured a fair trial. Of course, the Supreme Court's unanimous 1963 decision in *Gideon v. Wainwright* protects this fundamental principle in the criminal context. During his confirmation hearings, I asked Chief Justice John Roberts whether he thought that *Gideon*'s principle should apply with respect to other constitutional rights. What I was getting at was the idea that the same principle embodied in *Gideon* applies in the civil context as well, and that without legal representation it can be very difficult to secure the rights that the Constitution gives to all Americans. And while there is no civil analog to *Gideon*, the work that the Legal Services Corporation and other organizations do to provide legal assistance to the poor promotes this same basic fairness in the civil judicial process.

The LSC and the many organizations it funds work to ensure that the least fortunate among us are able to have their voices heard in civil court, and, in turn, their rights protected. This is a laudable goal, and when more Americans have legal representation in civil matters, the integrity of the legal system is supported and maintained. It should concern all Americans when justice is not done due to an individual's inability to afford counsel.

In Vermont, LSC has provided legal assistance to many low income people in matters including housing, consumer finance, and family law. Staff with the Legal Services Law Line of Vermont closed over 2,400 cases in 2007. In a State as small as Vermont, this is a significant accomplishment. Due to funding through the LSC, many Vermonters who

senator_leahy@leahy.senate.gov
http://leahy.senate.gov/

45653.166

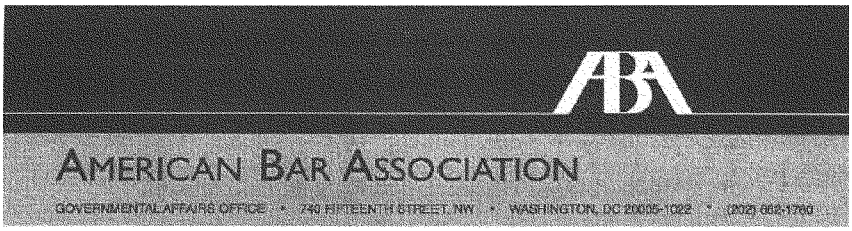
might otherwise not have been able to afford representation found themselves with able counsel as they sought redress in the courts.

Along with addressing the justice gap, I recognize that today's hearing will raise issues related to the LSC's corporate governance and oversight of its grantees. The Government Accountability Office (GAO), in two reports, identified areas where the Corporation needs to improve. By all accounts, the LSC has taken rapid steps in response to these reports, and openly acknowledges the need to squarely address issues of concern that may undermine its mission. And so I commend the LSC for appearing today, and being prepared to directly address the concerns of some members of the Judiciary Committee. Positive change can emerge much more easily when difficult or embarrassing circumstances are addressed openly and directly. Rather than try to hide or obscure the issues the GAO has identified, the LSC has stepped up and faced these problems with action and with a desire to correct them.

Consistent with the principles in the Supreme Court's *Gideon* decision, I believe it is sound Federal policy to provide Federal funds to help those in need of assistance in the legal process. Doing so promotes integrity in the judicial system, and protects the rights of less fortunate Americans who might otherwise be on their own. The work done by LSC has helped many Americans access their judicial systems in a meaningful way, and I look forward to hearing about this good work, and the ways in which the LSC is striving to improve and build upon its past successes for the future.

# # # # #

45653.167



STATEMENT OF

THE HONORABLE LORA J. LIVINGSTON

on behalf of the

AMERICAN BAR ASSOCIATION

before the

COMMITTEE ON JUDICIARY

of the

UNITED STATES SENATE

on the subject of

"Closing the Justice Gap:
Providing Civil Legal Assistance to Low-Income Americans"

May 22, 2008

Mr. Chairman and Members of the Committee:

I am Lora Livingston, a state trial court judge from Austin, Texas. I submit this testimony at the request of the President of the American Bar Association, William H. Neukom of Seattle, Washington, to voice the Association's views with respect to closing the "justice gap" to ensure access to justice for all, not just those who can afford a lawyer. The ABA believes that this objective must largely be achieved by strengthening the Legal Services Corporation ("LSC" or "Corporation") and we appreciate the opportunity to discuss this important program, which serves a critical role in ensuring equal justice for all.

The American Bar Association ("ABA"), the world's largest, voluntary professional organization with more than 413,000 members, is the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence and respect for the law.

I started my legal career as a Reginald Heber Smith Community Lawyer Fellow, assigned to a legal aid office in Austin, Texas, and I testify today in my capacity as a member of the ABA's Standing Committee on Legal Aid and Indigent Defendants ("SCLAID" or "Standing Committee"). Former Texas Supreme Court Justice Deborah Hankinson chairs this committee. She is in trial today and sends her regards and regrets that she cannot be here. Given your Committee's interest in learning a judge's perspective on the provision of legal aid for the poor, I am pleased to report that the Standing Committee includes a total of five judges among its ranks: Montana Supreme

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00204 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.169

Court Chief Justice Karla Gray, former California State Court of Appeals Judge Earl Johnson, Jr. and Juanita Bing Newton, a New York City trial court judge.

The Standing Committee and its members serve the ABA and the nation by examining issues relating to the delivery of civil legal assistance and criminal defender services to the poor. It maintains close liaisons with state and local bar association leaders, provides information and helps develop policy on civil legal aid and indigent defense. It advocates for and works to ensure the availability of legal assistance and defender services for indigent persons through a variety of activities and projects. Among many other activities, in 2006, the ABA adopted as policy the Standing Committee's "*Standards for the Provision of Civil Legal Aid.*" The *Standards,* which outline aspirational guidelines for the operation of legal aid providers and the provision of service by their practitioners, can be found on the ABA website at: http://www.abanet.org/legalservices/sclaid/downloads/civillegalaidstds2007.pdf.

I. ACCESS TO JUSTICE IN AMERICA

A. ABA is a Long-Time Leader in Access to Justice Issues

The American Bar Association has supported the effort to provide legal services to the poor since the establishment of the Standing Committee on Legal Aid and Indigent Defendants in 1920. Supreme Court Justice Lewis F. Powell, while serving as ABA President in 1964, called for a major expansion of the nation's legal services for the poor, ultimately leading in 1974 to the creation of the Legal Services Corporation. As Senator Edward Kennedy notably pointed out in his 2006 commencement address at the University of Virginia School Of Law,

> To understand how revolutionary [Powell's]. . . idea was, you have to know that when my brother became President in 1961, there was no national legal services

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00205 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.170

> program. There had long been legal aid and public defender offices in many cities, and a few privately-funded groups made poverty law a part of community development organizations. But hardly any taxpayer dollars supported them.
>
> In 1964, as part of President Johnson's Great Society, Congress enacted a genuine anti-poverty program in the Office of Economic Opportunity, and, under Sargent Shriver, it became a source for legal services funding throughout the country.
>
> That program filled such an obvious need that 5 years later, when the incoming Nixon administration tried to abolish it, the bar and many of us on Capitol Hill were able not only to save the program but to create the Legal Services Corporation as an ongoing federally-funded program. Ironically, President Nixon himself signed that bill into law as his last legislative act before resigning as President. *(Congressional Desk,* March 18, 2006.)

Promoting meaningful access to legal representation and the American system of justice for all persons regardless of their income or social condition continues to be one of the ABA's primary organizational goals. The ABA has strongly opposed past efforts to eliminate or significantly reduce access to legal services for the poor, working at the same time to build broad bipartisan support for LSC throughout the Congress and throughout the country.

The depth and breadth of that support will be apparent today from the two letters introduced for the record by Senator Cardin showing support in Congress and across the nation for LSC: the first, on behalf of Senator Kennedy, is a bipartisan letter signed by more than 55 Senators in support of at least $400 million in funding for LSC in FY 2009; and the second is a letter signed by the 50 state bar association presidents, plus the District of Columbia and two territories, also urging Congress to provide at least $400 million for LSC in FY 2009. The state bar letter is linked on the ABA website at: http://www.abanet.org/poladv/abaday08/resources/StateBarToSenate.pdf. The bar association letter truly signifies the extent of the national support and urgent need for increased funding for LSC.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00206 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.171

B. The Legal Services Corporation Plays a Vital Role in the Justice System

The Preamble to the U.S. Constitution states that the first enumerated function of government is to "establish justice." This program is an important component of our democratic system of government. Justice and fairness are bedrock principles of our democracy. President Washington wrote that "The due administration of justice is the firmest pillar of good government." But the justice system cannot retain the respect and popular support so essential to its functioning if it is apparent that access to justice is dependent upon one's wealth or place of residence. A comprehensive, national system providing civil legal services to the nation's poor must be maintained and strengthened.

For more than 30 years, the Legal Services Corporation has been a lifeline for Americans in desperate need. For poor Americans, LSC-funded legal aid programs have been there at times when they had nowhere else to go. Here are just a few examples of the clients served by LSC-funded programs throughout the country:

- Mrs. Smith, a widow, residing in Pennsylvania was referred by the Area Agency on Aging to Laurel Legal Services (LLS) for representation in a mortgage foreclosure action. The mortgage holder claimed that the mortgage could be foreclosed because the mortgagor, her late husband, was deceased. LLS successfully argued that Mrs. Smith was protected from foreclosure because, as spouse, she stood in her husband's position under the mortgage, and federal law protects the mortgagor until the death of the mortgagor, sale of the residence or the mortgagor's absence from the residence for a year. LLS was able to settle the case by having Mrs. Smith assume the mortgage. A *pro bono* attorney assisted with the federal court aspects of this case. (*The Pennsylvania Lawyer, May/June 2008, pg. 60.*)

- Lone Star Legal Aid's Hurricane Disaster Relief Project, which began days after Hurricane Katrina made landfall in August 2005, has closed more than 10,000 hurricane-related cases through the end of 2007. These cases cover every imaginable legal issue. Families and individuals continue to face multiple, simultaneous legal problems as a result of the loss of homes, jobs and health care benefits. Hurricanes Katrina and Rita have significantly expanded the needs of

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00207 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.172

many already eligible clients and created a new group of clients. LSLA's service area absorbed 250,000 new potential clients from Louisiana, more than any legal aid program in the country.

Today, 50 million Americans qualify for federally funded legal assistance. Many of these individuals have significant legal needs and may suddenly be poor because of natural disaster, loss of a job, the break-up of their family, housing loss or uninsured medical care. While the need for civil legal services has increased, LSC funding and our ability to ensure access to the justice system falls far short.

Here are just a few reasons why LSC-funded local legal aid programs warrant strong support:

- **LSC-funded programs provide basic legal services for low-income persons in every Congressional district in the country.** LSC disburses 95% of its annual federal appropriation to 137 local legal aid programs nationwide. Boards consisting of leaders in the local business and legal communities set the priorities for and oversee these programs, which provide basic civil legal services to the poor.

- **LSC-funded programs provide assistance to those who suddenly qualify for and need legal assistance, such as when natural or national disaster strikes.** September 11 families, flood victims, and hurricane evacuees have received legal assistance ranging from identity verification to family law issues. There are continually new issues that require legal assistance that disproportionately affect low-income families, including consumer fraud and now the mortgage foreclosure crisis; foreclosures are forcing both low-income home owners and renters from their homes.

- **LSC-funded legal aid lawyers preserve and protect American families; many low-income military families qualify for legal aid.** Local legal aid programs make a real difference in the lives of millions of low-income American families by helping them resolve everyday legal matters, including family law, housing, and consumer issues, and by helping them obtain wrongly denied benefits such as social security and veterans' pensions. Soldiers and their families most often seek help with estate planning, consumer and landlord/tenant problems and family law.

- **LSC-funded programs prevent a long-term reliance on other government programs, many of which have also suffered funding cuts.** People who are unable

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00208 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.173

to resolve basic legal problems are more likely to experience greater hardships and require assistance from public social services programs.

- **LSC-funded programs are the nation's primary source of legal assistance for women who are victims of domestic violence.** Legal aid programs identify domestic violence as one of the top priorities in their caseloads. While domestic violence occurs at all income levels, low-income women are significantly more likely to experience violence than other women, according to the U.S. Bureau of Justice Statistics. Recent studies also show that the only public service that reduces domestic abuse in the long term is a woman's access to legal aid.

II. Legal Needs Studies Document that the Poor Cannot Access the Justice System

A. ABA 1993 Comprehensive Legal Needs Study & Results

In 1993, a Temple University report commissioned by the American Bar Association reported that, despite the *combined* effort of legal services programs and the private bar, only 20% of the civil legal needs of the poor were being met. The ABA Legal Needs study found that, on average, low-income households experience approximately one serious legal problem each year. This study revealed that 80% of these legal needs go unaddressed. An executive summary of this seminal report is located on the ABA website at: http://www.abanet.org/legalservices/downloads/sclaid/legalneedstudy.pdf.

B. Recent State-Based Legal Needs Studies Repeat Earlier Findings

Since 2000, twelve states have conducted legal needs studies. Wisconsin, Utah and Arizona have most recently completed their own studies. Other state studies were conducted in Connecticut, Illinois, Massachusetts, Montana, New Jersey, Oregon, Tennessee, Vermont and Washington State. These studies can be obtained through the ABA Resource Center on Access to Justice Initiatives at: http://www.abanet.org/legalservices/sclaid/atjresourcecenter/resourcematerials.html.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00209 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.174

Each state found that the level of legal need compares to the level found by the ABA in 1993. These studies also independently report that the *combined* efforts of the private bar and publicly funded legal services providers address no more than 20% of the serious legal problems of the poor. These state-specific studies also determined that low-income households average of up to three new legal needs each year.

Significantly, at least one state study suggested that there are likely to be economic returns from providing prophylactic legal aid. The University of Wisconsin LaFollette School of Public Affairs estimated that every dollar spent toward increasing representation for victims of domestic violence will yield about $9 in net benefits to victims or reduction in costs that would otherwise have to be borne by government. This finding cannot be emphasized enough given the current federal and state budget constraints.

C. Number of People Living in Poverty, Experiencing Legal Programs and Turned Away by Legal Services Offices Continues to Grow

Today, 36 million Americans struggle to get by on incomes below the federal poverty line, and another 14 million Americans hover just below 125% of the poverty line; thus 50 million Americans are eligible for legal services from LSC. This is a marked increase in the number of eligible clients from just ten years ago, when 45 million Americans were eligible for LSC-funded representation.

The LSC's 2005 study, "*Documenting the Justice Gap in America,*" which was discussed in detail today by the Corporation witnesses, reports that one in every two eligible clients who seeks assistance from a federally funded legal aid program is turned

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00210 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.175

away because of lack of resources. Given the lack of resources, LSC-funded programs are only able to serve about one million clients per year. This study, however, was conducted prior to the 2005 hurricane season, and did not take into account the newly poor as a result of Hurricanes Katrina, Wilma and Rita. Since then, additional natural disasters have occurred and the mortgage foreclosure crisis has significantly increased the need for legal assistance.

Various legal needs studies show that, on average, poor households will experience at least one, and perhaps as many as three, serious legal problems each year. Yet, as noted, at least 80% of those problems will go unaddressed. Solvable legal problems snowball for persons living in poverty, as they lack the resources to address what start out as simple problems.

It is common knowledge in communities nationwide that legal aid is rarely available to those in need. Yet, in the last year for which statistics are available, over two million people came to federally funded legal aid offices for help. Over half were turned away for lack of resources. Surely, many people simply gave up and never bothered to apply for help.

III. Essential Elements of a System Providing Equal Justice

A. Equal Justice Requires Adequate Resources

1. Ensuring Access to Justice Requires Greater Federal Resources

Federal resources have not kept pace with inflation. In 1981, LSC for the first and only time achieved sufficient funding to reach the longstanding goal of providing two lawyers for every 10,000 poor people. If the $321 million 1981 appropriation for LSC had kept pace with inflation, LSC would now have $759 million. LSC's FY 2008

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00211 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.176

appropriation is only $350.5 million. More than 55 Senators and every State Bar Association president, plus the District of Columbia and two territories, strongly urge Congress to provide LSC with *at least* $50 million more in funding for FY 2009.

2. States Provide Uneven Resources for Access to Justice

Most, but not all, state governments are now full partners in the efforts to provide legal aid to the poor. Forty-six states provide legislative appropriations in varying amounts that *supplement* federal funding provided through LSC.

All states now operate Interest on Lawyer Trust Account (IOLTA) programs that harness the earning power of money by aggregating small quantities of funds that would otherwise not be able to earn interest for anyone. However, IOLTA resources are very unstable; they rise and fall quickly with interest rates and the level of deposits to IOLTA accounts.

The government, at all levels, has the fundamental responsibility to ensure fair and equal justice. In the long term, ABA encourages legislatures and courts to recognize this responsibility to provide for justice in matters where basic human needs are at stake, and to accord a right to counsel when such assistance is essential to a just result in all cases – both criminal and civil.

When legal help is not available, as judges, my colleagues and I see in our courts every day that justice is not always served. People are simply unable to navigate the system and to make claims and obtain fair outcomes when they are forced to advocate for themselves against sophisticated government or private institutions.

Further, when a poor litigant lacks legal help, the courts themselves become much less efficient. Judges do their best to insure that a just result is achieved, but it can be

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00212 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.177

very difficult to do so without the assistance of counsel to find facts and correctly apply the law.

3. The Organized Bar is an Active Partner in Serving the Legal Needs of the Poor

The organized bar at all levels strongly supports efforts to provide legal services to the poor. The ABA, and state, local, specialty and territorial bar associations are tireless in urging members of the profession to voluntarily contribute *pro bono* legal services to the poor; nearly 70% of the members of the bar provide *pro bono* services. The average lawyer donates close to 40 hours of free service to persons of limited means each year.

The ABA sponsors many entities and organizations that encourage *pro bono* participation and work to increase access to justice:

- The **ABA Center for *Pro Bono*** assists ABA members and the legal community in developing and supporting effective *pro bono* legal services in civil matters as part of the profession's effort to ensure access to legal representation and the American system of justice.

- The **ABA Resource Center for Access to Justice Initiatives,** established in 2006, provides assistance to the more than 26 states that have created access to justice commissions and works with other states in support of similar initiatives. The commissions involve leaders of the bar, the judiciary and other community leaders in designing and finding resources for more effective civil legal services systems. State and local communities are fully engaged and stand ready to work with the Congress in broadening access to justice.

- The **ABA Standing Committee on Legal Assistance for Military Personnel (LAMP)** helps the military and the Department of Defense improve the effectiveness of legal assistance provided in civil matters to an estimated nine million military personnel and their dependants. America's soldiers and their families are one of the neediest groups in terms of civil legal assistance. In response to the military activations following the September 11 tragedy, this Committee instituted the program "Enduring LAMP," which provides legal assistance to service personnel who have been deployed. In recent years, as American commitments to and casualties from the Iraq and Afghanistan conflicts

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00213 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.178

> have surged, so too have attorney *pro bono* commitments to active-duty service members and veterans. A number of large firms have significantly increased their *pro bono* assistance to veterans. The Walter Reed scandal of a year ago precipitated a number of new *pro bono* veteran initiatives.

It is clear that the organized bar is actively involved in providing access to justice for all. Some have suggested over the years that the private bar alone, or only with state funding, can ensure access to justice for the poor. Such a suggestion would only result in further rationing – and denying – justice. The level of need is too overwhelming. The ABA Legal Needs study and recent state studies consistently report that despite the *combined* efforts of LSC-funded programs, state, local and private funding and *pro bono* efforts, between 70 and 80 % of the legal needs of the poor are unmet. As the late, legendary lawyer John Pickering emphasized in previous Congressional testimony,

> My firm [Wilmer, Cutler and Pickering] and I have long been involved in providing *pro bono* legal services for the poor. Last year, my firm received the ABA's *Pro Bono Publico* award and just last month I was awarded the ABA Medal, the highest award given by the ABA, in recognition of my leadership role in providing legal services to the poor and the elderly. . . . I emphasize what I said in my acceptance speech when I received the ABA Medal: despite the efforts of my firm and others throughout the country, the legal problems of the poor cannot be addressed without a strong, well-funded Legal Services Corporation. *(Legal Services Corporation Oversight Hearing, House Judiciary Committee, Subcommittee on Commercial and Administrative Law, September 29, 1999.)*

B. LSC Provides a Strong Organizational Infrastructure

The Legal Services Corporation is a model private-public partnership. The core federal funding provides for client intake and screening, referral of cases, responding to emergency matters, training *pro bono* lawyers, and handling cases when no private lawyer can do so. LSC leverages and facilitates the utilization of private resources – both in-kind, *pro bono* services and private funding.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00214 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.179

A civil legal aid system should function efficiently and effectively, maximizing the use of public funds devoted to insuring access to justice. LSC disburses 95% of its annual federal appropriation to 137 local legal aid programs nationwide. Boards consisting of leaders in the local business and legal communities set the priorities for and oversee these programs, which provide basic civil legal services to the poor.

Since Justice Powell first moved the ABA in 1964 toward supporting this legal services model to today, the ABA has played a significant role helped by articulating clear standards for the operation of civil legal aid programs. The ABA set forth these standards in 1961, and updated them several times, including as recently as 2006. The most recent recommendations included in the ABA's "Principles of a State System for the Delivery of Civil Legal Aid" are available at: http://www.abanet.org/legalservices/sclaid/downloads/06A112B.pdf.

IV. CONCLUSION

The ABA strongly supports the Legal Services Corporation and its role in helping secure access to justice for all Americans. There are a few who continue to criticize or oppose LSC, going back decades. While LSC management can always work to improve its internal organization and oversight of and guidance for its grantees, one point remains certain -- the single greatest deficiency of the Legal Services Corporation is the lack of adequate resources to meet the needs of the 80% of the poor who currently cannot be served. Local legal services offices are functioning much like hospital emergency rooms, engaging in legal triage as they attempt to cope with the enormous unmet legal needs.

It is in the interest of all of us to see that these legal needs are resolved in a peaceful manner and that respect for the rule of law is strengthened. "Liberty and justice for all" is our proud national credo, but it is empty rhetoric without signicantly more resources to ensure a comprehensive national delivery system for civil legal aid.

Thank you and I would be happy to respond to your questions.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00215 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.180

NATIONAL CONFERENCE OF BAR PRESIDENTS

The organization of the nation's present, past and future bar leaders

• c/o American Bar Association • Division for Bar Services • 321 N. Clark Street, Floor 20th • Chicago, IL 60610-4714
(312) 988-5777 Fax (312) 988-5492

Contact: Julie M. Strandlie, ABA Governmental Affairs Office,
202-662-1764; jstrandlie@staff.abanet.org

April 15, 2008

The Honorable Barbara Mikulski
Chairwoman Subcommittee on Commerce
Justice and Science
Committee on Appropriations
United States Senate
Washington, D.C. 20510

The Honorable Richard Shelby
Ranking Member Subcommittee on Commerce
Justice and Science
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Chairwoman Mikulski and Senator Shelby:

As presidents of the 50 State and two Territorial Bar Associations nationwide, the National Conference of Bar Presidents, and the National Association of Bar Executives, we respectfully request that your Subcommittee take an important step forward in closing the current justice gap in America by providing the Legal Services Corporation (LSC) with at least $400 million in the Fiscal Year 2009 Commerce, Justice, Science, and Related Agencies bill.

Thanks to your efforts and strong bipartisan support, the Senate-passed CJS bill provided LSC with $390 million for FY 2008, a much-needed $41.4 million increase over FY 2007 level of $348.6 million. However, the end-of-the year FY 2008 consolidated appropriations act reduced LSC's funding back to $350.5 million, a mere $1.9 million increase. LSC would have needed a $7.3 million increase (to $355.9 million) just to keep up with inflation.

A significant funding increase is vital for this critical program as a step toward restoring LSC's funding to pre-1996 levels, adjusted for inflation. In FY 1995, LSC was funded at $415 million, which would be $576 million in today's dollars.

Today, 50 million Americans qualify for federally funded legal assistance. However, the 2005 study by LSC, "*Documenting the Justice Gap in America,*" reported that one in every two individuals who qualify for and actually seek assistance from LSC-funded programs is denied help because of lack of resources. Similar state studies in recent years consistently report that despite the combined efforts of LSC-funded programs, state, local and private funding and pro bono efforts, the majority of low-income Americans are unable to obtain legal assistance that is often critical to their safety and independence.

Every day, new situations arise that continue to stretch the ability of our country to ensure that low income persons can fairly resolve their legal problems through the justice system. Today, consumer fraud matters and the mortgage foreclosure crisis are at the forefront. In addition to affecting low-income homeowners, the foreclosures are also forcing low-income renters from their homes.

LSC currently funds 137 local programs serving every county, state and Congressional District in the United States and its territories. These local programs provide direct services to approximately one million constituents who struggle to get by on incomes below or near the poverty line. The failure to resolve their basic legal issues causes even greater hardship for them, and often leads to their reliance on other government programs.

For the above reasons, we request that you support increasing LSC funding to at least $400 million to help meet this urgent need. Thank you for your consideration of this request.

Sincerely,

Kay H. Hodge
National Conference of Bar Presidents

Evelyn Sullivan
National Association of Bar Executives

Samuel N. Crosby
Alabama State Bar

Matthew W. Claman
Alaska Bar Association

Daniel J. McAuliffe
State Bar of Arizona

Richard L. Ramsay
Arkansas Bar Association

Jeffrey L. Bleich
The State Bar of California

Wm. David Lytle
Colorado Bar Association

William H. Prout, Jr.
Connecticut Bar Association

Paulette E. Chapman
The Bar Association of the District of Columbia

Elizabeth M. McGeever
Delaware State Bar Association

Francisco R. Angones
The Florida Bar

Gerald Edenfield
State Bar of Georgia

Jeffrey H.K. Sia
Hawaii State Bar Association

Terrence R. White
Idaho State Bar

Joseph G. Bisceglia
Illinois State Bar Association

Douglas Denton Church
Indiana State Bar Association

Joel T.S. Greer
The Iowa State Bar Association

Linda S. Parks
Kansas Bar Association

Jane Winkler Dyche
Kentucky Bar Association

S. Guy deLaup
Louisiana State Bar Association

Brett D. Baber
Maine State Bar Association

Alison L. Asti
Maryland State Bar Association

David W. White, Jr
Massachusetts Bar Association

Ronald D. Keefe
State Bar of Michigan

Brian Melendez
Minnesota State Bar Association

Robert Russel Bailess
The Mississippi Bar

Charlie J. Harris
The Missouri Bar

John C. Schulte
State Bar of Montana

Wayne J. Mark
Nebraska State Bar Association

Nancy L. Allf
State Bar of Nevada

Eleanor Dahar
New Hampshire Bar Association

Lynn Fontaine Newsome
New Jersey State Bar Association

Craig Allen Orraj
State Bar of New Mexico

Kathryn Grant Madigan
New York State Bar Association

Janet Ward Black
North Carolina Bar Association

David L. Petersen
State Bar Association of North Dakota

Robert F. Ware
Ohio State Bar Association

J. William Conger
Oklahoma Bar Association

Richard S. Yugler
Oregon State Bar

Andrew F. Susko
Pennsylvania Bar Association

Marcia McGair Ippolito
Rhode Island Bar Association

Lanneau Wm. Lambert, Jr
South Carolina Bar

Richard Travis
State Bar of South Dakota

Marcia Eason
Tennessee Bar Association

D. Gibson Walton
State Bar of Texas

V. Lowry Snow
Utah State Bar

Samuel Hoar, Jr.
Vermont Bar Association

Howard W. Martin Jr.
Virginia State Bar

45653.182

Stan Bastian
Washington State Bar Association

Thomas Basting, Sr
State Bar of Wisconsin

Steven Johnston Knopp
West Virginia State Bar Association

Gay Woodhouse
Wyoming State Bar

Celina Romany
Puerto Rico Bar Association

Mark D. Hodge
Virgin Islands Bar Association

45653.183

Written Testimony

Submitted by the

National Organization of Legal Services Workers,
Local 2320,
International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW)

On the Subject of

Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans

Before the
Senate Judiciary Committee

May 22, 2008

45653.184

The National Organization of Legal Services Workers and the UAW

The National Organization of Legal Services Workers (NOLSW) had its founding convention in 1978, with representatives of nearly 30 independent unions at legal services programs funded by the Legal Services Corporation (LSC). In 1980 NOLSW affiliated with District 65, an established union headquartered in New York City, which was itself about to become associated with the International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW). In 1992, when District 65 was fully integrated into the UAW, NOLSW was chartered as UAW Local 2320, a national, amalgamated local. Today, NOLSW represents approximately 3000 attorneys, paralegals and support workers at legal aid and legal services programs from Maryland to California. We represent employees at 47 LSC-funded programs in 24 states and at an additional 24 programs that do not currently receive LSC funding.

The UAW is proud of its historic role in advocating for access to justice for the poor and for the establishment of the Legal Services Corporation and, with the NOLSW, in defending LSC against attempts to abolish it in the early 1980's and in the mid-1990's. We are pleased to have been invited to submit testimony for the hearing on "Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans." We commend Chairman Leahy and Senator Cardin for holding a hearing on this critical issue.

Inadequate Funding Is the Primary Cause for the Justice Gap

In our judgment, the most critical issue facing legal services programs is inadequate funding. The high water mark for LSC funding was in Fiscal Year 1981, when Congress appropriated $321 million dollar to LSC. The following year, LSC's funding was cut by 25%. Funding made modest gains in some years between FY 1981 and FY 1996, when LSC's funding was cut by 33 percent.

The chart on page 6 labeled "LSC Funding 1981 – 2008" graphically demonstrates the dismally flat funding record for LSC since 1981, when dollars are adjusted for inflation.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00220 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.185

In today's inflation-adjusted dollars, LSC's FY 2008 funding would have to be nearly $780 million match the 1981 funding level; in contrast, it is only $350 million.

Legal Service Programs Do Not Pay Enough to Recruit and Retain Staff

This inadequacy of funding, of course, leads directly to inadequacy of legal services; there simply aren't enough resources to meet the civil legal needs of low-income Americans. In 2005, the Legal Services Corporation released a report entitled "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans." Based on a study of LSC-funded programs that year, the report demonstrated that for every one LSC client who received services, another eligible client was turned away. This and other studies since then have concluded that at least 80 percent of the civil legal needs of low-income Americans are not being met.

Inadequate funding also leads to depressed salaries for LSC-funded program staff, particularly lawyers. The table on page 8 labeled "Average Attorney Salaries by Years of Experience" compares actual 2005 (the most recent year for which data are available) salaries for LSC-funded program lawyers with those salaries in 1980, adjusted for inflation. While the average entry level salary increased a modest 2.5 percent, salaries have declined for all other experience groups, most dramatically for attorneys who stay with LSC-funded programs for more than five years.

Attorneys for civil legal services programs are the lowest paid attorneys in the United States. According to data collected and reported by NALP (formerly known as the National Association for Law Placement) in 2006, the average starting salary for a first-year associate at a private law firm ranged from $50,000 at firms with between two and ten lawyers to $135,000 at firms with over 501 attorneys, with an average starting first-year salary of $95,000. In stunning contrast, the average starting salary for entry-level legal services jobs nationwide was $36,000.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00221 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.186

The Bureau of Labor Statistics data on Occupational Employment and Wages, May 2007, show that U.S. lawyers in the lowest-paid decile had an annual income of $52,280 and that half of all attorneys in the U.S. make more than $106,000 year. By contrast, NALP data show that the highest average salary in 2006 for a legal services attorney with 15 years experience was $55,000 year.

Even among attorneys who practice public interest work or who are public defenders or prosecutors, legal services attorneys are the lowest paid. The most recent biennial Public Sector and Public Interest Attorney Salary Report, released by NALP in September 2006, provides the data that underlie this assertion. The median entry-level salary for an attorney at a civil legal services organization was $36,000, compared to $40,000 for public interest organizations; $43,300 for public defenders; $43,915 for local prosecuting attorneys; and $46,374 for state prosecuting attorneys. As the NALP chart below shows, the legal services salary depression continues as these lawyers gain experience.

Attorneys by Type of Organization	Years of Experience		
	Entry-level	5 years	11-15 yrs
Civil Legal Services	$36,000	$43,291	$55,000
Public Defenders	$43,300	$54,672	$65,500
Local Prosecuting Attorneys	$43,915	$54,500	$72,970
State Prosecuting Attorneys	$46,374	$55,177	$67,712
Public Interest Organizations	$40,000	$52,000	$65,000

Source. NALP 2006 Public Sector and Public Interest Attorney Salary Report

Compounding the problem of low salaries is the fact that law school graduates are increasingly saddled with enormous debt. In 2003, the American Bar Association issued a report entitled "Lifting the Burden: Law Student Debt as a Barrier to Public Service." The report cited "skyrocketing" law school tuitions as the reason almost 87 percent of law students borrowed to finance their legal education. The report found that in 2002, the amount borrowed by many law students exceeded $80,000. Both law school tuitions and law student debt load have increased in the last six years.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00222 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.187

The low legal services salaries and high education debt load have created significant problems in the recruitment and retention of lawyers by LSC-funded programs. Most recent law school graduates simply cannot afford to work for such low salaries. The ABA report referred to above cited a national study that law student debt prevented two-thirds of law student respondents from considering a career in public service. Many who do take jobs with legal services programs leave after only a few years, most often because of financial considerations.

In 2007, the National Legal Aid & Defender Association issued a report based on a survey developed and conducted in 2006 by the Recruitment and Retention Committee of NLADA's Civil Policy Group. The survey, which gathered 786 responses by legal services attorneys 35 years old and younger, documented the high turnover rate in programs and the financial needs that drove many of those who planned to leave the field of legal services. Ninety percent of respondents said they had education debt when they graduated from law school and 41 percent of those carried a staggering $90,000 in loans.

In September 2007, the Florida Bar Foundation issued a detailed report entitled "The Quest for the Best: Attorney Recruitment and Retention Challenges for Florida Civil Legal Aid" <http://www.flabarfndn.org/pdf/Final_Report_%20Recruit-Ret-Study.pdf>. This in-depth study included surveys, interviews and focus groups of attorneys and former attorneys, as well as from law students and law school staff. The study reports that the average annual turnover rate for attorneys at the Florida civil legal aid programs was 20 percent. Only 39 percent of attorneys employed in 2002 were still employed at the time of the study in 2007. Half of those who left in that five year period had left after serving fewer than two years, causing turmoil for remaining staff, management, and for needy clients.

Not surprisingly, the Florida study cited salaries as the primary cause for attorneys leaving legal aid and for not applying for positions in the programs. (The median starting salary was $38,500 and it took nine years for a staff attorney to reach a salary of more than $50,000.) Sixty-five percent of the attorneys who reported they were likely to leave

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00223 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.188

their jobs within the next five years said that a salary increase would definitely or probably impact their decision. $10,000 was the median amount cited by those who said an increase would make a difference, an amount exactly equal to the median salary increase received by legal aid attorneys who left for new jobs in 2006.

Finally, the bar graph analysis of data in LSC's 2006 Fact Book on page 9 shows that there is a huge turnover among attorneys at LSC-funded programs in the first five years they are with their programs. This is costly to programs inasmuch as program costs are highest in the first few years that an attorney is out of law school and most in need of training and supervision. It is also disruptive for clients, who often have their cases handled by a succession of lawyers.

Providing Better Pay to Legal Services Attorneys Would Result in Efficiencies and Better Quality Services to Clients

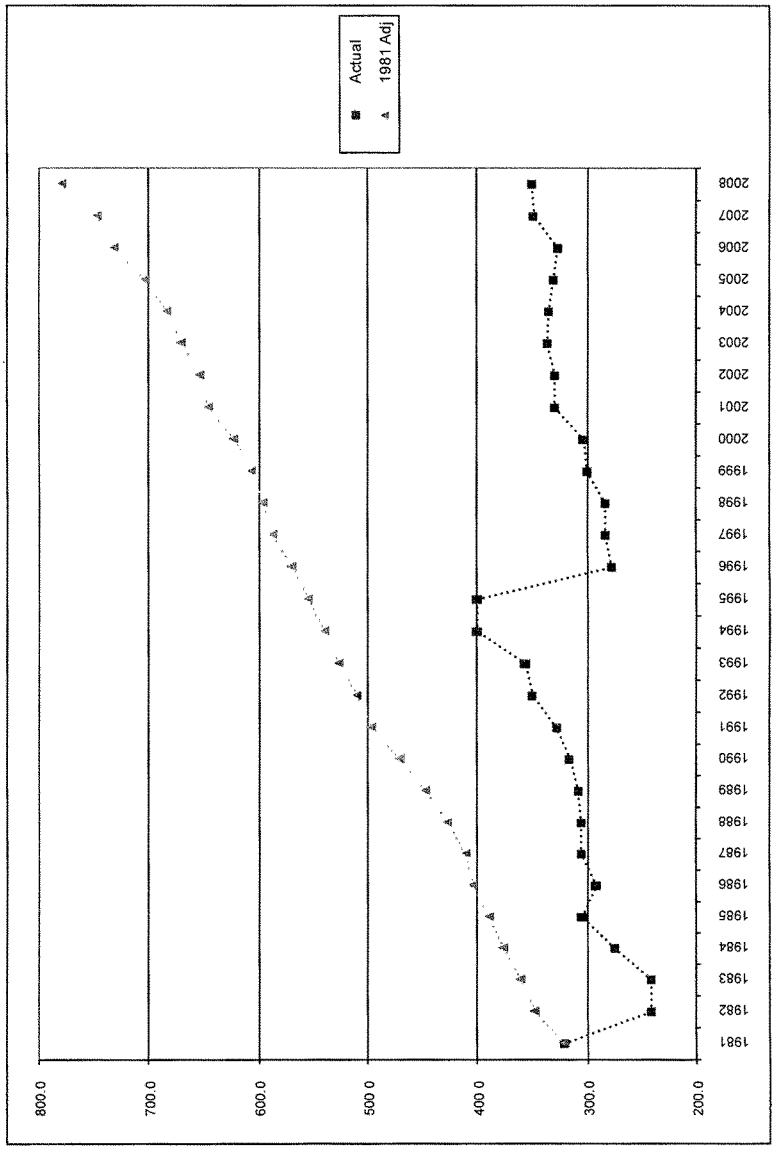
In the past, Congressional appropriators have asked, How many more cases would be closed in a year for each $10 million more in annual funding for LSC field programs? We believe there is no easy mathematical formula. Rather, NOLSW submits that legal services salaries must be substantially increased and that funding should be provided so that all legal services programs could offer staff lawyers a loan repayment assistance program. If these changes were made, we believe that programs would have many fewer problems recruiting and retaining attorneys. This, in turn, would lead to lower attorney turnover, greater efficiency and cost-effectiveness, and better quality legal services to clients. Thus, although salary increases would not translate immediately into more closed cases, we submit that they would redound to the benefit of the programs and, most importantly, to LSC's low-income clients.

For these reasons, the UAW and our local, the National Organization of Legal Services Workers, urge Congress to increase funding for LSC to a level that will enable grantee programs to raise salaries to competitive levels and to offer loan repayment assistance programs.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00224 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.189

LSC Funding 1981 – 2008



VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00225 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.190

Comparison of LSC Funding to 1981 Adjusted for Inflation

Year	Jan CPI-U	Pct Chg	LSC Actual	LSC 1981 Adj
1981	87.0		321.3	321.3
1982	94.3	8.4%	241.0	348.3
1983	97.8	3.7%	241.0	361.2
1984	101.9	4.2%	275.0	376.3
1985	105.5	3.5%	305.0	389.6
1986	109.6	3.9%	292.4	404.7
1987	111.2	1.5%	305.5	410.6
1988	115.7	4.0%	305.5	427.2
1989	121.1	4.7%	308.6	447.1
1990	127.4	5.2%	316.5	470.4
1991	134.6	5.7%	328.2	497.0
1992	138.1	2.6%	350.0	509.9
1993	142.6	3.3%	357.0	526.5
1994	146.2	2.5%	400.0	539.8
1995	150.3	2.8%	400.0	554.9
1996	154.4	2.7%	278.0	570.0
1997	159.1	3.0%	283.0	587.4
1998	161.6	1.6%	283.0	596.6
1999	164.3	1.7%	300.0	606.6
2000	168.8	2.7%	303.8	623.2
2001	175.1	3.7%	329.3	646.5
2002	177.1	1.1%	329.3	653.9
2003	181.7	2.6%	336.6	670.9
2004	185.2	1.9%	335.3	683.8
2005	190.7	3.0%	330.8	704.1
2006	198.3	4.0%	326.6	732.2
2007	202.4	2.1%	348.6	747.4
2008	211.1	4.3%	350.5	779.4

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00226 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.191

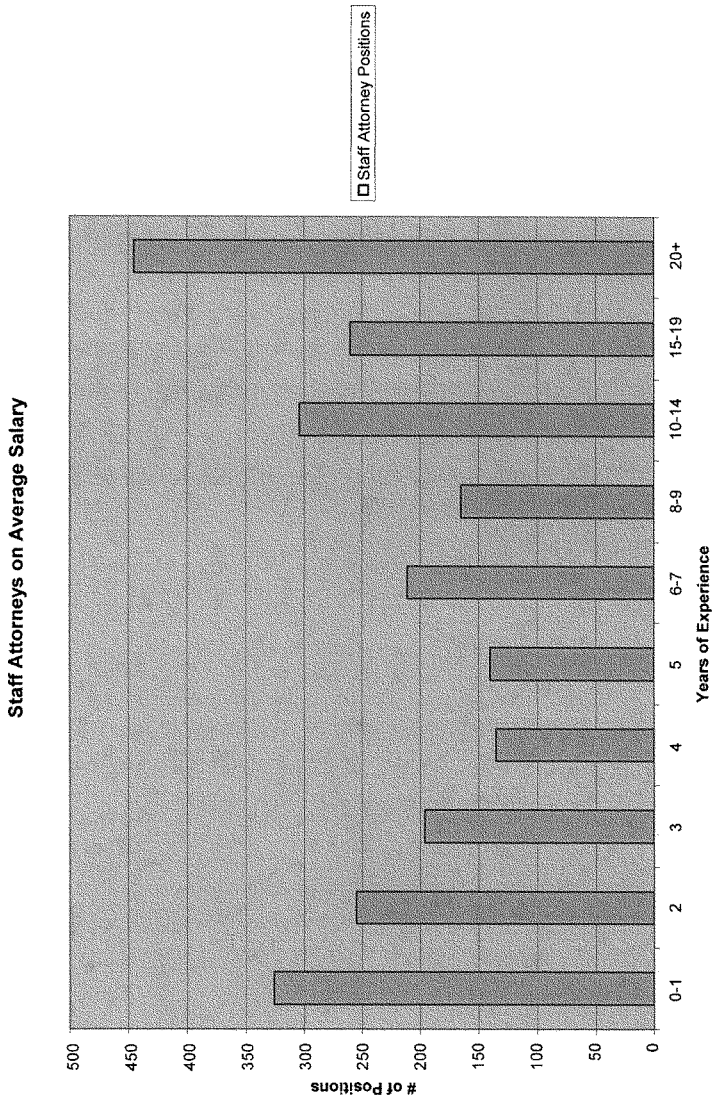
Average Attorney Salaries by Years of Experience
Comparison of Actual 2005 Average Salaries
To 1980 Average Salaries Adjusted for Inflation

Yrs Exp	Average in 1980	Adjusted in 1980	Average in 2005	Percent Difference
1	15,861	37,593	38,583	2.6%
2	17,181	40,721	39,883	-2.1%
3	17,897	42,418	41,460	-2.3%
4	19,070	45,199	44,525	-1.5%
5	21,136	50,095	46,623	-6.9%
6-7	22,272	52,788	47,194	-10.6%
8-9	23,859	56,549	50,788	-10.2%
10+	27,786	65,857	56,329	-14.5%

Data sources: CPI-U (1982-1984=100); Legal Services Corporation *1981 Fact Book Fact Book* and *2006 Fact Book*.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00227 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.192



BCS:sk
opciu494
104

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00228 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.193

United States Senate

WASHINGTON, DC 20510

May 21, 2008

The Honorable Barbara Mikulski
Chairwoman Subcommittee on Commerce
Commerce
Justice and Science
Committee on Appropriations
United States Senate
Washington, D.C. 20510

The Honorable Richard Shelby
Ranking Member Subcommittee on

Justice and Science
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Chairwoman Mikulski and Senator Shelby:

We write in support of an increase in Legal Services Corporation funding to at least $400 million in the Fiscal Year 2009 Commerce, Justice, Science, and Related Agencies Appropriations Act. The Corporation has suffered through a decade of drastic funding cuts, small increases and financial erosion due to flat funding, government-wide rescissions and inflation. In FY 1995, it was funded at $415 million, which would be **$576** million in today's dollars; in fact, however, its appropriation for the current fiscal year is $350.5 million.

Thanks to your efforts and strong bipartisan support, the Senate-passed CJS bill provided the Corporation with $390 million for FY 2008, a much-needed $41.4 million increase over FY 2007 level of $348.6 million. However, the end-of-the year FY 2008 consolidated appropriations act reduced the funding to $350.5 million, a mere $1.9 million increase. The Corporation would have needed a $7.3 million increase (to $355.9 million) just to keep up with inflation.

We ask that you again provide a significant increase for this vital program as a step in restoring the Corporation's funding to the 1995 level, adjusted for inflation. The Corporation's bipartisan Board has requested $471.7 million for FY 2009 in its attempt to close the "justice gap" in coming years.

Today, 50 million Americans qualify for federally funded legal assistance. However, a 2005 study by the Corporation's Board of Directors, "*Documenting the Justice Gap in America,*" reported that half of all individuals who qualify for and actually seek assistance from Corporation-funded programs are denied help because of the lack of resources. A 1993 American Bar Association study and recent state studies consistently report that, despite the combined efforts of the federal program, state, local and private funding, and pro bono support, between 70 and 80 percent of the legal needs of the poor are unmet. Each year, tens of thousands of low-income individuals and families are denied access to justice because of the lack of resources.

The result is a continuing crisis in the ability of millions of low-income individuals and families to have access to our legal system. The most severe challenges they face involve natural disasters such as hurricanes, tornadoes, floods; national disasters such as 9/11; and family disasters such as job loss, divorce, health crises, and housing loss. **Other issues that disproportionately affect low-income families also require legal assistance, such as,** consumer fraud, turbulent weather conditions, and the current mortgage foreclosure crisis. In addition to affecting low-income home owners, the foreclosures are also forcing low-income renters from their homes.

45653.194

The Corporation's grantees focus on providing basic legal services, in response to the intent of Congress that these federal funds should be spent on resolving day-to-day legal problems of individual poor clients. The Corporation currently funds 138 local programs serving every county, state and Congressional District in the United States and its territories. These local programs provide direct services to approximately one million constituents who struggle to get by on incomes below or near the poverty line. Those served include women and their children, survivors of local and national disasters, the working poor, veterans, family farmers and people with disabilities. Their legal problems involve family relationships (including domestic violence and child custody), housing, health care, employment, and many other basic needs. Our failure to resolve these issues causes even greater hardship for these persons, and often leads to their reliance on other government programs.

Clearly, large numbers of low-income individuals and families do not have access to the justice system to resolve their basic legal problems. Without continued incremental increases in federal funding, many more of our fellow citizens will be denied assistance in the future. **We urge you, therefore, to fund the Legal Services Corporation at no less than $400 million for the coming fiscal year to help meet this urgent need.**

Thank you for your consideration of our request.

Sincerely,

EDWARD M. KENNEDY

GORDON H. SMITH

PETE V. DOMENICI

TOM HARKIN

BLANCHE L. LINCOLN

MARK L. PRYOR

DIANNE FEINSTEIN

CHRISTOPHER J. DODD

JOSEPH I. LIEBERMAN

JOSEPH R. BIDEN, Jr.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00230 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.195

BILL NELSON

MEL MARTINEZ

ROBERT P. CASEY, Jr.

RICHARD J. DURBIN

CHUCK HAGEL

BARACK OBAMA

MARY LANDRIEU

JOHN F. KERRY

BENJAMIN L. CARDIN

CARL LEVIN

DEBBIE STABENOW

NORM COLEMAN

KIT BOND

CLAIRE McCASKILL

ELIZABETH DOLE

FRANK R. LAUTENBERG

JOE BIDEN

HILLARY R. CLINTON

CHARLES E. SCHUMER

SHERROD BROWN

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00231 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.196

RON WYDEN

SHELDON WHITEHOUSE

OLYMPIA J. SNOWE

LINDSEY GRAHAM

TIM JOHNSON

BOB CORKER

KAY BAILEY HUTCHINSON

JOHN WARNER

JIM WEBB

MARIA CANTWELL

PATTY MURRAY

RUSSELL D. FEINGOLD

HERBERT KOHL

JOHN D. ROCKEFELLER

AMY KLOBUCHAR

SUSAN COLLINS

BARBARA BOXER

PATRICK J. LEAHY

BERNARD SANDERS

MAX BAUCUS

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00232 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.197

DANIEL K. AKAKA

JACK REED

ROBERT MENENDEZ

JON TESTER

JOHN CORNYN

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00233 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.198

Testimony of Jo-Ann Wallace
President & CEO
National Legal Aid & Defender Association

Senate Judiciary Committee

"Closing the Justice Gap: Providing Civil Legal Assistance to Low-Income Americans"

May 22, 2008

45653.199

NLADA PRESENTATION TO THE SENATE JUDICIARY COMMITTEE

May 22, 2008

Good afternoon, Mr. Chairman. My name is Jo-Ann Wallace and I am President and CEO of the National Legal Aid & Defender Association. NLADA, founded in 1911, is the oldest and largest national, nonprofit membership organization devoting all of its resources to advocating equal access to justice for all people. NLADA champions effective legal assistance for people who cannot afford counsel, serves as a collective voice for both civil legal services and public defense services throughout the nation and provides a wide range of services and benefits to its individual and organizational members. I am proud to be here on their behalf.

FRAMEWORK FOR THE FEDERAL LEGAL SERVICES PROGRAM

In the Preamble to the Constitution, our forefathers stated clearly and forcefully the purpose of the government they were creating:

> We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense...

and so on. It is noteworthy that "establish justice" precedes and is the basis for "domestic tranquility" and that both come before "provide for the common defense." I think the sequence and those priorities are not accidental and we need to constantly bear them in mind.

Until passage and implementation of the Economic Opportunity Act of 1964, the federal government had not sought to "establish justice" for poor people by providing support for their representation in civil legal matters. With the passage of the OEO, the federal government began its efforts to fill this void. Ten years later, in 1974, Congress passed and the President signed the Legal Services Corporation Act, the comprehensive legislation to make permanent the vital legal services program started under the Economic Opportunity Act.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00235 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.200

The findings and declaration of purpose to that Act set out the appropriate framework for considering how to once again move forward on establishing justice for poor people.[1] Congress found that--

1. "there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances;
2. "there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel...[;]
3. "[there is a need] to continue the present vital legal services program;
4. "providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of [the Act];
5. "for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws;
6. "to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures; and
7. "attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the [Model Rules of Professional Responsibility] ...and the high standards of the legal profession."

As we examine the federal component of our civil legal aid system, it is important to keep in mind these critical principles, which are as salient today as they were when the LSC Act was first passed, and to evaluate where we are at present and where we should go in the future.

What we have today is a fundamentally sound legal services delivery system. Although it is woefully underfunded, unfairly restricted and continually besieged by its critics, the legal services delivery system continues to work extraordinarily well for those of our clients that it does serve. Of course, it can be made to work better. There is no enterprise, whether in government or in the private sector, that cannot benefit from efforts to enhance and improve it. That certainly includes the delivery of legal services to poor people in this country which has been evolving in form and in scope now for more than a century. Nevertheless, the basic system established by the LSC Act has served us well for almost 45 years; it should be improved and enhanced, not undermined or limited.

The civil legal aid system should be funded adequately and strengthened to provide meaningful access to our system of justice for low-income persons residing in the United States. Currently, the system

[1] See 42 USCA§2996 (Section 101 of the LSC Act).

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00236 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.201

is severely underfunded and LSC funding has remained relatively stagnant for more than a decade. As we show later in our testimony, LSC funding has gone down in real dollar terms 53% since its high water mark in 1980. Yet, civil legal aid is a federal responsibility. LSC continues to be the primary single funder for civil legal aid, provides the underpinning and sets the standards for the entire program. To achieve equal access to justice in our country, it is therefore essential to increase LSC funding to provide a firm foundation for the rest of the legal aid system.

Nevertheless, increasing LSC funding is not sufficient to guarantee equal access to justice. Equal access is not a reality when legal services attorneys are not able to use the same tools and strategies that other members of the legal profession are free to use on behalf of their clients. For example, the restriction on seeking attorneys' fees in those situations where other lawyers are permitted to seek them limits the leverage which legal aid attorneys can use in negotiations with defendants and undermines the fundamental policy goals of awarding attorneys' fees against losing parties which are to deter and punish illegal conduct. These and other similar restrictions on what legal services attorneys can do on behalf of eligible clients are inconsistent with the purposes of the LSC Act and limit the ability of LSC-funded programs to provide effective and efficient legal assistance to the disadvantaged residents of the United States.

Restricting what LSC programs can do with non-LSC funds is particularly troubling. Even if Congress believes it must impose restrictions on how the funds it provides to LSC are to be used, there is no justification whatsoever for also preventing LSC programs from receiving non-LSC funds that are provided for purposes that Congress does not want to fund with federal dollars. Other public funders and private donors should have the same opportunity as Congress to determine the purposes for which their funds will be used and to select the institutions that can best carry out those purposes. Congress should not interfere in decisions by other public funders, including state controlled IOLTA programs, on how to allocate their funds and with whom to contract, nor should it intrude unnecessarily into the funding decisions of the private sector. Moreover, Congress should encourage, rather than discourage, the creation of alternative funding sources for civil legal services and should encourage public-private collaboration to ensure the provision of effective legal services and efficient use of resources, rather than stimulate wasteful duplication of programs that occurs when funders are forced to put their resources elsewhere in order to accomplish their purposes.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00237 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.202

PARAMETERS OF LEGAL NEED AMONG DISADVANTAGED

As the testimony from the Legal Services Corporation and the American Bar Association aptly demonstrates, low-income households experience large numbers of legal needs, and the resources that are available to meet those needs are wholly inadequate. Legal needs studies conducted by numerous states during the past several years found that the combined efforts of publicly-funded legal services providers and the private bar serve only a small portion of the legal needs reported by low-income households. The LSC Justice Gap report showed that 50% of the eligible applicants who actually found their way to an LSC-funded program were turned away for lack of resources. Since 2000 numerous legal needs studies have been completed, and they have found that in the states studied, only 9% to 29.4% of the legal needs of low-income households were being met by legal aid programs or members of the private bar.

New legal needs are constantly arising to challenge the ability of legal aid programs to serve the low-income community. The current foreclosure crisis facing many thousands of low-income homeowners and tenants clearly illustrates the need for a strong legal services program. Families of limited means across the United States have turned to LSC-funded providers in increasing numbers to protect their vital interests in remaining in safe and affordable housing.

The subprime lending market, where predatory lending primarily takes place, has exploded by 795 percent over the last decade, from a roughly $43 billion market in 1994 to a $385 billion market in 2003. Due in part to abusive terms and practices, the foreclosure rate for subprime loans is much higher than prime loans: 1 of every 12 subprime mortgages will go to foreclosure, compared to 1 in 100 for the prime market. According to a number of studies, predatory lending disproportionately affects minority and elderly homeowners and communities with high concentrations of these populations.

The recent congressional focus on predatory mortgage lending and the foreclosure crisis recognizes the need to protect unsophisticated borrowers from often unscrupulous efforts to strip them of the one asset they have to avoid sliding more deeply into poverty. Predatory mortgage lending is stripping billions of dollars in precious assets from low-income communities across the nation. Seeking to exploit vulnerable and unsophisticated borrowers, predatory lenders charge more in interest and fees than is required to cover the risk of making the loans. These schemes not only target borrowers making home purchases, but also look to strip home equity that low-income owners have built up over

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00238 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.203

many years. Renters living in property whose owners are undergoing foreclosure have also been evicted from their homes at alarming rates.

LSC grantees in every region of the nation are reporting significant increases in the number of applicants needing legal assistance to prevent them from losing their homes to foreclosure. Many of these clients have defenses based upon lender overreaching that can only be raised by skilled and knowledgeable LSC attorneys. Otherwise, the legal system is hopelessly skewed in favor of lenders who failed to follow the law regarding interest rates, fees or other consumer protections.

The following stories from actual cases handled by legal services programs in the last several years amply underscore the fact that justice often turns on access to representation:

- A major subprime lender convinced an elderly man to refinance his loan four times in two years, raising his loan from $70,000 to $140,000. He was unable to pay back these loans and foreclosure was begun. As a result of legal services' intervention, the foreclosure was stayed. Renegotiation of loan terms was initiated only after the legal aid attorney confronted the lender with detailed allegations of a violation of the Truth in Lending notice requirements.
-
- An 85-year-old woman who has lived in her home for 50 years defaulted on a $25,000 home equity loan. A "Foreclosure Rescuer" offered to help her get the home equity loan repaid with a private loan, but in fact and without the owner's realization of the true nature of the transaction, engineered a conveyance of ownership of the property to him. As a result, the owner lost $150,000 of equity in her home. Only through the intervention of a legal services attorney was the client able to have the house returned to her and the loan renegotiated under terms she can actually afford.
-
- An elderly Vietnamese woman faced with foreclosure was tricked into deeding her house to a predatory lender. Only after a full jury trial handled by legal services was she able to get back $55,000 of equity that had been stolen from her.

Along with growth in those low-income populations which have traditionally been served by legal aid programs, including low-wage workers, children, domestic violence victims and the elderly, a new group of returning veterans from Iraq and Afghanistan, many with limited income and severe physical and mental disabilities, including post

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00239 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.204

traumatic stress disorder and traumatic brain injuries, have begun to further swell the ranks of the low-income population and strain existing legal aid resources. Nationally, 5.6% of all veterans are living below the poverty line and a disproportionately high number are among America's homeless population. In fact, the Department of Veterans Affairs estimates that one-third of all adult homeless men and nearly one-quarter of all homeless adults have served in the military. Many of these veterans have unique legal needs associated with their military service as well as the more typical legal problems experienced by low-income populations.

Collette

When Hurricane Katrina struck New Orleans in August 2005, "Collette" lost her house, and would have lost her son, "James," were it not for the critical intervention of Legal Services of Eastern Missouri.

Once the storm subsided and the extent of the devastation was clear, Collette and James packed up their meager belongings and went to live with relatives of Collette's boyfriend hundreds of miles away in Missouri. When that arrangement fell apart, Collette found herself completely homeless and without James, who was placed into Missouri's foster care program.

She moved back to New Orleans – the only place she could call home – to try to rebuild her house and regain custody of her son. Collette began making the arduous journey to and from St. Louis to attend custody hearings and to spend a few precious hours with James. At each hearing she was asked to report on the progress she had made to rebuild her home: a task which seemed almost impossible. She successfully applied for funds through the U.S. Department of Housing and Urban Development's Road Home program, which provides grants to Katrina victims trying to rebuild their homes, but her money was delayed for months and months. Not content to wait, Collette began rebuilding the home with her bare hands, paying for materials with wages earned from a few part-time jobs.

When staff from Legal Services of Eastern Missouri's (LSEM) Family Court Project learned of James's and Collette's plight, they immediately swung into action, working to secure custody for Collette and to connect her with valuable services back in New Orleans.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00240 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.205

LSEM put her in contact with a faith-based organization that organized volunteers who completely renovated and refurnished Collette's home, and connected her with mental health services for trauma survivors. Finally, in October 2007, despite numerous roadblocks, LSEM was able to convince the court that James belonged with his mother, and that New Orleans offered services that Missouri did not. The judge agreed, dismissed the case, and awarded full legal and physical custody to Collette.

DC

Legal Services of Northwest Jersey received a referral from Colorado to represent a veteran of two tours of duty in Iraq. DC had lost his apartment after he was discharged from the army and couldn't pay his rent. Rather than bring his children to a shelter, he asked his estranged wife's parents in New Jersey to take them for the summer while he looked for a job and housing. Before he could pick his children up again, his in-laws filed an action seeking temporary custody of the children, alleging that he had abandoned them. The legal aid attorney representing DC was successful in helping restore custody to his children.

With the current recession deepening, the numbers of people living in poverty continues to increase, swelling the numbers of persons eligible for legal aid who are facing legal problems and further increasing legal needs.

HISTORICAL LSC FUNDING TRENDS

Since its inception in 1975, the Legal Services Corporation has been the principle source of financial support for legal aid programs across the country. In its early days, LSC set a "minimum access" goal for federal funding of its grantees that would have provided enough federal dollars to support two LSC-funded lawyers for every 10,000 eligible poor people. Congress responded to LSC's effort, and by 1980 LSC funding had reached $300 million, the "minimum access" goal. By 1981, funding for LSC was $321,300,000, but that success was short lived. In 1982, in response to efforts by the Reagan Administration to eliminate the program in its entirety, Congress cut LSC funding by 25 percent, to $241 million.

Although the program survived, it was not until 1990 that LSC funding again surpassed, in actual dollars, the level it had reached in 1980, with an appropriation of $316,525,000. However, when adjusted for inflation, that amount still represented a cut of one-third from LSC's

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00241 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.206

1980 funding level. During the early 1990s, funding for LSC rebounded slowly, reaching its all-time high of $400 million in 1995. However, when adjusted for inflation, even that amount still represented a 28 percent cut from its 1980 funding level.

In 1996, Congress again decided to slash LSC funding, this time by 30 percent, to $278 million. When adjusted for inflation, this represented more than a 50 percent cut from LSC's 1980 funding level. Since 1996, LSC funding has remained relatively static with small cuts or modest increases in most years. In 2007, Congress provided LSC with $348 million, an increase of $22 million over the 2006 appropriation, its first significant increase in more than a decade. But each year, inflation has continued to eat away at the buying power of LSC grant funds. In 2008 Congress appropriated only $350,490,000, despite bills in both the House and the Senate that would have provided substantial increases over the amount appropriated for 2007. After taking account of inflation, the 2008 appropriation represented a 53.2 percent cut from LSC's 1980 funding level. To keep up with inflation, 2008 LSC funding would have to have reached $749,196,076.

INCREASES IN NON-LSC FUNDING

In part in response to the reductions in LSC funding in the early 1980s and mid 1990s, numerous legal aid programs have aggressively sought resources from non-LSC funding sources. Even though LSC remains the largest single source of legal aid funding, in many states around the country, the legal aid program today is primarily supported by funds from other sources. As a result, over the last twenty years, there has been a radical shift in funding from LSC and other federal programs to a more diversified funding base, including substantial increases from state sources, and the percentage of total legal aid funding provided by the federal government through LSC has shrunk significantly.

Since 1982, legal aid funding from state and local governments has increased from a few million dollars to over $370 million.[2] Most of this increase can be attributed to proceeds from Interest on Lawyer Trust Account (IOLTA) programs, which have now been implemented in every state. A number of new initiatives have resulted in expansions in IOLTA revenue in many states. These initiatives include changes from voluntary to mandatory IOLTA, or from opt-in to opt-out programs, changes in

[2] The exact amount of state funding for civil legal assistance has not been fully documented, because much of this funding has gone to non-LSC funded programs, which, unlike LSC-funded programs, do not have to report to any central funding source.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00242 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.207

legislation or court rules regarding interest rates that must be paid on IOLTA accounts, and, in some states, aggressive and successful negotiations with financial institutions. In 2007 IOLTA resources rose to $123,924,000. However, because of recent drops in interest rates, increases in bank fees and slowdowns in business activity, IOLTA revenues have dropped significantly in recent months from what programs had expected to earn. In addition, because IOLTA programs still vary significantly from state to state, available IOLTA funding for legal aid programs differ greatly, depending on the location.

Within the last several years, substantial new state funding for legal aid has come from general state or local governmental appropriations, filing fee surcharges and other state governmental initiatives. As of 2006 it appeared that significant state funds would likely continue to be available for legal aid programs because state revenue growth seemed to be strong enough to support spending demands. However, with the current fiscal downturn, states may begin to experience the kind of tight fiscal conditions that existed during the 2001–2003 economic recessions, and these conditions may have a substantial impact on the amount of funds appropriated for civil legal assistance programs. It is impossible to predict future state spending on civil legal aid, as well as on other areas that will have an impact on demands for legal assistance, because state fiscal conditions may change and the federal government may continue to shift more costs to state governments. With prospects for continued increases in state funding dimming, expanded federal funding becomes more and more important.

SIGNIFICANT GEOGRAPHIC FUNDING DISPARITIES

While LSC funds are distributed according to the 2000 census data on individuals living below the Federal Poverty Line, an amount currently equal to approximately $9.00 per poor person, non-LSC funding sources are not distributed equally among states, and there are enormous disparities in the legal aid resources that are available in different parts of the country. In 2006, total dollars per low-income person (including LSC funding) ranged from a low of $9.55 to a high of over $76. The average was about $28, and the median was about $23. The lowest-funded states are in the South and Rocky Mountain states, and the highest-funded states are in the Northeast, Mid-Atlantic, Midwest, and West.

- 8 states have total funding exceeding $50 per low-income person.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00243 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.208

- 12 states have funding between $30 and $49 dollars per low-income person.
- 19 states have funding between $20 and $29 dollars per low-income person.
- 11 states have funding less than $20 per low-income person.

LSC funding provides the critical foundation for legal aid programs across the country. Those LSC grantees in areas of the country where it is difficult to raise substantial amounts of non-LSC resources are almost wholly dependent on LSC funds for their continued existence. In other states, LSC funding provides the essential foundation to leverage and raise other resources. Regardless of where on the spectrum of non-LSC funding a program lies, increased federal funding is absolutely critical to expanding their ability to provide access to legal assistance for the low-income community and to close the justice gap.

But federal funding has not kept pace, and today the money programs receive from LSC purchases less than half of what it did in 1980, when LSC appropriations provided "minimum access," an amount that could support two lawyers for every 10,000 poor people in a geographic area. In order to secure the foundation of the civil legal aid program, federal funding must be increased and secured into the future.

PRO BONO AND JUDICARE

Pro bono efforts constitute a significant supplement to the staff attorney system for legal services delivery, and in many respects are an integral and integrated part of that system. Since the first LSC funding cuts in the early 1980s, pro bono efforts in the United States have continued to expand and engage more members of the legal profession in the delivery of legal services to the low-income community. Beginning in the early 1980s, each LSC-funded program has been required to spend a substantial amount of resources, currently an amount equal to 12.5% of its LSC grant, for private attorney involvement. In addition, there have been significant efforts by the American Bar Association and state and local bar associations to increase pro bono activity among all segments of the bar, including government attorneys, corporate counsel, law school faculties, as well as additional attorneys in private practice.

Pro bono efforts are provided through a wide variety of organizational structures. Some LSC-funded programs run their own pro bono projects, recruiting attorneys directly, referring cases through pro bono panels, running pro bono clinics, co-counseling with private

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00244 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.209

attorneys or a variety of other efforts. Others work in collaboration with state and local bar associations that run pro bono projects, or with free standing pro bono programs that operate in local jurisdictions or on a statewide basis, generally through subgrants or through support activities provided by LSC program staff. The common denominator is that LSC funding provides the structure and underpinnings upon which all of these pro bono efforts operate.

Pro bono efforts can range from limited legal advice or brief service provided in one-time clinic settings to extended representation in major litigation or extensive transactional work on behalf of an individual or group client that goes on for many months or even years. Pro bono attorneys handle individual cases referred by LSC-funded programs or act as co-counsel in conjunction with program advocates. They undertake cases within their areas of expertise and they learn to handle poverty law or other types of cases unrelated to their every-day practices. Attorneys who engage in pro bono efforts come from every practice setting, from solo and small firm practitioners to government attorneys or corporate counsel, from academics and clinical law faculty to partners in major national and international law firms. Pro bono practice not only expands the availability of legal assistance to low-income clients, but also fulfills professional obligations and provides great personal and professional satisfaction for those lawyers who donate their services.

Although the majority of private attorney involvement is provided through pro bono efforts, numerous LSC-funded programs engage private attorneys to provide legal assistance on a low-fee basis. Programs pay private attorneys to provide legal assistance to eligible client either on a fee-for-service (judicare) or contract basis. Most judicare and contract attorneys provide services in rural areas where it is not possible to set up a legal services program office.

Despite significant efforts over the last 25 years to increase the involvement of the private bar and other members of the legal profession in the delivery of legal services, pro bono services and judicare remain only a supplement to the basic staff delivery system. The primary responsibility for providing civil legal assistance remains with staff attorneys, paralegals and other legal aid staff with particular expertise in the areas of the law that affect the low-income community and a full-time commitment to improving the lives of low-income clients, their families and their communities. Private attorneys are an essential component of the legal services delivery system, but their efforts can only complement the efforts of the staff attorney program as it works to close the justice gap.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00245 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.210

ISSUES RELATED TO RECRUITMENT AND RETENTION OF LEGAL AID STAFF

Low funded legal aid programs throughout the country face additional obstacles to providing meaningful access to justice for the clients and communities they serve. With the reality of limited resources and growing needs, recruiting and retaining dedicated and talented lawyers is becoming increasingly challenging. Newer civil legal aid attorneys are leaving their employment with legal services programs at an alarming rate.

A survey, conducted in 2006 by NLADA, garnered 786 responses by civil legal aid attorneys 35 years old and younger. Forty percent of survey respondents reported that they expect to leave their current employment within three years. This finding is consistent with the results of other similar studies. A recent study in Florida looked back five years to the beginning of 2002 to determine how many attorneys are still with the same employer they were with at that point, finding only 39 percent remained. Even more startling is that half left before they had been with their programs for two years.

This level of turnover takes a toll on legal aid attorneys, their clients and the programs. The constant loss of attorneys means that those who remain have to pick up the open cases and try to provide assistance to more clients while positions are being filled. Many times these cases fall to supervisors who also bear the burden of training new attorneys who may leave after just a short time on the job. High turnover also takes a toll on the quality of the work as the positions are filled with new law school graduates without the experience and training of those who have left. Programs must expend additional financial resources on recruitment and training of new staff that could otherwise be used to serve program clients.

Low salaries

The primary cause for attorneys leaving and not applying for available positions is the low salaries paid by civil legal aid programs. The national median starting salary of $36,000 is below what most new attorneys need to meet the cost of living and far below the salary one would expect for an educated professional. Also troubling is the glacial pace at which salaries increase. It takes ten years for a legal aid staff attorney to reach the national median salary of $50,000.

In response to NLADA's survey, 540 respondents (69 percent) listed salary as one of the top five reasons they may leave their programs, with

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00246 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.211

350 (45 percent) listing it as the number one reason. In addition, 333 respondents (42 percent) listed long-term salary plans as one of the top five reasons they may leave their program.

Law school debt, loan repayment assistance programs and legislation

Ninety percent of respondents to NLADA's survey indicated they had educational debt when they graduated from law school, with 41 percent of those carrying at least $90,000 in loans. Forty-five percent of respondents expect it will take 25 to 30 years to pay off their educational debt.

Between 1986 and 2006, the average law school tuition increased almost four fold at private institutions ($8,225 to $30,520), almost five fold at public institutions for non-resident students ($5,160 to $25,227), and over six fold at public institutions for resident students ($2,206 to $14,245). Consequently, the average amount borrowed for law school has spiraled upward reaching $54,509 at public institutions and $83,181 at private institutions for the 2005-2006 academic year.

Loan repayment assistance programs (LRAPs) have emerged as a means to assist with the debt burden of some law graduates who are interested in pursuing public service legal jobs. There is a patchwork of various types of LRAPs, administered by law schools, state bar associations and foundations, federal and state governments, and employers to provide some assistance with the extraordinary educational debt loads carried by law graduates.

The College Cost Reduction and Access Act (CCRAA), which became law in September 2007, will enable many more law graduates to pursue public interest jobs without their educational debt being such a burden. With the income-based repayment and the forgiveness provision enacted as part of the CCRAA, meaningful assistance with their education debt will become a reality for many legal aid attorneys. In addition, a bill, introduced by Senator Tom Harkin (D-IA) and included in the Higher Education Amendments Act, would authorize up to $10,000,000 for loan repayment aid to "civil legal assistance" attorneys. Participants could receive up to $6,000 per year up to a total amount of $40,000 per participant.

These recent Congressional efforts will go a long way toward decreasing the difficulties that face law school graduates who wish to make a career serving the low-income community. But until sufficient resources are available to pay reasonable salaries to legal aid attorneys, programs will continue to face problems recruiting and retaining high quality staff attorneys who are willing to devote their professional lives to

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00247 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.212

serving low-income clients. The only way to ensure that all legal aid programs have the human capital that is needed to fill the justice gap is to increase the federal funding that provides the foundation for the civil legal assistance program.

In conclusion, I would like to thank you for holding this hearing on Closing the Justice Gap: Providing Legal Assistance to Low-Income Americans. You have devoted much of your distinguished career to seeing that the least advantaged among us receive the help they need to build healthy, happy families and live constructive, fulfilling lives. Providing civil legal aid is an integral part of constructing the foundation for achieving these outcomes. A 53 percent reduction in funding for legal aid and turning away 50 percent of those who seek it is NOT living up to the constitutional promise of "establish[ing] justice" that we all embrace. The federal government can and should do more. It should enhance the goal of "justice for all," not erode it. Our clients and your constituents deserve no less.

VerDate Aug 31 2005 14:05 Dec 18, 2008 Jkt 045653 PO 00000 Frm 00248 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\45653.TXT SJUD1 PsN: CMORC

45653.213

Testimony of

Kirt West
Inspector General, Legal Services Corporation (2004-2007)

Before
The Committee on the Judiciary
United States Senate

May 22, 2008

Good afternoon, Mr. Chairman and Members of the Committee:

My name is Kirt West. I had the privilege to serve as the Inspector General (IG) of the Legal Services Corporation (LSC) from September 2004 until August 2007. Before my appointment as the LSC IG, I served for nearly twenty years as a career Federal employee holding various legal and executive for Inspectors General at the United States Postal Service, the Central Intelligence Agency and the United States Department of Labor.

Thank you for the opportunity to provide comments on the role that the LSC Office of Inspector General played in the issuance of a 2005 report on the issue of unmet civil legal needs of low-income Americans.

In 1978, Congress passed the Inspector General Act in an effort to address issues of waste, fraud and abuse. Congress also charged the IGs to conduct independent audits, investigations and inspections; promote economy, efficiency and effectiveness; review pending legislation and regulations; and to keep Congress and the head of the agency currently and fully informed. IG standards require that our work be performed independently and objectively. IGs fulfill a valuable role when they act as the "eyes and ears" of the head of the agency.

45653.214

In the fall of 2005, the Legal Services Corporation issued a report called "Documenting the Justice Gap in America: The Current Unmet Legal Needs of Low Income Americans." At a September 30, 2005 Board Finance Committee meeting, LSC President Helaine Barnett briefed the LSC Board Finance Committee that the report was about to be released. Some members of the Finance Committee objected to its release without the Board formally discussing the report's contents. During this discussion, a Board member recommended that prior to its issuance there be a review of the report that asks "hard questions about the assumptions and methodology" employed.

In response to the Board member's comments, I attempted to address the Finance Committee to offer the suggestion that either the Office of Inspector General or the Government Accountability Office (GAO) conduct an independent and objective review of the assumptions and methodology employed in the report and to validate its findings. Unfortunately, the Finance Committee Chairman refused to recognize me despite the urging of a Committee member. As a result, this report did not undergo review by an independent and objective organization that did not have a stake in the outcome. It is my understanding that to date this report still has not undergone a review by an independent and objective party and thus its findings have not been validated.

Instead, the Board chose to assign the role of "skeptic" to Jon Asher, the acting Special Counsel to LSC President Helaine Barnett and Director of Colorado Legal Service. In my opinion, Mr. Asher was not a disinterested party. He was one of the individuals who spent months working the very report he was then asked to critique. In addition, Mr. Asher, as Director of Colorado Legal Services, heads an organization that would benefit from the increased funding that the report concludes is necessary.

45653.215

The Government Accountability Office has recently issued two reports regarding LSC in which GAO identified significant deficiencies in the way in which LSC Board carried out its governance duties. During my tenure as the LSC IG, I noticed several situations in which, in my opinion, the LSC Board failed to exercise an appropriate level of oversight regarding the actions of management as I believe is required under current governance practices. I think that the failure of the LSC Board to seek an independent and objective review of the Justice Gap report is one such instance.

○