

# LEGAL SERVICES CORPORATION

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
COMMERCIAL AND ADMINISTRATIVE LAW  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED ELEVENTH CONGRESS  
FIRST SESSION

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OCTOBER 27, 2009  
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OFFICIAL HEARING RECORD

MATERIAL SUBMITTED FOR THE HEARING RECORD BUT NOT REPRINTED

Reports submitted with the prepared statement of Rebekah Diller, Deputy Director, Justice Program, on behalf of the Brennan Center for Justice at NYU School of Law. The reports are entitled "Foreclosures: A Crisis in Legal Representation," and "A Call to End Federal Restrictions on Legal Aid for the Poor." These reports are available at the Subcommittee and can also be accessed at, respectively:

[http://brennan.3cdn.net/a5bf8a685cd0885f72\\_s8m6bevkv.pdf](http://brennan.3cdn.net/a5bf8a685cd0885f72_s8m6bevkv.pdf)

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## LEGAL SERVICES CORPORATION

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TUESDAY, OCTOBER 27, 2009

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

The Subcommittee met, pursuant to notice, at 11:07 a.m., in room 2237, Rayburn House Office Building, the Honorable Steve Cohen (Chairman of the Subcommittee) presiding.

Present: Representatives Cohen, Watt, Lofgren, Scott, Chu, Franks, Jordan, Coble, and King.

Staff present: (Majority) Norberto Salinas, Counsel; Adam Russell, Professional Staff; and (Minority) Justin Long, Counsel.

Mr. COHEN. This hearing of the Committee on Judiciary, Subcommittee on Commercial and Administrative Law is called to order.

Without objection, the Chair will be authorized to call a recess during the hearing.

And I will now recognize myself for a short statement.

This morning, we meet to discuss the Legal Services Corporation. Congressionally established in 1974, the LSC is a private, non-profit corporation which promotes equal access to justice under the law by providing grants to programs for civil legal assistance for low-income persons.

The programs which receive these grants help the most vulnerable, specifically those living at or below 125 percent of the Federal poverty level. The grantee programs help those who face a variety of matters, including displaced persons attempting to obtain Federal emergency assistance following hurricanes or floods or earthquakes, if they should happen, and victims of predatory lending practices.

During this economic downturn, the grantee programs have played an even more significant role. The programs have provided legal assistance to families and individuals to obtain public benefits and to fend off foreclosures in their personal lives.

Because LSC distributes more than 95 percent of its total funding to over 135 legal aid programs, providing legal assistance in every congressional district, we can be sure that many of those in need are receiving legal assistance. However, according to a recent report, not all eligible potential clients of LSC-funded programs were receiving the legal assistance they so desperately need.

In Memphis, my hometown, the Memphis Area Legal Services handled nearly 5,600 cases in 2008. Both the downturn in the economy and the resulting increase in requests for legal representation, the Memphis Area Legal Services has handled over 4,500 cases through the first 6 months of this year. That would extrapolate to 9,000 cases, or an increase of about 40 percent, at least.

I am very interested in hearing why LSC-funded programs have been unable to meet the needs of half of all the potential clients that have walked through the office doors and how that problem could be resolved. What avenues are available for families and individuals to seek legal assistance, but cannot obtain them from the LSC-funded programs?

I served for a brief period of time as a general sessions judge in Shelby County, and Legal Services often represented people who otherwise would have been taken advantage of by landlords. And it was important that the Allied Legal Services will be available to represent individuals or else they would not have been treated fairly and justly. So I have seen it firsthand.

Since the Subcommittee's last hearing on Legal Services in 2005, Legal Services and some of its grantees have received criticism for inappropriate use of Federal funds, and other criticisms, as well, have been heard. Members of this Subcommittee want to know that taxpayer money is being used efficiently and appropriately and that anyone who violates taxpayers' trust is held accountable.

There are special places held for people who steal from the poor. We seem to have some type of reverence in our society for people like Jesse James, who steal from the rich, but not for those who steal from the poor.

Although we have Ms. Barnett and Mr. McKay here to discuss what LSC is doing to improve accountability and proper use of Federal funds, we also welcome Susan Ragland from the General Accounting Office, to give us some information and help us determine whether LSC has implemented measures to protect against misuse of Federal funds and protect those funds entrusted to them for the benefit of people who need that help.

Finally, Mr. Scott, distinguished Member of the Subcommittee and chairman of the Criminal Law section, has recently introduced the Civil Access to Justice Act of 2009, legislation which several Members of this Subcommittee, including myself, have co-sponsored. The bill would authorize an increase in funding for the Legal Services Corporation, strengthen Legal Services, internal controls and corporate governance, and allow LSC-funded programs to utilize non-Federal funds more efficiently. Mr. Scott has a special concern, and I appreciate that. Hopefully, the witnesses will be able to address this legislation, as well.

Accordingly, I look forward to receiving today's testimony, and I now recognize Mr. Franks, the distinguished Ranking Member of the Subcommittee, for his opening remarks.

Mr. FRANKS. Well, thank you, Mr. Chairman, and thank you folks for being here. I know it is always a pretty heart-stopping challenge sometimes to come before a bunch of Members of Congress that know a lot less about the issues than you do and yet have to say some of the things they have to say, but I appreciate you being here.

Mr. Chairman, I welcome this opportunity to renew our oversight of the Legal Services Corporation. I don't think any hearings have been held on this topic since at least the beginning of the 110th Congress, and I think this oversight is long overdue.

And I say this because we know that LSC has had a troubling history of mishandling Federal funds. And this has been revealed by reports from LSC's inspector general and the GAO and has been pursued in various news articles, as well.

It is also clear that this historical pattern hasn't stopped yet. To the contrary, troubles continue even to this year. As recently as July, the Washington Times and CBS News reported numerous instances of wasted funds, including unnecessary travel expenses and a decorative wall costing over \$180,000.

In July, LSC's inspector general reported problems with the organization's consulting contracts. And as we speak, the GAO is in the middle of preparing its third report on LSC in as many years.

Our witnesses today undoubtedly will cite structural and other changes being implemented by LSC in an effort to bring it into compliance with recommendations in the most recent GAO and inspector general reports, and I do applaud those efforts, of course. At the same time, I am sincerely concerned over pending legislation that would vastly expand LSC's funding and lift restrictions on its activities before we know definitively that LSC has cleaned house and turned the page.

How can we trust that the most recent fixes at the corporation will be any more effective than LSC's past fixes, given the fact that GAO and the inspector general keep coming back and finding more problems that need fixing on an ongoing basis?

Doesn't logic dictate that we wait and watch vigilantly at least another year or 2 to see if funding at current levels is used properly before we reward LSC with another increase in annual funds, this time from \$390 million in 2009 to \$440 million in 2010, and doesn't logic demand that we refrain from lifting restrictions on how LSU—I am sorry, LSC can use the funds?

In March of this year, Senator Tom Harkin introduced a bill that would lift restrictions on the ability of LSC grantees to file ideologically motivated lawsuits. Our colleague, Congressman Scott, introduced similar legislation, H.R. 3764, this month in the House.

These restrictions were enacted by Congress in 1996 in response to evidence that Legal Services lawyers were systematically using taxpayers' money to further partisan policies. I guess that troubles me as much as anything, Mr. Chairman.

The restrictions ban representation—I am sorry, the restrictions ban representation of undocumented aliens, abortion-related litigation, class-action lawsuits, prisoner advocacy, challenges to the welfare reform, and congressional restricted redistricted cases.

Not only do they keep LSC out of the partisan arena, they focused LSC on what should have always been its true mission, and that is to provide legal aid to the poor. Given that these restrictions, however, Legal Services lawyers funded by LSC have attempted to use Federal funds to engage in prohibited activism.

As recently as 2008, for example, LSC's inspector general subpoenaed California Rural Legal Assistance to see if it had violated the restriction on representing undocumented aliens. The National

Legal and Policy Center reported this year that a “former CRLA lawyer said the organization had a policy of providing aid to illegal aliens.”

Now, Mr. Chairman, evidence like this, misuse of Federal funds, should stop before we reward LSC with increased funds, though it will probably take another year before LSC’s 130-plus grantee boards receive even orientation on modernized auditing practices. And it is absurd that Congress is considering giving LSC more money and more ways to misuse its money at this particular time.

Oversight and not increased funding and lifted restrictions is what is needed today and in the foreseeable future. Until LSC has proven over a sustained period of time that its funds are no longer being used for partisan activism, we should not consider rewarding LSC with increased funds and lifted restrictions.

And I thank you, Mr. Chairman.

Mr. COHEN. I thank the gentleman for his statement.

I now recognize Mr. Scott, the Chairman of the Crime Subcommittee and a particularly knowledgeable person on this issue who has a bill before us on the LSC.

Mr. Scott, you are recognized.

Mr. SCOTT. Thank you, Mr. Chairman, for holding this important hearing on the Legal Services Corporation.

I have long been a supporter of legal assistance to indigent persons and for LSC dating back to the 1970’s when I led the effort to establish the legal aid program on the Virginia peninsula and became the first chairman of the board of the Peninsula Legal Aid Center, which is funded by the LSC.

The Legal Services Corporation was established by Congress in 1974 to provide legal assistance for those with low income in civil matters. The LSC directs and supervises the Federal grants and local legal services providers, and over the years, the Legal Services Corporation has been stripped of many of its most effective tools to give those who need the help—give help to those who need it the most.

Specifically, there have been restrictions placed on the use of Federal and non-Federal funds that have limited the types of cases that Legal Services attorneys can bring, and the funds appropriated for LSC are insufficient to meet the needs of their clients. Unfortunately, the corporation has not been re-authorized since 1977.

For these reasons, I introduced the Civil Access to Justice Act of 2009, which reauthorizes the Legal Services Corporation. The bill will provide relief to those who need civil legal representation by accomplishing several goals.

First, it increases the authorization level for the LSC to \$750 million. This is approximately the same amount, adjusted for inflation, appropriated in 1981. LSC is currently funded at \$390 million, which in current dollars is well below the amount needed to respond to significant requests for Legal Services.

The bill also lifts most of the restrictions placed on the program through the appropriations bills over the years, including the restriction on collecting attorney’s fees and prohibition on legal aid attorneys bringing class-action suits. The bill does maintain the prohibition on abortion-related litigation and incorporates some

limits on whom the LSC-funded programs can represent, including the prohibition against representing prisoners challenging prison conditions and people convicted of illegal drug possession in public housing eviction proceedings.

The bill also provides for more effective administration of LSC. Recent GAO reports emphasized the need for better corporate oversight and governance. The bill seeks to improve corporate practices of LSC.

I would like to thank the current co-sponsors of the bill, including Chairman Conyers and Chairman Cohen, and former Chairs of the Subcommittee, Congresswoman Sánchez and Congressman Watt and Congressman Delahunt and Johnson for their leadership on this issue. We look forward to working with the LSC and civil legal advocacy groups as we move forward to its markup and ultimately passage of the bill in the House.

And, again, thank you, Mr. Chairman. I look forward to the witnesses' testimony.

Mr. COHEN. Thank you, Mr. Scott. I appreciate your statement.

Without objection, other Members' opening statements will be submitted and included in the record.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF THE HONORABLE HENRY C. "HANK" JOHNSON, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA, AND MEMBER, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

Chairman Cohen, Thank you for holding this important hearing. I am glad that CAL is taking the opportunity to look at the role that the Legal Services Corporation plays in ensuring that all Americans have access to justice.

In this current economic climate, it is vitally important to make sure that the funding that Legal Services Corporation receives is not placed on the backburner as a means to cut costs, as in these difficult economic times the importance of their work will only grow. Recent statistics indicate that for each client that the legal services corporation takes on, one eligible client is turned away due to inadequate resources. This means that an overwhelmingly large percentage of the legal needs of low income Americans are being unmet. Adequate legal representation can be costly, often forcing individuals to represent themselves, pro se. Pro se civil litigants represent a significant and growing burden on a judicial system which is not well-equipped to deal with them. Unsophisticated and inexperienced pro se litigants complicate the process and burden the entire system by complicating not only their own cases but by increasing the burden and transaction costs of other parties, represented or not.

Thus, it is imperative that we consider not only the costs of increasing the Legal Service Corporation's funding, but more importantly what costs we will face if we do not support them. Not only will we clog the judicial system, we essentially ensure a great miscarriage of justice by forcing litigants to go pro se. To suggest that their pro bono legal services or volunteers can begin to address the tremendous legal needs of low income Americans is unrealistic. This need exists amongst each of our constituencies across this country. Therefore, I implore my colleagues on this subcommittee to consider these needs as we hear testimony from the witnesses today.

I yield back the balance of my time. Thank you.

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Mr. COHEN. I thank all the witnesses for participating in today's hearing. Your written statements, without objection, will be placed into the record, and we would ask you limit your remarks to 5 minutes. We have got a lighting system. Green means you are in the first four; yellow means you are winding down to your last minute; and red means you should have finished.

After you have presented your statement testimony, Subcommittee Members will be permitted to ask questions, same 5-minute limit.

Now, I am pleased to introduce our witnesses for our first panel. And our first witness will be Mr. McKay. Mr. McKay is on the board of the Legal Services Corporation and serves as vice chair. He was confirmed in 2003, long and commendable record with Legal Services, is a founding partner of McKay Chadwell legal corporation, a practice which focuses on commercial litigation, white-collar criminal defense, and corporate and government internal investigations.

We appreciate—and you were a former U.S. attorney, as well?

Mr. MCKAY. I was, Mr. Chairman.

Mr. COHEN. Yes. Thank you. And we welcome you as our witness.

Well, I have got a second page which still says that you served as U.S. attorney for the western district of Washington from 1989 to 1993. And then in 2008, hired by the Port of Seattle to serve as legal counsel for special investigative committee's investigation of important contracting policies, run numerous political campaigns, and I won't go into those, for none of those were successful or ones that we would like to talk about too much.

Thank you, Mr. McKay. Will you proceed with your testimony? [Laughter.]

**TESTIMONY OF MICHAEL D. MCKAY, VICE CHAIRMAN OF  
THE BOARD, LEGAL SERVICES CORPORATION**

Mr. MCKAY. Chairman Cohen, Congressman Franks, Members of the Subcommittee, good morning. It is my pleasure to be with you today.

Mr. Chairman, thank you for holding this hearing and for your interest in LSC and the provision of civil legal assistance to low-income Americans.

I bring you greetings from our entire bipartisan board. Each board member is eager to do the right thing for the people we serve and understands that providing civil legal assistance to low-income citizens is quite important.

As you have noted from my resume, I was honored to be the United States attorney for the western district of Washington in Seattle under President George H.W. Bush, and I currently have a practice in Seattle with McKay Chadwell.

And a few of our cases do end up on the front pages of the Seattle newspapers, like the Port of Seattle case you just referenced, Mr. Chairman. However, some of my most rewarding cases have been the least publicized.

I had the opportunity to represent a public housing tenant whose case I took through our local volunteer lawyer services office many years ago. She endured harassment, broken windows, and physical violence at the hands of her neighbors. When the police came to investigate, language barriers led them to believe her attackers. She was evicted and brought up on criminal charges.

I took her case pro bono, and the charges were ultimately dropped, and she was moved into another housing unit far from

her attackers. Without pro bono legal assistance, women like her would be out on the street.

Mr. Chairman, I feel so strongly about the obligation of all attorneys to contribute to equal justice that I continued to take cases pro bono while I was a United States attorney. Those of us that do this know just how gratifying it is, but we also know how great the need is in our society for legal aid. Government has a role in this. Proper levels of funding, as well as leadership and oversight, are necessary if we are to ensure equal access to justice for all Americans.

The recently released report on the justice gap in America, about which President Barnett will be speaking today, makes clear that legal aid has never been more in need of resources. In today's economic downturn, more women are victims of domestic violence, more elderly Americans are being wrongfully evicted from their homes, more children are at risk, and half of our eligible clients are being turned away from the legal assistance they need to protect themselves.

The LSC board of directors over the last several years has worked hard to increase more private attorney involvement and has recommended increases in LSC funding to help meet that need. We sincerely appreciate the bipartisan support our requests have received.

Equally important, as Congressman Franks has indicated, of course, is the proper use of those funds that Congress has entrusted to our stewardship. And we consider this a central mission for the board and entire management.

And prompted by two GAO reports, we have worked to strengthen our governance practices, improve our oversight, and to work with management to improve management practices. We adopted a code of ethics. We train all employees every year on the code of ethics, and we included an orientation for the new employees.

We created a new audit committee. We created an ad hoc committee to make sure that all the GAO recommendations are being faithfully executed. For the fifth consecutive year, we received an opinion from outside auditors that our financial statements fairly present the financial position of LSC.

Oversight and emphasis on compliance with proper financial management practices has continued to be a priority for the board. We receive ongoing advice from the I.G., whose charge, of course, is to find and deter waste, fraud and abuse, and the I.G. is playing an essential role, and we appreciate working with him.

Mr. Chairman, in closing, let me say again what a privilege it is to be here today and an honor it has been to work with my board colleagues to support the mission of the Legal Services Corporation. My career has been about ensuring that the rule of law is properly carried out in this country and that all attorneys do their part to fulfill the promise of equal justice under the law.

And I will be happy to answer any questions that you might have. Thank you very much.

[The prepared statement of Mr. McKay follows.]

PREPARED STATEMENT OF MICHAEL D. MCKAY

Michael D. McKay  
Vice Chairman, Board of Directors  
Legal Services Corporation

Testimony Before the  
Subcommittee on Commercial and Administrative Law  
House Committee on the Judiciary  
U.S. House of Representatives

October 27, 2009

Chairman Cohen, Congressman Franks, members of the Subcommittee, I am Michael McKay, Vice Chairman of the Board of Directors of the Legal Services Corporation, and it is my privilege to be with you today. Mr. Chairman, I thank you for holding this hearing and for your interest in LSC and the provision of civil legal assistance to low-income Americans. Mr. Chairman, as you and Mr. Franks know, the Legal Services Corporation is the largest funder of civil legal assistance in the country. The Corporation makes competitive grants to 137 independent 501 (c) 3 corporations for the provision of civil legal aid to clients who are at or below 125 percent of the federal poverty guideline.

I bring you greetings today from Chairman Frank Strickland and our entire bipartisan Board. Each Board member is eager to do the right thing by the people we serve, and we listen to and respect one another's viewpoints about how best to fulfill LSC's mission. Providing civil legal assistance to individual indigent clients has never been more important.

As you will note from the resume that I have provided to the Committee, I was honored to be the United States Attorney for the Western District of Washington under President George H. W. Bush, and currently have an active commercial and criminal practice of law as a partner with McKay Chadwell in Seattle. However, some of my most rewarding cases have been the least publicized. I had the opportunity to represent a low-income public housing tenant from the Middle East whose case I took through Volunteer Lawyer Services many years ago. She endured harassment, broken windows, and physical violence at the hands of her neighbors. When the police came to investigate, language barriers caused them to believe her attackers, and she was evicted and brought up on criminal charges. I took her case pro bono, the charges were ultimately dropped, and the tenant was moved into another housing-authority unit far from her attackers. Without legal aid and pro bono, women like her would be high and dry. An evicted person would be out in the street.

Mr. Chairman, I believe so strongly in the obligation of all attorneys to contribute to equal justice efforts that I continued to take cases pro bono while I was U.S. Attorney, and I have recruited members of my firm and my local bar to do the same virtually my entire professional career. Those of us who have fulfilled that obligation know just how rewarding it is, but we also know how great the need is in our society for legal aid. Government clearly has a role. Funding, leadership, and oversight are in part a federal obligation and a necessity if we are to address the serious ills in our society and ensure equal access to justice for all Americans. That is why I am honored to be a member of this Board and proud of the work that we have done to strengthen LSC.

The recently released report on the Justice Gap in America, which we will be speaking about today, makes clear that legal aid has never been more in need of resources both from government and private sources. Equally important, of course, is the proper use of the funds that the Congress has entrusted to our stewardship. We consider that stewardship to be a central mission of our Board and the Corporation, and before President Barnett speaks to you about the Justice Gap this morning, I would like to say a few words about what our Board and LSC have done to improve and ensure that vital responsibility.

Our Board, prompted by two Government Accountability Office (GAO) reports, has concentrated its efforts over the last two years to improve our governance practices, to bring our Board's governance practices into alignment with Sarbanes/Oxley requirements, to improve the Board's oversight of the Corporation's financial and compliance responsibilities, and to focus the Corporation's attention on improved internal cooperation and good management practices. In making these efforts, the Board has had the assistance of and complete cooperation from the Corporation's management. We have made great progress and I'd like to outline those results for you today.

#### **Established a new code of conduct and ethics**

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 early last year. The Board adopted the Code on March 24, 2008, and the Corporation has conducted training for all employees, officers, and directors. In addition, training in compliance with the Code is now an important part of new employee orientation.

#### **Modernized Board governance**

An Ad Hoc Committee of the Board researched corporate audit committee options and charters, recommended the establishment of a separate Audit Committee, and proposed a charter for the new Committee. The Board approved the new committee and its charter. The Audit Committee held its first meeting at

the Oklahoma City Board meeting in April 2008, at which time it adopted a work plan for the coming year. The Board has drafted and approved charters for all its standing committees. A charter for a newly constituted Governance and Performance Review Committee was adopted at the August 2008 meeting of the Board. At its first meeting, the committee affirmed the importance of establishing a comprehensive training and transition plan for the next Board, and agreed on a board member self-assessment tool for Board approval and implementation. We completed the Board self-assessment and an evaluation of the full Board at our annual Board meeting in January 2009. The Committee's newly approved charter includes an annual review cycle.

The Board has established Board training and transition as a priority for 2009. We want to do everything that we can to facilitate a fully oriented and functioning Board in the shortest possible interval after the President appoints and the Senate confirms the new Board's members. To ensure that our efforts to improve Board governance are sustained, future Boards need to know not only the rules and procedures that have been established but also the background and history of our actions and the benefits that the new policies and procedures provide in fulfilling the mission of LSC.

#### **Strengthened financial accountability procedures**

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. The Board took the steps necessary to receive the LSC annual audit report from LSC's independent public accountant in a timelier manner. Accordingly, we have been able to act on the previous year's report at the end of January for each of the last two fiscal years.

In addition, LSC has revised and updated written guidelines for the fiscal component of the Corporation's Office of Compliance and Enforcement (OCE)'s regulatory compliance reviews and established written guidance for following up on grantee interviews. When reviewing programs on-site, OCE is now conducting expanded financial reviews that are designed specifically to address issues raised by GAO. These include review of prohibited political activities, proper use of non-LSC funds, transfers of funds, program integrity, private attorney involvement, sub-grants, membership fees or dues, timekeeping, attorney fees, and internal controls associated with the programs' accounting practices.

An advisory was sent to all LSC-funded programs on March 20, 2008, reminding Executive Directors of the need for appropriate documentation of expenditures of LSC funds and of the regulations regarding unallowable costs. The advisory specifically stressed the prohibition of expenditures of LSC funds for alcohol and lobbying, of the need for the grantees to adopt written policies governing salary advances, and of the regulation governing derivative income.

I am also pleased to report that for the fifth consecutive year, LSC received an opinion from outside auditors that LSC's financial statements present fairly, in all material respects, the financial position of LSC.

**Established a risk management program**

LSC management has this year established a formal and rigorous risk management program at the Corporation. Management researched a variety of risk management programs and best practices, identified the risk environment for the corporation, and performed an office-by-office risk assessment process. The final Risk Management Plan for LSC includes a full listing of the risks to LSC's strategic objectives, a delineation of the strategies to be followed to mitigate those risks, a list of the offices responsible for each of those strategies, and the dates of annual review. The completed program was presented to the Board at its January 2009 meeting and unanimously approved. One of the key annual duties of our new Audit Committee will be to review processes for risk assessment and mitigation, and the status of ongoing implementation of the plan.

To mitigate the risk of an interruption in grant payments or support to our 137 grantees, LSC management developed and implemented an emergency continuity of operations plan (COOP) for the Corporation, including notification protocols and procedures for each individual LSC office. As a part of the readiness aspect of the plan, LSC has established a remote computer facility and is using it as a backup for its computer operations. A test of the COOP, including the telephone tree initiation of the plan, was performed last September. Both announced and unannounced testing will be conducted on a regular schedule.

In a related area, LSC has reviewed and expanded the current risk factors for selection of grantees for program visits. The Corporation is updating procedures included in the Office of Program Performance (OPP) and OCE manuals. OCE and OPP will each apply the risk factors-such as date of last LSC visit, issues identified by the OIG, any change in grantee leadership, and issues related to program size (large or small). Together they will discuss their conclusions and make decisions about which programs to visit for 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.

**Tightened turnaround times on reports and guidance to grantees**

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 2008 to complete all outstanding reports to LSC programs. In

addition, LSC has set firm goals for report preparation following program visits, such that reports will be provided to the grantees within 90 days of on-site program visits (for the large, statewide programs with multiple offices, the goal is 120 days). These and other procedures all have been laid out in writing in manuals.

**Improved coordination and communication between program, compliance, and Inspector General offices**

LSC management developed and implemented policies and procedures for information sharing among the OIG, OCE, and OPP and coordination of OCE and OPP on-site visits. LSC worked with an Ad Hoc Committee of the Board to establish working groups and held many hours of joint staff meetings to work on the roles and responsibilities of the various oversight offices. New information sharing and coordination of site visits, where appropriate, among OCE, OPP, and the OIG, is now proceeding. Care is being taken to ensure the OIG's independence. New training of LSC's oversight staff has now been completed and quarterly staff meetings to continue coordination of work efforts are being conducted.

**Continued emphasis on oversight**

Oversight and emphasis on compliance with proper financial management practices and provisions of law and regulation will continue to be a priority of the Board this year. President Barnett issued an advisory letter to all grantees in December on the subject of compliance guidance, and indicated that this will be an annual alert on issues that have surfaced in the year's compliance reviews. The Board recently initiated an effort with LSC management to focus on the oversight responsibilities of the individual grantee boards. They are vital partners in ensuring that the programs provide high-quality civil legal services in compliance with all laws, regulations, and best governance practices.

**Conclusion**

Mr. Chairman and members of the Subcommittee, let me say again in closing what an honor it is to be here today. It has also been a privilege to work with my Board colleagues to support the mission of the Legal Services Corporation. I would be happy to answer any questions that you might have at the appropriate time.

Mr. COHEN. Thank you, Mr. McKay. I appreciate your service and your testimony.

Our next witness is Ms. Helaine Barnett, appointed president of the Legal Services Corporation in January 2004, first legal aid attorney to serve as president of the LSC. Under her leadership, the LSC has emphasized strategies to enhance the quality of legal services provided by LSC programs. The centerpiece has been the revision of LSC's performance criteria.

Before joining LSC, she devoted her entire 37-year professional career providing legal services to the indigent with the Legal Aid Society of New York City, the oldest and largest Legal Services organization in the country, for nearly 3 decades involved in managing the society's multi-office civil division, which she headed from 1994 to the end of 2003 when she assumed this position.

Under her watch, the division earned universal respect for its legal work, adherence to the highest professional and ethical standards, innovative projects, and disaster response plans to coordinate delivery of critical assistance to New Yorkers in the aftermath of the September 11 attacks.

Ms. Barnett, we appreciate your appearance and your service. And would you please proceed with your testimony?

**TESTIMONY OF HELAINE M. BARNETT, PRESIDENT,  
LEGAL SERVICES CORPORATION**

Ms. BARNETT. Thank you, Chairman Cohen, Congressman Franks, and Members of the Subcommittee.

Thank you for holding this hearing and providing the Legal Services Corporation with the opportunity to discuss the continuing justice gap facing our Nation and the importance of civil legal assistance to low-income individuals and families across this country.

It is my privilege to appear before you with Mike McKay, the distinguished vice chairman of the corporation's board of directors and a longtime champion of pro bono services for low-income persons with pressing civil legal problems. I share the sentiments he expressed about holding LSC and its programs to the highest standards.

Low-income Americans come to civil legal aid programs when they need assistance to help them escape an abusive relationship, to gain access to health care, food, disability benefits, to prevent foreclosure and eviction that may lead to homelessness.

Ensuring that the poor are adequately represented in the civil justice system greatly improves their chances of keeping or securing basic necessities, the keys to stability and self-sufficiency. It also keeps communities healthy.

With millions of Americans falling deeper into poverty because of the economic recession, and millions more slipping into poverty for the first time, the work of LSC-funded programs is more critical than ever before. Many of the 137 nonprofit programs funded by LSC are increasingly involved in foreclosure cases, and they frequently involve allegations of predatory lending.

For example, Community Legal Services in Phoenix has established a foreclosure law project to help homeowners and participates in a volunteer lawyers program, which recruits and trains

pro bono attorneys to help low-income homeowners at risk of losing their homes.

Our foreclosure projects reflect the difficult economic times facing our Nation. The magnitude of our challenge can be seen in new Census Bureau data. Close to 54 million people, including 18.5 million children, are eligible for LSC-funded services, according to the Census Bureau. That represents a 1-year increase of almost 3 million.

With unemployment projected to peak at above 10 percent, LSC will see another increase in the number of poor people eligible for legal services when the census issues its 2009 estimate. It is important to note that three out of four clients at LSC-funded programs are women, and many of them are struggling to keep their families together and their children safe.

Many programs have domestic violence projects, including Memphis Area Legal Services. In one of its cases, the Memphis program represented the mother of three children who was trapped in an abusive relationship with her estranged husband. Although she had left him, he stalked her, harassed her, and vandalized her property. After being convicted for aggravated assault and burglary, but before sentencing, he taunted her by claiming he could deny her a divorce.

With the assistance of the Memphis program, the woman was able to obtain the divorce and is raising her children in a stable home, free of abuse and violence.

The challenge confronting the Nation in providing equal access to justice is urgent. As you and Members of the Subcommittee know, LSC recently issued a report on the justice gap, the difference between the level of civil legal assistance available to low-income Americans and the level that is necessary to meet their needs.

The 2009 justice gap report updates and expands the first report, released by the corporation in 2005. The data collected in 2009 confirmed the earlier conclusion that there continues to be a major gap between the civil legal needs of low-income people and the legal help that they receive.

For every client served by an LSC-funded program, one person who sought help is turned down because of insufficient resources. In one category, foreclosures, LSC-funded programs are turning away two people for every client served. Programs are also meeting less than half of the requests for assistance with employment and family law matters.

There are people walking through the doors of our programs who never imagined that they would find themselves in need of legal help. Many have lost their homes and their jobs, their unemployment benefits are running out, and they have no place to turn. Their only hope is for justice, and it should not be denied.

Our study shows that, regrettably, many of these same people walk out those same doors with no relief. It is a heartbreaking scenario played out much too often throughout our country. Just as the recession has impacted clients, it has also put more strain on the resources that support civil legal aid programs. Many States are confronted by budget shortfalls, and the drop in short-term in-

terest rates to virtually zero has eroded the second-largest source of legal aid funding, interest on lawyer trust accounts, or IOLTA.

Numerous LSC programs project they will receive significantly less IOLTA funding this coming year and will struggle to maintain staff and services. It is clear that the support of the Congress is even more vital than before. Closing the justice gap will require a multifaceted approach that includes increasing pro bono, expanding partnerships, and promoting technology investments that expand access to justice.

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 vital service rendered at a critical moment in their lives. This is the essential mission that LSC and our programs across the country strive to fulfill every single day.

Thank you. And I would be pleased to answer your questions.

[The prepared statement of Ms. Barnett follows:]

PREPARED STATEMENT OF HELAINE M. BARNETT

Helaine M. Barnett  
President  
Legal Services Corporation

Testimony Before the  
Subcommittee on Commercial and Administrative Law  
House Committee on the Judiciary  
U.S. House of Representatives

October 27, 2009

Good morning, Chairman Cohen, Congressman Franks and other members of the Subcommittee. I am Helaine Barnett, in my sixth year as president of the Legal Services Corporation (LSC), and it is my pleasure to be with you today.

I am joined by Mike McKay of Seattle, the distinguished Vice Chairman of the LSC Board of Directors. Mike has served on the Board since 2003, and he chairs the Finance Committee of the Board. LSC benefits from his deep knowledge of the judicial system, both from his service as the U.S. Attorney for the Western District of Washington (1989-1993) and from his years as an attorney providing *pro bono* services to the poor in the Seattle area and years of volunteer work with the state Equal Justice Coalition. Mike and his brother, John, a former LSC president, were honored by the Legal Foundation of Washington in 2008, with the 22<sup>nd</sup> annual Charles A. Goldmark Distinguished Service Award. We are most fortunate to have Mike as one of our leaders.

I would like to begin by thanking you, Chairman Cohen, and the other Subcommittee members for your continuing support of civil legal aid programs around the nation and for giving us an opportunity to discuss the legal services that LSC-funded programs provide to the nation's poor. A part of my testimony will summarize the Corporation's recently released report that contains updated and expanded information on the "justice gap," an urgent and complex challenge to our nation and its promise of ensuring equal access to justice for all.

**The Legal Services Corporation**

My entire legal career has been devoted to providing legal assistance to low-income individuals and families. I have been privileged to be the longest-serving president of the Legal Services Corporation in its 35-year history. Prior to my appointment in January 2004, 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 as its Attorney In Charge from 1994 to the end of 2003. 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 assistance to eligible low-income Americans.

The clients of LSC-funded programs are the most vulnerable among us. They live at or below 125 percent of the federal poverty guideline—an income of \$27,563 for a family of four. Three out of four clients are women, and many are mothers struggling to keep their families together and their children safe, fed and housed. Program clients are all races and ethnicities, young and old, and include the working poor, people with disabilities, victims of domestic violence, victims of natural disasters, families with children, veterans and military families.

LSC-funded programs closed 889,155 cases in 2008, our most recent data. Family law cases accounted for 35 percent of these cases, the largest category of casework. Housing was the next largest category, representing about 26 percent of total cases closed. LSC has funded the development of statewide websites, which allows ever-increasing numbers to access legal information and download legal forms via the Internet. According to LSC data, web-based services that offer access to legal education materials, legal forms and self-help materials have grown from 8 million in 2004 to nearly 13 million in 2008. LSC-funded programs expect to receive increasing numbers of requests for help in coming months because of the continuing effects of the recession—from people who have lost jobs, lost health care and are at risk of losing their homes through foreclosure.

The Legal Services Corporation, established by Congress as an independent 501(c)(3) nonprofit organization, is the single largest source of funding for civil legal aid for low-income Americans. LSC provides grants to 137 independent nonprofit programs with 918 offices that serve every Congressional District.

The Corporation marked its 35<sup>th</sup> anniversary in July, and I want to thank you Chairman Cohen for honoring us with a commemorative statement in the Congressional Record. The White House also honored us with a Presidential Proclamation in July. Just weeks earlier, the House rejected an amendment to eliminate LSC, on a 323-to-105 vote. We are most appreciative of the bipartisan support for equal access to justice for all Americans.

The Corporation's Fiscal Year 2009 appropriation is \$390 million. The House has approved a FY 2010 appropriation that would provide \$440 million for LSC. The Senate Appropriations Committee has approved a \$400 million appropriation. For the first time in several years, the White House has proposed to increase funding for LSC, requesting \$435 million for FY 2010.

LSC distributes more than 95 percent of its annual appropriation directly to the nonprofit programs that deliver civil legal services. The Corporation provides guidance and oversight to ensure that the programs provide high-quality services and comply with Congressional requirements, funding restrictions, LSC rules and regulations. Administrative expenses are less than 4 percent of our budget—low by any standard.

The Corporation's challenge is great. About 54 million people—including 18.5 million children—are eligible for LSC-funded services, according to Census Bureau data released last month. That represents an increase of almost three million people from 2007 to 2008. This is the highest number of people eligible for civil legal assistance in LSC's history. Although there are reports that the recession appears to be ending, the Office of Management and Budget projects that unemployment will remain high, peaking at a rate above 10 percent. LSC will likely see another increase in the number of people eligible for legal services when the Census issues a new count next year.

These are harsh economic times. Millions of Americans are falling deeper into poverty and millions more are slipping into poverty for the first time. Clients come to civil legal aid programs when they need a lawyer to help them escape an abusive relationship; to gain access to health care, food, subsistence income and disability benefits, and to prevent foreclosure and eviction that may lead to homelessness. LSC-funded programs save lives and save taxpayer dollars by averting more costly interventions by state and local social services and public assistance agencies.

Legal aid can help prevent the downward spiral of the poor into costly public support. It greatly improves their chances of keeping their home rather than moving into a shelter, holding a job rather than going onto public assistance, retaining custody and support of their children rather than losing them to foster care, receiving early medical care rather than costly hospitalization, and escaping an abusive relationship rather than suffering further injury or even death. Civil legal assistance saves both lives and money.

In these troubled economic times, legal aid can facilitate solutions and help clients who have nowhere else to turn. Ensuring that the poor are adequately represented in the civil judicial system greatly improves their chances of keeping or securing basic necessities—the keys to stability and self-sufficiency. It also helps keep communities healthy. The work of LSC and its programs are more critical than ever before.

### **The Justice Gap**

Last month, LSC released an updated and expanded report on the "justice gap"—the difference between the level of civil legal assistance available to low-income Americans and the level that is necessary to meet their needs. This 2009 report, "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans," updates the first Justice Gap Report released by the Corporation in 2005.

The program data collected in 2009 confirmed the conclusion of the 2005 Justice Gap Report—that there continues to be a major gap between the civil legal needs of low-income people and the legal help that they receive.

For every client served by an LSC-funded program, one person who sought help is turned down because of insufficient resources, the 2009 data show. In one category—foreclosures—LSC-funded programs are turning away two people for every client served. Programs also are meeting less than half of the requests for assistance with employment and family law matters, according to the program data.

The report used three different methodologies to examine the extent of unmet civil legal needs. First, LSC asked programs to document the number of people actually seeking assistance from the program who could not be served due to insufficient program resources. Programs collected the data from March to May 2009, the same time period used in 2005 for data collection. Second, LSC analyzed civil legal needs studies from seven states that were conducted since the 2005 report. Those findings were compared to nine state studies conducted during 2000-2005 that were discussed in the 2005 report. In addition, the report took into account the Comprehensive Legal Needs Study funded by the American Bar Association and released in 1994. In the third methodology, the report counted the number of legal aid attorneys (working in LSC and in non-LSC programs) available to low-income Americans and compared that to the total number of private attorneys providing personal legal services to the general population of the nation.

The first methodology documented again for 2009 that 50 percent of the potential clients requesting assistance from LSC-funded programs were turned away for lack of adequate resources.

The new state legal needs studies add to a body of social science knowledge that shows only a small fraction of the legal problems experienced by low-income people (less than one in five) are addressed with the assistance of either a private attorney or a legal aid lawyer.

The report's analysis of the most recent available figures on numbers of attorneys shows that nationally, on average, only one legal aid attorney is available for every 6,415 low-income people. By comparison, there is one private attorney providing personal legal services for every 429 persons in the general population who are above the LSC poverty threshold.

In addition, the 2009 report included new data indicating that lower state courts, particularly housing and family courts, are facing significantly increased numbers of unrepresented litigants. Studies show that the vast majority who appear without representation are unable to afford an attorney, and a large percentage of them are low-income people who qualify for legal aid. A growing body of research indicates that outcomes for unrepresented litigants are less favorable than those for represented litigants.

Despite increases in funding for civil legal assistance over the past four years by the Congress, by 25 states and the District of Columbia, the nation continues to confront a substantial justice gap. As an initial, critical goal, as a nation, we must

provide enough funding to serve at least all those currently seeking help from LSC programs. The 2009 Justice Gap Report found that this would require a doubling of LSC funds and a doubling of the state, local and private funds that also support LSC programs.

The long-term goal must be to develop resources sufficient to meet the civil legal needs of all eligible low-income people, and that would require the federal, state, local and private funding to grow by five times. *Pro bono* efforts need to be expanded substantially in the years ahead, but even expanded *pro bono* contributions will not be enough to address a major portion of the unmet need.

Too often we summarize by using numbers, but I want to emphasize that LSC programs are focused on people and their pressing civil legal needs. Legal aid lawyers help the poor with shelter, protection from domestic violence, access to health care and income maintenance. Families, and especially children, depend on legal aid lawyers daily to help them achieve safety, security and a path to self-sufficiency.

#### **Strategies to Close the Justice Gap**

Closing the justice gap and securing necessary access to civil legal assistance requires a multifaceted approach built around increased federal, state and local government funding and an array of public-private partnerships that include individual lawyers, the organized bar, foundations, charitable donors and other concerned private parties.

*Pro bono* services and private attorney involvement (PAI) are important elements in LSC's efforts to close the justice gap. In 2008, private attorneys closed approximately 10 percent of LSC cases on behalf of LSC programs.

Since the 2005 Justice Gap Report, LSC has undertaken a major initiative to increase the involvement of private attorneys in LSC-funded programs. The LSC Board of Directors adopted a PAI action plan, "Help Close the Justice Gap, Unleash the Power of Pro Bono," which included a call to programs to adopt resolutions that recognize and celebrate the involvement of private attorneys in the delivery of civil legal services, and 107 programs have done so to date.

LSC also in 2007 provided guidance to programs on resources and innovative approaches available to more effectively integrate private attorneys into the delivery of civil legal aid. LSC has recommended that programs develop long-term relationships with large law firms, corporate and government attorneys, and offer support to small law firms, solo practitioners and judicare attorneys so that they may more effectively assist low-income clients. Just as importantly, the American Bar Association and various state and local bar associations have sought to encourage and support *pro bono* contributions by private lawyers.

Across the nation, the creation of state Access to Justice Commissions has energized efforts to increase state funding and *pro bono* support for civil legal

aid. Justices of state Supreme Courts and the heads of state bar associations are leaders in these efforts, and LSC has encouraged the creation of commissions, highlighted the importance of integrated statewide delivery systems, and urged the involvement of local legal aid programs in setting goals for the commissions. Twenty-four states and the District of Columbia now have such commissions.

In your state, Mr. Chairman, the Tennessee Supreme Court announced the creation of a statewide Access to Justice Commission in April 2009 to help address the unmet civil legal needs of low-income individuals in Tennessee. Congressman Franks, the State Bar of Arizona created the Arizona Foundation for Legal Services & Education in 1978, as the Interest on Lawyers' Trust Accounts (IOLTA) funder with a mission of promoting access to justice for all Arizonans. State-based initiatives like these are invaluable in raising awareness about the justice gap in America and in setting priorities that help low-income families, especially during economic downturns when the poor more than others are at risk of losing their job, health insurance and even their home.

To expand the reach of their services, many LSC-funded programs are joining in partnerships. Programs have joined with local and state groups to address the foreclosure crisis and related housing issues, including partnering with lenders and banks to explore workouts that keep families in their homes and help others write down loans. In an effort to improve overall health outcomes for low-income children and families, more than 35 LSC-funded programs are participating in medical-legal partnerships, where legal aid attorneys and *pro bono* attorneys are trained to work as part of health-care teams to enforce the laws and regulations in place to protect health. In California, Illinois and Tennessee, programs are addressing challenges facing military veterans, including homelessness, re-employment rights and improved coordination of services with local military commands.

Technology is increasingly an important tool for improving access to justice and in providing self-help options for those that we are unable to directly serve. LSC's Technology Initiative Grants (TIG) use past successes as a guide to expand intake through online systems; expand assistance for *pro se* litigants through the development of more 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. In rural areas, technology can help deliver services more efficiently.

LSC is committed to exploring ways of using technology to expand access to justice. This is essential in a good economy, imperative in a weak economy, and vital in a natural disaster or other local emergency.

Although *pro bono* efforts and technology projects need to be expanded substantially in the years ahead, these endeavors will not be enough to address a major portion of the unmet need for legal services. Federal, state, local and private funding also will have to grow to address the overall need.

Since the 2005 Justice Gap Report, many state legislatures have recognized the need to help close the justice gap in their states. Twenty-five states and the District of Columbia have adopted new or increased funding for civil legal aid. In addition, many state Interest on Lawyers' Trust Accounts (IOLTA) programs also adopted new revenue measures. But these state legislative and IOLTA increases only benefited the particular states taking action to increase legal aid funding, and the economic recession is placing many of these gains at risk.

IOLTA revenue—the second-largest single source of funding (12.7 percent in 2008) for LSC programs—has decreased significantly because the short-term interest rate has dropped to almost zero. The National Association of IOLTA Programs reports that projected IOLTA revenue will be about \$93 million this year, a dramatic 67 percent decline from 2008, when IOLTA revenue was nearly \$284 million. The impact of the IOLTA erosion varies state by state, but numerous LSC programs project they will receive significantly less IOLTA funding in the coming year and will struggle to maintain staff and services to clients.

Many states may not be able to make up IOLTA losses, in part because of overall state and local budget shortfalls. Charitable organizations also will be unlikely to contribute as much to legal aid as in the past because of the impact of the recession on the stock market and other revenue sources for private giving.

The weak economy has created stresses for legal aid programs. The recent federal funding increases provided by the Congress may help programs to avert layoffs and offset drops in IOLTA, state funding and charitable donations. With limited resources, many programs have limited intake capacity—they can only accept so many requests for assistance each day or answer so many telephone calls. One development we see is a growth in Internet use at LSC-funded programs and at LSC-funded statewide websites. Technology can provide clients with videos and information on dozens of areas of law, including foreclosures and military and veterans' issues, and provide resources to legal aid staffs, volunteers and courts. Technology permits programs to overcome distance, share information in multiple languages and expand access to legal information.

Going forward, the federal government must continue to play a vital role in providing a pathway to equal justice for all, consistent with its role in maintaining the formal civil justice system and providing an orderly forum for the resolution of disputes.

#### **Charting New Directions**

Our nation's commitment to equal access to justice is far from being fulfilled, and will be achieved only through bipartisan support in the Congress, strategic partnerships with business and community groups and the dedicated work of LSC-funded staff attorneys and private lawyers rendering *pro bono* assistance to clients.

In 2004, LSC launched a Quality Initiative—the Corporation's vision for supporting, building and institutionalizing strategies within legal services programs to increase the capacity for the delivery of high-quality legal services. The centerpiece of the Quality Initiative is the revised LSC Performance Criteria, distributed to programs in 2007. It reflects a collective view of best practices to promote the delivery of high-quality legal services. LSC convened a conference of all program executive directors in 2008 to focus on quality as a value, as essential to the provision of legal services and as a vital ingredient of leadership.

Importantly, members of Congress have introduced bills that would reauthorize the Corporation and enhance efforts to increase the LSC budget by authorizing \$750 million as a new, annual funding level. The LSC Board of Directors has called for strong, measured strides to help close the justice gap, and the House and Senate reauthorization bills would accelerate LSC efforts to meet that goal. LSC is deeply appreciative of these efforts to strengthen funding for the delivery of civil legal assistance to low-income individuals and families across the nation.

LSC also wants to take this opportunity to express support for provisions in the reauthorization bills that would improve oversight of the Corporation's grants management.

LSC is committed to holding itself and its 137 programs to the highest standards—which will ensure the most effective and efficient delivery of civil legal assistance to clients and will reinforce the importance of providing high-quality services.

The Corporation receives LSC Inspector General Management Information Memoranda, which are timely reports that offer opportunities to take appropriate action where necessary to improve operations. LSC responds to the Inspector General memoranda and acts on findings from Inspector General audits and investigations.

LSC also accepts and acts on recommendations from the Government Accountability Office, and during the last two years has implemented more than a dozen major actions to improve Board governance, financial and grants oversight and management practices.

LSC has revised and updated written guidelines for the Corporation's two oversight offices, and fully reviewed and updated the procedures for on-site program visits.

When conducting on-site visits, LSC's Office of Compliance and Enforcement (OCE) performs regulatory and fiscal compliance reviews. These OCE reviews include oversight on prohibited political activities, proper use of non-LSC funds, transfers of funds, program integrity, private attorney involvement, use of sub-grants in legal services delivery, proper payment of membership fees or dues, timekeeping, attorney fees and internal controls associated with program

accounting practices. LSC also has sent advisories to all LSC-funded programs reminding them about important fiscal internal control requirements and regulatory compliance requirements.

LSC's Office of Program Performance (OPP) administers the competitive grants system, engages in program quality assessments, and promotes the development and implementation of strategies to support and improve the delivery of high quality legal services. Through on-site visits, LSC identifies areas of programs' operations that would benefit from additional review, support and technical assistance. The on-site program assessment reviews are patterned on the LSC Performance Criteria, look at issues such as: the quality of board governance and oversight of programs' operations; the processes used to target priority legal needs and allocate program resources; how effectively potential clients are able to access the legal services programs; the quality of the legal work provided; and a range of program management and administration issues focusing on programs' use and implementation of acknowledged best practices for the operation of legal services programs. A critical component of the work of OPP is the sharing of innovations and best practices in legal services delivery among recipients.

In addition, LSC has:

- Enhanced coordination of program visits by OCE and OPP staff.
- Performed follow-up on each of the improper uses of grant funds involving nine programs identified in a December 2007 GAO report (GAO-08 37).
- Completed or has proceedings underway to complete actions to strengthen internal controls at LSC-funded programs, as recommended by the Inspector General.
- Strengthened internal controls over contracts for consultants on program visits.

Oversight and emphasis on proper financial management practices and provisions of law and regulation are priorities of the LSC Board, management and staff. In particular, the Board and LSC management are focusing on the oversight responsibilities of the individual boards of the nonprofit organizations that receive LSC funding. Local boards, which best understand the priorities and needs of their communities, are the linchpins in ensuring that LSC-funded programs provide high-quality civil legal assistance in compliance with all laws, regulations and best governance practices. Training is an essential component in ensuring effective oversight, particularly in the areas of board governance and fiscal compliance, and in the delivery of high-quality civil legal assistance. In fiscal years 2010 and 2011, LSC will focus on making training a priority in these areas.

### **Conclusion**

The people who come to LSC-funded programs are truly among the most vulnerable in our society. They are in search of fair treatment and solutions to pressing legal problems.

Every day, legal aid attorneys help low-income clients avoid unlawful eviction and the prospect of homelessness, escape domestic violence and maintain custody of their children. These lawyers not only open the doors to justice, in many cases they help prevent the downward spiral of the poor into costly public support.

The Domestic Violence Project at Memphis Area Legal Services represented a mother of three children who was locked in a power struggle with her estranged husband. Although she had left him, he stalked her, harassed her, and vandalized her property. After being convicted for aggravated assault and burglary, but before sentencing, the husband taunted the legal aid client by claiming he could deny her a divorce. With the assistance of the Memphis program, the woman was able to obtain a divorce and is raising her children in a stable home, free of abuse and violence.

Many LSC-funded programs are increasingly involved in foreclosure cases, and they often involve allegations of predatory lending. The Legal Aid Society of Cleveland participates in "Save the Dream," a statewide response in Ohio to the foreclosure crisis there led by the state's chief justice and governor. Cleveland legal aid trained and mentored 300 volunteer attorneys in Northeast Ohio, and these *pro bono* attorneys work with legal aid staff to prevent foreclosures. Community Legal Services in Phoenix has established a foreclosure law project to help homeowners and participates in a volunteer lawyers program, which recruits and trains *pro bono* attorneys to help low-income homeowners at risk of losing their homes. Other programs—such as Atlanta Legal Aid, West Tennessee Legal Services, Iowa Legal Aid and the Legal Aid Foundation of Los Angeles—have created similar foreclosure projects.

One couple with two children came to the Cleveland legal aid program for help because of a rise in their mortgage rate, which had an initial rate of 9.75 percent with a cap of 15.75 percent. As the date approached for the interest rate to reset, medical expenses and the loss of a job by the husband created financial problems, which led the lender to file a foreclosure action. Unable to keep up their payments under a forbearance agreement, the couple turned to housing authorities, the state of Ohio and the Cleveland legal aid program for help. Legal aid lawyers assisted the couple through mediation, which ended with a loan modification, ensuring a 6 percent fixed rate for 30 years.

In Tucson, staff attorneys at Southern Arizona Legal Aid helped stop the eviction of a woman who was accused of not paying her rent. The case began when the woman received a letter from a law firm representing a creditor indicating that the landlord was involved in a bankruptcy case and that the woman must begin

paying her rent to the law firm. The woman did, but then received a nonpayment of rent notice from the landlord, who began an eviction suit. Legal aid lawyers looked into the matter and got the creditor's attorney to contact the landlord. The eviction effort was dropped.

The Legal Aid Foundation of Los Angeles sponsors a Homeless Veterans Project. It helped an honorably discharged Army veteran who had served in Vietnam and lived with the ravages of war. Every day was a quest for food and shelter. The Los Angeles project filed a claim for benefits with the Veterans Affairs Department, pointing out that their client had physical limitations, an inability to work and was homeless. The VA granted pension, medical and housing benefits, and this veteran is reunited with his once-estranged son and lives in an apartment.

As these examples show, civil legal assistance saves lives and makes communities stronger. Telling people who come to our offices that we are unable to assist them is by far the hardest task of the day, because we know that they often have nowhere else to turn. With the help of this Congress, with the support of the organized bar and private attorneys providing *pro bono* services, with partnerships in business and community groups, with the involvement of courts and law schools, we can make progress toward achieving the goal of equal access to justice.

As U.S. Supreme Court Justice Lewis Powell Jr. said, "Equal justice under law is not merely a caption on the façade 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.

Thank you. I am happy to respond to your questions.

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Mr. COHEN. Thank you for your testimony.

I will start with questioning, and I will be first. And my first question will be for Mr. McKay, who I will mention, before my questioning, who was the Washington State vice chair of the 1988,

2000, and 2004 Bush campaigns and co-chair of the steering committee of the McCain 2008 campaign. So his bona fides have been well described here.

You believe that the additional—do you believe that the additional monies that are being appropriated or proposed to be appropriated for LSC are needed in these economic times?

Mr. MCKAY. I do. And, first, Mr. Chairman, not to rub salt in anyone's wounds, you neglected to point out that I was the State vice chair for President Bush in 2000 and 2004, as well. [Laughter.]

Yes, we do. The justice gap report, which we have provided you, shows that 50 percent of low-income people who come to our grantees asking for help are turned away. The State studies show an even larger number of people who have needs who do not ask for help simply because they just don't think they are going to get it. Clearly, we need more help.

I firmly believe, as I indicated in my opening statement, that more private attorneys need to donate their time. But even if they do, we will still need help. So the answer is, if at least 50 percent of low-income people who need legal assistance are turned away, that we do need additional help.

I do want to hasten to add, because I want to echo Congressman Franks' comments, that an important facet of the budgetary request includes an increase of the number of individuals in our Office of Compliance and Enforcement to make sure that the congressional restrictions as they now exist are faithfully executed. And that is an important part of our budgetary request.

Mr. COHEN. Let me ask you this, and it is important. Ms. Ragland in her written testimony is going to suggest that all of the GAO's recommendations have not been implemented. Can you comment on why they haven't?

Mr. MCKAY. I certainly can, and it is something that we as a board—and I believe management—have taken very, very seriously. Immediately upon the issuance of the first GAO audit, we created an ad hoc committee to make sure they are faithfully executed.

There are quite a few of the recommendations that have been completed from the GAO's perspective. Others have not, for a series of reasons. One is, as I understand it—and, of course, Ms. Ragland can speak for herself, but I did call her yesterday to make sure that what I am about to say is accurate, is that sometimes these things take longer. They cannot be done right away. And I believe Mr. Ragland will confirm that the pace that we are addressing these recommendations is appropriate under the circumstances.

And also, one last point. We may have said, all right, we are going to do this, and we have adopted a policy to do it. I believe GAO's position is, "We see you have adopted the policy. We want to make sure you do it." So it isn't completed yet because they want to watch us for a while to make sure that that policy that we have adopted in response to the GAO is faithfully executed. I can assure you, Mr. Chairman, and everyone on the Committee that that is being done.

Mr. COHEN. Let me ask you this. Mr. Franks mentioned something about LSC agencies going beyond their charters in dealing with everything but ACORN. Are there provisions that you know

of that can give us some assurances that those type of things won't occur in the future?

Mr. MCKAY. Well, the policies are certainly in place. We have staff that goes out to make sure this doesn't happen. We need more staff to go out and make sure it doesn't happen.

It will serve two purposes. One, we will catch those who do it. And if we have a larger compliance staff, it will also serve as a deterrence, because those few grantees that violate our regulations know they are eventually going to get caught. And if we get a larger staff, we are going to catch them sooner.

So the assurance is, number one, yes, the policies are in place. We have staffs that are trying to enforce those policies. We would appreciate more staff to look at more grantees to make sure they are faithfully enforced.

Mr. COHEN. Ms. Barnett's contract ends at the end of this calendar year. Where is the board in finding her replacement?

Mr. MCKAY. We have a committee that has been created to address the interim president question. We respect the fact that there is a new Administration and that this Administration is nominating a new board. And we think it is the new board's responsibility to find a new president. We think it is our obligation to fulfill our fiduciary duties to make sure there is an interim president in place by January 1.

Mr. COHEN. The Senate confirmed one nomination to the board, and they also—last week, the HELP committee approved five pending nominations, a total of six new members, which would be a majority. Do you presently have a full complement of members to do your—

Mr. MCKAY. I don't believe—I think we are short one.

Mr. COHEN. Just one?

Mr. MCKAY. Oh, yes. Short—just one, then? Yes, just one. Lillian BeVier has resigned, so we are short one right now.

Mr. COHEN. Okay. Thank you, sir. My time has—

Mr. MCKAY. I am sorry. I am told we lost one who is deceased, and so there are actually two vacancies right now.

Mr. COHEN. I appreciate your responses.

And I now recognize the Ranking Member, Mr. Franks, for his 5-minute questioning.

Mr. FRANKS. Well, thank you, Mr. Chairman.

And, again, thank you both for being here.

Ms. Barnett, I am told, during your tenure as LSC president, that you have changed the process by which LSC staff can request legal opinions from OLA. And is it true that LSC staff now must submit to requests for legal opinions to the executive management team, in other words, not allowed to go directly to OLA? And does LSC executive management now decide whether the legal opinion request is submitted to OLA? And if there were changes, what were the reasons for those changes?

Ms. BARNETT. Congressman Franks, I saw a story in the Washington Times this morning that seems to allude to what you are asking. We have responded to Senator Grassley in July indicating that we have robust discussions about legal opinions that affect our program, as I think many Federal agencies, government agencies and private institutions, do.

However, general counsel is all—indicates and issues opinions to which he agrees. We do not in any way tell him what to issue. In fact, general counsel is right here behind me, very experienced, and I suggest that he would be the most appropriate—

Mr. FRANKS. Ms. Barnett, it is your testimony that OLA has been allowed to issue final opinions without the approval, I mean, of the executive time, and specifically you, the LSC president. Can they issue these things with or without your approval?

Ms. BARNETT. I don't give approval. We have robust discussions at executive team meetings on certain opinions that are requested and affect our programs and the clients we serve. Ultimately, the decision of what should be in that opinion is up to general counsel, and in no way do we influence what his ultimate decision is.

And the general counsel reports both to me and to the board and if there is an another avenue, if there was any thought that the general counsel was not doing his job independently.

Mr. FRANKS. Thank you, Ms. Barnett.

I wanted to, if I could, return to Mr. McKay. Mr. McKay, you know, I know you understand that there is a debate within Congress as to exactly what the funding levels and exactly what the mission of the organization that you work with should be, but I think that one thing should be agreed upon by all of us, and that is that top-tier funding of a Legal Services outreach shouldn't be allowed to try to make partisan legal battles in order to shake the political culture, that they should primarily focus on helping the underserved, those who can't afford legal representation for themselves.

I mean, I am hoping that you agree with that.

Mr. MCKAY. Absolutely.

Mr. FRANKS. And do you think that, in the future, what can we do to try to make sure that Legal Services focuses on its primary duty, which is to give legal services and aid to the poor?

Mr. MCKAY. The kind of cases you are referring to have happened over the years, quite a while ago. If any occur now, they are pretty quickly rooted out by either our compliance team or the I.G. There is no one who is more opposed to political cases being brought by LSC grantees than me, mainly because I know of how many families are being wrongfully evicted, that may be deprived of legal services because these political cases are being brought. But to my knowledge, these kinds of cases haven't been brought for quite some time.

Mr. FRANKS. And under your tenure in the future, that would be something that you would be very vigilant about?

Mr. MCKAY. I have been very vigilant about it since I was sworn in, in 2003. My days are numbered, though, Mr. Franks.

Mr. FRANKS. It is your testimony that you think that it is the right thing for Congress at this point to lift restrictions, as is being discussed here today?

Mr. MCKAY. I am here as a member of the board of directors, speaking on behalf of the board of directors, and so I don't think it is appropriate for me to share with you my personal views, other than to say that—and I will very firmly say that any restrictions or lack of restrictions that are a product of this Congress will be

faithfully executed by the board, certainly as long as I am on the board.

Mr. FRANKS. Well, thank you, sir. Maybe it is too bad you are leaving.

Mr. MCKAY. Well, talk to—

Mr. FRANKS. Thank you very much.

Mr. COHEN. Thank you, Mr. Franks.

I now recognize Mr. Watt, the distinguished Member from great State of North Carolina, the predecessor to the State of Tennessee, and we give thanks.

Mr. WATT. Thank you, Mr. Chairman.

And I thank the witnesses for being here.

I think I will refrain from all of the philosophical discussions that have been going on and maybe talk about what the hearing was designed to focus on, which is the bill that Mr. Scott has introduced and which I am happy to be a co-sponsor of.

I did want to make sure that Mr. McKay, if he had any connections with the Reagan era, got an opportunity to tell us about those. Maybe that would satisfy some of my colleagues on the Committee, too. So if he has got any connections to former President Reagan's campaign, I am going to give him the opportunity to—he may be too young for that era.

Mr. MCKAY. I wish I were. I did not work on those two campaigns. I was working on local campaigns, Congressman.

Mr. WATT. For equally robust and philosophically sound candidates, I presume?

Mr. MCKAY. Yes, sir.

Mr. WATT. Okay. All right.

Ms. Barnett, you have had a chance to review Representative Scott's bill, H.R. 3674. I guess both of you have. I am wondering if you could just tell us a little bit about—either one of you could tell us a little bit about how this legislation would help the Legal Services Corporation achieve its mission.

Ms. BARNETT. We certainly welcome and support the bill to reauthorize the Legal Services Corporation. I think, as Congressman Scott said in his opening remarks, the corporation hasn't been reauthorized since 1977.

We certainly greatly appreciate the funding level that is reflected in the bill at \$750 million for 5 years. And we appreciate the inclusion, about which we have already done, to improve our governance and our oversight. And we look forward to working with the sponsors as this bill moves forward.

Mr. WATT. As a practical matter, Mr. McKay, the restrictions that have been placed on funds that are not even government funds have nothing to do with taxpayer money. What impact does that have?

Mr. MCKAY. And you are talking about questions like sharing of-office space and things like that, Congressman?

Mr. WATT. No, I am talking about the restrictions that have been placed on non-government money, non-taxpayer money.

Mr. MCKAY. Well, there are certain restrictions that prohibit grantees from using non-LSC funds. And, again, those are the kinds of things that we need to make sure are faithfully executed until and unless Congress changes those.

Mr. WATT. Well, I understand you will be executing them until Congress changes them, but they have some impact, I presume, on the operations of the Legal Services Corporation.

Ms. Barnett, maybe you are in a better position, since you are operating the agency on a day-to-day basis?

Ms. BARNETT. Congressman, the position of the corporation, I guess both the board and management, is that we enforce the will of Congress.

Mr. WATT. I understand. I think you are missing the import of the question. What impact does it have? I understand that you are enforcing them. You have got to enforce the law as we write it. But what impact does it have, as a practical matter, on your operations?

Ms. BARNETT. Well, I guess we would have to ask our programs what impact it has with regard to the current restrictions, because right now, they are mandated to follow the current restrictions, which we enforce.

Mr. WATT. I understand. Have you not asked your related organizations? Or maybe this is something—should I be taking this up with the next panel? That would—

Ms. BARNETT. I would suggest that you do. And I think they will be in a far better position to answer the question directly.

Mr. WATT. Well, it is not a trick question.

Ms. BARNETT. No.

Mr. WATT. I am just trying to get to the practical consequences of some of the restrictions that we have placed, that the law has placed on the receipt and use of non-taxpayer funds. It is one thing to control taxpayer funds, which we have an obligation to do. My question relates to non-taxpayer funds.

Mr. McKay? And I—

Mr. MCKAY. I consulted with Karen Sergeant, who helped me, and I understand the congressman's question better. Stating factually, if there is a restriction on a grantee—that is, a grantee cannot do something—but the grantee—and I will just use an example, Northwest Justice Project in Washington State. It also receives funds from the Washington State government, Washington State legislature and the governor.

Those funds might not have a similar restriction, but the fact that the Northwest Justice Project is receiving those unrestricted funds, but is receiving funds from LSC, they cannot use the unrestricted funds in such a way that would violate the congressional restrictions.

Mr. WATT. I thought that was the case as a practical matter. I will take it up—my time is expired. I will take it up with the second panel.

Mr. MCKAY. I apologize. I didn't understand what you were looking for, so—

Ms. BARNETT. Congressman, if I could just add, also, currently, we are involved in defending the regulations in two court cases, as well, and that is why I would suggest that the second panel may be more appropriate.

Mr. WATT. Defending them in the sense that that is taking time and resources away from other things, to defend litigation related to the restrictions?

Ms. BARNETT. We have two longstanding court cases on both sides of the country in which LSC is defending the will of Congress in upholding these restrictions, yes.

Mr. WATT. Okay. All right. Thank you.

I yield back, Mr. Chairman. I am sorry I went over time.

Mr. COHEN. Thank you, sir.

I now recognize the distinguished—another gentleman from Carolina, Mr. Coble?

Mr. COBLE. Mr. Watt, I am glad he is making both of us distinguished today. I appreciate that, Mr. Chairman.

Good to have you all with us.

Mr. WATT. He is from Tennessee, and he understands that Tennessee wouldn't be around but for North Carolina.

Mr. COBLE. I am not sure he would admit that.

Good to have you all with us.

Mr. COHEN. That is true. And Texas wouldn't be around for us.

Mr. COBLE. Oftentimes, impoverished citizens do come to LSC for assistance. You gave a very moving example, Mr. McKay, in your opening statement. That is the good news.

The bad news is I have heard that there may have been imprudent spending, so I want to touch on that, maybe even reckless spending. That is the bad news, if, in fact, it is true.

Ms. Barnett, describe, if you will, the relationship between the LSC management and the Office of Legal Affairs and the inspector general and the board of directors? Specifically, does management—and when I say “management,” I include you in that, Ms. Barnett—does management willingly share information with these other offices and allow these other offices to independently perform their duties?

Ms. BARNETT. Let me see if I understand to your question, Congressman, by beginning with the relationship with the Office of Inspector General, where we cooperate fully with their reviews and we welcome their reviews. And they certainly operate independently of LSC management.

With respect to the board, we make every effort to keep the board timely informed about any action or policy. And I think we do a good job at doing that.

But Mr. McKay is here, and he can respond with respect to the board.

Mr. COBLE. Well, Mr. McKay, you want to weigh in on this?

Mr. MCKAY. I think there is a consistent effort for all of us to do a better job, and there are—if we as a board feel like we are not getting enough information and we make it clear to management that we need more information.

Same thing relates to our legal counsel. And we have worked hard to make sure that the legal advice we receive from our legal counsel is good and clean and unfettered. And we are satisfied with that process.

Mr. COBLE. Well, Ms. Barnett, to follow up on the Ranking Member's question regarding the process by which staff can request legal opinions, has that process been altered or changed by you or anyone else?

Ms. BARNETT. I believe I will try to answer it the same way I did with previous questions.

Mr. COBLE. And that is why I am revisiting it, because I didn't follow it that clearly. That may be my fault.

Ms. BARNETT. No. We have robust discussions on certain opinions that have been requested that impact all our programs and the clients they serve. I would like to believe that those discussions raise issues that general counsel may have considered, should in addition consider, but ultimately, in the end, it is general counsel who has to issue opinions that he believes is the correct opinion.

And I believe he does so, but as I indicated, the Committee is certainly free to ask general counsel directly, who is here. I have been informed that the Office of Inspector General has been asked to look into this matter. We welcome that inquiry.

And as with any GAO or OIG inquiry during my entire tenure, we intend to cooperate fully with that review and await the report, which I think will vindicate the position that I am advocating and sharing with you today.

Mr. COBLE. Let me try to beat that red light before it illuminates. Mr. McKay, let me ask you this. Has there been a time when management did not provide you with all the information you desired or significantly delayed the providing of such information to you?

Mr. MCKAY. I cannot point to any example. I think this is a traditional tension between a board and management. And sometimes it is the opportunity for management to understand what a particular board's needs are.

But there have been times in the 6 years I have had the privilege of serving where I have made it clear and with the entire board have made it clear to management that we needed more information about certain things. We have also made it clear that certain things should be done, in addition to giving us information.

So, yes, it has happened. It is not unusual. If we are doing our job, we should be routinely saying, "Well, what about this? What about that? And we need more information about this," and so forth. So, yes, it has happened.

Mr. COBLE. Thank you both for your testimony.

I yield back, Mr. Chairman.

Mr. COHEN. Thank you, sir.

I now recognize Ms. Lofgren, the lady from California.

Ms. LOFGREN. Thank you very much, Mr. Chairman, and for this hearing.

I was interested to read the General Accounting Office report. And in the conclusions, they say the following: "The improvements that LSC has made in its governance and accountability provide a good foundation for completing implementation of the elements needed for a strong program of governance and internal controls."

So I think that is a pretty positive statement, and certainly the witnesses here have indicated here certainly a desire—more than a desire, an eagerness to reach out to the GAO and implement all of the recommendations. It is obvious the program sees this as helpful. Not every agency does see the GAO recommendations as helpful. So that is a very positive piece of information that we have gained out of this hearing.

I am interested—you know, I served on the board of legal aid in Santa Clara County for many years and did not agree with the restrictions that were put in place some years ago.

But what happened in Santa Clara County—and I think it happened in many places around the country—was that sort of secondary offices were established that were able to do the work that legal aid was now prohibited from doing. And in many cases, there was funding from the local bar association in California. The interest from trust accounts is diverted to Legal Services.

So I am just wondering, in this economy where there isn't any interest because of the financial situation, what is happening to those other efforts? And is it impossible with the State budget cuts and the decrease in interest rates for those secondary efforts that could do the things prohibited from LSC to keep up and sort of make up for the cuts and the prohibitions? Do you know that?

Ms. BARNETT. I do not know about the non-LSC-funded programs. I do know that the LSC-funded programs themselves have had significantly reduced IOLTA funding, when the interest rate, as you point out, went to zero and the projected decrease is like 21 percent in 2009 State by State. It is a significant drop.

Also, as you point out, the State budget deficits have limited the State funding for civil legal aid programs. So I can speak from LSC-funded programs' perspective that the decrease in resources that leverage Federal dollars has greatly been decreased, and many programs, because of that, have laid off staff or closed offices.

Ms. LOFGREN. Do you know, Mr. McKay?

Mr. MCKAY. I can only talk about Washington State—

Ms. LOFGREN. Okay.

Mr. MCKAY [continuing]. And what you are talking about certainly happened there. We had two other non-LSC grantee providers, Evergreen Legal Services and Columbia Legal Services, and they were free to do the kinds of things that our grantee, Northwest Justice Project, is not able to do. They don't exist anymore.

Ms. LOFGREN. Really?

Mr. MCKAY. They are gone. And those good lawyers, some of whom, jeez, happily were picked up by Northwest Justice Project, but others—Ada Shen-Jaffe is now teaching at Seattle University Law School. She is not providing the legal services that she used to provide. So it has been a hard hit.

And now, while our county bar association plays a role by trying to get private attorneys to help, but it is woefully inadequate. Eleven percent of the attorneys in King County, of the 14,000 attorneys, donate their time every year, 20 hours or more every year. So the answer is, it has been a hard hit.

Ms. LOFGREN. All right. Well, and it is more difficult for members of the bar actually to donate time. Because of the economic conditions, people are scrambling, aside from the large firms that are jettisoning their first-year associates to go work full time.

So the picture you have painted here is really a dire one. I am especially concerned—well, there are many issues—but in this foreclosure crisis that we are facing, one of the things that has become obvious is that there are institutions attempting to foreclose who don't have a legal right to foreclose. And so individuals who do not

have representation are losing their homes in a miscarriage of justice.

Are you seeing those cases being turned away from legal aid?

Ms. BARNETT. Well, unfortunately, our justice gap report, which showed for every one eligible client we represent, we turn away one eligible applicant, in the area of foreclosure, we are turning away two for one. And you are absolutely right that the necessity for a lawyer in a foreclosure action makes all the difference, whether they keep their home or they don't, whether they assert a legal defense, whether they assert truth in lending, whether they are able to request that the foreclosed party has actual title to foreclose.

So the difference a lawyer can make in these very complex cases means whether there is a roof over a family's head or not.

Ms. LOFGREN. Thank you very much, Mr. Chairman. My time has expired.

Mr. COHEN. Thank you, Ms. Lofgren.

I now recognize the gentleman from the State of Iowa, Mr. King?

Mr. KING. Thank you, Mr. Chairman. I want to thank both witnesses, and I appreciate Mr. McKay's opening this discussion up with his pro bono work. I think that set the right tone for the spirit that we hope to see and have seen, I think, in much of the past of LSC.

But I think about some other things, the consequences that seem to be kind of moving in the background here and was part of the opening statement of Mr. Franks, as well, and has a lot of questions on a lot of different subject matter.

But I think I would turn first to Ms. Barnett, and you have twice mentioned the will of Congress and it is your intent to follow the will of Congress. And I have just heard Ms. Lofgren—I am sorry that she left the room. She said she didn't agree with the restrictions put in place in 1996. I will submit that is the will of Congress.

And I will just ask you the question, how do you identify the will of Congress?

Ms. BARNETT. As reflected in the laws that are passed, the appropriations acts and the restrictions that were placed in 1996 and carried forward in every appropriations act. We agree that is the will of Congress, and that is what we expect our programs to abide by, and that is what our programs do abide by.

Mr. KING. Thank you. And I just wanted to have you an opportunity to put that particular response into the record.

I am looking back at some information I have in front of me with regard to the California Rural Legal Assistance, and going back to even as recently as 2008, a case where the inspector general wanted to look into the situation of a case that had to do with—determine if it had violated the restriction or representing undocumented aliens.

And I would go—a case that underlies that is in 2002, the Legal Aid Foundation of Los Angeles introduced a case that even though the General Assembly in bill number 60 had never enacted into law, they introduced a case to promote the granting of driver's licenses to undocumented aliens. And I would suggest that that violated their restriction on assisting undocumented aliens.

However, there is a refusal to release some of the information on these related cases. And it turns out that Mary Grace Odias didn't have a Social Security number. And so if these kind of things can happen in such an obvious way, how could we possibly audit and keep track of the compartmentalization of funding if the Scott bill were passed?

And I would tell you that I am focused on ACORN. It was brought up by our Chairman. And we are watching the fungibility of funding be passed through the joint accounts and as many as 361 different affiliations. I have a real aversion to expanding anything that could turn into an arm of any organization that might have an undercurrent like ACORN.

So I would be interested in your response. How do we protect against that? How could we in any kind of good faith go forward and lower their restrictions when these things happen with the restrictions in place?

Ms. BARNETT. Well, I can only comment on what we do now to ensure that the programs comply with the existing law. We have, as Mr. McKay has indicated, increased our staff in our office of compliance and enforcement.

Mr. KING. Since the clock is ticking, I would just appreciate that that—I have heard that response from Mr. McKay, and I respect that response that you would use more resources. But what has happened to the people that have violated the 1996 statute? Are they still working? Do they still have a job? What were the consequences?

And I think I would turn to Mr. McKay, so I can hear from him, as well.

Mr. MCKAY. Well, I want to augment President Barnett's answer to make sure you know, Congressman, that, in addition to the statute, we have our own regulations, that we have them in place, that set forth in more detail the congressional restrictions and other obligations that are imposed upon us, so they are there. And, of course, it is part of a checklist that the office of compliance and enforcement bring out.

There are sanctions. And I will turn back to President Barnett. She is in a better position to answer that. But for certain grantees, we change the level of the nature of the funding. Instead of giving them a chunk of cash for the entire year, we switch to month to month, to use that as a tool to—

Mr. KING. But let's get them back to rectitude. The people that have violated the 1996 statute, are they still working for LSC?

Mr. MCKAY. I will have to turn to President Barnett, but if I could just complete my answer.

Mr. KING. And I would ask right in the middle this question—

Mr. MCKAY. Just to make sure you know that we are—

Mr. KING [continuing]. Because we are going to run out of time in a moment. I think the Chairman will allow the questions answered by both of you, but I would like to know if they are still working for LSC. And what are the names of those individuals?

Ms. BARNETT. I am not aware of anybody who is working at LSC who violated the 1996 restrictions. What we do, do when we find questionable activities, we have corrective actions. We have questioned cost proceedings, where we get back the money that LSC

provided, so the Federal taxpayer is made whole, for instance, on the marble that was used in a recent office building.

We have special grant conditions that we impose on a grant to ensure that there is compliance. We have short funding cycles that are sure they are in compliance. And, ultimately, we can terminate a grant, if that is necessary.

Mr. COHEN. Your question now—Mr. King?

Mr. KING. Thank you. And I would just ask consent for Mr. McKay to complete his answer.

Mr. MCKAY. I would simply invite the congressman's attention to the way we have dealt with particular grantees who have violated the sanctions and we weren't satisfied with their response. And when I say "we," we as a board specifically ask questions about it.

I am familiar with the examples that you have given. And we have asked for briefings for these different cases to make sure that the problems are turned around and, where they are not satisfactorily turned around, that the funding is impacted, that is, we are not going to give them the full chunk of cash. We are going to do it on a month-to-month basis.

We have reviewed changes in our regulations to punish them in other ways, to deter them from doing this in the future. So it is something that is in the forefront of our minds, something that we discuss every board meeting, and I just wanted to reassure you of that.

Mr. KING. I thank you. I thank the witnesses. And I yield back.

Mr. COHEN. Thank you, Mr. King.

And I will recognize Mr. Scott, of Virginia.

Mr. SCOTT. Thank you.

Ms. Barnett, as I understand the funding mechanism, you fund by formula, not by line item in a proposal. Is that right?

Ms. BARNETT. We are mandated to fund by a congressional formula that states it is based on the poor person population in the service area in the decennial census. So we are funding now based on the poor person population of 2000.

Mr. SCOTT. And the fact that you do not fund by line item, does that affect your ability to provide oversight for the physical management of local programs?

Ms. BARNETT. No, Congressman, it does not. We have a rigorous request for proposal that every grantee has to submit at least every 3 years. And in that, they attach their budgets. In that, they attach an answer to many specific questions that gives us the ability to know whether this program is capable of providing high-quality legal services in conformity with the mandates of Congress.

We also do program visits. We also have grant activity reports quarterly that give us information for us to review. We get coordinated impact input from the Office of Inspector General, as well, based on their visits to programs. We hear from the public. We hear from Members of Congress.

So we feel that we have an opportunity to review adequately the program's ability to provide high-quality legal services in conformity with the mandates of Congress.

Mr. SCOTT. How do you do oversight on ensuring that the salary level of LSC program attorneys is sufficient to attract the best and the brightest?

Ms. BARNETT. Well, you have mentioned something that is of major concern to LSC-funded programs, and that is, the starting salary for legal aid attorneys is the lowest of any public-sector attorneys. And these young attorneys are graduating with huge student debt from their law schools.

We, in fact, have started a pilot loan repayment assistance program to be able to attract and retain these attorneys in our programs. In the course of our review of their budgets and their quarterly grantee reports, they indicate what their salaries are, so we can see, unfortunately, we don't have any programs that are paying exceeding high salaries, because the average starting salary is \$40,000 for a legal aid attorney.

Mr. SCOTT. Now, you indicated that 50 percent of the people turned away, are those people that would be qualified for services by every other measure, but for the resources of the program?

Ms. BARNETT. Yes, Congressman. In our justice gap report, we indicated—we had uniform instructions to every one of our programs that was collecting this data and that the data was that if the person who came would be eligible for the services fell within the office priorities of the program would have been helped but for the fact of lack of resources.

Mr. SCOTT. And you turned away two-thirds of the persons for foreclosure assistance. You indicated the difference you can make. How often are you able to actually help someone in a foreclosure situation?

Ms. BARNETT. Well, we are being—I think our programs are being inundated with requests for foreclosure assistance. And they are seeing a huge percentage increase over last year.

Last year was the first year we started to collect data on foreclosures themselves, so we will have more concrete data at the conclusion of 2009 when we can have a comparative basis. We hadn't thought to take out of housing the separate category of foreclosures up until last year.

Mr. SCOTT. When you find that—in an area that people are systematically being ripped off in certain ways, how do you deal with that without a class action?

Ms. BARNETT. Well, for instance, in the foreclosure area, LSC has taken a leadership role in hosting national calls with national providers and legal aid programs that specialize in foreclosure on an every-other-monthly basis to share developments that are happening in Los Angeles with court mediation, in Philadelphia with the newly enacted Federal legislation, so that we get to share what are the different practices and the way that different programs are dealing with it—

Mr. SCOTT. If you have a lot of people with essentially the same case, how do you deal with that without being able to bring a class action?

Ms. BARNETT. Well, right now, our programs cannot bring class actions, so they have to bring individual cases.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. COHEN. You are welcome, Mr. Scott.

I now recognize our newest Member from the Golden State, Congresswoman Chu.

Ms. CHU. Ms. Barnett, my question has to do with the greatest use of dollars for legal services and partnerships. And, in fact, the budget request document for 2010 mentions two innovative LSC-funded programs that are from my area, the Legal Aid Foundation of Los Angeles and the Neighborhood Legal Services of Los Angeles County. And they partnered with nonprofits and banks to keep families in their homes.

Can you tell me how these partnerships were established in both cases and whether you feel this approach can be replicated in other areas?

Ms. BARNETT. Actually, the representatives from Neighborhood Legal Services participate in our foreclosure calls and shared with all the participants how they partnered with the banks to renegotiate the loans. So I think this is based on a local basis, where the program establishes a partnership, and what we want to do is facilitate sharing that information with other programs so they can replicate that in their own communities.

Ms. CHU. And do you think that is a doable thing?

Ms. BARNETT. I hope so. I certainly do.

Ms. CHU. My other question has to do with closing the justice gap. In particular, with regard to people who are limited English, California, in fact, is home to one of the most racially and ethnically diverse populations. About 26 percent are foreign-born. In my district, the number of foreign-born jumps to 41 percent. And, in fact, the number of people that don't speak English at home is 70 percent.

If LSC receives more funding through appropriations, what is your plan to address language assistance to LSC-funded programs?

Ms. BARNETT. Well, we are also very concerned, as are our programs, on the non-English-speaking eligible applicants for our services and to find out which programs are doing the best job with language access, sharing that information. In foreclosure alone, predatory lending not only impacts seniors, but—and minority communities, but also targets the less fluent English-speakers, as well.

So this is an area that we—and I think our programs—recognize we need to have culturally competent services available and we need to have language availability to effectively represent and give legal advice to these populations.

Ms. CHU. And are you able to hire attorneys that speak other languages?

Ms. BARNETT. I think our programs very much do that, particularly in communities where there are non-English-speaking languages, that they make an effort to hire bilingual staff. And many of our programs have many different language capabilities on their own staff.

Ms. CHU. Is there a difficulty with doing that, considering your ability to pay for attorney salaries?

Ms. BARNETT. Well, it is our hope that there always will be those attorneys who want to work in the legal aid program, that want to make a meaningful difference in the lives of their clients, to want to help low-income people keep their families together and a roof over their head. And hopefully, they will be attracted to our programs.

Ms. CHU. Thank you.

Mr. COHEN. Do you yield back the remainder of your time?

Ms. CHU. Yes, I yield back the remainder of my time.

Mr. COHEN. Thank you, ma'am.

We appreciate the panelists. And we appreciate your service and your testimony. And we will now shift to the next panel.

Mr. MCKAY. Thank you.

Ms. BARNETT. Thank you very much.

Mr. COHEN. You are welcome—second panel's attendance here. If you notice, our attendance is diminishing. This regularly happens with lunch hour and is one of the downsides of being Chairman and Ranking Member, hunger. [Laughter.]

But I am pleased we have our second panel. And our first witness is Mr. Harrison McIver III. He has held the executive legal management position in legal aid and related organizations for 27 years in Mississippi, Washington, DC, and now in Memphis, TN, where he is executive director, CEO of Memphis Area Legal Services. He has had that position for more than 10 years, done an admirable job, well respected to the legal community.

Prior to joining Memphis Area Legal Services, he was executive director of the project, advocacy, advisory group National Organization of Legal Services programs here in D.C., working on a national level to preserve the national commitment to civil legal aid to indigents, as embodied in Legal Services Corporation.

In Mississippi, he held positions as staff attorney and managing attorney at two legal aid programs and finally as executive director of the then-Central Mississippi Legal Services in Jackson, Mississippi.

Mr. McIver, we appreciate your being here and testifying and your service, and if you would now begin your testimony.

**TESTIMONY OF HARRISON D. McIVER, III, EXECUTIVE  
DIRECTOR/CEO, MEMPHIS AREA LEGAL SERVICES, INC.**

Mr. McIVER [continuing]. Sorry.

Chairman Cohen, if I may, I would like to—I would be remiss if I were not to acknowledge your hard work and effectiveness as a congressman, my congressman from the Ninth Congressional District, and I wanted to say thank you publicly for the hard work and efforts you do not only for advancing equal access to justice, but so much you do in our community.

Mr. COHEN. Thank you. And would staff have those words put on the Internet and broadcast?

Mr. McIVER. I will repeat them.

Today, I appear on behalf of a wonderful and effective law firm, Memphis Area Legal Services, and my dedicated staff, board, volunteers, and, of course, our client population. MALS grew out of a national tragedy, the death of Dr. Martin Luther King in 1968, and now, more than 40 years later, we are a viable legal aid organization serving a client population desperately in need of our services.

I submit my sharing some facts will illuminate our realities. Fact one: The average unemployment figure for our four-county service area is 13.3 percent, with the most rural, Lauderdale County, over 19 percent.

Fact two: Since 2000, we have experienced a 45,000 increase in poverty population from 155,000 to 200,000 individuals living at

the poverty line and eligible for our services. This translates into one legal aid attorney for every 10,000 eligible clients, whereas in the general population, the ratio is 1 to 300.

Fact three: In 2006, MALS received 6,631 applications for our services in 2008. That rose to 8,552, a 29 percent increase. We project by year's end that we will receive a 25 percent increase to 10,694. And if the trend continues into 2010, we expect over 15,000 applications.

These are very compelling facts that we must contend with in the course of the work that we do on behalf of our clients. This means we have to be resourceful and we have to be creative. Our resourcefulness has been called upon in times of crisis.

Three examples are illustrative. Disaster response, after Katrina and Rita hit the Gulf Coast, we estimated that between 20,000 and 25,000 displaced individuals, including children, arrived in Memphis and the surrounding communities. MALS was called upon to coordinate the legal community's response, and we served as the hub for pro bono volunteerism and our staff's participation, and we did it. Subsequently, we acquired grants to expand that services over the course of a year.

Domestic violence continues to plague our community. In 2008, 35 homicides and 58 percent of all violent crimes related to domestic violence. We secured an LAV grant from DOJ to address the legal needs, but created the Opportunity Plus project to remove the economic barriers that impede our clients from being free of an abusive environment.

The foreclosure crisis has not escaped our service area. Through the end of August, 9,104 foreclosures were initiated in Shelby County, compared to 8,494 for the same period in 2008, a 7 percent increase. In response, we sought and received funding to create our home preservation project. We are assisting more than 1,000 clients with their foreclosure legal needs.

Obviously, we cannot do all of this alone. I direct your attention to page six, where there is a listing of pro bono opportunities at MALS office to our private attorneys and other volunteers.

In conclusion, I again want to thank the Subcommittee and, in particular, Chairman Cohen and Ranking Member Franks for this opportunity. But I want to leave you with a client's story that is not included in the materials in my written testimony.

An Army Vietnam veteran, a Mr. Calhoun, was almost killed by a landmine. In fact, he thought he was dead. He was awarded the Purple Heart, but for many years, and even at the point before he came into our office, he was unaware that he had received a Purple Heart because of lost memory that was caused by his injuries. And he now has a host of other problems.

So he came to us to get increased veteran benefits. And now, because of the advocacy of a paralegal in our office, he increased his rating to 100 percent to expand those benefits. Our paralegal, as he sifted through the papers, realized that this gentleman was entitled to the Purple Heart and had been awarded the Purple Heart.

Do you know what we do even more than just serve our clients? Our paralegal contacted the Pentagon or the Army and asked that—brought it to their attention that he didn't have the Purple

Heart. A ceremony was convened by the Army to award him the long-awaited Purple Heart.

And, indeed, we attended that ceremony, and we were very proud. That is just one example of the work that we do on behalf of our clients.

Do I have more time? I can go through some more.

Mr. COHEN [continuing]. Give you that time, but I don't know that I have it, Mr. McIver. And I appreciate your testimony—

Mr. MCIVER [continuing]. Thank you again. And that is just one example of the kind of work that Memphis Area Legal Services and the legal aid programs across this country provide to our most needed citizens. And I want to, again, thank you for this opportunity.

[The prepared statement of Mr. McIver follows:]

PREPARED STATEMENT OF HARRISON D. MCIVER, III

TESTIMONY OF HARRISON D. MCIVER, III

EXECUTIVE DIRECTOR/CEO

MEMPHIS AREA LEGAL SERVICES, INC.

Before The

COMMERCIAL AND ADMINISTRATIVE LAW SUBCOMMITTEE

Of The

HOUSE JUDICIARY COMMITTEE

October 27, 2009

Chairman Cohen, Ranking Member Franks, and other members of the Subcommittee, my name is Harrison D. McIver, III, Executive Director/CEO of Memphis Area Legal Services, Inc. (MALS), a position I have held for more than eleven (11) years. As my short bio indicates, I would be considered a legal aid lifer having spent my entire career (32 years) in legal aid law firms or related organizations. I am indeed honored to be invited and have the opportunity to testify at this hearing and share the wonderful work that MALS and its dedicated staff do on a daily basis in a community where nearly 200,000 people qualify for our services. I am not testifying for my firm alone, but for 137 legal aid law firms, with thousands of dedicated legal aid workers, from across this country. All are here with me in spirit. I am also giving voice to the plight of the millions of potentially eligible clients. But for the efforts of legal aid law firms, with the assistance of volunteer attorneys, paralegals and others, access to justice would be even less of a reality than it is today.

**Memphis Area Legal Services History**

The Memphis Area Legal Services, Inc. story began in response to a profound tragedy for our nation. In 1968 in the wake of the death of Dr. Martin Luther King, Jr., the commitment and resolve of thirty members of the legal profession in the Memphis area, led by W. J. Michael "Mike" Cody, honored Dr. King's memory by advancing the dream of the dreamer. Though these lawyers and law students initially faced staunch opposition from the local bar, they nevertheless persevered until their dreams were realized when, on June 15, 1968, the Neighborhood Legal Services Project (NLSP) was established. When they were twice denied funding by the Office of Economic Opportunity (OEO), the NLSP founders pooled their own funds to support and organize the project and volunteered their time after normal work hours, with law students and a secretary staffing the office. Two years later, OEO funded Memphis and Shelby County Legal Services (MSCLS), due in no small part to many of the unsung heroes who helped establish the original NLSP. In 1974, when Congress passed the Legal

Services Corporation (LSC) Act, Memphis and other legal aid programs received additional funding. Subsequently, Memphis and Shelby County Legal Services' name was changed to Memphis Area Legal Services, Inc. (MALS) to better reflect the expansion of services to the three rural counties of Fayette, Lauderdale, and Tipton. MALS is one of four LSC-funded law firms in Tennessee.

Today, MALS, which will celebrate its official 40<sup>th</sup> Anniversary in 2010, is a multi-faceted law firm guided by values and principles that embody its commitment to "equal justice under law." Through its well-trained, dedicated and capable staff,<sup>1</sup> complemented by the volunteerism of the private bar, MALS continues to provide free legal assistance through advice and counsel, court and administrative representation, and community education and outreach to the low-income and elderly residents in Shelby, Fayette, Lauderdale, and Tipton counties, in accordance with board approved substantive priorities.

#### **Delivery of Legal Assistance Faces Enormous Challenges**

LSC's "Documenting the Justice Gap in America" accurately depicts the growing challenges legal aid firms are facing in our efforts to address the critical needs of our client population. This challenge is exacerbated by our struggling economy. While I believe that closing the justice gap will require multiple strategies and the collective efforts of all key stakeholders, we must start with a substantial increase in funding from Congress for LSC. Additionally, other federal grant opportunities, significant expansion and innovations in private attorney involvement/pro bono programs, and increased support from state and local governments, as well as the private sector will be needed.

MALS, like other legal aid law firms across this country as well as many private law firms, is feeling the brunt of a severe recession. But unlike private law firms, MALS's challenges arose as more and more low-income individuals and families experienced legal problems that were exacerbated by the bad economy. Notably, the unemployment number nationally is close to 10%, but in the four counties served by MALS the average rate is 13.3%. Legal aid firms have always had more clients than they could ever serve, but nothing like what we have experienced over the past year. Bringing it close to home, MALS this year was forced to turn away nearly 65% of the poor people who needed us, simply because we did not have the resources available that were necessary to meet their legal needs.

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<sup>1</sup> MALS' employs a staff of 53 composed of 20 attorneys, 12 paralegals/housing counselors, 5 intake counselors, and 18 other administrative and support staff.

To put it bluntly: the Justice Gap in West Tennessee grew even wider this year. More than 200,000 people now live below the poverty line in our four county service area. That number represents an increase of 45,000 or a 23 % increase over the 2000 census figures. Things are not likely to improve in light of these staggering figures, and next year threatens to be the worse. We have 20 attorneys on staff, which means there is only one attorney for every 10,000 eligible clients in our community, compared to the one-to-300 attorney-client ratio for the general population. MALS expects 15,000 requests from low-income individuals for legal services in 2010. That's an overwhelmingly disheartening figure. Yet the lack of legal resources is not limited to MALS. As reported in the "Justice Gap", studies of legal needs throughout the nation conducted over a 15-year period show that less than one in five low-income persons actually receives the legal help they need. The mission of MALS and other legal aid organizations is to work hard every day to fulfill this nation's promise of "equal justice under law."

The demand for our services is best demonstrated by the number of applications that we receive for our services. When that number increases, it generally signals some combination of an increase in the number of individuals eligible for our services and in the level of hardship being faced by those who are eligible. Using that barometer, in 2006, we received 6631 applications for our services. By 2008, that number had increased by nearly 29% to 8552 applications. Using the first three quarters as a guide, in 2009, we will receive 10,694 applications. While the number has increased substantially each year, the greatest spike is from the 8552 applications that we received in 2008 to the 10,694 that we are projected to receive this year. That is a 25 % increase in just the past year, the approximate increase in the poverty population.

To show the impact that the economy is having on our client base, in 2006, fewer than 1500 applicants reported that they were either receiving unemployment benefits or had no income at all. In 2009, we have already had over 2000 applicants in that category and are expecting over 2800 by year's end. In 2006, we completed 2984 cases on behalf of our clients. By 2008, that number was up over 22%, to 3650 cases. And, in 2009, we are well ahead of where we were a year ago.

The 3650 cases completed in 2008 breakdown as follows: Consumer 14%, Education 1%, Employment 2%, Family 9%, Health 4%, Housing 27%, Income Maintenance 29%, Juvenile 1%, and other 14%.

### **Resources Have Not Kept Pace with Demand**

While MALS relies heavily on its Legal Services Corporation grant, the core funding to sustain its delivery model, we have also aggressively pursued non-LSC funding in order to meet the ever-growing demand for legal assistance in our service area. MALS' total budget for 2008 was \$3,504,578 of which \$1,383,092 or 39% was from the LSC, and the other 61% included \$150,495 in IOLTA funds, \$240,294 in grants/contracts with the City of Memphis, \$793,765 in State of Tennessee dedicated funds, \$367,102 in other federal grants, \$148,651 in foundation funds, and \$421,179 in private contributions and cy pres awards.

MALS' total budget for 2009 is \$3,541,705, of which \$1,515,836 or 42% will come from the Legal Services Corporation, and the other 58% from other sources, including \$150,295 from IOLTA funds, \$285,000 from the City of Memphis, \$797,698 from the State of Tennessee, \$417,876 from other federal awards, \$175,000 from foundations, and \$300,000 from private contributions.

Despite our proactive efforts to increase revenues, we still fall far short in our capacity to respond to the widening of the justice gap.

### **MALS Work on Behalf of Low-Income Clients**

We at MALS are extremely proud of the work we do for our clients. We have a reputation as an excellent law firm, staffed with highly skilled and experienced attorneys who are dedicated advocates for their clients. Our attorneys and support staff help people faced with foreclosures and other housing issues such as evictions, landlord and tenant disputes and housing discrimination, domestic violence and other family law matters, healthcare issues, and issues relating to social security and veteran benefits. Without access to a lawyer, for people faced with these devastating legal problems, equal justice under the law would be meaningless.

The following stories are but a few examples of the thousands of clients who have received high quality assistance from our dedicated staff. The vignettes are factual but the names are changed to maintain confidentiality.

- **“Dorothy”** suffered from extensive memory lapses and lost her ability to write, much less work. Doctors found a massive brain tumor. Yet, she was denied SSI benefits. She turned to MALS for help, and our paralegal advocated for her before the Social Security Administration. She now receives SSI benefits as well as health coverage.
- **“Julie”** was married for twenty years to a controlling and abusive husband. She tried to leave with her son, but due to her economic situation and lack of affordable legal

assistance, she was forced to stay with her husband. Eventually, she turned to our Family/Domestic Violence Unit when his abusive outbursts became more frequent and more violent. MALS was able to obtain an order of protection, possession of the marital home, and custody of their son.

- **“Carolyn,”** a 70-year client, refinanced her home for \$75,000, at an APR of 14.83% on a 30-year mortgage with a variable interest rate and a balloon payment. Our appraiser found the property was worth only \$49,000. Over the life of the loan, Carolyn would have paid total of \$337,734.00. After filing suit in federal court, MALS reached a settlement, with the principal lowered to \$39,000, at 6% fixed interest. The term of the loan stayed the same but the balloon payment provision was removed, and all arrearages were forgiven. Now the total repaid will be \$84,175. This representation saved our client \$253,559.
- **“Alicia”** had lived in her home for 30 years. She owed \$4,942 on the mortgage and had an A-1 credit rating. She was persuaded to obtain an equity loan for home improvements and to “pay off some bills,” for a total amount of \$19,057 at an 18% interest rate. Part of the amount that was financed was for credit life insurance for the lender. A year later our client was persuaded to refinance again at a similar rate and fees in excess of 15%, negatively amortizing the loan. Our Fair Housing Center attorney reached settlement after threatening the lender with litigation. The interest rate on the new loan was 6%. All outstanding property taxes were paid by lender, the principal was reduced to \$20,935, and the 30- year term was reduced to 10 years. Our client would have paid a total of \$189,378 over the course of the original loans. We saved her \$161,488, and in addition she received a settlement of \$27,890.
- **“Sara”** requires the use of a wheelchair. A women’s regional clothing store not far from her home required Sara and others using wheelchairs to enter the store through a rear service entrance in an alley. Many times Sara had to wait for long periods of time in the alley before someone opened the door for her. Once, she was completely denied entry. MALS sued on her behalf in federal court under the Americans with Disabilities Act and filed an administrative complaint with the United States Department of Justice. Through our combined efforts, we reached a consent judgment where the store will make modifications for wheelchair access through the front door and other modifications to become ADA compliant.

#### **Volunteer Opportunities for Attorneys & Volunteers at MALS**

MALS is fortunate to have a large group of dedicated pro bono attorneys and other volunteers who are interested in our work and are willing to give their time in a variety of ways to

supplement the work of our small but dedicated staff. Among our numerous pro bono programs are the following:

*Traditional Case Referral:* The longest running of MALS' volunteer lawyers' efforts is a basic pro bono program in which attorneys enroll and agree to take a certain number of a specific type of cases and provide individual representation or co-counsel with a MALS attorney.

*The Bankruptcy Alternatives and Pro Bono Project* was initiated because of a developing consensus among members of the Access to Justice Committee, bankruptcy judges and the MemphisDEBT Collaborative that our community was reaching a crisis point as consumers and debtors used the bankruptcy courts as their number one choice for resolving consumer and debt-related problems. Under the project, applicants for a bankruptcy are enrolled in a bankruptcy class conducted by MALS volunteer attorneys to ensure that applicants only use the bankruptcy options as a last resort, while determining which applicants truly are in need of additional assistance. The applicants who complete the class and need to file a Chapter 7 bankruptcy are referred to pro bono bankruptcy attorneys.

*Atticus Referral Network:* Originally conceived of by young lawyers, this program was specifically designed to facilitate a faster referral process using technology. The focus was recruitment at the bigger law firms to enlist associates to join in this network by designating a firm attorney in-house to serve a 'gatekeeper' function. The gatekeeper then forwards the requests from MALS' staff on to firm members who can select a case for pro bono representation.

*MBA Business Section /Corporate Counsel Pro Bono Initiative (CCPBI):* The most recent initiative creates a partnership between CCPBI, the Memphis Bar Association Business Section and MALS to provide a variety of services. Additionally, the CCPBI and the Business Section plan to work with the Memphis Small Business Chamber of Commerce, the Memphis Music Foundation and the Alliance for Nonprofit Excellence to match attorneys with small businesses, small business entrepreneurs, and non-profit entities.

*Low Income Taxpayer Clinic (LITC):* MALS has been awarded a grant from the IRS to create a LITC with a pro bono component to assist individuals with problems involving personal income taxes.

*Law School Clinic:* Third year law students at the University of Memphis School of Law under the supervision of clinical faculty provide legal assistance to eligible clients referred by the MALS Pro Bono Project. Currently the clinical program is housed at MALS.

In addition to these projects, our pro bono volunteers staff MALS's In-house Telephone Advice, Screening and Referral Project; Attorney of the Day, Courthouse (Pro SE) Project; Advice and Counsel Clinics; Saturday Legal Clinics; Advance Directives Panel; Conservatorship Panel; and Volunteer Mediation Panel.

#### **MALS' Responsiveness to Specific Crises**

***Disaster response:*** In 2005, when Hurricanes Katrina and Rita devastated the Gulf Coast, an estimated 20,000-25,000 displaced individuals arrived in the Memphis, Shelby County with a myriad of needs including legal assistance. The legal community came together to formulate a strategy to respond. MALS was called upon to coordinate and implement the strategy, first by organizing volunteers and staff to be on-site at Red Cross designated centers. MALS then successfully acquired additional resources to establish a more long-term response. With United Way and Presbyterian Church grants, MALS hired additional personnel to staff an outreach center which focused primarily on FEMA-related matters.

***Domestic violence (DV)*** is an epidemic in the city of Memphis and the surrounding suburbs. In 2007 and 2008, the Memphis metropolitan area had the second highest rate of violent crime in the country, and in 2008 more than 58% percent of all local violent crime was domestic violence-related. In 2008, a record number of 35 domestic homicides created what local leaders pronounced a "public safety emergency." In response to this crisis, MALS successfully sought a Legal Assistance for Victims of Domestic Violence grant from the US Department of Justice (DOJ). That funding complemented an earlier grant that had established a collaboration involving the city and county governments, law enforcement, victims' assistance, the YWCA and MALS as the administrative agent.

With a new Legal Assistance for Victims grant and a supporting grant from the Women's Foundation for Greater Memphis, MALS sought to address both the legal and other issues that impede the victims from freeing themselves from the abusive relations while achieving a level of self-sufficiency. Thus, the Opportunity Plus Project was created to enhance the well-being of domestic violence survivors and their families by empowering them to become economically and emotionally self-sufficient. Research indicates that financial independence, self-sufficiency and self-confidence are factors that enable victims of violence to leave their abusers and live free of violence. Economic independence is the primary factor that enables victims of violence to live independent from their abusers. This is one of the primary reasons that the Domestic Violence Project places emphasis on obtaining orders of financial support.

***Foreclosure:*** Another crisis that has engulfed our country in recent years has been the continuing foreclosure saga. The foreclosure crisis in Shelby County continues to worsen. In 2008, we experienced a record breaking number of foreclosures (more than 12,000), and the

number of foreclosure sales actually exceeded the number of arms length sales for the first time in history. Through the end of August, there have been 9,104 foreclosures initiated in Shelby County as compared to 8,494 for the same period in 2008. This is a 7% increase.

Our Home Preservation Project continues to help more than 1,000 clients each year with foreclosure issues. However, one new issue that is becoming more and more common relates to tenants who are facing eviction because the home in which they are living has been sold at foreclosure. In many instances the tenant has continued to pay rent and had no knowledge of the foreclosure until a Sheriff's Deputy or process server appeared at their door with a foreclosure warrant. In that situation, the tenant often was faced with having their belongings set out on the street within thirty days of learning of the foreclosure. In some ways, a tenant in this position is in a worse position than a homeowner who loses his or her home to foreclosure.

In 2008, as a part of our Memphis Fair Housing Center, MALS established the Home Preservation Project (HPP) to target these compelling and systematic housing problems. The HPP was a natural outgrowth of effective advocacy in addition to fair housing and predatory mortgage lending in the Memphis area.

**Lifting the Attorneys' Fees and Class Action Restrictions Would Expand Resources to Serve Clients**

In 1996, Congress imposed on LSC grantees a wide variety of restrictions that have had a major impact on the ability of MALS and other legal aid programs to fully serve the low-income client community. Two of the most significant of these are the restrictions on seeking attorneys' fees and participating in class actions. Not only have these restrictions significantly limited the tools that MALS is able to use in representing its clients, but they have also substantially limited the resources that we have available to serve the eligible clients who need our help. This is but one example of the impact of these restrictions on the client community served by MALS.

By the year 2000, it had become clear that thousands of Memphians were at risk of losing their homes as a result of the proliferation of predatory mortgage loans, particularly in identifiably African-American communities in Memphis. MALS had become actively engaged in litigating individual predatory lending cases by that time and had developed a great deal of expertise in the area. A pattern of extremely exploitative lending activity had emerged that involved a group of real estate agents, home improvement companies, closing agents, mortgage brokers, appraisers, and national mortgage lenders. A team of MALS attorneys began working on a series of cases that involved allegations of reverse redlining in violation of the Fair Housing Act; the civil RICO laws; the Home Ownership Equity Protection Act; the federal Truth-In-Lending Act, and a large number of other legal theories. Ultimately federal lawsuits were filed

on behalf of 17 plaintiffs against more than 30 defendants. MALS was able to bring these cases because it receives substantial resources from sources other than Legal Services Corporation to do fair housing litigation.

The litigation went on for 7 years before settlements were reached against all defendants. By that time, MALS attorneys had invested 10,435 hours in the case. The settlements involved restructured mortgages, which saved the plaintiffs \$1,678,401 in mortgage payments over the life of the loans. The plaintiffs also involved monetary damages of \$1,298,000, for a total benefit of \$2,976,401. In addition, MALS was able to recover \$86,500 in actual costs and expenses it had invested in the case.

Although MALS was able to recover its out-of-pocket costs, it was not able to get reimbursed for any of the time its attorneys and staff spent on the case. Had MALS been able to recover attorneys' fees, even at the modest rate of \$175 per hour, it could have recouped \$1,826,125 from the defendants for its work on the cases. This would have enabled MALS to serve between 2,500 and 3,000 additional clients in the years since 2007. In addition, based upon information obtained through discovery it appears that, had the cases been consolidated and certified as a class action, there may have been as many as 1,800 class members who could have received relief through the litigation.

MALS continues to be the only law firm in the Memphis area that does significant litigation regarding predatory mortgage lending and mortgage foreclosures and there continues to be an extraordinary need to help the approximate 15,000 families who will be faced with foreclosures in Shelby County this year.

### **Conclusion**

I would like to thank the Subcommittee, Chairman Cohen, and Ranking Member Franks for holding these hearings and providing me with the opportunity to champion the essential contributions that Memphis Area Legal Services and legal aid organizations around the country are making to make "equal justice under law" more of a reality. As Judge Learned Hand stated, "if we are to keep our democracy, there must be one commandment, thou shalt not ration justice." Beginning to close the justice gap will be major step in our effort to ensure that we are not "rationing justice."

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Mr. COHEN. Thank you, sir.

Our next witness is Mr. Don Saunders. He has worked with Legal Services for over 32 years, director of Legal Services, the National Legal Aid and Defender Association. He has been in Washington. And before coming here, he was executive director of the North Carolina Legal Services Resource Center in Raleigh for about 7 years in the 1980's and was a staff attorney in the D.C. area in Wilmington.

And he has also been at Boone, North Carolina, so it is appropriate that East Carolina plays the University of Memphis tonight on television, a game that I am sure nobody but some few of us from Tennessee, Memphis, and Carolina will care about, and even then it is questionable that you follow Mr. McIver.

Welcome.

**TESTIMONY OF DONALD SAUNDERS, DIRECTOR OF THE CIVIL LEGAL SERVICES DIVISION, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION**

Mr. SAUNDERS. Chairman Cohen, Ranking Member Franks, and the Subcommittee, the National Legal Aid and Defender Association, founded in 1911, is the oldest and largest membership organization in the Nation advocating for equal access to justice for all people, regardless of their income.

NLADA greatly appreciates your convening this important hearing, and I am very proud personally to be here today in support of over 6,500 attorneys and thousands of other advocates, such as those Mr. McIver mentioned, dedicated to ensuring our democratic principle of equal justice under the law.

As pointed out in our written testimony, establishing justice holds a preeminent place in the preamble to the Constitution of the United States. My colleagues work every day—often at significant personal sacrifice—to make that principle a reality for low-income families in communities in every corner of the Nation.

I appear before you today particularly to support H.R. 3764, the Civil Access to Justice Act, introduced by Representative Scott, cosponsored by the Chairman and a number of other Members of this Subcommittee. Like your prior witnesses and Mr. McIver so eloquently testified, legal aid programs across the country are being stretched dangerously thin, as the most recent poverty figures underscore.

Our testimony also vividly indicates how the growing need for services has come at the worst possible time for legal aid programs nationwide as State and local resources of revenue have been greatly undercut by the economic downturn. Federal support to ensure at least a minimum of access to justice has never been more critical. We heartily endorse section 14 of the Civil Access to Justice Act, authorizing Federal support sufficient to put a significant dent in the justice gap, amply illustrated in the LSC report.

However, H.R. 3764 goes much further in providing meaningful access to justice for our Nation's disadvantaged. As you know, the legal services corporation has not operated under a current authorization since 1980. Much has changed in our Nation, our justice system, and in the delivery of civil legal aid since that time.

In our view, it is not good policy to continue to define the parameters of legal aid delivery through the annual appropriations process. It is time, however, to return to the original vision of legal aid contained in the LSC act, wherein LSC advocates were free to use the tools available to every other lawyer practicing in the United States.

The restriction on advocacy placed on all of the money held by LSC grantees since 1996 have greatly undercut the ability of low-

income people to fully vindicate their rights under the law and it limited the efficient and effective use of scarce legal aid funding.

The Civil Access to Justice Act, by returning in general to the restrictions placed on LSC grantees in the original act, would provide a tremendous impetus to attack the justice gap in America. Specifically by allowing attorneys fees who are provided by law, H.R. 3764 not only increases the resources available for civil legal aid, but also it levels the playing field and negotiations on behalf of clients.

Under the current restrictions, fee claims that are available to every other practicing attorney can be ignored by defendants who have seriously violated clients' rights. Likewise, to suggest that class-action relief, where appropriate and provided by law, is available to each and every attorney except those representing the disadvantaged denies the full measure of justice to low-income communities and greatly diminishes the effectiveness of scarce Federal dollars in addressing significant client problems.

Regarding legislative and administrative advocacy, the lives of low-income people are more impacted by legislation administrative rules than almost any other sector of our population. Denying advocates the ability to raise their clients' particular problems before these bodies is to deny access to the full justice system in America.

Finally, Congress should trust our State legislatures and courts to set appropriate guidelines on the money they allocate to address legal issues affecting the poor at the State and local level. You should do away with the application of Federal restrictions to State, local and private funds that already have adequate local safeguards on overreaching and abuse.

Again, Mr. Chairman, I thank you for the ability to appear before you today and would be happy to answer any questions at the appropriate time.

[The prepared statement of Mr. Saunders follows:]



TESTIMONY OF DONALD SAUNDERS

Director of Civil Legal Services

On Behalf Of

THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

Before The

COMMERCIAL AND ADMINISTRATIVE LAW SUBCOMMITTEE

Of The

HOUSE JUDICIARY COMMITTEE

October 27, 2009

**NLADA PRESENTATION TO THE  
COMMERCIAL AND ADMINISTRATIVE LAW SUBCOMMITTEE  
OF THE HOUSE JUDICIARY COMMITTEE**

October 27, 2009

Good afternoon, Mr. Chairman. My name is Donald Saunders, and I am the Director of the Civil Division of the National Legal Aid & Defender Association ("NLADA"). I submit this testimony at the request of Chairman Cohen, and I would like to thank him and the members of the Subcommittee for giving NLADA the opportunity to voice its support for the Legal Services Corporation ("LSC") and to comment on the provisions of the Civil Access to Justice Act of 2009 ("House Bill") that was recently introduced by Subcommittee member Scott and numerous co-sponsors, including Chairman Cohen and Subcommittee Members Watt, Delahunt, Johnson and Conyers.

NLADA, founded in 1911, is the oldest and largest national, nonprofit membership organization devoting all of its resources to advocating for equal access to justice for all people. For almost a century, NLADA has championed effective legal assistance for people who cannot afford counsel. We serve as a collective voice for both civil legal services and public defense services throughout the nation, and provide a wide range of services and benefits to its individual and organizational members. Among NLADA's 700 program members and 15,000 attorney members are most of the 137 recipients of LSC funds. I am proud to be here on their behalf and on behalf of the legal services community as a whole.

**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" comes before 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 ("OEO"), the federal government had not sought to "establish justice" for poor people and had not provided any 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 ("LSC Act"), the comprehensive legislation to make permanent the vital legal services program started under the OEO.

The findings and declaration of purpose to the original LSC Act set out the appropriate framework for considering how to once again move forward on establishing justice for poor people.<sup>1</sup> 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."

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 35 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 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 by more than 48% 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

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<sup>1</sup> See 42 USCA§2996 (Section 101 of the LSC Act).

the same tools and strategies that other members of the legal profession are free to use on behalf of their clients. For example, the current appropriations act restriction on claiming 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 that were imposed by appropriations riders in 1996 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 though such restrictions were inappropriate in our view regarding LSC funds, there was 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. State legislatures and other public funders as well as 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.

### **Legal Needs of the Disadvantaged**

As the testimony from the Legal Services Corporation, the American Bar Association and Harrison McIver of Memphis Area Legal Services 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. Current Census data reveals that the number of people in the United States eligible for LSC-funded services has increased significantly over the last several years, and, with the current economic crisis, the numbers of unemployed and newly poor who are likely to be eligible for LSC-funded services is growing rapidly. Low-income people are increasingly losing their homes to foreclosure, including large numbers of tenants who are being evicted because their landlords are facing foreclosure on rental properties. Low-wage workers are facing

major job losses as significant lay-offs continue. Instances of domestic violence are rising as individuals face significant stress caused by economic insecurity. Low-income consumers are experiencing mounting credit problems. As a result, the need for civil legal assistance is on the rise.

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. 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, both homeowners and tenants, have defenses that can only be raised by skilled and knowledgeable LSC attorneys. Otherwise, the legal system is hopelessly skewed in favor of lenders who fail 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:

- Southern **Arizona** Legal Aid (SALA) helped a 55-year housecleaner stay in her home that had fallen prey to foreclosure. After living in her home for twenty years, she began struggling with her payments due to a 9.38 percent hike on the interest rate of her subprime loan. A SALA attorney assigned to her case sought a loan modification with her servicer to prevent her home from going into foreclosure. She was successful in negotiating a loan agreement that modified the interest rate to an amount that SALA's client could afford.
- Communities served by LSC grantee Neighborhood Legal Services of **Los Angeles County** are not only at the epicenter of the foreclosure crises, but are now looking at unemployment rates of 15% or more. Jobs in the informal service sector of the economy that many low-income families depend upon for survival have virtually disappeared - leaving homeowners jobless while they struggle with unconscionable mortgage payments to protect homes that are more than \$100,000 underwater. For these families threatened with homelessness LSC-funded legal services programs are the safety net of last resort.

Neighborhood Legal Services has responded decisively to meet this crisis by collaborating with community groups and local officials to develop creative pre-foreclosure solutions to keep families in their homes and maintain vibrant local communities. The City of Los Angeles has invested more than \$1 million to pilot a model developed by NLS-LA and its partners in the Northeast San Fernando Valley that avoids foreclosures through a mortgage renegotiation framework that reduces principal and leaves homeowners with fixed-rate interest loans and affordable payments. NLS-LA is implementing similar models with the African-American middle class communities of South Los Angeles and in the multi-ethnic San Gabriel Valley City of El Monte. Next month the same model will be presented to HUD Secretary Donovan.

NLS-LA is also at the forefront of providing emergency help to families struggling to keep their lives together. In 2009 alone, NLS-LA's widely praised system of court-based Self-Help Legal Access Centers will assist more than 100,000 people with family law and eviction problems. And, through \$1.2 million of city and county grants from HUD's stimulus-funded Homeless Prevention and Rapid Re-Housing Program (HPRP), NLS-LA added 7 new staff to help the newly unemployed avoid homelessness.

- "Rhonda" had lived with her husband Samuel in Shelby County **Iowa** for almost ten years with their three children. In their rural home, he controlled what she wore, who she spoke to, and where she went. There was always emotional abuse, but as the years passed, Richard became physically abusive. She didn't know where to turn and felt like she could not reach out or he would find out. She lived through many assaults, many injuries-- even while she was pregnant with his children. Richard has even raped her.

At the end of 2008, Richard strangled Rhonda until she blacked out then he held her hostage behind locked doors for two days. When he left the home, she escaped and was able to get to help. She made contact with Iowa Legal Aid to discuss what options were available to protect her and the children from his violence. Legal Aid attorney staff helped her get a protection order that restrained him from further abuse. Rhonda and her children were able to live without the daily fear and isolation that Richard imposed, though not entirely. Richard violated the order many times, and Iowa Legal Aid was there to help her with holding him in contempt of the protection order, and helping her contact law enforcement. Richard eventually spent time in jail for his many violations and Rhonda and the children are working toward healing.

- The Miller family of Central **Massachusetts** thought they had exhausted all of their options in trying to save their home. Then they called legal aid. Marine specialist Philip Miller, his wife Morgan, and their two young children were close to being evicted after the mortgage company foreclosed on their home. Philip had returned injured after an 18-month tour of duty in Iraq and was unable to work due to injuries. At the same time, the couple's adjustable rate mortgage jumped to almost 11 percent.

The Millers were unable to afford the inflated payments, and the mortgage company was unwilling to negotiate. Then, their legal aid attorney stepped in and got the mortgage company to dismiss the eviction. Now, more than a year later, the Millers are working with their attorney to renegotiate the terms of their loan, with the goal of buying back their home. Spc. Miller is healthy again and preparing to leave for his second tour of duty in Iraq.

- When Congress bailed out Fannie Mae, one provision included in the legislation instructed Fannie Mae not to evict tenants from foreclosed buildings, if the tenants were in good standing (paying their rent). The provision makes good sense -- in an economy in which foreclosed buildings sit empty, why should people be made homeless to create streets lined with empty buildings, when the current tenants want to stay and keep paying their rent? Fannie Mae was not complying with this requirement, however -- until lawyers at New Haven Legal

Assistance (not an LSC grantee) representing families threatened with illegal eviction threatened to file a national class action to force Fannie Mae to comply. Officials at Fannie Mae reached a settlement instructing their national network to follow the law. Since then, legal aid programs **across the country** have been working on behalf of paying tenants to enforce individual compliance with the corrected national Fannie Mae policy.

Along with the growth in those low-income populations that have traditionally been served by legal aid programs and the newly poor suffering from the recession, other new legal needs are also arising with respect to returning veterans from Iraq and Afghanistan, many with limited income and severe physical and mental disabilities, including post 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 live below the poverty line, and a disproportionately high number are among America's homeless population. 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.

#### **Reauthorization of the Legal Services Corporation Act**

For many years LSC has enjoyed the support of a strong bi-partisan majority in Congress. Both the House of Representatives and the Obama Administration have sought a significant increase in funding for LSC for FY 2010. Nevertheless, the last time that Congress reauthorized LSC was 1977, and that reauthorization expired in 1980. Since 1980, LSC has been funded through annual appropriations that have often been encumbered by a series of riders that have been imposed, at least in part, because the LSC Act has not been revisited and thoughtfully revised through the reauthorizations process to take into account changing needs and circumstances.

Earlier this month, Representative Scott introduced the Civil Access to Justice Act of 2009 (H.R. 3764).<sup>2</sup> The House Bill represents a thoughtful reevaluation of and a significant improvement over the current LSC Act. The House Bill authorizes a significant increase in funding for LSC; it updates or eliminates numerous outdated LSC Act provisions; and eliminates or incorporates and improves upon a wide variety of provisions from the current appropriations act.

NLADA strongly supports the passage of the Civil Access to Justice Act of 2009.

#### **The House Bill Responds to the Needs of the Low-Income Client Community**

The House Bill includes numerous provisions that would, if enacted, assist LSC grantees to better respond to the legal needs of the low-income client community. The bill would authorize Congress to appropriate up to \$750 million, which represents the inflation-adjusted amount that was appropriated for LSC in 1981, which was the high-

<sup>2</sup> In March of 2009, Senator Harkin introduced the Senate version of the Civil Access to Justice Act of 2009 (S. 718) ("Senate Bill") which is, in most respects very similar to the House version. However, the House Bill differs from its Senate counterpart in several aspects, and the House version improves upon the Senate Bill in a variety of ways.

water mark for LSC funding. That amount would go a long way toward filling the justice gap that exists.

The House bill would also eliminate the provision in the current appropriations act that restricts non-LSC funds to the same degree as LSC funds. The bill would permit grantees to use their non-LSC funds to serve categories of low-income clients who are not now permitted to be served by LSC grantees with any funds, including certain aliens and prisoners. The House Bill would still prohibit LSC funds from being used to represent these ineligible aliens and prisoners.

The House Bill also would eliminate the current restriction on attorneys' fees and class actions and would permit grantees to engage in legislative and administrative representation under a wider range of circumstances than is currently allowed, so that LSC funded advocates would be able to utilize the advocacy tools to represent their low-income clients that other lawyers are permitted to use on behalf of their paying clients.

While there are numerous restrictions and requirements that are included in the current appropriations act that NLADA has long opposed, since 1996 the appropriations acts have also added numerous positive improvements to the LSC system that have been incorporated into the House Bill which we support. The House Bill incorporates a system of competition for grants and census-based funding to help insure that LSC grantees provide high quality legal assistance and that limited LSC resources are fairly and appropriately distributed. The House Bill requires grantees' advocates to maintain timekeeping records to ensure the correct allocation of resources among funders and to improve accountability. And the House Bill continues to authorize funding for technology grants which have been crucial in grantees' efforts to improve the delivery of legal assistance.

The House Bill also includes a number of additional provisions to strengthen and improve LSC and its grantees. It contains a series of new LSC governance requirements recommended by the Government Accountability Office, including new requirements for LSC to improve its internal control structure and to protect against the impact of disasters. The bill also includes new restrictions on LSC's private fundraising and new requirements on LSC's use of funds for certain representational and other activities.

The House Bill requires LSC to develop new training standards on compliance and encourages training on domestic violence or other areas where grantee training is needed. In addition, the bill contains provisions that are intended to increase the participation of private attorneys in the delivery of legal assistance by encouraging pro bono services by private lawyers and requiring grantee boards to include pro bono liaisons to the State Bar. To promote the recruitment and retention of high quality recipient staff, the bill authorizes the continuation of LSC's pilot loan repayment assistance or initiation of other programs. To give grantees flexibility to include on their governing boards individuals who are able to assist in fundraising, development of relationships with the business community, and support from the public, the bill lowers the number of board members who are required to be lawyers.

In order to better protect the client privacy and confidentiality of client records, the House Bill limits LSC's access to client records that are confidential under applicable rules of professional responsibility. The bill eliminates the current appropriations act

provision that undermines the authority of State courts and bar associations to enforce the rules of professional responsibility dealing with client confidentiality that apply to the lawyers practicing within their jurisdictions, and restores the original LSC Act provision that respects that authority. Despite arguments that have long been made by LSC's Inspector General, LSC does not need to have access to client names in order to ensure compliance with Congressional mandates and other requirements. LSC's Office of Compliance and Enforcement ("OCE") and numerous other grant making agencies have successfully used unique client identifiers to check grantee records for compliance with restrictions and requirements and to ensure that clients are appropriately served.

### **The House Bill's Approach to Restrictions**

Since 1996, LSC grantees have been encumbered in their efforts to represent their clients by a significant number of restrictions and requirements that apply to a grantee's LSC funds as well as to funds received from other federal, state, local and private funds. The House Bill would eliminate most of these restrictions and requirements that have hampered LSC grantees in their ability to provide a full range of legal assistance to the low-income client community.

As noted above, the House Bill would eliminate the restriction on the use of non-LSC funds, as well as the attorneys' fee and class action restriction. In addition, the bill retains but modifies several of the appropriations act restrictions on use of LSC funds. The House Bill would expand the categories of aliens who could be represented with LSC funds to include most aliens who are in the US legally and several limited categories of undocumented aliens including disaster victims, certain groups of children, and some victims of torture. The bill would limit the restriction on representation of prisoners to litigation involving prison conditions, and specifically permit prisoner re-entry litigation. The bill would limit the restriction on eviction defense for public housing residents to those who have been convicted of certain drug related charges.

The original LSC Act, as it was amended in 1977, included a number of limitations on LSC recipients. The House Bill leaves in place most of these LSC Act restrictions and requirements including the restrictions on: legislative and administrative advocacy; public policy advocacy training; organizing; priorities; financial eligibility; outside practice of law; political activity; fee-generating cases; criminal representation; habeas corpus representation; desegregation; and representation in Selective Service cases. The House Bill also leaves in place the appropriations act restriction on the use of both LSC and non-LSC funds for representation in abortion litigation.

### **Additional Needed Improvements**

While we are very supportive of the House Bill as it is currently drafted, we think there may be areas where there could be additional improvements. For example, we believe it would be helpful if the bill made it clear that LSC grantees are subject to the OMB Circular A-133 ("A-133") and that grantee audits should be done using Government Auditing Standards ("GAS"). We also think that the bill should make it clear that LSC funds are to be considered Federal funds for purposes of Federal statutes relating to the proper expenditure of Federal funds.

We also believe that the bill should limit the authority of the LSC Office of Inspector General ("OIG") to impose additional auditing requirements on grantees

beyond those required by OMB A-133 and GAS. Although the OIG should have the authority to audit grantees to respond to complaints and to audit to ensure against instances of waste, fraud and abuse, the bill should clarify that regular monitoring for compliance with substantive statutory and regulatory restrictions is the role of OCE, not OIG or grantee auditors ("IPAs"). NLADA is willing to work with the Subcommittee staff as well as with LSC Management and the OIG to address these or any other concerns that they may have about the bill's treatment of grantee audits, ensuring compliance, and any other issues.

### **Need for Increased Funding**

The \$750,000,000 authorized by the House Bill is essential to ensure the ability of LSC grantees to close the widening justice gap in America.

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 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 amount 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. In 2009, Congress increased LSC funding to \$390 million, but after taking account of inflation, the 2009 appropriation still represented a 48.2 percent cut from LSC's 1980 funding level. To keep up with inflation, 2009 LSC funding would have to have reached \$752,938,299.

### **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.<sup>3</sup> 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 resulted in expansions in IOLTA revenue in many states. These initiatives included changes from voluntary to mandatory IOLTA, or from opt-in to opt-out programs, changes in 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 significant drops in interest rates, increases in bank fees and substantial slowdowns in real estate transactions and general business activity, IOLTA revenues have dropped significantly in the last year 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. In 2008, IOLTA income was down 23% nationwide, reflecting both dwindling IOLTA fund balances and the miniscule federal funds interest rate. In some states, IOLTA income was down over 80%. While cumulative data is not yet readily available regarding the overall perspective on state and local public appropriations, many states report the potential for significant cuts in these areas as well.

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. Until the recent economic downturn, 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, in the last year, states have begun to experience extremely tight fiscal conditions, and these conditions are having 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 the demand 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 even more important.

### **Significant Geographic Funding Disparities**

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<sup>3</sup> 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.

While LSC funds are distributed according to the 2000 census data on individuals living below the Federal Poverty Line, 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. 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.

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 only 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.

### **Conclusion**

We believe that, if adopted, the House bill will significantly improve the ability of LSC grantees to effectively serve the low-income community. The bill includes a framework to provide additional resources that are sorely needed to help fill the enormous justice gap that exists today. The bill eliminates numerous restrictions that have impeded the ability of LSC grantees to fully serve many financially eligible members of the low-income community and to utilize the tools that attorneys with paying clients can now use to represent their clients. The bill respects the historical role of States to establish and enforce rules of professional responsibility for the attorneys who practice in their jurisdictions

In conclusion, I would like to thank you for holding this hearing and for your support for LSC and the civil legal services community. Providing civil legal aid is an integral part of constructing the foundation for ensuring that the least advantaged among us receive the help they need to build healthy, happy families and live constructive, fulfilling lives. A 48.2 percent reduction in funding for LSC and turning away 50 percent of those who seek legal aid is NOT living up to the constitutional promise of "establish[ing] justice" that we all embrace. The federal government can and should do more. The House Bill will enhance the goal of "justice for all," not erode it with unreasonable restrictions. Our clients and your constituents deserve no less.

Mr. COHEN. Thank you, sir. I appreciate your testimony and your service.

Third witness is Mr. Thomas Wells, partner and founding member of Maynard, Cooper & Gale in Birmingham, diversified practice, past president of the American Bar Association, served in the policymaking group of the House of Delegates since 1991 and was chair of the ABA House of Delegates in 2002 to 2004, former chair of the ABA section of litigation.

And we thank you for your service to the bar and appreciate your testimony today, Mr. Wells.

**TESTIMONY OF H. THOMAS WELLS, JR., IMMEDIATE PAST  
PRESIDENT, AMERICAN BAR ASSOCIATION**

Mr. WELLS. Thank you, Chairman Cohen, Congressman Franks, Members of the Committee. I thank you again for calling today's hearing to discuss the essential role of the Legal Services Corporation in closing the justice gap. Indeed, the justice gap is now looking more like the justice chasm.

The ABA believes that this objective must largely be achieved by strengthening the legal services corporation and urges the 111th Congress to enact bipartisan legislation to reauthorize, strengthen and improve LSC. At the same time, the ABA and America's lawyers will continue to advocate for private bar involvement and pro bono service to supplement the work of LSC.

Long before I became ABA president, I began visiting my congressional delegation, both Republicans and Democrats, to explain how important LSC funding is to Alabama and the most vulnerable citizens in our State. Until recently, the only funding for Alabama legal services was Federal funding. Over the years, strong bipartisan support for LSC has energized not just in Alabama, but around the country.

In addition to being year-round work at home, ABA members and State and local bar presidents, many on their own dime, travel to D.C. every year to remind Congress how important LSC is to their States and their districts. Importantly, in the past 2 years, the bar presidents of all 50 States, plus the District of Columbia, the U.S. Virgin Islands, and Puerto Rico, have jointly urged Congress to increase funding for LSC.

In addition to the support of the legal community, the American people strongly support a Federal legal services program. This past spring, the ABA released a newly completed Harris public opinion poll which demonstrated strong national support for providing free legal services to qualified low-income families.

The LSC is the central foundation of the legal aid system. Other components—State and local funding and pro bono contributions by private lawyers—are catalyzed by LSC seed funding and serve to supplement the LSC resources.

LSC 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 where no private lawyer can do so.

LSC leverages and facilitates the utilization of private resources, both in-kind pro bono services and private funding. A comprehensive national system is necessary to assure that all persons have

access to the justice system, yet every indicator shows that the efforts described above have proven to be inadequate and that access to justice is still largely denied to the poor.

One significant problem is that resources that are provided to LSC are not able to be used to maximum effect. The ABA strongly urges the Subcommittee and Congress to address in reauthorization legislation three measures that have been included in appropriations riders since 1995 that have impeded LSC in fulfilling its mission.

We request specifically the Subcommittee eliminate, one, the restriction that prevents recipients of LSC funding from freely utilizing State, local, private, and other non-LSC funds to provide needed legal assistance to poor clients.

Second, the restriction that prevents LSC recipient programs from obtaining statutorily permitted attorney fees, as the House did in its version of the CJS bill. And, third, the restriction on class actions.

Another roadblock to closing the justice gap is that legal aid systems—other funding sources are insufficient or unstable. The good news is that most, if not all, State governments are now partners in the efforts to provide legal aid to the poor, and now 48 States, in fact, provide funding. Unfortunately, that funding, as you probably know, has been either decreased or is in jeopardy.

In addition, several States have sharply reduced State appropriations. And at the same time, while there are many positive efforts to supplement LSC's Federal funding, these efforts cannot supplant LSC. For example, the ABA promotes generous contributions of pro bono service and money by private lawyers through our center for pro bono. We support charitable giving through the ABA resource center and through long-time advocacy for IOLTA accounts.

Unfortunately, as you have noted before, IOLTA monies have all but dried up, and therefore, that source of funding for legal services has been essentially eliminated.

The ABA this week is sponsoring a national celebration of pro bono to draw the bar and the public's attention to the pro bono contributions of lawyers and to encourage even more lawyers to participate. This week, there will be over 500 events nationwide.

While pro bono remains an important part of the delivery system, a strong, efficient, well-funded LSC is the central mechanism for making any headway toward closing the justice chasm. The ABA, our members, and State and local bars nationwide stand ready to help get this important job done.

Thank you very much.

[The prepared statement of Mr. Wells follows:]

PREPARED STATEMENT OF H. THOMAS WELLS, JR.



**STATEMENT OF H. THOMAS WELLS, JR.**

**submitted on behalf of the  
AMERICAN BAR ASSOCIATION  
to the  
Committee on the Judiciary,  
Subcommittee on Commercial and Administrative Law  
United States House of Representatives  
on the subject of**

**THE LEGAL SERVICES CORPORATION**

**October 27, 2009**

Mr. Chairman and Members of the Committee:

I am Tommy Wells, Immediate Past-President of the American Bar Association (“ABA”) and a founding member of the law firm of Maynard, Cooper & Gale, PC in Birmingham, Alabama. I submit this testimony at the request of the President of the American Bar Association, Carolyn B. Lamm of Washington, DC, to voice the Association's views with respect to the essential role of the Legal Services Corporation (“LSC” or “Corporation”) in closing the “justice gap.” LSC is essential 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 through bipartisan reauthorization and increased funding. The ABA urges the 111<sup>th</sup> Congress to enact bipartisan legislation to reauthorize, strengthen and improve the LSC.

The American Bar Association, the world's largest, voluntary professional organization with nearly 400,000 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. The ABA is a “big tent” if you will: we consist of Republicans and Democrats, plaintiff and defense lawyers, corporate general counsel and outside lawyers, prosecutors and defenders. The ABA does not endorse candidates or make political contributions. For these reasons, the ABA brings a strong, non-partisan voice to the table. We appreciate the opportunity to discuss the LSC and the justice gap, and offer our ongoing support and assistance to continuing to improve the delivery of legal services to low-income individuals.

#### **I. 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 LSC.

Long before I became ABA President, I began visiting with my Congressional Delegation, both Republicans and Democrats, to explain how important LSC funding is to Alabama and the most vulnerable citizens in our state. Until recently, the only funding for Alabama legal services was federal funding. Over the years, strong bipartisan support for LSC has energized not just in Alabama but around the country. In addition to their year-round work at home, ABA members and state and local bar presidents, many on their own dime, travel to DC every year to remind Congress how important LSC is to their states and districts. These past two years the Bar Presidents of all 50 States, plus the District of Columbia, the U.S. Virgin Islands and Puerto Rico, jointly urged Congress to increase funding for LSC. This past year, the four major bars of color (the National Bar Association, the Hispanic National Bar Association, the National Asian Pacific American Bar Association and the National Native American Bar Association) added their voices to this effort.

In addition to the support of the legal community, the American people strongly support a federal legal services program. This past spring, ABA released a newly completed Harris public opinion poll which demonstrated strong national support for providing free legal services to qualified low-income families.

Promoting meaningful access for all persons regardless of their income or social condition continues to be one of the ABA's primary organizational goals. The ABA has assisted Congress and state and local entities in the development of the LSC, has assisted the Corporation in becoming the cornerstone for delivery of legal aid to the poor in this nation, and has also worked to build broad understanding of the work of LSC and bipartisan support for it in the Congress and throughout the country. We work closely with a coalition of state and local bars that support the work performed by LSC grantees in their communities and that have joined us in urging policymakers at all levels to support the program.

The ABA has also 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.

A key resource supplementing the LSC is pro bono contributions by private lawyers. The ABA promotes, as a key professional value, generous contributions of pro bono service and money by private lawyers. ABA Model Rule of Professional Conduct 6.1 states that: "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 addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means." With our support and encouragement, 25 states have adopted a version of this rule to emphasize that the professional responsibility of lawyers includes direct representation of the poor. Other states have rules expressing this same sentiment using language other than that of Model Rule 6.1. The ABA itself seeks to catalyze pro bono contributions through its national support center for pro bono activities – the ABA Center for Pro Bono.

Pro bono service is an indispensable element for closing the justice gap. Yet it can never alone meet the legal needs of the poor. Therefore, to supplement the foundation provided by federal resources through the LSC and the pro bono contributions by the private bar, the ABA has also provided support and leadership for charitable giving by lawyers and the profession. Through the "ABA Resource Center for Access to Justice Initiatives," we assist state legal aid systems in identifying and pursuing additional revenue sources to support civil legal aid. The ABA has long advocated Interest on Lawyers' Trust Account (IOLTA) programs as an effective way to raise additional resources for the legal aid system. We provide a clearinghouse of information and operational expertise for those programs, including promulgation of techniques for enhancing revenues which can then be used to supplement federal resources provided through the Corporation.

Last year, the ABA worked with Congress to encourage the FDIC to include IOLTA in the Temporary Liquidity Guarantee Program to ensure that this vital program continued through the economic crisis. My own Congressman, Spencer Bachus, spearheaded the House bipartisan effort and we again thank everyone, including many members of this Committee, who signed letters to the FDIC to express their support.

## **II. The Poor In America Have Very Limited Access to the Justice System**

The Preamble to the U.S. Constitution states that the first enumerated function of government is to "establish justice." President Washington wrote that "the due administration of justice is the firmest pillar of good government." Our system of government 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 is necessary to assure that all persons have access to the justice system. Yet every indicator shows that the efforts described above have proven to be inadequate; access to justice is largely denied to the poor.

We are heartened that there has been increased discussion during the last several years of the "justice gap." But to me this seems to be a misnomer; it is more like a "chasm" than a "gap." Every effort to assess the number of life-altering legal issues that confront poor people in this country, and the capacity of our legal aid system to respond to those problems, leads to the conclusion that much work lies ahead.

#### **ABA 1993 Comprehensive Legal Needs Study & Results**

In 1993, a Temple University report commissioned by the ABA 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 79% of these legal needs go unaddressed. An executive summary of this seminal report is located on the ABA website at: <http://www.abalegalservices.org/downloads/sclaid/legalneedstudy.pdf>. Unfortunately, for a variety of reasons including an increase in the number of people living in poverty, these statistics have changed little in the last 16 years.

#### **Recent State-Based Legal Needs Studies Find a Large Proportion of the Legal Needs of the Poor Remain Unmet**

Since the year 2000, sixteen states have conducted large-scale legal needs studies. These studies were conducted by a variety of respected research and academic institutions, using standard empirical research techniques. They have revealed in every case that only a small fraction, about 20%, of the legal problems experienced by low-income people is addressed with the assistance of a private or legal aid lawyer.

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.

Some observers might say that the legal needs research is too abstract because it depends upon surveys of the quantity of legal problems presenting significant life challenges that are not resolved through the justice system. But in 2005 and 2009, the LSC examined something far less abstract – the demand for its services and the capacity of its grantee programs to respond to this demand. It learned that, due to limited resources, grantees are able to respond to less than half the applications for legal assistance by eligible individuals. LSC-funded programs must turn away one-half the eligible people who seek assistance in resolving legal problems that affect their health, housing, employment or other critical areas of life – problems that keep them mired in poverty. Furthermore, it is clear that the actual level of need is much larger than the current demand for such services would suggest. Many poor people with life-altering legal problems simply do not seek assistance because they are well aware that they have at best a 50-50 chance of getting such help.

**The Number of People in Poverty Continues to Grow**

Today, more than 51 million Americans (including 18 million children) qualify for federally funded legal assistance through the Legal Services Corporation. The Census Bureau reported in September of this year that the poverty rate rose in 2008 to 13.2 %. This is the highest rise in the poverty rate since 1997. The total number of people in poverty climbed to the highest level since 1960. This is a marked increase in the number of people eligible for legal aid from just ten years ago, when 45 million Americans were eligible for LSC-funded representation.

**III. The Legal Services Corporation Provides the Foundation for a System Providing Equal Justice**

**LSC Provides a Strong Organizational Infrastructure and Foundation for the Legal Aid System; LSC Should Be Reauthorized, and Given Adequate Resources to Close the Justice Gap**

It is important that this Congress examine the current situation regarding access to justice in America and enact bipartisan legislation to reauthorize the Legal Services Corporation – which represents the principal federal mechanism through which government seeks to provide some assurance that justice is available to all, regardless of their financial condition. Our nation should be proud of the structure that it has created, but should allocate the resources needed to fully address the needs. LSC is important to your constituents because:

**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 help those who suddenly qualify for and need legal assistance, including during times of recession and after natural disasters strike.** 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 homeowners 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; these include family law, housing, and consumer issues, and obtaining 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 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.

The LSC is the central foundation for the legal aid system; other components – state and local funding and pro bono contributions by private lawyers – are catalyzed by LSC seed funding and serve to supplement the LSC resources. The 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.

However, federal resources to support LSC are grossly inadequate. They do not come close to addressing the level of need and have not even kept pace with inflation. In 1981, LSC for the first and only time achieved sufficient funding to reach the longstanding goal of providing 2 lawyers for every 10,000 poor people. If the \$321 million 1981 appropriation for LSC had kept pace with inflation, LSC would now be funded at close to \$800 million. LSC's FY 2009 appropriation is only \$390 million.

The resources that are provided to LSC are not able to be used to maximum effect. Impediments have been created by restrictions that have proven to be overreaching. The ABA supports a re-examination and adjustment of these restrictions, as is contemplated in reauthorization legislation in both chambers of Congress.

The ABA strongly urges the Subcommittee to address in reauthorization legislation three measures that have been included in appropriations riders since 1995 that have impeded LSC in fulfilling its mission of providing basic legal services to qualified persons. Specifically, we request that the Subcommittee eliminate (1) the restriction that prevents recipients of LSC funding from freely utilizing – without being subject to federally imposed restrictions – state, local, private and other non-LSC funds to provide needed legal assistance to poor clients; (2) the restriction that prevents LSC recipient programs from obtaining statutorily permitted attorneys' fees, as the House did in its version of the CJS bill; and (3) the restriction on class actions. These changes are sure to expand access to justice for low-income families without imposing unjustifiable costs on defendants.

The restriction on the use of other non-LSC funds by local legal aid recipients of LSC funding greatly diminishes the ability of LSC-funded programs to raise other funds from state and local governments, charitable foundations and private individuals. The restriction prevents these other funders from giving money to LSC-funded programs because the funds often cannot be used as the donor intends. The restriction has created great inefficiency in the legal aid system across the nation; entirely new and separate local legal aid programs had to be created to accept non-LSC funds in order to facilitate the donor's intent. The result has created a situation where hundreds of thousands of dollars in limited resources are squandered on needless duplication.

The restriction barring recovery of statutorily authorized attorneys' fees further diminishes the scarce resources available to support civil legal aid programs. Perhaps more important, it

eliminates a critical source of leverage in many cases, putting legal aid lawyers at a grave disadvantage in attempting to negotiate settlements for their clients.

Both restrictions offend basic principles of federalism. They require independent legal aid programs to act in ways that are contrary to the expressed desires of state and local governments, local individuals and charities and state fee-recovery statutes. While it is understandable that the federal government may wish to dictate what can be done with federal funds, it is unacceptable for the federal government to tell local public service programs what they can do with other funds. Furthermore, states have, in their own sovereign wisdom, chosen to permit fee-shifting in certain situations and have therefore structured an appropriate balance between parties operating within their justice systems. Federal interference denies states the right to determine how their justice systems should operate.

The ABA also recommends lifting the restriction on LSC-funded programs using federal funds to file class actions. The ABA strongly believes that class actions should be available to low income victims of unscrupulous practices. Should eliminating this restriction prove controversial, we urge the Subcommittee to consider compromise language that would enable groups of similarly targeted poor people to effectively and efficiently obtain justice in the courts.

The ABA has longstanding policy favoring a legal aid system that does not interfere with poor persons' full access to the courts or deny advocacy that is available to others in our society. Removal of these restrictions will be a modest step toward adjusting the legal aid system so that it once again can approach the promise of ensuring equal access to justice for all.

**States and Other Sources Provide Supplemental Resources for Access to Justice – But Resource Levels Vary Greatly by State and Over Time**

Most, but not all, state governments are now partners in the efforts to provide legal aid to the poor. Forty-eight states provide public funding in varying amounts that supplement federal funding provided through LSC. However, the amounts contributed by the states vary widely. States with more limited resources, like my own state of Alabama, can contribute very little. We are able to supplement the LSC grant by only \$200,000 in state funding to support legal aid.

During the past year to 18 months, several states have sharply reduced state appropriations to support legal aid. A small handful of others have rallied to provide additional funding. We estimate that the system as a whole continues to receive approximately the same amount as in the past from state governmental funding sources, but that is only because of large increases in a small number of states. Access to justice in many states has been dramatically impaired by the current economic downturn.

All states now operate Interest on Lawyer Trust Account (IOLTA) programs that harness the earning power of money that would otherwise lie fallow by aggregating small quantities of funds that would otherwise not be able to earn interest for anyone. However, IOLTA resources are market-driven and therefore are not a stable form of support; they rise and fall quickly with interest rates and the level of deposits to IOLTA accounts. ABA research shows that in the aggregate, IOLTA programs experienced a 23% decline in income in 2008, the most recent year for which full data is available. Thirty-seven jurisdictions saw an actual decrease between 2007 and 2008 income; decreases ranged from 1.4% to 60%. A recent informal poll of IOLTA programs requesting their projections of income for 2009 indicates that, in the aggregate, IOLTA

programs expect to see an additional decrease in income from 2008 to 2009 of about 67%. As a result, the amount of supplemental funding available from state IOLTA programs is expected to continue to shrink in the short term.

States are expanding their efforts to improve the legal aid infrastructure by another mechanism – creation of broad-based access to justice commissions. The commissions involve leaders of the bar, the judiciary and other community leaders who are designing and finding resources for more effective civil legal services systems. Approximately 25 states have created such commissions, or similar entities, including my home state of Alabama. These efforts hold promise for the future, as they seek to improve the infrastructure and resources available for legal aid. This is, however, a nascent effort which has not yet begun to bear fruit or to generate significant new resources for the system. The ABA is providing support for these efforts through an ABA Resource Center for Access to Justice Initiatives, established in 2006. The Resource Center provides assistance in the development of the commissions, offers technical assistance in developing effective strategic plans, and sponsors annual national meetings/educational sessions for commission members.

Pro bono service by the private bar provides an invaluable supplemental source of in-kind contributions to the total resources for legal aid. It is difficult to accurately quantify the total amount of pro bono contributions, as much service occurs outside of any organized program; in many cases, lawyers are contacted directly by individuals in their communities who are in need, and the lawyers respond generously and without seeking credit. The ABA began to conduct periodic random surveys of lawyers in 2005 to assess the amount of pro bono service provided both within and outside of organized programs. Our surveys in 2005 and 2008 showed that approximately 70% of members of the private bar report providing at least one hour of pro bono service to persons of limited means during the year preceding their report. Of the lawyers who performed pro bono work, the average amount contributed was about 40 hours of service during the reporting year. Between 2005 and 2008, our surveys showed a slight increase in the number of lawyers who reported providing pro bono service.

We are pleased that the trend appears to be toward increased pro bono participation. Law firms are now hiring pro bono partners and according both associates and partners credit for billable hours for pro bono work; law schools are developing more pro bono projects and clinics per the ABA accreditation standards requiring pro bono efforts; bar associations are supporting their members' participation in pro bono activities; judges are taking a more active role in promoting pro bono work to lawyers in their communities; and government attorneys 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 1,400 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).

Even with these heartening statistics, the ABA, and the organized bar in general, continues efforts to enlist more lawyers in providing pro bono service. For example, the ABA Standing Committee on Legal Assistance for Military Personnel has launched a program, "Operation Enduring LAMP," which is a consortium of state and local bar associations that have made a commitment to recruit volunteer attorneys, and in many cases offer training and facilities to volunteers, in order to assist military legal assistance providers with civil law matters affecting service members. The Committee also has launched the ABA Military Pro Bono Project to connect active-duty military personnel to free legal assistance for civil legal issues that are

beyond the scope of services provided available to such personnel through a military legal assistance office.

During my term as President of the ABA, the ABA established a new and innovative project to coordinate an ABA-based national medical-legal partnership pro bono support initiative. Medical-legal partnerships (MLPs) now serve almost 200 sites in the United States, including hospitals, community clinics and other health care facilities. MLPs represent an exciting and unprecedented opportunity for lawyers to join the national health care community in working with key stakeholder organizations to develop partnerships to help identify and resolve diverse legal issues that affect patients' health and well-being and to educate physicians on the impact of unmet legal needs on the health of patients, provide physicians with information on screening for such unmet legal needs in their patients, and provide physicians, hospitals and health-centers with information on establishing a medical-legal partnership.

We know that many low-income families and individuals who receive legal assistance from legal aid or pro bono attorneys have multiple needs well beyond the discreet legal issues we lawyers handle. These patients confront illness that interferes with their ability to meet their basic needs. But, not every illness has a biological remedy. A family forced to choose between food and heat in the winter months cannot be treated with a prescription or a vaccination. Similarly, a child with asthma will never breathe symptom free – no matter how much medication is administered – if he or she returns from the doctor's office to mold-infested housing, as thousands do.

Medical-legal partnerships integrate lawyers in the healthcare setting to help patients navigate the complex legal system that often holds solutions to many social determinants of health – income supports for food-insecure families, utility shut-off protection during cold winter months, and mold removal from the home of asthmatic children.

Bar associations and private lawyers have redoubled their efforts during the current time of economic uncertainty, to try to raise additional funding for legal aid, or to expand pro bono services. Examples include:

**Arizona:** The state bar association and bar foundation created the “Lawyers Helping Homeowners” program, calling upon volunteer lawyers to assist homeowners in working with their lenders to find appropriate financial arrangements to avoid foreclosure.

**California:** Among a wide variety of pro bono contributions, notable is the Holocaust Survivors Initiative, a network of over 2,600 lawyers who provide service to survivors, coordinated by the joint efforts of Bet Tzedek Legal Services and the firm of Manatt, Phelps & Phillips.

**Iowa:** The director of our ABA Young Lawyers Division Disaster Legal Services Project is Craig Cannon, a North Carolina lawyer and Iowa native and graduate of the University of Iowa. His project provided an incredible amount of pro bono service to victims in the aftermath of the recent Iowa floods. Craig is a recipient of the University of Iowa Distinguished Alumnus Award for his work in pro bono and, particularly, for legal assistance to low income disaster survivors.

**North Carolina:** The North Carolina Bar Association in 2008 launched an innovative “[Justice4ALL](#)” campaign to increase access to legal services for the poor through a five-prong approach: educate, legislate, donate, participate and provide loan repayment assistance. The education campaign focused on informing North Carolina lawyers about the great unmet need

for legal services by the poor in the state. The legislative campaign developed a grassroots advocacy network to seek increased public funding for legal services. Through its private bar fundraising efforts, the campaign raised close to \$900,000 for Legal Aid of North Carolina. The “4ALL” campaign has also led to increased pro bono participation through its annual statewide “Service Day.”

**Ohio:** The Ohio State Bar Association worked closely with state government and other key institutions to launch the “Save the Dream” foreclosure assistance program: a new initiative that connects qualified homeowners with legal aid lawyers and nearly 1,100 attorneys statewide who have volunteered to provide legal services free of charge. Ohio State Bar President Robert F. Ware, Jr. stated at the program’s launch: “Nearly 1,100 Ohio lawyers have volunteered to assist Ohio homeowners facing the potential loss of their homes. These 1,100 lawyers – and more will join their ranks – are being assigned to local legal services providers to be matched with qualified clients and will work with lower income Ohioans who could not otherwise afford legal counsel. These pro bono attorneys will supplement the resources available in the legal services community which alone are inadequate to address the current need. We are committed to helping Ohioans stay in their homes – to save their dreams – wherever possible.”

**Virginia:** The Fairfax Law Foundation and the Fairfax Bar Association support a vibrant and expanding civil pro bono program. Volunteer lawyers, law students, and paralegals give their time to staff diverse projects including: Housing, Consumer, and Employment Pro Bono Law Panels, a Family Legal Assistance Project, a Nonprofit Legal Support Program, and a Wills on Wheels Pro Bono Project. Lawyers contribute a full day’s work at any given time when they serve as “lawyer for the day” helping victims of domestic violence obtain protective orders. The Fairfax Law Foundation also hosts an innovative annual fundraiser “Jazz 4 Justice.” This year’s event, to be held November 13 at George Mason University, is a terrific example of a great community partnership as proceeds go to both the Law Foundation and GMU Jazz Ensemble.

To draw the bar’s and the public’s attention to the pro bono contributions of lawyers, and to encourage even more lawyers to participate, the ABA is this week sponsoring a National Celebration of Pro Bono. This consists of over 500 events nationwide recognizing the important contributions lawyers make to communities all over America.

Despite the wonderful work demonstrated by lawyers as described above, we again must caution that even with an ongoing strong commitment from the private bar, at best pro bono provides a supplementary resource. Some have suggested over the years that the private bar or state funding alone can ensure access to justice for the poor. Such suggestions would only result in further rationing of justice. The level of need is too overwhelming.

The ABA agrees that pro bono service is an indispensable partner in closing the justice gap. Some have suggested that the lawyers can and should be required to provide pro bono service or even to bear the entire burden of closing the justice gap alone. Such a suggestion is misguided. First, ensuring access to the legal system for all and not just the wealthy is fundamentally a governmental responsibility; one profession cannot be conscripted to fulfill a government obligation without compensation. Second, lawyers as a profession already do more public service than any other profession. As ABA President, I had the wonderful opportunity to travel the country to see firsthand the outstanding pro bono work that I described above which is being done by state and local bar associations and individual lawyers. Many who would place additional responsibility on individual lawyers for closing the justice gap do not realize that

America's lawyers are mostly solo or small firm practitioners; they are your constituents who are small business owners trying to make ends meet themselves, including paying off student loan debt and providing for their own families.

Pro bono remains an important part of the delivery system, and we can and should do more to encourage private lawyers to assist in closing the justice gap. The ABA, and state, local, specialty and territorial bar associations will remain tireless in urging members of the profession to voluntarily contribute pro bono legal services to the poor, to build upon the foundation and central infrastructure that is provided through the Legal Services Corporation. This is why the ABA strongly supports the language in H.R. 3467 that encourages LSC to continue its Private Attorney Involvement program.

#### **IV. Conclusion**

The ABA strongly supports the Legal Services Corporation as essential in helping secure access to justice for all Americans. The ABA urges the Subcommittee (and Congress) to work together to approve bipartisan reauthorization legislation before the 111<sup>th</sup> Congress adjourns. Despite some dissenters, LSC is not going away – the program enjoys strong bipartisan support in Congress and among the American people. There are many improvements, however, that can be made – LSC has not been reauthorized since 1977 and many things have changed since then. The ABA was indeed part of the compromise in 1995 that imposed the “restrictions” that saved LSC. But it's time to take a hard look at those restrictions, learn from how these restrictions have been in many cases overreaching, and work together to improve the delivery of legal services to the poor. The ABA, our members, and state and local bars nationwide stand ready to help get this important job done.

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 a significant increase in resources devoted to the Legal Services Corporation.

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Mr. COHEN. Thank you, Mr. Wells. I appreciate your testimony and your service in the ABA.

Our last witness is Ms. Susan Ragland, director in the GAO's financial management assurance team, responsible for work in gov-

ernance, internal control, grants accountability, and implementation of the Recovery Act, written—a wide range of experience leading cross-cutting efforts at GAO regarding government-wide management reforms. She has received a variety of awards that recognized her leadership and teamwork, and we appreciate your testimony today.

**TESTIMONY OF SUSAN RAGLAND, DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE TEAM, GOVERNMENT ACCOUNTABILITY OFFICE**

Ms. RAGLAND. Thank you, Chairman Cohen, Representative Franks, and the Subcommittee.

I am pleased to be here to discuss GAO's prior work on the Legal Services Corporation's governance, accountability, and grants management practices. Today, I will highlight 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.

I will put this in context by presenting the status of LSC's actions to respond to the recommendations that we made. We have been following up on these actions since May, and we will continue to do so.

LSC's governance and accountability practices and internal control are key in maintaining trust and credibility. LSC agreed with all 12 of our recommendations in this area and have implemented four recommendations that we made to LSC management.

LSC has implemented a formal risk assessment program, established a conflict of interest policy, established and tested a continuity of operations plan, and decided to base LSC's financial reporting on standards set by the Governmental Accounting Standards Board.

LSC's board has fully implemented three of eight recommendations we made to the board to help strengthen governance. The board established an audit committee chartered to the board's committees and a shorter timeframe for issuing LSC's audited financial statements.

However, the board has not fully implemented five remaining recommendations. One of these was for the board to develop and implement procedures to periodically evaluate key management processes. This recommendation is key, because it contributes to establishing an effective internal control environment at LSC, and it helps keep LSC management accountable.

The other recommendations to the board that remain outstanding are to establish and implement an orientation program, develop a training plan, establish a compensation committee function, and conduct a periodic self-assessment of the board's, committees', and members' performance.

At this time, all but one of the board's terms have—members' terms have expired. As new members transition to the board, it will be important that the new board make it a priority to fully implement these recommendations.

Turning to the area of grants management and oversight, LSC continues to meet improved internal controls. Our December 2007 report identified weaknesses in LSC's internal controls that left

grant funds vulnerable to misuse. Such weaknesses and improper expenditures can result in a loss of credibility to the grantee, the grantor, and allows instances of fraud to take place if not addressed.

LSC has addressed two recommendations we made. It has followed up on the improper uses of grant funds that we identified, and it developed and implemented policies and procedures for sharing information among the Office of the Inspector General, the Office of Program Performance, and the Office of Compliance and Enforcement.

However, LSC has not yet fully implemented a key recommendation to employ a systematic approach for assessing risks across its 137 grantees. LSC needs a sound, analytical approach consistently applied to determine whether its oversight resources are being used effectively.

LSC management has also not fully implemented a recommendation to revise its guidelines for fiscal compliance reviews, and the LSC board has not fully implemented a recommendation to clearly delineate organizational roles and responsibilities for grantee oversight and monitoring.

In conclusion, LSC's board of directors and managers have made progress and fully implemented nine recommendations. The improvements that LSC has made in its governance and accountability provide a good foundation LSC can build upon to effectively adjust to evolving practices and risk.

However, LSC needs to complete implementation of the remaining recommendations and focus continuing attention on the elements needed for strong governance and internal control. In particular, continuing risk assessments and a robust risk management program and mitigation will be crucial components of LSC's overall internal control structure.

Similarly, although the board has taken an important step by establishing the audit committee, it will be important for the board to continue to develop and implement procedures to periodically evaluate key management processes, such as financial reporting.

Thank you. I will be happy to answer any questions you may have.

[The prepared statement of Ms. Ragland follows:]

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United States Government Accountability Office

**GAO**

Testimony

Before the Subcommittee on Commercial  
and Administrative Law, Committee on  
the Judiciary, House of Representatives

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For Release on Delivery  
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**LEGAL SERVICES  
CORPORATION**

**Some Progress Made in  
Addressing Governance  
and Accountability  
Weaknesses, But  
Challenges Remain**

Statement of Susan Ragland, Director  
Financial Management and Assurance



GAO  
Accountability Integrity Reliability

## Highlights

Highlights of GAO-10-194T, a testimony before the Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, House of Representatives

### Why GAO Did This Study

In August 2007, GAO reported (GAO-07-989) that Legal Services Corporation (LSC) had not kept up with evolving reforms aimed at strengthening governance, accountability and internal controls. In December 2007, GAO reported (GAO-08-37) weaknesses in LSC's internal controls over grants management and oversight of grantees. GAO was asked to testify on the status of accountability practices of the LSC. GAO's testimony is primarily a summary of our prior reporting, but includes follow up work conducted between May and October 2009 to obtain information on the status of our prior recommendations.

### What GAO Recommends

In its August 2007 report, GAO made 8 recommendations to LSC's Board of Directors to improve LSC's governance and accountability practices and four recommendations to management to improve key management processes. GAO also provided a matter for congressional consideration on whether LSC could benefit from additional mandated governance and accountability requirements. In its December 2007 report, GAO made 1 recommendation to LSC's Board and 4 recommendations to management to improve LSC's internal control and oversight of grantees. LSC agreed with our recommendations and has addressed 3 of GAO's 17 recommendations as of October 20, 2009. GAO will continue to monitor LSC's corrective actions.

View GAO-10-194T or key components. For more information, contact Susan Ragland at (202) 512-8485 or ragland@gao.gov.

October 27, 2009

## LEGAL SERVICES CORPORATION

### Some Progress Made in Addressing Governance and Accountability Weaknesses, But Challenges Remain

#### What GAO Found

In August 2007, GAO reported that the governance practices of LSC's board fell short of the modern practices employed by other nonprofit corporations and public companies. Although the board members had demonstrated active involvement in LSC through regular board meeting attendance and participation, we pointed out several areas where LSC's governance practices could be strengthened. LSC's management practices had also not kept up with the current practices for key processes in risk assessment, internal control, and financial reporting. We pointed out certain areas where management's practices could be strengthened. GAO concluded that a properly implemented governance and accountability structure might have prevented incidents, such as compensation rates in excess of statutory caps, questionable expenditures, and potential conflicts of interest. GAO made 12 recommendations – 8 to the board and 4 to management. LSC's management has implemented all 4 recommendations to improve its management practices. The board has fully implemented 3 recommendations, but it needs to take additional actions to fully implement the other 5 recommendations. For example, LSC's board has fully implemented the key recommendation to establish an audit committee. However, another key recommendation for the board to implement procedures to periodically evaluate key management processes has not yet been fully implemented. LSC told GAO that it plans to take additional actions to more fully address the five recommendations.

In December 2007, GAO reported weaknesses in LSC's internal controls over grants management and oversight of grantees that negatively affected LSC's ability to provide assurance that grant funds were being used for their intended purposes in compliance with applicable laws and regulations. Effective internal controls over grants and grantee oversight are critical to accomplishing LSC's mission because it relies extensively on grantees to provide legal services to individuals who otherwise could not afford to pay for legal counsel. GAO made 5 recommendations to address these issues. LSC management fully implemented two of our report recommendations, including following up on identified improper or potentially improper uses of grants funds. However, LSC has only partially implemented three key recommendations, including only limited action to implement an approach for selecting grantees for review using consistently applied, risk-based criteria.

In order to improve LSC's board and management's ability to maintain accountability over LSC's mission, it will be critical for LSC's board and management to maintain priority focus on fully implementing all remaining GAO recommendations.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our prior work on the Legal Services Corporation's (LSC) governance, accountability, and grants management practices and the status of LSC's efforts to address the seventeen recommendations we made as a result of that work.<sup>1</sup>

Today I will highlight our key findings and conclusions from our prior reports on LSC's governance and accountability practices, as well as the internal control improvements needed in LSC grants management and oversight. Our August and December 2007 reports<sup>2</sup> contain a detailed description of our findings, conclusions, and recommendations. In addition, I will also provide the current status of LSC's action to implement the recommendations contained within those reports directed at improving governance and management and grants management internal controls.

LSC's mission is to make federal funding available for legal assistance in civil matters to low-income individuals throughout the United States on everyday legal problems. LSC pursues this mission by making grants<sup>3</sup> to legal service providers (grant recipients) who serve low-income members of the community who would otherwise not be able to afford legal assistance (clients). Established by a federal charter<sup>4</sup> in 1974<sup>5</sup> as a federally funded, private nonprofit corporation, LSC is highly dependent on federal appropriations for its operations. LSC received \$390 million in

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<sup>1</sup>GAO, *Legal Services Corporation: Governance and Accountability Practices Need to Be Modernized and Strengthened*, GAO-07-593 (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).

<sup>2</sup>GAO-07-593 and GAO-08-37.

<sup>3</sup>As used in this testimony, the term grant encompasses all of the agreements LSC uses to distribute federal funding to providers of civil legal assistance to low-income persons, and the term grant recipient refers to those who enter into such agreements. Although LSC distributes most financial assistance through grants, it sometimes uses contracts.

<sup>4</sup>As used in this testimony, the term federal charter refers to a congressional act, or the written instrument documenting this act as in a statute, that establishes or authorizes the establishment of a corporation and includes requirements governing the corporation's operations.

<sup>5</sup>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).

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appropriations for fiscal year 2009.<sup>6</sup> For fiscal year 2010 and 2011, LSC has requested \$485.8 million and \$516.5 million, respectively.

LSC distributes funding to local legal-service providers based on the number of low-income individuals living within a service area.<sup>7</sup> 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 duties in overseeing LSC management's operations and use of appropriated funds.

Effective governance and accountability, including internal control are key to maintaining trust and credibility. 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. 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.<sup>8</sup>

We conducted the work for the August 2007 and December 2007 reports on which this testimony was based from November 2006 through June 2007, and September 2006 through September 2007, respectively, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient,

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<sup>6</sup>Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, div. B, title IV, 123 Stat. 524, 593 (Mar. 11, 2009); Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, Pub. L. No. 110-329, div. A, § 101, 122 Stat. 3574 (Sep. 30, 2008), as amended by Joint Resolution, Pub. L. No. 111-6, 123 Stat. 522 (Mar. 6, 2009).

<sup>7</sup> 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.

<sup>8</sup>GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (November 1999).

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appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provided a reasonable basis for our audit findings and conclusions based on our audit objectives. In addition, between May 2009 and October 2009 we obtained and reviewed available documentation and discussed with LSC officials the status of actions to implement our August and December 2007 recommendations.

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**LSC Has Made Improvements in its Governance and Management Practices But Key Actions Still Need to Be Completed**

While LSC's board and management have taken actions to improve its governance and accountability practices towards fully implementing the recommendations from our August 2007 report additional actions to fully implement the other key recommendations are needed. In August 2007 we reported, that since its inception over 30 years ago, LSC's governance and accountability practices, including its financial reporting and internal control, had not kept pace with evolving governance and accountability practices and as a result, its practices had fallen behind those of federal agencies, U.S. government corporations,<sup>9</sup> and other nonprofit corporations.

LSC's board and management agreed with all twelve of our recommendations in this area, the board has implemented corrective actions for three of the eight recommendations made to the board and management has implemented all four recommendations made to management. For instance, in response to one of our eight recommendations to the board, in March 2008 the board established an audit committee, which filled an oversight gap of LSC's internal control, financial reporting and audit processes. However, another key recommendation directed at the board developing and implementing procedures to periodically evaluate key management processes, has yet to be developed and fully implemented. This recommendation is key in that it contributes to establishing an effective, supporting internal control environment at LSC as well as assists the board in fulfilling its oversight duties. As the board transitions to new board members,<sup>10</sup> it will be

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<sup>9</sup>In general, our review of government corporations was limited to those corporations subject to chapter 91 of title 31 of the U.S. Code (commonly known as the Government Corporation Control Act).

<sup>10</sup>As of October 2009, all but one of the Board members term has expired. As new Board members are confirmed by the Senate, the Board members with expired terms will leave LSC's Board.

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important for the new board to provide priority focused attention on fully implementing the other five of our recommendations.

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#### Governance Practices

In August 2007 we reported 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 had demonstrated active involvement in LSC through their regular board meeting attendance and participation, we pointed out 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 governance practices, the regulatory environment, and key management practices. Although the LSC board had four committees, including finance and operations and regulations, it did not have audit, ethics, or compensation committees' functions, important governance mechanisms commonly used in corporate governance structures. The board had also not assessed the performance, collectively or individually, of its board members. Finally, the board had not implemented certain procedures that are key to helping it carry out its fiduciary duties for overseeing LSC, including evaluating key management processes, such as risk assessment, risk mitigation, internal controls and financial reporting.

Our August 2007 report recommendations to improve and modernize the governance processes and structure of LSC along with our views on the status of LSC's efforts to implement these recommendations (as of October 20, 2009) are summarized in table 1.

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**Table 1: Status of August 2007 GAO Report Recommendations on Governance Practices to LSC Board of Directors**

Recommendation	Status
Establish an audit committee function to provide oversight to LSC's financial reporting and audit processes either through creating separate audit committee or by rewriting the charter of the board's finance committee.	Implemented
Establish charters for the Board of Directors and all existing committees and any newly developed committees to clearly establish committees' purposes, duties, and responsibilities.	Implemented
Establish a shorter time frame (e.g., 60 days) for issuing LSC's audited financial statements.	Implemented
Establish and implement a comprehensive orientation program for new board members to include key topics such as fiduciary duties, IRS requirements, and interpretation of the financial statements.	Partially implemented
Develop a plan for providing a regular training program for board members that includes providing updates or changes in LSC's operating environment and relevant governance and accountability practices.	Partially implemented
Establish a compensation committee function to oversee compensation matters involving LSC officers and overall compensation structure either through creating a separate compensations committee or by rewriting the charter of the board's annual performance review committee.	Partially implemented
Implement a periodic self-assessment of the board's, the committees', and each individual member's performance for purposes of evaluating whether improvements can be made to the board's structure and processes.	Partially implemented
Develop and implement procedures to periodically evaluate key management processes, including, at a minimum, processes for risk assessment and mitigation, internal control and financial reporting.	Partially implemented

Source: GAO analysis of LSC data.

LSC data we obtained and analyzed as part of our follow up work conducted between May 2009 and October 2009, showed that the board had fully implemented three of the eight recommendations, and had taken some action on the remaining five recommendations. But full implementation will be needed in order for the board's actions to be fully effective. The following summary highlights LSC actions and work that remains to be done on the five recommendations that our analysis showed were partially implemented.

- In response to our recommendation that the board establish and implement a comprehensive orientation program, LSC created a "wiki,"<sup>11</sup> which contains relevant information for LSC board members. However, LSC management informed us that they are waiting for the pending board member nominations to be confirmed by the U.S. Senate prior to holding a formal orientation program.
- In response to our recommendation that the board develop a plan for providing regular training, LSC's management informed us there have been

<sup>11</sup>A wiki is a Web site that uses wiki software, allowing the easy creation and editing of interlinked web pages.

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discussions about a training program and that the organizational updates for training the board occurs during the quarterly board meetings and that additional training needs of the board are determined by the self-assessments that the board members complete. LSC officials also stated that since this is an overall experienced board, the recent self-assessments did not indicate a need for training outside the organizational update.

Officials told us that LSC management is currently documenting a training program, which we will evaluate when completed and implemented.

- We recommended that the board establish a compensation committee function to oversee compensation matters including LSC officers and LSC's overall compensation structure. Currently, the board's Governance and Performance Review Committee's charter requires the committee to annually review and report on LSC's president and inspector general performance and compensation. An LSC official told us that during the October board meeting the board will be discussing and voting on a new charter for the Governance and Performance Review Committee.
- In response to our recommendation that the board conduct a periodic self-assessment of the board's, the committees' and each member's individual performance, the board has conducted and documented assessments for the board and individuals. According to an LSC official, the committee self-assessment process is still under discussion.
- We recommended that the board develop and implement procedures to periodically evaluate key management processes including at a minimum, processes for risk assessment and mitigation, internal control and financial reporting. The recently established audit committee's charter provides the audit committee with responsibility over internal controls and therefore the evaluation of management's processes. Although the audit committee was established in March 2008, it has not yet completed this key action.

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#### Management Practices

In August 2007, we reported that LSC's management practices did not reflect current practices in the areas of risk assessment, internal control, and financial reporting. We pointed out areas where management's practices could be strengthened. We found that management had not implemented a systematic or formal risk assessment that evaluated 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. In addition, senior management had not established comprehensive policies or procedures regarding conflicts of interest or other issues of ethical conduct. Without such policies and procedures, LSC was 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. Also, management

had not conducted analysis of accounting standards to determine the most appropriate standards for LSC to follow.

Our August 2007 report recommendations to improve and modernize key management processes at LSC, along with our views on the status of LSC's efforts to implement those recommendations (as of October 20, 2009) are summarized in Table 2.

**Table 2: Status of August 2007 GAO Report Recommendations on Management Practices to LSC Management**

Recommendation	Status
Conduct and document a risk assessment and implement a corresponding risk management program that is part of a comprehensive evaluation of internal control.	Implemented
With the board's oversight evaluate and document relevant requirements of the Sarbanes-Oxley Act of 2002 and practices of New York Stock Exchange and American Bar Association 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.	Implemented
Establish a comprehensive and effective continuity of operations plan (COOP) program, including conducting a simulation to test the established program.	Implemented
Conduct an evaluation to determine whether Government Accounting Standards Board (GASB) should be adopted as a financial reporting standard for LSC's annual financial statements.	Implemented

Source: GAO analysis of LSC data.

### Improved Internal Controls Needed over Grants Management and Oversight

While LSC has taken some actions with respect to our prior report's grants management-related recommendations, LSC has only partially implemented some key recommendations in this area. LSC management fully implemented two of our December 2007 report recommendations, including following up on identified improper or potentially improper uses of grants funds. However, LSC has only partially implemented three key recommendations, including limited action on implementing an approach for selecting grantees for review using consistently applied, risk-based criteria. Full implementation of all of the remaining recommendations is needed in order to ensure that LSC management has effective control over its mission-critical grantees.

Our December 2007 review of grants management and oversight at LSC identified weaknesses in LSC's internal controls over grants management and oversight that negatively affected LSC's ability to monitor and oversee grants and left grant funds vulnerable to misuse.<sup>12</sup> At grantees we visited,

<sup>12</sup>GAO-08-37.

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we also found poor fiscal practices and improper or potentially improper expenditures that LSC could have identified with more effective oversight. Although LSC has taken action to address two of the four recommendations we made to management in our December 2007 report, it has not yet implemented the two recommendations focused on oversight of grantees use of funds. In order to strengthen the organizational structure and governance of grantee oversight and monitoring, we made a recommendation to the board to develop and implement policies that clearly delineate organizational roles and responsibilities.

In December 2007 we reported on 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. At the time of our review, LSC management shared fiscal oversight and monitoring of grantees with the OIG. Management's oversight role was 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 was staff confusion about the types and scope of grantee fiscal reviews that LSC management could 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, 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 did not employ a structured or systematic approach for assessing the risk of noncompliance or financial control weaknesses across its 137 grantees. Without an analytically sound basis for assessing risk and distributing its oversight resources, LSC did not have a basis for knowing whether its oversight resources were being used effectively to mitigate and reduce risk among its grantees.

LSC's monitoring of grantee internal control systems needed to be strengthened, because 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

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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. 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 also identified various weaknesses and improper expenditures at grantees we visited. These weaknesses and improper expenditures can result in a loss of credibility to the grantee and grantor and also allow instances of fraud to take place if not addressed.

Our December 2007 report recommendations to improve its internal control and oversight of grantees, along with our views on the status of LSC's efforts to implement those recommendations (as of October 20, 2009) are summarized in Table 3.

<b>Recommendation</b>	<b>To</b>	<b>Status</b>
Develop and implement policies and procedures for information sharing among the OIG, OCE and OPP and coordination of OCE and OPP site visits.	Management	Implemented
Perform follow-up on each of the improper or potentially improper uses of grant funds that GAO identified in the <i>LSC Improved Internal Controls Needed in Grants Management and Oversight</i> report (GAO-06-37).	Management	Implemented
Implement an approach for selecting grantees for internal control and compliance reviews that is founded on risk-based criteria, uses information and results from oversight and audit activities and is consistently applied.	Management	Partially implemented
Implement procedures to improve the effectiveness of the current LSC fiscal compliance reviews by revising LSC current guidelines to provide <ul style="list-style-type: none"> <li>• a direct link to the results of OPP reviews and OIG and IPA audit findings,</li> <li>• guidance for performing follow-up on responses from grantee interviews, and</li> <li>• examples of fiscal and internal control review procedures that may be appropriate based on individual risk factors and circumstances at grantees.</li> </ul>	Management	Partially implemented
Develop and implement policies that clearly delineate organizational roles and responsibilities for grantee oversight and monitoring including grantee internal controls and compliance.	Board	Partially implemented

Source: GAO analysis based on LSC data.

As a result of our follow-up work conducted between May 2009 and October 2009, we determined that LSC management had fully implemented two of the four recommendations we made to management. The remaining two, as well as the recommendation to the board were partially implemented. Based on our evaluation, the following summary highlights LSC actions and work that remains to be done on the three recommendations that remain partially implemented.

- In response to our recommendation that LSC management use an approach for selecting grantees for internal control and compliance reviews that is founded on risk-based criteria and consistently applied, LSC revised its OPP and OCE manuals to include criteria for use in selecting grantees for reviews. Although LSC officials told us that the risk-based criteria was issued, they have not provided us with sufficient evidence to demonstrate that the criteria is consistently applied. We will evaluate LSC's implementation as part of our current ongoing work.
- We recommended that LSC address three factors—revise current guidelines of fiscal compliance reviews to provide (1) a direct link of results of OPP reviews and other audit findings, (2) guidance for performing follow up responses during interviews, and (3) examples of fiscal and internal control review procedures relative to individual risk factors. LSC has updated its written guidelines for the fiscal component of OCE's regulatory and compliance reviews; however, the updates do not

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include the three factors. LSC officials told us they will analyze their current manuals and incorporate interview guidelines and other information as needed. We will reevaluate this recommendation after LSC management completes its analysis.

- In response to our recommendation that the board develop and implement policies and procedures that clearly delineate organizational roles and responsibilities for grantee oversight and monitoring, the board-approved updated descriptions of organizational roles and responsibilities. However, internal controls discussed in the board approved descriptions are limited to fiscal internal controls and do not include operational or other internal controls that OPP and OCE are responsible for monitoring. According to LSC's management, the board's description combined with OPP and OCE manuals and documents address more than fiscal internal controls. We will reevaluate this recommendation after LSC management analyzes and gathers additional documentation to determine whether further actions are needed to ensure clear organizational roles and responsibilities.

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## Conclusions

LSC's Board of Directors and management have made progress on implementing our prior recommendations including fully implementing nine recommendations. The improvements that LSC has made in its governance and accountability provide a good foundation for completing implementation of the elements needed for a strong program of governance and internal controls. Although management has implemented the key recommendation of conducting and documenting a risk assessment, ongoing risk assessment and a robust risk management program is important to LSC's overall internal control structure.

Further, although the board has implemented the key recommendation of establishing an audit committee, the board must continue its efforts to implement another key recommendation of developing and implementing procedures to periodically evaluate management processes, including risk assessment, mitigation, internal control and financial reporting. It will also be important for the board to provide ongoing oversight of management's risk assessment and risk management program. Periodically evaluating management will assist the board in fulfilling its oversight duty. Fully implementing the remaining recommendations, will enable the board and management to achieve the level of governance and internal control needed to provide adequate assurance that LSC's governance and internal control structures are effective, and that grant funds are being used as intended and in accordance with laws and regulations.

A strong governance structure and well established management practices and internal controls will be crucial for LSC to maintain stable operations

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during the upcoming board transition. Strong internal controls, with ongoing risk assessment, monitoring, and oversight will also be key to providing both the board and management with assurance that LSC funds are being used for their intended purposes, in accordance with laws and regulations and enable LSC to effectively adjust to evolving practices and risks.

This concludes my prepared statement.

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**Contact and  
Acknowledgments**

For further information about this testimony, please contact Susan Ragland, Director, Financial Management and Assurance at (202) 512-8486, or [raglands@gao.gov](mailto:raglands@gao.gov). Contact points for our offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Major contributors to this testimony included Kimberley McGatlin, Assistant Director; F. Abe Dymond, Assistant General Counsel; Lauren S. Fassler; Bernice M. Lemaire; Mitch Owings; and Carrie Wehrly.

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Mr. COHEN. Thank you, Ms. Ragland.

Just like in the first panel, we will now have a series of questions, and I will begin the questions. And I will start with Ms. Ragland.

Legal Services has corrected most of the problems that were cited, but they haven't completed. How many areas have they still not complied with?

Ms. RAGLAND. There are eight recommendations in a couple areas that I tried to highlight as being key areas, in particular.

Mr. COHEN. Do you have any belief why they haven't completed that?

Ms. RAGLAND. Well, I believe that it is a combination of factors that Mr. McKay referred to, in that sometimes you need to do one step, like establishing the audit committee first before you can take some of the other actions. And so there is sort of a normal progression like that.

So that is basically the reasons that we believe that they are not all implemented at this time. Some of these actions just take time.

However, I would like to emphasize that we do think it is important, obviously, to implement all of our recommendations. And, you know, LSC remains at greater risk until we feel—until all of the recommendations are fully implemented.

Mr. COHEN. How much time do you think it would take to complete implementing all of your recommendations?

Ms. RAGLAND. Well, I think that, generally for our recommendations, we look for recommendations within a period of 4 years. That is across all recommendations that we make to agencies. And so I feel that LSC has made progress and is on the way on some of these other recommendations that they have not yet fully implemented them.

Mr. COHEN. Do you think if we had a hearing next year, some time maybe like September, we have a new president appointed, we have got new board members approved, do you think by next September, if we have a hearing, that all of these recommendations could be implemented, if the board and the president knew that they were a priority of this Subcommittee.

Ms. RAGLAND. I can't say. But I would think that that would be something that would be helpful to have, you know, continuing oversight and making sure that this is a priority, given the turnover and the transitions that will be happening.

Mr. COHEN. Thank you, Ms. Ragland.

Mr. McIVER, Memphis has recently discovered through data that we are the poorest of the 60 urban regions in the country. You said we have but 1 Legal Services—what were the statistics? They were amazing, 1 to 10,000?

Mr. McIVER. Yes. We have 20 lawyers and, we estimate, about 200,000. The increase from the 2000 decennial census to now, based upon our research, indicates that we have 45,000 increase in the poverty population. And in our area, we have a small pro bono program that you are aware of called Committee Legal Center, but it is not a full-fledged law firm to address the sorts of issues that we have to contend with on a daily basis.

Mr. COHEN. Mr. King talked about pro bono volunteer efforts. Do we have a good response from the legal community in Memphis to pro bono already? And is that a realistic expectation, to fill the gap that we currently see?

Mr. McIVER. I think it—without Memphis Area Legal Services or legal aid organization as the hub, the pro bono efforts would fall short. It is very evident, even from the inception of Memphis Area Legal Services, that the Neighborhood Legal Services project founded by, you know, our friend, Mike Cody, and the 29 others, that pro bono just doesn't work without an independent legal services—

not the independent—without a legal aid organization as the center, center at its efforts.

As reflected in my testimony, written testimony, we have just a host of opportunities that private lawyers and paralegals—we have volunteerism on the part of the paralegals. The paralegal association out here really has stepped up to the plate and done yeoman's work in terms of that.

You have the traditional kind of case referrals. We have now—it is very interesting, because our area, as you well know, Mr. Chairman, that bankruptcies are a very predominant issue in our area. We have probably called the mid-South's—and probably the whole country—the bankruptcy capital of the world. That is what I have heard.

Through the efforts of Judge Latta, who is a bankruptcy judge, and with our pro bono program, we have created the bankruptcy—pro bono project, which is designed to help potential bankruptcy or debtors to appreciate some alternatives to just going in to file bankruptcy. And that has been set up.

There are other opportunities. We have created the Memphis Bar Association, with the help of the Memphis Bar Association, business section, corporate accounts pro bono initiative. We have established a pro bono capacity to assist nonprofits, which are really suffering in our various communities, and even across this country, in need of legal assistance. We have created that capacity locally.

And you are aware—aren't you a University of Memphis Law School graduate?

Mr. COHEN. Yes, sir.

Mr. MCIVER. You know about the legal clinic. We have had the legal clinic for almost 20 years. The Memphis Area Legal Services now is going to move down the street to that beautiful building in a few months, but we have had that capacity in house for third-year law students who are student attorneys to assist our clients in providing legal representation.

We have a stellar pro bono program. While we reach and try to involve private attorneys to a certain level, only about 700 lawyers are actually participating in our pro bono program, and we have 3,000, so you can see that we still have work to do. But as you also know, the Tennessee Supreme Court, through its access to justice commission and its recent promulgation of the rule that require pro bono reporting to be made within the States, so that is another opportunity where we can see some growth in pro bono.

But in our community, we have seized upon Pro Bono Week, and we have had—and an event was called, attorney of the day, a legal clinic each day this week in order to avail our services with the help of the legal community to assist those in need. So it is really—I think it is truly—the bar in our community has been just unbelievable in its willing to embrace the need that we have.

But, again, we have to have a legal aid organization to make it most effective, and we are the hub to make that effective.

Mr. COHEN. Thank you, sir.

The Ranking Member, Mr. Franks, for questioning?

Mr. FRANKS. Well, thank you, Mr. Chairman.

Mr. Wells, you mentioned that there were three areas of restrictions in the type of lawsuits that you would like to see lifted. And

could you delineate those one more time and tell us what new opportunities lifting those would present to LSC?

Mr. WELLS. I would be glad to. Thank you, Congressman.

The first area is the restriction on non-Federal funds. There are a number of legal services providers across the country that generate a substantial portion of their operating revenues from private fundraising. And yet, despite the fact that those are not being raised or not being given by the Federal Government, they are subject to the same restrictions.

That has led to inefficiencies that I myself have personally seen during my year as ABA president, traveling across the country and seeing providers who were forced to set up a parallel organization to the federally funded one in order that they be able to effectuate the donors' or the State governments' wishes, in terms of what the money could be used for.

So the first is eliminating the non-Federal funding restriction, allow them to use those moneys as the donor or the State or the local person desires the monies to be used.

The second is in statutorily authorized attorney's fees. As you know, Congressman, many States have statutes that, in their wisdom, have decided that if a particular type of case is brought, the plaintiff, if they prevail, should be able to get attorney's fees from the offending party.

Right now, legal services attorneys are prohibited from asking for those statutorily mandated fees. We see that, quite frankly, as a violation of the concept of federalism. If the State decides, then why is the Federal Government saying that legal services lawyers shouldn't get those? It puts them at a negotiating disadvantage if a settlement is negotiated in those cases.

And then the final one is the ability to bring class actions. We believe that there are appropriate instances where class actions would be the most effective way to handle larger numbers of Legal Services clients, particularly in a situation where you have everyone, for example, in a housing complex who has a claim that the landlord is not keeping it up to habitable standards. It makes no sense to bring 100 separate actions to do that. It makes a whole lot more sense to bring one consolidated action.

And, quite frankly, we believe Congress has handled the overall issue of class actions and overall abuses of class actions in their overarching legislation dealing with class actions, such as the Class Action Fairness Act.

Mr. FRANKS. All right. Well, thank you, sir.

Ms. Ragland, given the number of weaknesses or challenges that the GAO found in LSC's accountability and grantee oversight in recent years, do you believe that LSC has proven that it can be trusted to use Federal funds efficiently and for intended purposes in the future? Or how soon can that come to pass?

Ms. RAGLAND. As I stated in my testimony, we found that LSC has made progress in improving its governance, accountability, and grants management practices. And so the main point I would like to make is that it is going to be very important. It will continue to be important for LSC to focus on implementing the recommendations and continuing the efforts that it has underway to assure

that its governance and internal controls are effective and that grant funds are being used as intended.

I recognize, you know, your interest and the Committee's interest in safeguarding and stewardship of taxpayer dollars, and I think that the importance of maintaining that continuing focus is key going forward.

Mr. FRANKS. Do they have your seal of Good Housekeeping at the moment? And what do you think a timeline would be before they could accomplish that, if not?

Ms. RAGLAND. I think that they have made some progress, but I do think there are still risks. And as you increase funding to any program, the level of risk increases, so that, you know, the center of that LSC is able to fully implement the recommendations that we have made.

We do have work going on there now, as you know. And so we are looking at some other areas, as well.

Mr. FRANKS. Well, thank you.

And, Mr. Chairman, I guess I would just say I sincerely believe that it is important for us to have a confluence about the last question I just asked, before we make additional funding increases.

And the only other thing that—I would suggest that potentially class action, even though I can see positives there, it seems to me like that could also present an opportunity to magnify certain abuses. And I would just put that down for the record and yield back. Thank you.

Mr. COHEN. And now I would like to recognize Mr. Watt, of North Carolina.

Mr. WATT. Thank you, Mr. Chairman.

Ms. Ragland, first, you testified that the board has adopted or subscribed to all of the recommendations that you all have made. I am wondering whether you have traced the failure to implement any of those recommendations to recalcitrance or unwillingness on the part of the board?

Ms. RAGLAND. No, sir.

Mr. WATT. Okay.

Ms. RAGLAND. There are some recommendations that are not implemented yet that we have made to the board, but we found that the board, you know, has expressed cooperation and an incentive to want to address the issues that we have raised.

Mr. WATT. Okay. I want to follow up on Mr. Franks' questions about the activities that Mr. Wells testified about, the three things, and particularly focusing on the first two, as I did with the first panel of witnesses.

Mr. Wells has given a description of some of the problems that each one of those presents. The one that I think I am the most exercised about is the notion that government should restrain the use of other people's money just because it has a certain set of beliefs about the use of its own money. And the question I asked the first panel was for some practical examples of that and the impact that it has.

Mr. Wells, you testified about a couple of those practical impacts. I am wondering whether Mr. Saunders might be able to amplify on some of those practical impacts of failure to allow the use of other

funds, not government—not taxpayer money, but other money by the Legal Services Corporation?

Mr. SAUNDERS. Yes, Congressman Watt. This issue exists in every part of the country. If there are limited amounts of money, programs are unable to provide some of the critical services that I have outlined in my testimony, such as providing representation in a wide array of forum.

In States where they have twinned, as we call it, the system, as Mr. Wells testified, there is enormous administrative duplication. That duplication exists in the city of Philadelphia, in New York City, in Boston, and also at the State level. As Mr. McKay testified, the State of Washington has had to duplicate two entire statewide systems, as has Florida, as has Ohio.

The other thing that we hear from a number of programs is it limits the ability of LSC programs to maximize funding. In this time of real shortage, it is our view that Congress should not discourage auxiliary fundraising. It ought to be encouraging it. And, indeed, this restriction in many communities serves as a deterrent for certain funders.

A lot of the money we are talking about here is appropriated either through the State legislature or through the State supreme court. It is our view that they are better situated than Congress to determine the best use of those funds.

Mr. WATT. Well, you know, we used to have some States' rights advocates around this institution, but they seem to have disappeared. I am having more and more trouble finding them. Even on the Committee that used to be most known for the States' rights advocacy, there seems to be a lack of that.

Let me just go to the policy implications of the attorney's fee restriction, because it is our understanding in a lot of the States that allow for attorney's fees to be assessed to the prevailing party, part of the policy justification for that is to discourage bad activity and encourage the prompt settlement of cases.

Mr. Wells referred to the second aspect of that, but have you seen any indication of cases in which actually, because there is no ability to get attorney's fees assessed, the opposing attorneys have just drug the case out and drug the case out because they really don't have any real incentives to minimize the litigation cost on the other side? All of their incentive is to maximize litigation costs for which they are being compensated. Have you seen any examples of that?

Mr. SAUNDERS. Certainly, anecdotally, a number of examples of that. Clearly, one area where attorney's fees are often authorized by law would be in the consumer area, where you have some very bad actors in some instances we have experienced, certainly in the last few years, wherein the ability to attain fees is really a major part of the negotiation.

That, in conjunction with the inability to bring class actions, it is certainly created an environment where a number of predatory lending abuses could have been addressed, but in the current situation, those tools really are a limit to getting to the kind of bad behavior that you were mentioning.

Mr. WATT. Thank you, Mr. Chairman. I yield back.

Mr. COHEN. Thank you, Mr. Watt.

We are not going to have a second round, but I am going to exercise the Chairman prerogative, and that is to ask a couple of questions that were brought up to an extent.

Ms. Ragland, some of the bad publicity concerning Legal Services I have seen has been limousines and lobster and pastries. Did any of that come across in your analysis? Did you see those circumstances?

Ms. RAGLAND. We didn't see those specific circumstances, but we did find problems at the grantees that we visited on the work that we did in 2007. So we found problems at 9 of the 14 grantees that we visited.

Mr. COHEN. And what were the problems you found, just in general?

Ms. RAGLAND. We found problems with insufficient supporting documentation of expenditures, alcohol purchases, employee—

Mr. COHEN. Alcohol purchases? But what did—

Ms. RAGLAND. Yes, sir.

Mr. COHEN. But they purchased alcohol? Was this for like a Christmas party?

Ms. RAGLAND. I am not sure what the purpose was, sir.

Mr. COHEN. Yes, okay. Or a hard day. [Laughter.]

What other things did you find?

Ms. RAGLAND. We identified two instances where a grantee was using LSC funds to pay lobby registration fees, late fees for overdue goods, earnest money. We discovered an improper transaction at one grantee involving a sale of a building using both LSC and non-LSC funds.

Mr. COHEN. Did you discover a pattern throughout LSC or just random violations that were not anything uniform throughout the corporation's agencies?

Ms. RAGLAND. Well, we found, you know, that this was something that does require a systematic way to address it. And so that is why—that is the basis for the recommendation that we made. It is important for LSC to have a structure and systematic approach to assess risk of noncompliance or weaknesses across all the grantees.

And we also made another recommendation to revise the guidelines for fiscal compliance reviews of grantees to include three elements which were a direct link to the results of OPP reviews and other audit findings, interview guidelines, and examples of fiscal and internal control review procedures based on individual risk factors.

Mr. COHEN. In your years at GAO, have you seen these type of programs at other organizations, Federal agencies, as well?

Ms. RAGLAND. I personally haven't, but I have seen GAO has seen lots of examples of things.

Mr. COHEN. Great. Thank you so much, and I appreciate the Committee's indulgence.

I would like to thank all of our witnesses for their testimony today. I would like, without objection, Members to have 5 legislative days to submit any additional written questions, which we will forward to you and ask you to answer as promptly as you can, make them part of the record.

The record will, without objection, remain open for 5 legislative days for the submission of any other additional materials.

Thank you, everybody, for their time and patience. I congratulate Mr. Wells on the blocking of the field goal.

This hearing of the Subcommittee on Commercial and Administrative Law is adjourned.

[Whereupon, at 1:10 p.m., the Subcommittee was adjourned.]



A P P E N D I X

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MATERIAL SUBMITTED FOR THE HEARING RECORD

ANSWERS TO POST-HEARING QUESTIONS FROM MICHAEL D. MCKAY,  
VICE CHAIRMAN OF THE BOARD, LEGAL SERVICES CORPORATION

Questions for the Record  
Subcommittee on Commercial and Administrative Law  
Hearing on the Legal Services Corporation  
October 27, 2009

Helaine Barnett, President, Legal Services Corporation

Questions from the Honorable Steve Cohen, Chairman

1. **During your oral testimony, you referred to “two longstanding court cases on both sides of the country in which LSC is defending the will of Congress in upholding . . . restrictions.” Please describe in detail the two cases and their status.**

**Response:** The Corporation is currently defending the congressional restrictions in the following cases. While I cannot comment as to the substantive issues on the pending litigation, I can provide you with an update on the status of those cases.

Legal Aid Services of Oregon (“LASO”) v. LSC: Plaintiffs brought an “as applied” challenge to the Part 1610 Program Integrity Rule and facial challenges to some of the restrictions in Federal court in Oregon. On April 7, 2008, United States District Court Magistrate Judge Paul Papak dismissed all of the facial challenges. After discovery, the court entered full judgment in favor of LSC, rejecting all of plaintiffs’ challenges. *LASO* appealed to the Ninth Circuit Court of Appeals and a three-judge panel heard oral argument on July 7, 2009, with a decision being awaited from the Ninth Circuit. The U.S. Department of Justice participated as an intervener in the case on behalf of the United States.

State of Oregon v. LSC: On September 16, 2005, the complaint was filed after consolidation with *LASO v. LSC*. On October 20, 2006, the district court dismisses complaint for failure to state a claim. On January 8, 2009, the ninth circuit ruled that plaintiffs lacked standing and remanded the case for dismissal. On March 9, 2009, plaintiffs filed a petition for rehearing by the panel or *en banc*. In April of 2009, the case was dismissed for lack of standing as per the decision of the Ninth Circuit Court of Appeals and is now closed.

Dobbins v. LSC: Plaintiffs brought an “as applied” challenge to the Part 1610 Program Integrity Rule and facial challenges to some of the restrictions in Federal court in the Eastern District New York. United States District Court Judge Frederic Block dismissed the facial challenges but ruled partially in favor of the plaintiffs on the “as applied” challenge and enjoined LSC from enforcing the rule against the plaintiffs’ particular proposal, with minor modifications. The U.S. Court of Appeals for the Second Circuit reversed the injunction and remanded the case to the district court. The Second Circuit denied plaintiffs’ request for rehearing *en banc*. In April 2009, at the request of plaintiffs’ counsel, the Judge granted a continuance putting the case on hold pending possible Congressional changes to the restrictions. LSC and the DOJ agreed not to object

to the continuance, on the express condition that it was without any prejudice to the defense of the current law, regulations and the application thereof.

2. **LSC recently issued an updated justice gap report. Please explain the justice gap. What were the results of the new report? Has the justice gap decreased or increased since the initial report was released in 2005?**

**Response:** The Justice Gap is the difference between the level of civil legal assistance available to low-income Americans and the level that is necessary to meet their needs. LSC's 2009 report, "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans," updates the first Justice Gap Report released by the Corporation in 2005. Data collected in 2009 confirmed the conclusion of the 2005 Justice Gap Report: for every client served by an LSC-funded program, one person who sought help is turned down because of insufficient resources. Thus, LSC-funded programs only serve half of those seeking legal assistance and often must settle for providing many applicants with less than full representation. In one category—foreclosures—LSC-funded programs are turning away two people for every client served. Programs also are meeting less than half of the requests for assistance with employment and family law matters.<sup>1</sup>

In addition, the 2009 report included new data indicating that lower state courts, particularly housing and family courts, are facing significantly increased numbers of unrepresented litigants. Studies show that the vast majority who appear without representation are unable to afford an attorney, and a large percentage of them are low-income people who qualify for legal aid. A growing body of research indicates that outcomes for unrepresented litigants are less favorable than those for represented litigants.

3. **The LSC mission is "to promote equal access to justice in our Nation and to provide high quality civil legal assistance to low-income persons." How is LSC achieving its mission? What may Congress do to help LSC achieve its mission?**

**Response:** To assist grantees in trying to meet the high demand for service, LSC published in April 2006, the revised LSC Performance Criteria to serve as a guide to ensure the provision of high quality service with limited resources. The Performance Criteria are designed to promote effective identification of civil legal needs to serve low-income populations and to provide the collective view of best practices to ensure the delivery of high-quality legal services.

LSC applies the Performance Criteria in all the work it does with grantees. Through the competition process, on-going contact with grantees and on-site reviews of grantee's performance, LSC holds grantees accountable for their performance. Performance is assessed based on the regulations, LSC policy directives, and the LSC Performance Criteria.

Other components of the quality initiative include:

- Encouraging and disseminating creative and innovative approaches to engage private attorneys in the delivery of legal services to the poor.
- Piloting and providing guidance for leadership mentoring programs.
- Providing a Loan Repayment Assistance Program to effectively recruit and retain civil legal assistance attorneys.
- Implementing an improved system of data collection and reporting.
- Developing a strategic technology plan to increase the efficiency and effectiveness of programs.

LSC also looks for ways to expand the provision of civil legal assistance to the poor. The cases handled by LSC-funded programs, while a primary focus, are not the only services provided to low-income Americans. Technology permits people to help themselves and better navigate through the judicial system. LSC encourages programs to establish statewide websites to provide information and to direct low-income individuals to programs that provide assistance. The websites have become a major means of accessing information, as demonstrated by the increase in page views recorded on the websites. While the number of cases closed by programs has remained about the same in recent years, programs were able to expand the provision of services short of legal representation.

In addition to expanding information and services, LSC and its programs have responded to new demands caused by natural disasters and the fallout from foreclosures following the housing market collapse and the 2008 recession. To help programs respond to natural disasters, LSC, in partnership with other organizations, established a disaster website ([www.disasterlegalaid.org](http://www.disasterlegalaid.org)) to provide information to people affected. In response to the foreclosure crisis, LSC invited other national organizations and LSC programs to participate in conference calls on foreclosure issues and placed material on LSC's website to provide information to programs that assists them in meeting new and unexpected demands for foreclosure assistance.

To expand the reach of their services, many LSC-funded programs participate in and foster partnerships. Programs have joined with local and state groups to address the foreclosure crisis and related housing issues, including partnering with lenders and banks to explore workouts that keep families in their homes and help others write down loans. In an effort to improve overall health outcomes for low-income children and families, more than 35 LSC-funded programs are participating in medical-legal partnerships, where legal aid attorneys and *pro bono* attorneys are trained to work as part of health-care teams to enforce the laws and regulations in place to protect health.

Lastly, LSC seeks to expand its training initiative as a vital component of its oversight responsibilities. The training initiative will focus on creating a capacity within the Corporation to produce and deliver training on compliance, grant conditions, and program quality. LSC intends to take a leadership role in promoting regional and national discussions on training needs and the importance of expanding the training capacity available to programs. One goal would be to ensure efficient use of limited

resources, with LSC providing much of the curricula so that programs do not have to spend time and money developing their own training programs.

Despite increases in funding for civil legal assistance over the past four years by the Congress, by 25 states and the District of Columbia, the nation continues to confront a substantial justice gap. Congress can help by providing sufficient resources to serve at least all those currently seeking help from LSC programs. The 2009 Justice Gap Report found that this would require a doubling of LSC funds and a doubling of the state, local and private funds that also support LSC programs.

4. **Representative Bobby Scott recently introduced H.R. 3674, the Civil Access to Justice Act of 2009. Several members of this Subcommittee co-sponsor that legislation. How does H.R. 3674 impact LSC? How does the legislation help LSC achieve its mission?**

**Response:** The Corporation supports reauthorization and efforts that would raise our funding ceiling and authorize us for a larger annual appropriation.

A higher level of authorized appropriations would help LSC in its efforts to close the nation's justice gap and to more effectively provide high-quality legal services to low-income Americans. We understand that bill sponsors are proposing to provide LSC with an authorization of \$750 million for each year of a five-year period. Such an increase would reaffirm Congress' commitment to LSC and signal congressional awareness that the justice gap is growing and that we need to strive even more to fulfill the promise of equal justice for all.

LSC does not have a position on proposals that would lift congressional funding restrictions, and the Corporation will continue to carry out the will of the Congress and enforce the restrictions in effect.

5. **H.R. 3674 seeks to authorize increased funding for LSC, eliminate many of the restrictions currently imposed on LSC and its grantees, and improve and strengthen governance and accountability. What recommendations would you suggest to improve the legislation?**

**Response:** The Corporation has appreciated the opportunity to provide input to the bill sponsors and has no additional recommendations at this time.

**6. LSC and its grantees have been the subject of much criticism throughout the years. What is LSC doing to improve accountability and governance so that LSC and its grantees can focus on providing efficient, quality legal assistance to poor individuals and families?**

**Response:** LSC has worked diligently to improve and expand accountability and promote improved governance over the past four years. Oversight and emphasis on proper financial management practices and provisions of law and regulation are priorities of the LSC Board of Directors, management and staff. In particular, for FY 2010 and FY 2011, the Board and LSC management are focusing on the oversight responsibilities of the boards of the local nonprofit organizations that receive LSC funding. Local boards are the linchpins in ensuring that LSC-funded programs provide high-quality civil legal assistance to clients, and training is an essential component to help ensure the ability of local boards to perform their duties.

During the last two years, LSC has moved aggressively to adopt and implement recommendations by the Government Accountability Office. In testimony to the House Subcommittee on Commercial and Administrative Law, the GAO Director for Financial Management and Assurance has estimated it takes four years to implement recommendations, and LSC has implemented about two dozen major changes since receiving its first recommendations from GAO, putting the Corporation ahead of schedule in addressing issues raised by GAO.

In that testimony, GAO said, “The improvements that LSC has made in its governance and accountability provide a good foundation for completing implementation of the elements needed for a strong program of governance and internal controls.”

LSC is committed to implementation of GAO recommendations and to holding itself and the 136 nonprofit programs we fund accountable to the highest standards.

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<sup>1</sup> The Justice Gap Report used three different methodologies to examine the extent of unmet civil legal needs. First, LSC asked programs to document the number of people actually seeking assistance from the program who could not be served due to insufficient program resources. Programs collected the data from March to May 2009, the same time period used in 2005 for data collection. Second, LSC analyzed civil legal needs studies from seven states that were conducted since the 2005 report. Those findings were compared to nine state studies conducted during 2000-2005 that were discussed in the 2005 report. In addition, the report took into account the Comprehensive Legal Needs Study funded by the American Bar Association and released in 1994. In the third methodology, the report counted the number of legal aid attorneys (working in LSC and in non-LSC programs) available to low-income Americans and compared that to the total number of private attorneys providing personal legal services to the general population of the nation. The first methodology documented again for 2009 that 50 percent of the potential clients requesting assistance from LSC-funded programs were turned away for lack of adequate resources. The new state legal needs studies found only a small fraction of the legal problems experienced by low-income people (less than one in five) are addressed with the assistance of either a private attorney or a legal aid lawyer. The report’s analysis of the most recent available figures on numbers of attorneys shows that nationally, on average, only one legal aid attorney is available for every 6,415 low-income people. By comparison, there is one private attorney providing personal legal services for every 429 persons in the general population who are above the LSC poverty threshold.

ANSWERS TO POST-HEARING QUESTIONS FROM HELAINE M. BARNETT,  
PRESIDENT, LEGAL SERVICES CORPORATION

**Questions for the Record**  
**Subcommittee on Commercial and Administrative Law**  
**Hearing on the Legal Services Corporation**  
**October 27, 2009**

**Michael McKay, Vice Chairman of the Board, Legal Services Corporation**

**Questions from the Honorable Steve Cohen, Chairman**

- 1. During your oral testimony, you suggested that state studies reveal that many eligible people who need legal assistance do not request it because they believe they will be turned down. What can LSC do to educate these persons that legal aid programs are available to offer them legal assistance?**

**Response:** Given the fact that we are currently turning away one eligible client for every client served due to limited resources, word of mouth in low-income communities has the effect of discouraging potential clients from approaching a legal aid office. In addition, given the fact that we can only serve 50% of those currently coming to our offices, a proactive campaign to bring more clients to our door would seem counter-productive.

In the face of this reality, LSC grantees go out into the community to teach the public self-help skills and to inform them of their rights as tenants, homeowners, parents, and citizens. They also host a number of clinics and outreach programs to educate the public about civil legal assistance services. These programs and education classes are widely publicized and are free to the public. Programs also have expanded services through the use of technology such as establishing statewide websites to provide information and direct low-income individuals to programs that can provide assistance, as well as directly helping pro se litigants with instructions and down-loadable court forms.

To further expand the reach of their services, many LSC grantees participate in and foster partnerships, such as public-private partnerships that include individual lawyers, the organized bar, foundations, charitable donors and others. Programs have joined with local and state groups to address the foreclosure crisis and related housing issues, including partnering with lenders and banks to explore workouts that keep families in their homes and help others write down loan balances. In an effort to improve overall health low-income children and families, more than 35 LSC grantees are participating in medical-legal partnerships, where legal aid lawyers and pro bono attorneys are trained to work as part of hospital health-care teams to enforce the laws and regulations.

- 2. During your oral testimony, you suggested that a larger LSC compliance staff to conduct oversight of LSC-funded programs would ensure less grantee violations of LSC rules and regulations. How many more compliance staff does LSC need?**

**Response:** The LSC Board authorized the Corporation to establish 15 new positions in FY 2009 based on an increase in funding from the Congress and recommendations for

improved grants oversight by the GAO. Ten of the new positions are in grant compliance and enforcement. Filling all of the 15 positions is part of a two-year staffing plan, which is underway. LSC will request an increase in funding for management and grants oversight for FY 2011 to support the annualized cost of these positions and projected increase in operating expenses, and to hire two new positions to support increased training for grantee staff and board members.

3. **During your oral testimony, you stated that “more private attorneys need to donate their time. But even if they do, we will still need help.” Please explain in greater detail why the legal services community will still need help.**

**Response:** *Pro bono* services and private attorney involvement (PAI) are important elements in LSC’s efforts to close the justice gap. Since the 2005 Justice Gap Report, LSC has undertaken a major initiative to increase the involvement of private attorneys in LSC-funded programs. The LSC Board of Directors adopted a PAI action plan, “Help Close the Justice Gap, Unleash the Power of *Pro Bono*,” which included a call to programs to adopt resolutions that recognize and celebrate the involvement of private attorneys in the delivery of civil legal services, and 109 programs have done so to date.

Across the nation, the creation of state Access to Justice Commissions has energized efforts to increase state funding and *pro bono* support for civil legal aid. Justices of state Supreme Courts and the heads of state bar associations are leaders in these efforts, and LSC has encouraged the creation of commissions, highlighted the importance of integrated statewide delivery systems, and urged the involvement of local legal aid programs in setting goals for the commissions. Twenty-four states and the District of Columbia now have such commissions, an increase of 16 since 2005.

However, private attorney involvement alone cannot close the justice gap. About 54 million Americans—including 18.5 million children—are eligible for LSC-funded services, according to the Census Bureau. That represents an increase of almost 3 million poor people from 2007 to 2008. The 2008 poverty figures reflect the initial effects of the recent recession and foreshadow even larger increases for 2009 because of high unemployment rates. Closing the justice gap and securing necessary access to civil legal assistance requires a multifaceted approach built around increased federal, state and local government funding and an array of public-private partnerships that include individual lawyers, the organized bar, foundations, charitable donors and other concerned private parties.

4. **According to Susan Ragland’s written testimony, the LSC board had yet to “develop and implement procedures to periodically evaluate key management processes” even though the audit committee was established in March 2008 and tasked with the evaluation of management’s processes. Please explain the 18 month delay in completing this key recommendation.**

**Response:** The Board of Directors does understand the importance of this recommendation and the Audit Committee will move forward on its implementation in 2010.

LSC continues to work with the Government Accountability Office (GAO) to ensure that all recommendations from the 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 are completed to their satisfaction. Of the 17 recommendations made in those two reports, all were accepted by management and the Board. Nine recommendations have been judged by GAO to be fully implemented, 8 have been judged to be partially implemented, and of those, management has recently submitted documentation of full implementation for 3 recommendations. GAO is reviewing them at this time.

While there has been an 18-month delay in the full implementation of the Audit Committee recommendation, Ms. Ragland's written testimony noted that we have made progress. She said LSC Management has implemented GAO's key recommendation of conducting and documenting a risk assessment, and that the Board needs to continue its effort to develop and implement procedures to periodically evaluate management processes, including risk assessment. The Board is committed to robust risk management and internal controls. In her oral testimony, Ms. Ragland said that LSC is still ahead of the typical, four-year cycle for implementation that GAO has observed at federal agencies. In addition to GAO, other reviews by the Office of Inspector General, the Corporation's outside independent auditor and ongoing reviews by Board committees are helping to ensure we fully adopt best practices.

5. **Representative Bobby Scott recently introduced H.R. 3674, the Civil Access to Justice Act of 2009. Several members of this Subcommittee co-sponsor that legislation. How does H.R. 3674 impact LSC? How does the legislation help LSC achieve its mission?**

**Response:** The Corporation supports reauthorization and efforts that would raise our funding ceiling and authorize us for a larger annual appropriation.

A higher level of authorized appropriations would help LSC in its efforts to close the nation's justice gap and to more effectively provide high-quality legal services to low-income Americans. We understand that bill sponsors are proposing to provide LSC with an authorization of \$750 million for each year of a five-year period. Such an increase would reaffirm Congress' commitment to LSC and signal congressional awareness that the justice gap is growing and that we need to strive even more to fulfill the promise of equal justice for all.

LSC does not have a position on proposals that would lift congressional funding restrictions, and the Corporation will continue to carry out the will of the Congress and enforce the restrictions that currently exist.

6. **H.R. 3674 seeks to authorize increased funding for LSC, eliminate many of the restrictions currently imposed on LSC and its grantees, and improve and strengthen governance and accountability. What recommendations would you suggest to improve the legislation?**

**Response:** As an individual member of the Board, I would have no specific additional recommendations at this time.

ANSWERS TO POST-HEARING QUESTIONS FROM HARRISON D. McIVER, III,  
EXECUTIVE DIRECTOR/CEO, MEMPHIS AREA LEGAL SERVICES, INC.

**Questions for the Record**  
**Subcommittee on Commercial and Administrative Law**  
**Hearing on the Legal Services Corporation**  
**October 27, 2009**

**Harrison McIver, III, Executive Director/CEO, Memphis Area Legal Services, Inc.**

**Questions from the Honorable Steve Cohen, Chairman**

- 1. The current economic downturn has had profound effects on individuals and families across the country, and particularly in Memphis. The unemployment rate in the area served by your program in Memphis is over 13%, above the national average. With the increase in unemployment and the overall down economy there, have you observed a marked difference in the number of eligible clients seeking legal assistance from your program? Has there been a difference in the types of claims on which your program is now focusing?**

Yes, we estimate that more than 200,000 people now live below the poverty line in our four county service area. That number represents an increase of 45,000 or a 29 % increase over the 2000 census figures or a 23% increase based upon the 200,000 figure. Things are not likely to improve in light of these staggering figures, and next year threatens to be the worse. MALS expects 15,000 requests from low-income individuals for legal services in 2010. The demand for our services is best demonstrated by the number of applications that we receive for our services. When that number increases, it generally signals some combination of an increase in the number of individuals eligible for our services and in the level of hardship being faced by those who are eligible. For illustrative purposes, the following supplement my earlier written testimony for in 2006, MALS recorded 6631 applications for services. By 2008 that number had increased by 29%, to 8,552 applications, which resulted from 8,894 requests for assistance. While the number of requests has increased substantially each year, the greatest spike has been from the 8,892 requests received in 2008 to the 10,584 requests received in 2009, a 24% increase in just the past year. Of the 10,584 requests received in 2009, 9,704 resulted in client applications.

In response to part two of the question, the statistics below show the increase in number of applicants based upon the several areas that would be good barometer of the conditions of the economy.

- In the area of Consumer, there was a 21% increase between 2008 and 2009.
- In Education, there was a net increase of 47% between those same years.
- Employment issues rose 39% from 2008 to 2009.
- Family cases rose 15% from 2008 to 2009; even worse, Orders of Protection for the same timeframe rose 72%.
- Health cases were up 47% from 2008 to 2009.

- Although income maintenance issues declined slightly (-7%), cases involving unemployment increased a whopping 36%.
2. **In September 2009, LSC released a report, *Documenting the Justice Gap in America*, which concluded that for every client served by an LSC-funded program, one person who seeks assistance is turned down because of insufficient resources. Is this conclusion accurate for Memphis Area Legal Services? Please explain.**

Yes, this conclusion is accurate. In my testimony, I reported that approximately 65% of or 2 out of 3 individuals seeking our assistance were turned away. Further review of that percentage has resulted in a refinement of that number to 53 % because the 65% in my written testimony included all requests for services whether or not the applicants were eligible for such services. The 53 % (or 1 out of 2) turnaways represent requests for services by eligible applicants. What this tells us is that legal aid law firms will continue to face insurmountable challenges without an additional federal commitment that provides an a substantial increase in LSC, other federal grant opportunities, a significant expansion and innovations in private involvement/ pro bono programs, increase support on the state and local level including governmental and private support.

3. **In your written statement, you indicated that despite your “proactive efforts to increase revenues you still fall far short in responding to the widening justice gap.” What efforts have you undertaken to increase revenue for your program? Will non-federal funding sources close the gap?**

We at MALS continue to aggressively seek non-LSC funding that includes grants and contracts that fit within our board-approved substantive priorities to complement the essential and core funding that LSC provides on an annual basis. In 2009, 42% of our \$3.542 million budget was LSC funding, while 58% was non-LSC. More specifically, we received and continue to receive state, local and non-LSC federal funding.

In addition, MALS mounts a valiant effort in our annual fundraising campaign to raise additional revenues, largely targeting the legal community, corporate legal departments, the charitable arms of corporations, and foundations. For example, our efforts produced 34% of our 2009 budget which would be considered non-federal. A further breakdown reveals that 14% would be strictly private. That figure does not include IOLTA funding but notably our 2010 IOLTA grant was reduced from \$150,000 to \$94,000, more than a 1/3.

Therefore, while our efforts may be commendable, but taken in the broader context, without LSC funding, no meaningful or sufficient legal assistance could or would be provided to meet the needs of the poor without the federal commitment as represented in LSC funding.

**4. What impact has your program had in the Memphis Area for poor families and individuals? Please provide any specific examples if possible.**

In my written testimony, I cited 5 examples of how services impacted lives of the clients we served. I submit the greatest impact of our service and assistance to poor are in the areas of predatory loans, fair housing and foreclosure cases; and domestic violence. First, through our Memphis Fair Housing Center, funded by CDBG funds through the City of Memphis, and HUD, MALS has employed litigation strategically to ferret out the entities that prey upon the poor, elderly and minority communities that deprive them of their most precious material assets-their homes. MALS has successfully used the RICO statutes, Fair Housing Act and other laws to sue in the U.S. District Court, resulting in settlements that have ended many of the practices in the Memphis area and deterring to some extent new ones inclined to so prey. An example is a massive federal lawsuit filed by MALS on behalf of the Memphis Center for Independent Living (MCIL) against a group of developers, builders, architects, civil engineers, and property managers based upon the design and construction provisions of the Fair Housing Amendments Act. The lawsuit, which alleged that six large multifamily apartment complexes were illegally inaccessible, was split into two cases by the trial judge and the Justice Department intervened in the cases on behalf of the United States.

On March 25, 2005 a comprehensive settlement was reached that called for extensive retrofitting of three complexes, creation of a damage fund of \$260,000 for those adversely affected by the faulty design and construction of the three complexes, payment of \$20,000 in damages to our client, and payment of a \$20,000 civil penalty to the United States. In addition, all defendants are enjoined from discriminating against people with disabilities in the future; are required to provide education in Fair Housing to all employees; are required to obtain an independent monitor to ensure compliance with all the architectural modifications provided for in the Consent Order; and are required to provide evidence of compliance of with the FHAA's design and construction requirements in all new construction for the duration of the Consent Order. The trial court will retain jurisdiction over the case for three years from the entry of the order to ensure that all provisions of the Order, including payments through the damage fund, are properly carried out. The modifications called for in the Consent Order will entail exterior and interior redesign, will cost millions of dollars, and will result in almost 500 rental units becoming accessible to people with disabilities.

In the second case against three additional complexes that were the subject of this suit, there are no sidewalks throughout the complex and there are steps leading to all entrances and angles that are much too steep. The trial judge granted Partial Summary Judgment for plaintiffs, finding several thousand illegal barriers. The defendants sought an interlocutory appeal to the Sixth Circuit Court of Appeals, which was denied. The case was scheduled for trial in October of 2006. Within weeks of trial, a settlement was finally reached which involved massive retrofitting of the complexes; creation of a \$320,000 fund, to be administered by MCIL, to assist disabled persons in making modifications to

their homes; and \$10,000 in damages to our client. The settlement also called for injunctive and other remedial relief and court monitoring.

Expansion of the Domestic Violence Opportunity Plus Project (OPP), with a DOJ Legal Assistance for Victims and foundation support, was achieved. It enhanced the capacity of the Project to address the legal, economic, emotional and other issues in a holistic way that are barriers to freeing the victims from abusive and violent relationship. OPP has and is accomplishing its objective and goal in that been a real asset and impact to our community. The primary goal in addition to the non-abusive relationships, the goal is self-sufficiency. Of 65 victims who have participated in the Project, 63 have graduated to a life free of abuse. Only 2 returned to their abuser or abusive environment.

**5. Opponents of providing federal funding for legal service programs contend that other avenues, such as pro bono assistance programs or private funding sources, can provide sufficient legal assistance to meet the needs of the poor. In your 32 year experience in legal aid, do you agree?**

We at MALS would be the first to tout the volunteerism of the private bar for its efforts to augment or better stated, complement our efforts, to serve the growing demand and need for legal assistance of the poor. However, we unequivocally state that without the legal aid law firms, in this case MALS, the effort and success of pro bono assistance programs would fail miserably. MALS is the anchor and coordinator of the pro bono programs and projects listed in my written testimony. Without it, they could not and would not be successful. Finally, while the need is growing, only about 13% of the attorneys in our four-county service areas actually volunteer through an organized program. In the surrounding and more rural counties, little organized pro bono or volunteer activities can be documented.

My 32 years working with legal aid firms across the nation, regionally and locally, have not changed my position that is reflected above.

**6. As the Executive Director of Memphis Area Legal Services, you are well aware of the restrictions placed on LSC-funded programs. Please discuss which restrictions have the greatest impact not just on your program, but on your clients and potential clients. How have the restrictions affected the ability of your staff attorneys to represent their clients?**

The 1996 Congressional-imposed restrictions on LSC grantees, like MALS, have had a major impact on the ability of MALS to fully serve the client population in its four-county service area. The restrictions on LSC funds deprive our clients of the same tools and strategies to which private attorneys have available to represent their clients. Chief among them are class actions; attorney's fees (although 2010 appropriations lifted it); and legislative and administrative advocacy. Take the attorney's fees for example. In my testimony I alluded to the fact that in a multi-defendant predatory lending case, MALS would probably be entitled to a projected attorney's fee of \$1.826 for our assistance.

With those fees, MALS could have served several thousand additional clients who otherwise would not have been served. Other examples are class actions. We estimated that with the consolidation and class certification of the predatory cases mentioned in my testimony, over eighteen hundred additional individuals would have benefited from a class action settlement.

Further, the limitations placed on our ability to fully advocate before administrative and legislative bodies, currently limit us to respond only to requests from legislators, administrative and public officials. Without such requests, our clients most especially seniors, are deprived of the benefits that private clients can seek and received. Legislative and administrative bodies have been very active in making policies and enacting legislation that can and does adversely affect our clients.

Another is the poison pill restriction that applies to same restrictions on some LSC monies or on LSC funds further limit the capacity and use of available resources to expand legal assistance to our clients. Indeed, this restriction also hamstrings our capacity to leverage and raise additional funds to serve a greater number of clients. Several funding sources balk at the restrictions placed on their funds – funds that otherwise would not have such limitations.

**7. Please discuss what impact H.R. 3674, the Civil Access to Justice Act of 2009, would have on your program.**

First, if CAJA passes, it would authorize Congress to appropriate a lot more money for LSC which would mean that MALS would receive an increase in LSC funds that will enable us to provide more legal assistance to eligible clients in the Memphis service area. Second, it would eliminate most of the funding restrictions and would permit MALS to use its LSC funds to do restricted work, including class actions and legislative/administrative advocacy which would have a huge impact on our ability to do systemic advocacy and make fundamental changes in the way poor people in the Memphis area are treated. As part of this, MALS would be able to use its non-LSC funds to do work on behalf of groups that cannot be served with LSC funds (e.g., undocumented aliens and prisoners).



ANSWERS TO POST-HEARING QUESTIONS FROM DONALD SAUNDERS, DIRECTOR OF THE CIVIL LEGAL SERVICES DIVISION, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

**Questions for the Record  
Subcommittee on Commercial and Administrative Law  
Hearing on the Legal Services Corporation  
October 27, 2009**

**Donald Saunders, Director of the Civil Legal Services Division, National Legal Aid and Defender Association**

**Questions from the Honorable Steve Cohen, Chairman**

- 1. Please provide some typical stories of cases handled by LSC-funded legal aid programs which may be of interest to members of this subcommittee.**

The following actual case histories document just some of the ways in which LSC programs make a significant difference in the lives of the clients they serve:

- A female resident of Virginia was enduring a grueling battle with ovarian cancer. She had been trying for months to access benefits from her insurance policy. Even though she desperately needed the insurance benefits, the insurance company was denying her claim. When she sought assistance from Blue Ridge Legal Services, a staff attorney got involved. After a letter, a few phone calls, and some work with the client's doctor to get the necessary medical records and forms completed, the benefits were approved. The client received \$3,132 in her first payment, with additional payments forthcoming.
- When 67-year-old "Ms. S." received a notice from the IRS Automated Underreporting Reconsideration Office she was first puzzled, then alarmed. The notice stated that she had grossly underreported her taxable income in the amount of \$61,074 for the tax period ending December 31, 2005. Ms. S. had retired in 2001 after working as a bank clerk for 27 years and her only sources of monthly income were the \$212 she received from her pension and \$1,306 from Social Security. She remembered a letter that her former employer had sent in 2005 warning that computers containing personal information such as names, Social Security numbers, dates of birth, bank account numbers, medical claim histories, and employee service history had been stolen from the subsidiary that handled actuarial and benefits consulting for the bank's retired employees.

After trying unsuccessfully to solve the problem on her own, Ms. S. turned to Bedford Stuyvesant Community Legal Services for assistance. Fearing that Ms. S. was the victim of identity theft, a legal aid attorney contacted the IRS Collection Due Process Department and obtained a transcript listing all sources of income reported to

the IRS for Ms. S. during the tax year 2005. The transcript showed that \$61,074 had been withdrawn from a vested retirement account using Ms. S.'s social security number and the proceeds used to trade securities through a security clearing house, again using her social security number. The action had reduced Ms. S.'s pension from \$900 to just over \$200 per month. The legal aid attorney then contacted the Federal Trade Commission and the IRS Identity Theft Unit to report the crime. Working with the IRS and the Consumer Fraud Unit of the U.S. Treasury, the Bedford Stuyvesant Community Legal Services attorney negotiated a fair settlement in which the stolen \$61,074 was restored to Ms. S.'s account. What's more, her monthly benefit was increased from \$212 per month to the full \$900. Problems arose again when the IRS levied her bank account in the amount of \$16,589.02 for taxes owed on the profits of the security trades. The IRS has since refunded the levy.

- "Margaret," a 64-year old disabled grandmother living in HUD housing, received a shut-off notice from the electric company, advising her that her electric service would be shut off because of a \$50.00 overdue bill. Margaret sought help from a legal aid attorney and told them that the electric company first put this charge on her bill seven years before. She advised the company then that the bill was not hers; the bill was for service at an address at which she had never lived. The electric company refused, over the course of seven years, to remove the charge. Consequently, Margaret had been subtracting that amount from her bill for seven total years. On at least two occasions in the last seven years, Margaret provided the electric company with letters from the housing authority that she had never lived at the address in question. The electric company continued to refuse to remove the charge. Upon receipt of the shut-off notice, the legal aid attorney contacted the electric company and received word that the charge would be deducted and the shut-off notice rescinded. Finally, after seven years, Margaret no longer has to subtract a contested charge from her monthly electric bill.
- After "Ms. Y." moved to the U.S. from Mexico, her husband became physically abusive, threatening to have her deported if she told anyone about the beatings and to kill her if she tried to leave him. Ms. Y. first went to Staten Island Legal Services in 2007 seeking an order of protection, but when she became convinced that her husband had gone back to Mexico, she dropped the case. Ms. Y. had moved in with a relative and found a job at a laundromat when her estranged husband showed up at work. Infuriated by her refusal to rekindle their relationship, he stabbed her repeatedly, puncturing her lung and liver. She lost consciousness, and he fled the scene. He was never apprehended. Once again, Ms. Y. turned to legal services. Because she had helped the police and the district attorney in their attempts to find and prosecute her husband, a Staten Island Legal Services attorney realized that she was eligible for a

U-Visa, a new type of visa that offers a pathway to legal status for immigrant crime victims who cooperate with criminal investigations.

Legal services helped Ms. Y. assemble the documents she needed to apply for a U-Visa. Because the visa requires certification that the applicant cooperated in a criminal investigation, a legal aid attorney went with Ms. Y. to meet with the DA's office, which provided certification. Staten Island Legal Services then prepared an affidavit describing the history of domestic violence and gathered evidence to support the affidavit, including medical records, photos, police reports, and a statement from her domestic violence counselor. Ms. Y.'s application was approved. She now has work authorization and will soon have her U-Visa. With the U-Visa, she will be able to get a Green Card.

- “Gina” was a victim of domestic abuse and violence. One morning, her husband violently assaulted her and threatened to kill her. She lay in bed, unable to get out of the house because of her injuries and barely able to move, for a week before she and her young child were rescued by law enforcement authorities. Gina’s legal aid attorney helped her obtain a domestic violence protective order. Gina was given temporary custody of her young child and the two moved to be with Gina’s family, far away from her husband. Gina still goes through physical therapy to overcome the physical injuries left by her husband. With the help of her legal aid attorney, Gina and her child have been taken from this abusive relationship and are living with people that love and support them.
- “Mr. Q.” filed his 2006 tax return jointly with his wife. Two years after Mr. and Mrs. Q.’s returns were filed, the IRS audited them and requested additional information on deductions and credits. When Mr. Q. asked his wife about the return, she grew defensive and would not answer his questions. Ultimately the couple got divorced and Mr. Q. began to uncover a number of financial matters his wife had hidden from him. Mr. Q. had been representing himself pro se, but when the IRS claimed that he owed \$9,000 in back taxes, he realized he was in over his head and sought help from Queens Legal Services. After obtaining and scrutinizing transcripts of Mr. Q.’s and his former wife’s tax returns, the legal aid lawyer discovered a number of discrepancies and brought them to the attention of the IRS. In representing Mr. Q. in U.S. tax court, the legal aid lawyer argued successfully that her client was an “innocent spouse,” unaware of any of his wife’s financial misdeeds. The IRS readjusted its calculations based on the court’s finding, and reduced Mr. Q.’s payment from \$9,000 to \$3,000. The legal aid attorney also helped him work out a payment plan to cover the amount he owed.
- A single mother with several children had to rent a storage unit to hold large furniture and seasonal belonging that could not fit in her small home. At times she had gotten a

little behind on her storage unit rent, but continued to pay the rent and applicable late fees upon receiving the notices management was required by law to send her. Her several-years experience demonstrated that the storage management was not overly concerned when she frequently carried a low, albeit ongoing, balance. Then management changed hands, and the new management failed to provide her adequate notice, as required by statute, that she was in default and that by a certain deadline her items would be sold unless she made certain payments. The client first learned of the auction sale of her belongings in the storage unit one day after they had been sold. With the help of legal services, she was able to recover a portion of her losses through a lawsuit for the storage unit owner's violation of the notice statute.

- “Misty” came into the legal aid office one afternoon crying uncontrollably. She was holding several papers and telling the legal aid paralegal that the family judge had just given the babysitters her 2-year-old child. There was, in fact, an order from the court granting the babysitters emergency custody. It turned out that they had raised concerns about Misty’s fitness and convinced the judge that Misty had given them permanent custody, none of which was true. A legal aid attorney immediately prepared a motion requesting that the judge reverse the decision, but the next hearings did not prompt the judge to reconsider the ruling. After two months, Misty was only seeing her daughter two or three days a week for a few hours. This continued for over a year and a half as the legal services attorney appealed the case to the West Virginia Supreme Court. Misty attended the argument and watched as every justice on the bench expressed amazement at what had happened to Misty. Two weeks after the case was argued, the court unanimously reversed the family judge and returned custody to Misty.
- In August 2008, “Ms. M” fell victim to a check scam of the deposit-some-for-you-and-send-the-rest-to-us type, but with a twist: she vetted the check, which had been drawn on a state branch of Bank of America, with the local branch of Bank of America, where she herself banked, and that branch approved it as genuine, despite the fact that the state branch knew four days prior to the approval that the account on which the check had been drawn had fraud-related issues. Nevertheless, when the check proved to be bogus, Ms. M’s branch withdrew the entire amount—\$2,800, comprising both what Ms. M had deposited, none of which she had yet spent, and what she had sent to the fraudulent third party—from her checking account, effectively cleaning her out completely. Ms. M contacted her local legal aid organization. A legal aid attorney filed a Warrant in Debt for the full amount against the Bank of America parent company in general district court and effected service on their registered agent. In December 2008, Bank of America’s “East Coast counsel” contacted the legal services organization and discussed, *inter alia*, the parent company’s responsibility for the branch’s knowledge of fraud via agency theory. Legal services represented Ms. M at

the return date, at which no one from Bank of America appeared. The court awarded Ms. M a default judgment in the full amount. Bank of America did not appeal, and paid Ms. M the full \$2,800 within approximately a month of judgment being issued.

- The Miller family of Central Massachusetts thought they had exhausted all of their options in trying to save their home. Then they called legal aid. Marine specialist Philip Miller, his wife Morgan, and their two young children were close to being evicted after the mortgage company foreclosed on their home. Philip had returned injured after an 18-month tour of duty in Iraq and was unable to work due to injuries. At the same time, the couple's adjustable rate mortgage jumped to almost 11 percent. The Millers were unable to afford the inflated payments, and the mortgage company was unwilling to negotiate. Then, their legal aid attorney stepped in and got the mortgage company to dismiss the eviction. Now, more than a year later, the Millers are working with their attorney to renegotiate the terms of their loan, with the goal of buying back their home. Spc. Miller is healthy again and preparing to leave for his second tour of duty in Iraq.
- Southern Arizona Legal Aid (SALA) helped a 55-year housecleaner stay in her home after falling prey to foreclosure. After living in her home for twenty years, she began struggling with her payments due to a 9.38 percent hike on the interest rate of her subprime loan. A SALA attorney assigned to her case sought a loan modification with her servicer to prevent her home from going into foreclosure. She was successful in negotiating a loan agreement that modified the interest rate to an amount that SALA's client could afford.
- "Ashley," 13, was looking forward to beginning a new year at a new middle school. However, as a disabled student confined to a wheelchair, she was dismayed when she could not even get in the front door of the building. There were no service ramps available to gain access to her new school. Ashley's mother initially contacted the school system, which offered to "bump" Ashley up and down the stairs to the library and gymnasium and to bring her lunch, since she could not access the cafeteria to eat with her schoolmates. In addition, none of the school bathrooms were designed to accommodate disabled children like Ashley. So Ashley's Mom contacted Legal Services of Eastern Missouri in search of assistance for her daughter's plight. After being confronted with possible legal action for violating the federal Americans with Disabilities Act, school officials finally acquiesced. The district installed ramps, giving Ashley access to the main floor and to all of her classrooms. It also made several bathrooms on each floor wheelchair-accessible, including one by the nurse's station. Additional structural changes are under way, including the construction of several elevators, which will be completed as early as next year.

- Communities served by LSC grantee Neighborhood Legal Services of Los Angeles County (NLS-LA) are not only at the epicenter of the foreclosure crises, but are now looking at unemployment rates of 15 percent or more. Jobs in the informal service sector of the economy that many low-income families depend upon for survival have virtually disappeared - leaving homeowners jobless while they struggle with unconscionable mortgage payments to protect homes that are more than \$100,000 underwater. For these families threatened with homelessness LSC-funded legal services programs are the safety net of last resort.

Neighborhood Legal Services has responded decisively to meet this crisis by collaborating with community groups and local officials to develop creative pre-foreclosure solutions to keep families in their homes and maintain vibrant local communities. The city of Los Angeles has invested more than \$1 million to pilot a model developed by NLS-LA and its partners in the Northeast San Fernando Valley that avoids foreclosures through a mortgage renegotiation framework that reduces principal and leaves homeowners with fixed-rate interest loans and affordable payments. NLS-LA is implementing similar models with the African American, middle class communities of South Los Angeles and in the multi-ethnic San Gabriel Valley City of El Monte. This model has been presented to HUD Secretary Donovan, at his request.

NLS-LA is also at the forefront of providing emergency help to families struggling to keep their lives together. In 2009 alone, NLS-LA's widely praised system of court-based Self-Help Legal Access Centers will assist more than 100,000 people with family law and eviction problems. And, through \$1.2 million of city and county grants from HUD's stimulus-funded Homeless Prevention and Rapid Re-Housing Program (HPRP), NLS-LA added 7 new staff to help the newly unemployed avoid homelessness.

- "Rhonda" had lived with her husband in Shelby County, Iowa for almost ten years with their three children. In their rural home, he controlled what she wore, who she spoke to, and where she went. She didn't know where to turn and felt like she could not reach out or he would find out. She lived through many assaults, many injuries, including rape-- even while she was pregnant with his children. At the end of 2008, Rhonda was strangled by her husband until she blacked out. Then he held her hostage behind locked doors for two days. When he left the home, she escaped and was able to get to help. She made contact with Iowa Legal Aid to discuss what options were available to protect her and the children from his violence. Legal Aid attorney staff helped her get a protection order that restrained him from further abuse. Rhonda and her children were able to live without the daily fear and isolation that her husband imposed, though not entirely. He violated the order many times, and Iowa Legal Aid was there to help her with holding him in contempt of the protection order, and

helping her contact law enforcement. Her husband eventually spent time in jail for his many violations and Rhonda and the children are working toward healing.

**2. This committee has focused on the home foreclosure crisis during this and the last Congress. How has the current foreclosure crisis affected legal aid programs? The legal aid community? Poor individuals and families?**

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. 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, both homeowners and tenants, have defenses that can only be raised by skilled and knowledgeable LSC attorneys. Otherwise, the legal system is hopelessly skewed in favor of lenders who fail to follow the law regarding interest rates, fees or other consumer protections.

As to the overall picture affecting poor individuals and families, millions of homeowners and renters are staring at the stark reality of losing their homes as a result of the ever-growing foreclosure crisis. There were an estimated 1.5 million foreclosures in the United States in 2007, and 3.2 million foreclosure filings were reported in 2008. The nonprofit Center for Responsible Lending estimates that one in eight homes with outstanding mortgages will be lost to foreclosure over the next five years. These figures have not been broken down concisely by family income, but our experience is that many of these troubled families are looking to legal aid for help.

Foreclosures often force families out of their communities and devastate once thriving neighborhoods. In addition to the impact on homeowners, many of the properties in foreclosure create housing problems for renters who are especially vulnerable because of unwritten month-to-month leases, missing receipts from rent or security deposits, or because they fall through the cracks of Section 8 housing assistance.

These homeowners or tenants may be victims of predatory lenders, or may be in financial distress because they lost a job, have become disabled, or lost a spouse who contributed to their household income. Statistics show that predatory lending practices are particularly acute in African American and Latino neighborhoods.

While foreclosures may be inevitable for many people, there are many others for whom they are not. The simple truth is that many borrowers have very legitimate defenses to foreclosure proceedings that cannot be raised without skilled legal advice and assistance. Likewise, loan modification negotiations are often handled more effectively when legal counsel is available to the borrower. The lenders involved in these proceedings are extremely well represented by counsel, creating a substantial tilt in the playing field away from borrowers and their tenants.

Unfortunately, thousands of Americans who could benefit from access to legal advice and counsel are currently unable to afford representation. A recent study in Maine showed that homeowners are represented in only 6% of foreclosure proceedings.

LSC-funded programs have adopted innovative approaches to the foreclosure crisis:

- The Legal Aid Foundation of Los Angeles convened the Advocates for Consumer Justice Foreclosure Response Team, a coalition to address the subprime mortgage crisis, and is a leader in the California Reinvestment Coalition Network, a statewide group addressing mortgage and housing issues.
- Neighborhood Legal Services of Los Angeles County has partnered with several lenders, including Wells Fargo, Bank of America, JPMorgan Chase and Citigroup, to explore work-outs that will keep low-income families in their homes.
- Legal Services NYC operates two foreclosure prevention projects in Brooklyn, a foreclosure project in the Bronx and a homeowner defense project on Staten Island. The Legal Support Unit of Legal Services NYC was recently named the Legal Services Program Partner to provide expertise to the Center for NYC Neighborhoods, the largest initiative in the country to coordinate and support services to homeowners facing foreclosure.
- Maryland Legal Aid Bureau sponsors a Foreclosure Assistance Project to help that state's poor resolve foreclosure actions.
- Atlanta Legal Aid sponsors a Home Defense Project and a Senior Citizens Law Project; both have been using reverse mortgages to help the elderly modify or write down loans that threaten them with the loss of homes often owned for decades.
- Legal Aid of North Carolina works with creditors to negotiate solutions that permit families to remain in their homes.

Other LSC-funded programs have efforts underway to avert foreclosures in Florida, Maine, Ohio and other states. Data from LSC-funded programs in states with high foreclosure rates show increased demand for legal assistance. For example:

- California: Telephone calls on foreclosure-related issues jumped 214 percent at the Legal Aid Foundation of Los Angeles in 2008, compared to 2007. The Legal Aid Society of San Diego saw a similar increase—a 250 percent increase in the number of foreclosure cases it opened in 2008, compared to the previous year. The Legal Aid Society of Orange County recorded a more than 200 percent increase in the number of foreclosure calls during the 2007-2008 period.
- Florida: Legal Services of Greater Miami has seen a steady climb in the number of housing cases—about 20 percent over the last two years. Legal Services of North Florida is handling many more foreclosure cases—recording a 160 percent increase over a 12-month period ending in October 2008.
- Georgia: Requests for foreclosure and home protection assistance are up 70 percent from 2006 at the Atlanta Legal Aid Society.

- Michigan: The Legal Aid and Defender Association in Detroit is opening more foreclosure and predatory lending cases, up 19 percent in 2008 compared to 2007.
- Ohio: The Legal Aid Society of Cleveland recorded a 28 percent increase in foreclosure applications in 2007. In 2008, Cleveland Legal Aid had an increase of nearly 90 percent.

As stated above, legal aid programs across the country are being flooded with new requests for assistance in foreclosure-related matters. While these programs have fashioned many creative initiatives aimed at stemming the tide of foreclosures, funding for these programs is drastically inadequate to address the need for services.

**3. Please discuss how H.R. 3674, the Civil Access to Justice Act of 2009, would impact eligible clients.**

The Civil Access to Justice Act (CAJA) would significantly improve the ability of LSC grantees to effectively serve eligible clients and the low-income community. The bill includes a framework to provide additional federal funding to fill the serious “justice gap” that exists in resources that are currently available to support legal assistance, and it eliminates many of the severe legislative restrictions that have impeded the ability of LSC grantees to fully serve many financially eligible members of the low-income community and to utilize the tool that attorneys with paying clients can now use to represent their clients.

Low-income clients experience a large number of legal needs, most of which go unmet given the current woefully inadequate level of legal services resources. LSC’s “Justice Gap” study showed that 50% of eligible applicants are turned away by LSC grantees, and that 80% of the legal needs of low-income people are unmet. CAJA would provide authorization to significantly increase funding for LSC grantees and provide greatly enhanced access to legal assistance for more eligible clients.

Those additional resources would be available to meet the legal needs of an increasingly large number of poor people in these recessionary times, including thousands of low-wage workers facing major job losses as lay-offs escalate or returning veterans from Iraq and Afghanistan who are becoming a disproportionate percentage of the nation’s homeless and often have severe physical and mental disabilities, including PTSD and traumatic brain injuries. These resources would also help address legal needs related to such issues as the significant increases in low-income homeowner foreclosure and evictions of tenants from foreclosed properties, many of whom are facing homelessness; escalations in domestic violence that are exacerbated by increased stresses from economic insecurity; and low-income consumers facing mounting credit problems.

The bill also eliminates many of the restrictions that were imposed on LSC grantees and their advocates in 1996 that severely limit their ability to provide a full range of legal assistance to eligible clients. It would allow LSC grantees to use all of the tools and strategies that are

available to private attorneys to utilize on behalf of their clients, including class actions and expanded legislative and administrative advocacy.

The bill expands the categories of aliens who can be served with LSC funds to include all aliens who are in the US legally as well as several other categories of aliens with significant legal needs—children, victims of disasters and certain torture victims. It would also permit programs to use non-LSC funds to provide legal assistance to low-income clients whom Congress has determined should not be served using LSC funds, including undocumented aliens and prisoners.

Finally, the bill would also eliminate the provision in current law that gives LSC and the Office of Inspector General access to client names and other records that are protected by state rules on client confidentiality. It protects client privacy and the confidentiality of client records, concepts that have been a hallmark of the legal profession.

**4. Please discuss how H.R. 3674, the Civil Access to Justice Act of 2009, would impact LSC-funded legal aid programs.**

As mentioned above, through the increase in funding authorized under the bill, LSC grantees will have enhanced ability to provide additional legal assistance and meet additional legal needs of client community. In addition, increased resources will give grantees an opportunity to increase legal aid advocates salaries, which are now the lowest in the nation for members of the legal profession. These increases would enable a new generation of legal aid advocates, often saddled with huge levels of educational debt, to pursue careers serving the needs of the nation's poor communities.

With the elimination of the restrictions, LSC grantee advocates will have access to the same tools and strategies that other members of the legal profession are free to use on behalf of their clients. Lawyers and paralegals could represent their clients in every forum of justice in this country, including before administrative and legislative bodies. They could seek class relief in appropriate cases where provided by law.

CAJA would also eliminate the restrictions on non-LSC funds which have been particularly troubling to LSC grantees across the nation. There is no justification for preventing LSC programs from receiving non-LSC funds that are provided for purposes that Congress does not want to fund with federal dollars. Congress has interfered with decisions by other public funders, including state governments and IOLTA programs, and private supporters, on how their resources should be used to serve clients. CAJA encourages rather than discourages the creation of alternative funding sources for civil legal assistance and public-private collaborations to ensure provision of effective legal services to eligible clients.

This change would promote the efficient use of resources and avoid unnecessary duplication of programs and administrative structures that are needed when funders have to put their resources elsewhere in order for them to be used as the funders require.

The CAJA would reaffirm the nation's commitment to the legal services program. It represents a thoughtful reevaluation of and significant improvement over the current LSC Act, it eliminates

numerous outdated LSC Act provisions and politically motivated appropriations act restrictions, and would provide legal aid with a greater sense of security.

CAJA would continue to fund LSC's Technology Innovation Grants that provide a source of funding to support the improvements in technology that have been crucial in grantees' efforts to improve the delivery of legal assistance. The legislation also codifies the system of competition that is currently in use by LSC which ensures that LSC funding is fairly and appropriately distributed across the country to grantees that provide high quality legal assistance.

The bill encourages LSC to continue its loan repayment and other programs that promote the recruitment and retention of high quality staff to better serve the low-income community.

Finally, CAJA gives grantees increased flexibility to include on their governing boards individuals who can help with fundraising, development of relationships with business community, support from public, and expertise in financial issues.

**5. Congress and the LSC Act currently impose restrictions on the ability of LSC-funded programs to undertake certain cases or represent certain individuals. For example, Helaine Barnett testified at the hearing that LSC-funded programs currently cannot bring class action lawsuits. Please discuss in detail how this and all of the other restrictions impact LSC-funded legal aid programs. How do these restrictions impact clients seeking legal assistance from LSC-funded legal aid programs? How do these restrictions impact clients seeking assistance from non-LSC funded legal aid programs?**

The current appropriations act restrictions prohibit LSC-funded legal aid programs from using the full range of advocacy tools that private attorneys are permitted to use on behalf of their paying clients, limiting programs' ability to effectively represent individual low-income clients and deal with many of the problems that are facing their communities that often cannot be addressed by individual representation.

The restriction on class actions prohibits LSC-funded programs from using any of their resources to deal in an effective and efficient manner with those problems that affect large numbers of clients that cannot be solved on a case-by-case basis. LSC recipients should be allowed to pursue class relief in appropriate cases, as such cases are a very cost-effective use of the scarce federal and other funds available for civil legal assistance in this country. These actions are nothing but a procedural device made available by court rules providing remedies under narrow circumstances to achieve consistent resolution of legal issues and to address systemic abuses by certain defendants. The restriction is unnecessary because under other federal and state provisions, and the rules of all state and federal courts, the process is clearly defined and supervised from beginning to end. Judges only certify the use of class actions in appropriate situations.

The lives of low-income Americans are affected by legislative and administrative rules to a greater degree than almost any other segment of our population. Consequently, legislative and administrative advocacy is often the only tool that can effectively address the legal problems faced by low-income people. The current restrictions prohibit LSC-funded programs from using their LSC resources to influence the passage or defeat of legislation or rulemaking and severely limits their use of non-LSC resources to do the same. CAJA would reestablish access to all facets of the justice system for clients eligible for LSC services. To deny poor people access to legislative and administrative decision making through qualified representatives is to provide them only second-class justice. All other attorneys representing paying clients are permitted to advise and represent them if their interests or rights are affected by legislative or administrative actions.

In addition, the appropriations act prohibits LSC grantees from using both their LSC and non-LSC funds to serve many members of the low-income community, including undocumented aliens, prisoners, and certain public housing tenants who are threatened with eviction. In many areas of the country, the LSC recipient is the only source of civil legal assistance. Low-income people do not have the option of seeking assistance from a non-LSC funded legal aid program.

In many other areas, the non-LSC programs that do exist have very limited resources and do not provide assistance on a wide range of issues that affect the low-income community. The restrictions force these small programs to establish entirely separate, duplicative and often expensive administrative structures, even where it would be substantially more efficient for the LSC and non-LSC programs to merge their efforts and spend their resources on providing additional legal assistance to low-income clients. The restrictions also prevent the LSC and non-LSC programs from working together in close collaboration. In those relatively few areas where there are robust non-LSC programs, the restrictions prevent these programs from collaborating with LSC grantees on a range of issues where the LSC programs have special expertise.

**6. LSC grants funding to legal aid programs throughout the country. Please describe the other sources of funding on which legal aid programs depend. Do these sources provide a dependable and consistent stream of funding?**

LSC remains the largest single funding source for legal aid programs in the country. It is and must remain the stable base on which other sources are built. It is the only source that is consistent in amount from state to state – that is, every state receives approximately the same amount per poor person.

Other types of funding do exist. State legislative funding and IOLTA comprise the next two largest funding sources. Substantial work by bench and bar leaders in most states has increased revenue from these sources in recent years; however, especially in the current economic climate, neither of these can be described as dependable or consistent:

- State legislative funding : Right now, funding in states that utilize court fees and fines as the mechanism for funding legal services are more likely to be consistent than states with an annual appropriation. However, no state funding can be considered safe, as

state legislatures face growing deficits and the requirement that they balance their budgets.

- IOLTA: In recent years, by making IOLTA participation mandatory and working with banks to increase interest rates through a variety of mechanisms, IOLTA programs in most states increased revenues significantly. But, with the plummeting of interest rates generally, IOLTA income has fallen drastically. IOLTA income will remain low until interest rates generally increase.

Other public funds – non-LSC federal funds, state contracts, and funds from cities and counties – collectively provide the next largest source of funds to legal aid programs:

- Non-LSC federal funds: Most of these funds come from the Department of Justice, HUD and the Administration on Aging. Virtually all of them are tied to specific populations or issues – the elderly, housing, domestic violence. Many of them have complex application procedures and reporting requirements, some have difficult matching requirements and/or conditions regarding which services may be provided. Some, especially VAWA, are the exact opposite of dependable or consistent – programs have no way of knowing whether a grant will be renewed.
- State contracts and city and county funds: Much of this funding has been relatively consistent over time. However, again due to current economic problems, all non-federal government sources are being forced to reduce expenditures, and legal aid programs are losing funding from these sources as well.

Private funding sources, which, taken as a whole have been relatively consistent in recent years, have also declined during this general economic collapse. Further, private funding, no matter how generous and from what sources, will always be an important supplemental source – it will never reach the level of the public sources and IOLTA described above.

The legal community, through a variety of mechanisms, provides solid support for legal aid. Indeed, in some states, the Bar has stepped up to significantly increase support during this time when other sources have been falling. For example, the Washington State Bar Association made a one-time donation of \$1,500,000 to help programs in that state. In Minnesota and Pennsylvania, the Supreme Courts raised attorney registration fees to help fund legal services. Individual attorneys and law firms in areas not too hard hit by the economy have maintained giving levels; however, in other communities, legal community giving is down.

Other private sources include foundations, corporations, and United Ways. All these sources have been forced to cut back on giving during this difficult economic time.



ANSWERS TO POST-HEARING QUESTIONS FROM H. THOMAS WELLS, JR.,  
IMMEDIATE PAST PRESIDENT, AMERICAN BAR ASSOCIATION

**Questions for the Record**  
**Subcommittee on Commercial and Administrative Law**  
**Hearing on the Legal Services Corporation**  
**October 27, 2009**

**Thomas Wells, Jr., Immediate Past President, American Bar Association**

**Questions from the Honorable Steve Cohen, Chairman**

- 1. Opponents of providing federal funding for legal service programs contend that other avenues, such as pro bono assistance programs or private funding sources, can provide sufficient legal assistance to meet the needs of the poor. Do you agree? Please explain.**

No, the ABA does not agree with that statement. The ABA believes that the private bar can provide a useful *supplement* to the federal infrastructure for providing legal services for the poor. Private attorneys are a key part of this public-private partnership. However, it is the federal funding and coordination through the Legal Services Corporation that provides the foundation and the catalyst for all other contributions. The organized bar, at the national, state, and local levels, has demonstrated incredible commitment to providing assistance through pro bono services. The LSC Justice Gap studies confirm that for every eligible client who seeks assistance, another eligible client is turned away due to a lack of resources; state-based legal needs studies document that, despite the combined effort of the LSC, the organized bar and private lawyers, more than 80 percent of the legal needs of the poor go unmet.

- 2. In your written statement, you briefly mentioned how the state bar association and the bar foundation in Arizona have helped homeowners avoid foreclosure. You also mentioned the North Carolina Bar Association's Justice4All campaign. With the success of these and other programs, it would seem that LSC is no longer necessary. Do you agree?**

No. The ABA strongly disagrees with that contention. As stated above, numerous national and state-based studies continue to show that despite the *combined* effort of the LSC, the organized bar and private lawyers, more than 80 percent of the legal needs of the poor go unmet. However, we will continue to commend and encourage bar associations to implement such innovative programs to help close the justice gap, and I am proud to say the ABA is a leader in these national efforts. As I stated in my testimony, the justice gap is more of a "justice chasm" than a "gap" and much more needs to be done at the federal, state, and local government levels, as well as by the organized bar, to truly make a difference. Finally, most, but not all, state governments are now partners in the efforts to provide legal aid to the poor. Forty-eight states provide public funding in varying amounts that supplement federal funding provided through LSC. However, the amounts contributed by the states vary widely. States with more limited resources, like my own state of Alabama, can contribute very little. We are able to supplement the LSC grant by only \$200,000 in state funding to support legal aid. Equal

justice is guaranteed by the U.S. Constitution, and the ability to resolve one's basic legal issues cannot depend on one's wealth or the state in which an eligible client resides.

3. **The ABA is not a partisan organization. It is comprised of attorneys from all political ideologies, and all sides of issues. Please explain why the ABA is supportive of LSC and federal funding for legal aid programs.**

The ABA has as a key goal, "To assure meaningful access to justice for all persons." It has pursued that objective through a variety of programs involving Association members of all political parties and ideologies for at least the last 90 years. The Association leaders helped to craft the legislation that led to the creation of the Legal Services Corporation, and continues to believe that a non-partisan federal program is the best way to provide a foundation for expanding access to justice in this nation, a nation that lags far beyond most others in providing justice for all.

4. **Please discuss how H.R. 3764, the Civil Access to Justice Act of 2009, would ensure access to justice for all.**

H.R. 3764 would (1) improve LSC governance; (2) increase the authorized funding level; (3) lifts restrictions on the legal tools available to LSC-funded attorneys, which would restore the rights of poor clients and place their attorneys on a more level playing field with private attorneys; and (4) lift most restrictions on the use of non-LSC funds.

5. **In your written statement, you indicated that the ABA believes that it is essential that Congress reauthorize LSC and increase funding for it. Please explain why the ABA urges bipartisan legislation to strengthen and improve LSC.**

LSC enjoys strong bipartisan support in Congress and among the American people. There are many improvements, however, that can be made – LSC has not been reauthorized since 1977 and many things have changed since then. H.R. 3764 addresses many of those concerns, including increasing the *authorized* funding level for the program. The ABA was indeed part of the compromise in 1995 that imposed the "restrictions" that saved LSC. But it's time to take a hard look at those restrictions, learn from how these restrictions have been in many cases overreaching, and work together to improve the delivery of legal services to the poor. The ABA, our members, and state and local bars nationwide stand ready to help get this important job done.

6. **In response to a question from Ranking Member Trent Franks, you described generally that the current restrictions on LSC-funded programs create inefficiencies in the legal services system. Please describe in greater detail why you believe that the current restrictions should be lifted. For example, which states allow legal services attorneys to receive attorneys' fees?**

The restriction on the use by LSC-funded programs of “all funds” received from other funding sources (including state governments and private donors) prevents programs from effectively and efficiently serving eligible clients according to the desires of the other funders. Many local communities and funding sources wish to provide legal services to poor persons who cannot be served with the restricted federal LSC funds. As a result, in compliance with the law and LSC regulations, many communities end up having to create entirely separate legal services programs to provide locally-desired legal services. This requires separate, duplicative physical facilities, staffs, governance structures and all the associated costs of same. Although not successful, the State of Oregon even sued LSC for restricting the use of Oregon state funds. Whether state funds are restricted should be up to each individual state, not the federal government and private donations should be used according to the wishes of the donors. This restriction on the use of non-federal funds has created inefficiencies and has negatively impacted the ability of local legal aid programs to raise additional dollars.

We are pleased that Congress, in the FY 2010 appropriations law (P.L. 111-117), lifted the restriction on LSC-funded programs being eligible to claim statutorily-authorized attorneys’ fees. This action was done with bipartisan agreement and we encourage the Judiciary Committee to permanently codify this action in a law reauthorizing LSC. The attorneys fees restriction presents two impediments to poor clients and the LSC-funded lawyers who serve them: (1) it prevents LSC-funded programs from obtaining revenues through attorneys fees, and diminishes the leveraging effect of LSC dollars, and (2) it greatly diminishes the negotiating ability of LSC lawyers, who do not have the leverage of an attorneys’ fee award when seeking a settlement. Private attorneys do not labor under these impediments; this restriction puts poor clients and LSC-funded lawyers at an unfair disadvantage.



ANSWERS TO POST-HEARING QUESTIONS FROM SUSAN RAGLAND, DIRECTOR,  
FINANCIAL MANAGEMENT AND ASSURANCE TEAM, GOVERNMENT ACCOUNTABILITY  
OFFICE



January 29, 2010

The Honorable Steve Cohen  
Chairman  
Subcommittee on Commercial and Administrative Law  
Committee on the Judiciary  
House of Representatives

Subject: Response to Post Hearing Questions Related to Legal Services Corporation

Dear Mr. Chairman:

On October 27, 2009, GAO testified<sup>1</sup> before your committee at a hearing entitled "The Legal Services Corporation." At that hearing, we discussed GAO's recent review of the status of recommendations from two prior GAO reports.<sup>2</sup> This letter responds to your January 11, 2010, request for responses to posthearing questions for the record related to our October 27, 2009, testimony. In our responses the "Civil Access to Justice Act of 2009" is referred to as H.R. 3764. Our responses are based on our prior audits which were conducted in accordance with generally accepted government auditing standards. Your questions along with our responses follow.

**Please discuss how H.R. 3764, the Civil Access to Justice Act of 2009, would improve LSC corporate governance and accountability. What would you suggest to improve LSC corporate governance and accountability?**

LSC was established by federal charter in 1974 as a federally funded, private nonprofit corporation. Since 1974, Congress has enacted financial management laws to strengthen the governance and performance of federal entities. At your request, we have reviewed H.R. 3764 and have highlighted below key provisions that would strengthen corporate governance and accountability for LSC.

<sup>1</sup> GAO, *Legal Services Corporation: Some Progress Made in Addressing Governance and Accountability Weaknesses, But Challenges Remain*, GAO-10-194T (Washington, D.C.: Oct 27, 2009).

<sup>2</sup> GAO, *Legal Services Corporation: Governance and Accountability Practices Need to Be Modernized and Strengthened*, GAO-07-993 (Washington, D.C.: Aug. 15, 2007).  
GAO, *Legal Services Corporation: Improved Internal Controls Needed in Grants Management and Oversight*, GAO-08-37 (Washington, D.C.: Dec. 28, 2007).

Permanent Legislation. We have previously reported that LSC's authorizing legislation<sup>3</sup> was last comprehensively reviewed and reauthorized in 1977 and that each year since 1996 Congress has made temporary changes to LSC's statutory framework through administrative provisions<sup>4</sup> included in LSC's annual appropriations acts.<sup>5</sup> In our August 2007 report, we stated that Congress should consider enacting permanent legislation that includes additional governance and accountability requirements.<sup>6</sup> H.R. 3764 addresses the intent of the matter for congressional consideration in our report.

- Financial or Audit Expert for Board. Section 5 of H.R. 3764 would require that at least one individual with financial or audit experience be a member of the LSC Board. Including a member with financial or audit experience on the Board should strengthen corporate governance. This is especially true with respect to the Board's oversight of financial reporting, budget execution and internal control. Under the Sarbanes-Oxley Act of 2002, public companies are generally required to have an audit committee made up of independent directors, including at least one financial expert, to oversee the company's financial reporting and audit processes.<sup>7</sup>
- Board Committees. Section 7 of H.R. 3764 would require LSC's Board to establish three standing Board committees: (1) audit, (2) finance, and (3) governance and performance review. We recommended in our August 2007 report that LSC's Board of Directors establish an audit committee function to provide oversight to LSC's financial reporting and audit processes and a compensation committee function to oversee compensation matters through creating a separate compensation committee or by rewriting an existing committee charter.<sup>8</sup> An audit committee is a key element in effective

<sup>3</sup> Legal Services Corporation Act, *codified, as amended*, at 42 U.S.C. §§ 2996-2996I (LSC Act).

<sup>4</sup> *See, e.g.*, the statute enacting LSC's appropriation for fiscal year 2010, Pub. L. No. 111-117, div. B, 123 Stat. 3034 (Dec. 16, 2009), which incorporates by reference the administrative provisions included in the statute enacting LSC's fiscal year 1998 appropriation, Pub. L. No. 105-119, 111 Stat. 2440, 2510 (Nov. 26, 1997), which, in turn, incorporates by reference most administrative provisions included in the statute enacting LSC's fiscal year 1996 appropriation, Pub. L. No. 104-134, 110 Stat. 1321, 1321-50 (Apr. 26, 1996).

<sup>5</sup> GAO-07-993, at 9.

<sup>6</sup> GAO-07-993, at 42.

<sup>7</sup> Pub. L. No. 107-204, §§ 301, 407, 116 Stat. 745, 775-77, 790 (July 30, 2002) (*codified at* 15 U.S.C. §§ 78j-1, 7265).

<sup>8</sup> GAO-07-993, at 43.

corporate governance. LSC has responded to our recommendations through administratively establishing an audit committee and requiring the governance and performance review committee to oversee the compensation of LSC's president and inspector general. Legislatively establishing the three standing Board committees as required in H.R. 3764 would solidify the committees. The establishment and effective functioning of these committees would improve and modernize the governance processes and structure of LSC.

- Adequate Internal Control Structure. Section 7 of H.R. 3764 would require LSC to "establish an adequate internal control structure and procedures for financial reporting" and to "conduct an assessment of the effectiveness of the internal control structure and procedures." This should lead to improvements in the internal control environment and monitoring for financial reporting if implemented effectively.
- Comprehensive Training Standards. Section 7 of H.R. 3764 would require LSC to "adopt comprehensive training standards and develop appropriate training materials to ensure that [grantees]<sup>3</sup> are able to provide comprehensive and appropriate training for executive directors, supervisors, and attorneys employed by [grantees] and board members of [grantees]...." That section further sets out specific requirements of the training standards and requires LSC to provide the financial assistance to provide the training. Such training should, if implemented effectively, achieve an increased level of competency and knowledge within the programs. Providing proper grants management training is key to improving accountability at the program level and would therefore, enhance LSC's grants management and oversight programs.

Our August 2007 report includes a matter for Congressional consideration that Congress should consider whether LSC could benefit from additional legislatively mandated governance and accountability requirements. The above sections of H.R. 3764 are consistent with the intent of our prior matter for congressional consideration and if implemented would improve governance and accountability. Additional governance and accountability requirements that Congress may want to consider include provisions requiring LSC to (1) establish and use a performance measurement framework with measurable performance metrics such as a framework specified by the Governance Performance and Results Act (GPRA) of 1993, and (2) audit follow-up requirements such as OMB Circular No. A-50 *Audit Followup*. This would require LSC to follow up on its Offices of Program Performance and Compliance and Enforcement significant reportable conditions, findings, corrective actions, and recommendations. Specifically, such follow-up would help ensure grantee auditor's findings of instances of deficiencies and noncompliance are

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<sup>3</sup> As used in this response, the term "grant" encompasses all of the agreements LSC uses in its programs funding nonprofit providers of civil legal assistance to low-income persons, and the term "grantee" refers to those who enter into such agreements. Although LSC distributes most financial assistance through grants, it sometimes uses contracts. See LSC Act, 42 U.S.C. §§ 2996(b), 2996e(a)(1)(A).

resolved in a timely manner.<sup>10</sup> These provisions could also be voluntarily adopted by LSC through direction from the LSC Board of Directors.

We also identified an apparent drafting error in Section 13 of H.R. 3764 which could be corrected by striking out only section 1009(c)(1) of the LSC Act [42 U.S.C. § 2996h(c)(1)] and not all of section 1009(c) in order to avoid eliminating GAO's access to records, which is set out in section 1009(c)(2) of the LSC Act [42 U.S.C. § 2996h(c)(2)].

**In your written statement, you indicated that LSC has made progress in implementing GAO's recommendations. Do you foresee LSC catching up with other federal agencies, U.S. government corporations, and other non-profit corporations in governance and accountability practices? How soon? Do you have any suggestions on how LSC can improve more quickly?**

Through the LSC Act, Congress chartered LSC in the District of Columbia as a private, nonprofit corporation that would not be considered a department, agency or instrumentality of the federal government. Due to its charter LSC is not subject to the same governance and accountability requirements as independent federal agencies, U.S. government corporations, and other nonprofit corporations. LSC's Board and management are responsible for ensuring LSC implements effective governance and accountability practices. Therefore, it will be important for LSC's Board to address the recommendation in our August 2007 report that the Board evaluate key processes, including processes for risk assessment and mitigation, internal control and financial reporting, and for LSC management to address the recommendation to fully evaluate the governance and accountability practices of the other organizations and determine which practices would be effective for LSC and then identify how it could most efficiently implement these practices.

We previously recommended that the LSC president and executive committee perform a risk assessment and implement a corresponding risk management program as part of a comprehensive evaluation of internal control. For example, such a comprehensive and ongoing risk assessment might include considering aspects of LSC's governance and accountability structure and whether LSC might benefit from adopting effective governance and accountability practices in place at other organizations. For example, such an assessment might include considering whether LSC could improve more quickly if it were made subject to, or voluntarily implemented, provisions of other laws such as GPRA or 31 U.S.C. § 3512(c), (d), commonly referred to as the Federal Managers' Financial Integrity Act of 1982

<sup>10</sup> For a comparable requirement, which since 1996 has been annually required of LSC through administrative provisions included in the statute enacting its annual appropriation, see Pub. L. No. 104-134, § 509(k), 110 Stat. 1321, 1321-59 (Apr. 26, 1996).

(FMFIA)<sup>11</sup>. FMFIA provides the statutory basis for management's responsibility for and assessment of internal control. OMB Circular No. A-123, *Management's Responsibility for Internal Control* (rev. Dec. 21, 2004) sets out guidance for implementing FMFIA's provisions, including agencies' assessment of internal control under the standards prescribed by the Comptroller General.<sup>12</sup>

The timing of when LSC can "catch up" to federal agencies, U.S. government corporations, and other nonprofit corporations in modernizing its governance and accountability practices will depend on the focus and sustained attention that the LSC Board of Directors and management commit to this effort. This would include fully and effectively resolving the weaknesses underlying our prior recommendations, as well as implementing key governance and accountability provisions of H.R. 3764 that might be enacted into law.

GAO will continue to monitor how LSC's Board and management address the remaining open recommendations. Should you have any questions on matters discussed in this response or need additional information please contact me at (202) 512-8486 or at [raglands@gao.gov](mailto:raglands@gao.gov) or Kim McGatlin at (202) 512-9366 or at [mccgatlink@gao.gov](mailto:mccgatlink@gao.gov). Key contributors to this correspondence were Kimberley A. McGatlin, Lauren Fassler and Bernice M. Lemaire.

Sincerely yours,



Susan Ragland  
Director  
Financial Management and Assurance

cc: Jeanette Franzel  
Kimberley McGatlin

(197210)

<sup>11</sup> See also, for example, a provision governing the Troubled Asset Relief Program (TARP), which was recently enacted in the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, § 116(c)(1), 122 Stat. 3765, 3785-86 (Oct. 3, 2008) (*codified at* 12 U.S.C. § 5226(c)(1)): "The TARP shall establish and maintain an effective system of internal control, consistent with the standards prescribed under section 3512(c) of title 31, United States Code, that provides reasonable assurance of—(A) the effectiveness and efficiency of operations, including the use of the resources of the TARP; (B) the reliability of financial reporting, including financial statements and other reports for internal and external use; and (C) compliance with applicable laws and regulations."

<sup>12</sup> GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (November 1999).

LETTER FROM ALAN REUTHER, DIRECTOR, CWA-UAW ALLIANCE



Ron Gettelfinger, UAW President

Larry Cohen, CWA President

October 29, 2009

The Honorable Steven Cohen, Chair  
Subcommittee on Commercial and Administrative Law  
Committee on Judiciary  
US House of Representatives  
Washington, DC 20515

Dear Chairman Cohen:

On behalf of two million active and retired workers, the CWA-UAW Legislative Alliance supports the Civil Access to Justice Act of 2009 (H.R. 3764), a bill to expand and improve the provision of legal aid to low-income Americans by reauthorizing the act that established the Legal Services Corporation. We respectfully request that you include this letter in the official record of the hearing on the Legal Services Corporation that you chaired on October 27, 2009.

In 1974, Congress created the Legal Services Corporation (LSC) to administer the provision of legal representation to low-income Americans in civil legal matters. LSC is a private, nonprofit corporation that disburses federally-appropriated funds through a competitive process to 137 legal aid programs in all 50 states, the District of Columbia and current and some former territories. The LSC statute has not been reauthorized since 1977, but Congress has continued to fund LSC every year since 1980, when LSC's authorization expired.

The eligibility threshold for clients of LSC-funded programs is generally set below 125 percent of the federal poverty guidelines. In September, the Census Bureau reported that the poverty rate rose in 2008 to 13.2%, and today, more than 51 million Americans qualify for legal assistance through LSC. The categories of cases handled by LSC-funded programs relate mainly to families, housing, income maintenance, consumer and finance. Over the last several years, LSC grantees have closed nearly one million cases a year. But for every case that is closed, there is at least one other case that is never opened. Based on a survey conducted by LSC earlier this year, we know that fully half of eligible clients who seek services from a grantee each year are turned away for lack of resources.

UAW Local 2320, the National Organization of Legal Services Workers, represents three thousand legal aid attorneys, paralegals and support staff in programs across the country. These UAW members are on the front lines daily, providing legal assistance to an ever-increasing number of poor clients with legal issues ranging from threatened eviction or foreclosure to denial of unemployment benefits. According to the 2008 biannual NALP salary survey, legal aid attorneys' pay is the lowest of all public service attorneys, a category of pay that is substantially lower than in the private sector. The median starting salary for a legal aid lawyer is only \$40,000, and that of a legal aid attorney with 11 to 15 years experience a mere \$55,000.

First, the Civil Access to Justice Act of 2009 would make a significant contribution toward closing the alarming justice gap and increasing the pay of legal aid staff by authorizing \$750 million in funds for LSC. This level is roughly equivalent to the highest funding year (1981), adjusted for inflation. This amount of funding would provide a "minimum access level" of one attorney for every 5000 low-income persons instead of the current ratio of approximately one for every 10,000. (The comparable ratio for the general population is one attorney for every 525 persons.) Increased funding also would allow programs to raise salaries to more reasonable levels, reducing staff turnover and the attendant costs of recruiting, training and supervising new employees.

Second, H.R. 3764 would remove many of the restrictions placed on LSC-funded programs since the mid-1990s by a rider to LSC's annual federal appropriation. Importantly, it would lift restrictions on the legal tools available to LSC-funded attorneys by permitting them to request and collect attorneys' fees when authorized by statute; to bring class-action lawsuits grounded in existing law; and to advocate before state legislators and executive officials on client matters with non-federal funds. The easing of these restrictions would enable LSC-funded attorneys to pursue their clients' interests much more effectively and efficiently, and to secure supplemental funding for their programs.

Third, H.R. 3764 would lift most of the restrictions on funds received by LSC grantees from non-federal sources, with the exception of abortion-related restrictions. Since FY 1996, all the restrictions on the use of federally-appropriated funds have also been applied to funds received by grantee programs from state and local governments, from IOLTA funds, and from private donations and foundation grants. This has caused some states to establish completely separate, duplicate programs - - one receiving LSC funds and another receiving non-LSC funds - - a practice that is both costly and inefficient. The removal of the restriction on state, local and private funds would result in significant cost savings for many legal service providers.

Access to justice regardless of income is a hallmark of a democratic society. Regrettably, since the early 1980s, the United States has been retreating from its commitment to provide access to justice for low-income Americans. The Civil Access to Justice Act of 2009 represents an important step forward. The CWA-UAW Legislative Alliance supports this bill and urges its swift passage through the Judiciary Committee and the House of Representatives.

Sincerely,



Alan Reuther  
Director  
CWA-UAW Alliance

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PREPARED STATEMENT OF REBEKAH DILLER, DEPUTY DIRECTOR, JUSTICE PROGRAM,  
ON BEHALF OF THE BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW

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**U.S. House of Representatives  
Committee on the Judiciary  
Subcommittee on Commercial and Administrative Law**

**Written Testimony of  
Rebekah Diller, Deputy Director, Justice Program  
on behalf of  
The Brennan Center for Justice at NYU School of Law  
November 4, 2009**

**Submitted for the  
Hearing on Legal Services Corporation held on October 27, 2009**

The Brennan Center for Justice at NYU School of Law<sup>1</sup> thanks Chairman Cohen and the Subcommittee on Commercial and Administrative Law for holding this hearing on the Legal Services Corporation (“LSC”) and for providing this opportunity to discuss the pressing need for civil legal assistance in the nation – a crisis that threatens one of our nation’s proudest traditions: “equal justice for all.”

Other witnesses have testified about the extremely well-documented shortage of legal assistance for the poor, the “justice gap.” Drawing on two recent Brennan Center reports – “Foreclosures: A Crisis in Legal Representation,” and “A Call to End Federal Restrictions on Legal Aid for the Poor”<sup>2</sup> – this testimony will focus on two factors that exacerbate the justice gap: the explosion of legal need caused by the foreclosure crisis, and the severe barriers to justice imposed by restrictions on LSC grantees that have in past years been enacted in the appropriations process. By reauthorizing and strengthening the Legal Services Corporation, the single largest source of funding for civil legal aid for the poor, The Civil Access to Justice Act of 2009 (H.R. 3764) would make huge strides toward remedying these problems.

**I. The Foreclosure Epidemic Has Exacerbated the Need for Legal Assistance.**

Even before the current economic downturn, there was a severe shortage of representation for low-income people in civil cases. By most estimates, 80 percent of the legal needs of low-income people go unmet. The current recession, and accompanying foreclosure epidemic, has made matters much worse by pushing more

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families into poverty and by creating vast legal need for those homeowners facing foreclosure. Poverty statistics from the U.S. Census Bureau reveal that nearly 54 million people were income-eligible for federally funded legal aid in 2008, up from approximately 51 million just one year before.<sup>3</sup>

**A. Most Homeowners Facing Foreclosure Do So Without an Attorney.**

The mortgage foreclosure crisis continues unabated. Nationally, foreclosure filings in the third quarter of 2009 were up 5 percent from the previous quarter and nearly 23 percent from the same period last year.<sup>4</sup> Often lost in the discussion about the foreclosure crisis is the fact that it is also a legal crisis.

No definitive nationwide study has been done on the number of persons without legal representation in the foreclosure process.<sup>5</sup> However, all indications are that people overwhelmingly face foreclosure without the protection of legal counsel.

In connection with our report, "Foreclosures: A Crisis in Legal Representation," the Brennan Center contacted 30 court clerks' offices in counties with the highest rates of foreclosure in the ten most foreclosure-impacted states.<sup>6</sup> Few tracked data on representation. The data the Brennan Center was able to obtain, from these and other jurisdictions, however, reveals that the number of homeowners proceeding without representation in foreclosure actions is remarkably high:<sup>7</sup>

- In Stark County, Ohio, a particularly hard-hit locale, data suggests that 86 percent of defendants in foreclosure proceedings went without counsel in 2008.<sup>8</sup>
- In Connecticut, over 60 percent of defendants facing foreclosure of their property in 2007-08 did not have counsel. Of those without counsel, 43 percent attempted to represent themselves. The remaining 57 percent failed to respond to the notice of foreclosure.<sup>9</sup>
- In New York, data in Queens County shows that as many as 84% of defendants in proceedings involving foreclosures on "subprime," "high cost" and or "non-traditional" mortgages (which are disproportionately targeted to low-income and minority homeowners) proceeded without full legal representation from November 2008 to May 2009. In Richmond County (Staten Island), 91 percent of such defendants were not fully represented, and in Nassau County, 92 percent were not fully represented.<sup>10</sup>

Around the country, there are further reports of courts inundated with cases in which people are facing foreclosure proceedings *pro se*. Chief Bankruptcy Judge Henry J. Boroff of Massachusetts reported that the number of Chapter 13 *pro se* bankruptcy filings jumped from 13 percent in 2004 to 20 percent in 2007, a result in large part of the higher rates of home-mortgage foreclosures.<sup>11</sup> And, in an

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unprecedented appeal to members of the organized bar, Chief Judge Robert M. Bell of the Maryland Court of Appeals wrote to every member of the Maryland State Bar asking attorneys to provide pro bono help to citizens facing foreclosure, explaining “[members of] the legal services community alone are inadequate to address the current need.”<sup>12</sup> Helaine Barnett, President of LSC, testified before this committee that LSC-funded programs must turn away two applicants for assistance for every person served.

**B. Legal Services Lawyers Can Save Families’ Homes and Stabilize Communities.**

Facing a foreclosure is daunting for even the most sophisticated home owner. Without a lawyer, it can be extremely difficult to figure out what is required to defend oneself. Complicated legal notices may require specific responses – such as the filing of an “answer” with a court – by a particular date in order to prevent judgment from being entered in favor of the lender. Legal papers may not spell out in detail how the lender has arrived at the sums allegedly owed and generally do not give the homeowner any clues as to possible defenses or solutions.

Civil legal aid lawyers across the country can help to ensure that low-income homeowners facing foreclosure will not unjustly lose their homes. In the process, their work helps all of us by stabilizing communities, checking freefalls in home values, and preventing the blight that accompanies abandoned homes. In our “Foreclosures: A Crisis in Legal Representation” report, we identify the following five ways in which legal representation can help low-income families save their homes.

**1) Legal services attorneys can raise claims that protect homeowners from lenders and servicers who broke the law.** A troubling portion of the millions of foreclosures in this country are the product of unlawful and abusive lending practices to which our regulatory and law enforcement systems have been slow to react. Identifying these violations requires knowledge of complex state and federal law as well as the wherewithal to scrutinize voluminous and difficult to decipher loan documents. Such tasks are difficult enough for the attorney untrained in lending laws; for a *pro se* litigant, they are nearly impossible. Yet, with so few lawyers available to pursue civil remedies for homeowners who are injured by these violations, the homeowners get victimized repeatedly and the lenders are permitted to violate the law with impunity.<sup>13</sup>

**2) Legal services attorneys help homeowners renegotiate their loans.** Effective loan modifications are those that get late fees and other penalties waived, reduce or fix the interest rate to an affordable level, and in the best cases, reduce the principle loan amount. Homeowners represented by legal counsel are often better able to negotiate meaningful loan modifications. Lawyers can review loan documents and assess viable claims and defenses and use these claims to persuade lenders to agree to more favorable terms. Moreover, with the assistance of a lawyer, a homeowner can

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often bypass the lender's loss mitigation department and obtain the attention of someone in a position to significantly change loan terms. As the Congressional Oversight Panel has stated, "[m]any borrowers are ignored until they retain assistance of a legal advocate or local public official."<sup>14</sup>

**3) Legal services attorneys help ensure that the foreclosure process is followed properly.** Another way in which lawyers are able to assist homeowners is by ensuring that lenders are indeed entitled to repossess a home and by ensuring that excessive and illegitimate fees are not assessed against the homeowner. One of the most basic requirements is that the foreclosing party must own the underlying mortgage or, in legal parlance, have "standing." However, due to the securitization frenzy, in which mortgages were bought, bundled with other mortgages into securitized assets, chopped up, and sold many times over to creditors across the world, it is not always clear that the party attempting to foreclose can prove that they own the mortgage. Indeed, a study from the University of Iowa by Professor Katherine Porter of Chapter 13 bankruptcy cases filed by homeowners found that approximately 40% of home loans were missing original mortgage notes.<sup>15</sup> The same study shows that a startling number of mortgage servicers and lenders make calculation mistakes and also demand unnecessary and excessive fees.<sup>16</sup> With the assistance of a lawyer, a homeowner is better able to identify mistakes and compel corrections.

**4) Legal assistance can help homeowners achieve bankruptcy protection.** Although typically an option of last resort – as the bankruptcy laws do not permit judicial modification of mortgages on primary residences – bankruptcy is one way that homeowners can temporarily suspend a foreclosure, which sometimes will create space in which to reach more favorable resolutions. The act of filing for bankruptcy creates an "automatic stay" which precludes all lenders and creditors from proceeding with legal action against the debtor.

**5) Legal services attorneys help tenants when a landlord's property is foreclosed.** Approximately 40 percent of families facing eviction due to foreclosures are rental tenants.<sup>17</sup> Although legal protections for tenants are minimal in many states, a lawyer can at least ensure that the jurisdiction's eviction requirements are followed and can protect tenants from other types of abuses too, such as when a landlord continues to collect the rent, long after he or she has relinquished title to the home in a foreclosure proceeding. Keeping a tenant in his or her home, even if not permanently, can make a substantial difference in the quality of life for the individual or family, and can help preserve the value of the property, while preventing blight in the neighborhood - a good result for everyone.

In sum, the foreclosure crisis has created a multitude of new legal needs of low-income families. Legal services attorneys are essential to help those in need and to contain the spillover effects and widespread dislocation caused by the foreclosure epidemic. By reauthorizing and strengthening the Legal Services Corporation, the Civil Access to Justice Act of 2009 (H.R. 3764), would ensure that the federal

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infrastructure for equal justice is better able to provide assistance. In particular, by setting a funding authorization level of \$750 million, the bill would make huge strides toward ensuring that more families in need – whether due to foreclosure or other crisis – could obtain assistance.

**II. The Restrictions on Representation Imposed by Appropriations Riders Have Undermined the Efficiency and Effectiveness of Lawyers for the Poor.**

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 imposed by Congress in 1996. These restrictions, which have been carried forward in a rider to the annual LSC appropriation, cut deeply into low-income people's capacity to secure meaningful access to the courts, harming them additionally and unnecessarily in foreclosure cases, eviction matters, domestic violence proceedings, benefits disputes, consumer debt cases, and other civil legal matters.

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).<sup>18</sup>

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.<sup>19</sup>

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 \$526 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.<sup>20</sup>

The pending fiscal 2010 Commerce-Justice-Science Appropriations bill – which contains the LSC appropriation and rider – may eliminate a piece of the restrictions. The House-passed bill removes restrictions on attorneys' fee awards while the bill that has passed the Senate Appropriations Committee (but has not yet been voted on by the full Senate) would remove most restrictions on non-federal funds. It remains to be seen what the final bill will do. However, regardless of the outcome of this year's appropriations process, a more extensive re-tooling of the restrictions, as is contemplated in the Civil Access to Justice Act, is in order.

**A. Limits on Advocacy Tools Available to Low-Income Clients Obstruct Equal Justice.**

Notwithstanding the restrictions, legal services offices continue to provide high-quality representation and assist client communities in addressing legal problems. However, people face many types of legal problems that could be addressed more effectively and efficiently were they to have access to the legal tools available to all other litigants. This section describes the impact of particular advocacy restrictions – those prohibiting attorneys’ fee awards, class actions, and legislative and administrative advocacy. Many of the examples involve efforts to combat predatory lending and other consumer scams that are tied to the mortgage meltdown and foreclosure crisis.

When legal aid offices are able to take cases in which consumer fraud was involved,<sup>21</sup> the restrictions – particularly the class action and attorneys’ fee restrictions – limit the ability of LSC recipients to perform their private attorney general role in the consumer protection enforcement scheme and enable wrongdoers to write off individual cases as a mere cost of doing business.<sup>22</sup> Moreover, the restrictions on legislative advocacy have gagged legal aid attorneys, preventing them from performing their critical role in alerting legislatures to the problems of low-income communities, including those that led to the subprime lending crisis.<sup>23</sup>

**1. Attorneys’ Fee Award Restriction Prolongs Litigation and Undercuts State and Federal Regulatory Schemes.**

Attorneys’ fee awards serve three related, and equally important, functions when legal services organizations are representing clients. First, fee awards provide a reason, within an ongoing case, to encourage a party to agree to a settlement; second, they act as a deterrent to discourage people from violating laws that are designed to protect the public; and third, they enable legal aid programs to bring in additional revenue from non-LSC sources in order to serve more clients.<sup>24</sup>

The possibility of having to pay attorneys’ fees provides critical leverage to ensure that a better funded legal adversary does not drag out proceedings in an attempt to exhaust the poor client’s resources and those of the legal aid lawyer. As the New York Court of Appeals has stated, the availability of attorneys’ fees is “an incentive to resolve disputes quickly and without undue expense” on the part of the court and litigants.<sup>25</sup> In predatory lending cases, for example, where the underlying loan to the homeowner may be a product of deceptive or overreaching strategies on the part of the lender, the unfairness inherent in the original agreement may be compounded if the lender has no incentive to conduct the litigation responsibly. Without the ability to level the litigation playing field, low-income families are placed at a disadvantage, both in the litigation and in settlement negotiations.

The award of attorneys’ fees also serves a deterrent purpose. For example, it ensures that wrongdoers suffer some additional financial penalty for violating a

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consumer protection or civil rights statute and cannot merely write off the costs incurred in the litigation as a cost of doing business. When low-income victims of such violations cannot seek fee awards, however, that purpose is frustrated. As new “foreclosure consultant” scams – in which unsavory “consultants” make money by falsely promising to help distressed homeowners refinance or otherwise reduce their mortgage debt – pop up with alarming regularity around the country, the fee restriction hampers efforts to shut them down.

For example, LSC-funded Legal Aid Foundation of Los Angeles (“LAFLA”) estimates that as many as 30 to 40 percent of homeowners contacting its office last year for foreclosure-related assistance had either already paid a foreclosure consultant or had been contacted by one.<sup>26</sup> To protect homeowners and ensure that they are informed of their rights, California law regulates the practices of these foreclosure consultants.<sup>27</sup> Even with this law on the books, LAFLA reports that some consultants illegally provide little or no services and divert the homeowner from seeking legitimate assistance. In many cases against deceitful foreclosure consultants, actual damages would be in the range of \$1,500 to \$2,500, but this small amount limits the effectiveness and feasibility of litigation.<sup>28</sup> Despite the statutory provision for attorneys’ fees in the California law, there are inadequate resources available among those entities that could pursue fees, including the private bar and criminal prosecutors, to fight these predatory consultants. If LAFLA could seek fees in these cases, it could raise the consultants’ costs of continuing these illegal practices, perhaps high enough to put them out of business.

Finally, the attorneys’ fee restriction cuts off a key mechanism that, while promoting enforcement of the law, has the added benefit of enabling programs to bring in additional funds to enable more clients to protect their rights. The California Legal Services Commission has observed that in addition to impeding successful case resolutions, the attorneys’ fee award restriction creates serious funding problems for LSC grantees.<sup>29</sup> Prior to the restriction’s enactment, LSC-funded organizations in California recovered approximately \$1.75 million annually in attorneys’ fees, a revenue source that is no longer available to them.<sup>30</sup> It does not make sense for Congress to prevent legal services programs from relying on awards paid by wrongdoers to finance at least a portion of part of the cost of representing the poor.

## **2. Class Action Restriction Prevents Use of Rare But Necessary Device for Effective Representation.**

Class actions provide courts and litigants with an efficient mechanism for adjudicating the similar claims of individuals who comprise a group and ensuring that all similarly situated persons obtain relief when a defendant violates the law. This legal tool also provides access to the courts for individuals who might not have the resources to bring an individual claim. In some cases, the availability of a class action ensures that essential discovery can take place as to a defendant’s unlawful actions.

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For poor people in particular, the availability of the class action option is critical for obtaining relief from widespread, illegal practices.<sup>31</sup> Historically, class actions by legal services programs ensured that poor children obtained medical coverage,<sup>32</sup> forced the Social Security Administration to abide by court rulings,<sup>33</sup> and challenged consumer fraud.<sup>34</sup> Access to justice and legal services commissions in Georgia, Hawaii, Missouri, New Hampshire, and North Carolina have concluded that the inability to use the class action mechanism hinders legal services offices from providing the best possible services to their clients.<sup>35</sup> As the North Carolina Legal Services Planning Council has concluded, challenging some “illegal but widespread practices” without a class action lawsuit is “impossible.”<sup>36</sup>

As with the attorneys’ fee restriction, the class action limitation has a particularly harmful effect on efforts to combat consumer frauds that target low-income communities. In predatory lending cases, for example, legal services programs must litigate against unscrupulous players piecemeal, helping one homeowner at a time instead of a broad class of victims.

**3. Restriction on Legislative and Administrative Advocacy Strips the Poor of a Powerful Voice.**

Low-income people are at a distinct disadvantage in raising their concerns before legislative and administrative bodies. They lack the lobbyists, trade associations and donation money that provide corporate and other well-resourced interests access to the political process. At the same time, their daily lives are often inextricably linked with the operations of government and law.<sup>37</sup>

Legal aid attorneys who see the legal problems faced by low-income communities on a daily basis can potentially play a critical role in alerting legislatures and other government bodies to gaps in regulation and problems in the implementation of laws. The silencing of legal aid attorneys has had dire consequences in the current mortgage crisis.<sup>38</sup> Attorneys at Maryland Legal Aid Bureau (“LAB”), for example, have witnessed many of the lending abuses that have occurred over the last 10 years, but restrictions on legislative and administrative advocacy have prevented them from actively pursuing reforms.<sup>39</sup> Under the restrictions, the only way that a legal aid office can participate in lobbying is in response to a written request from a lawmaker.<sup>40</sup> Because lawmakers are often unaware of this limitation and of the need to make an extra effort to invite the participation of legal services lawyers in legislative discussions, this highly unusual requirement can shut down communication entirely.<sup>41</sup>

In contrast, when LAB has been able to educate lawmakers about the problems faced by its clients – at a lawmaker’s invitation, as required by the restrictions – it has lent a critical, non-mortgage-industry voice to the process. In 2008, the Maryland Legislature dramatically overhauled state laws regarding credit and lending processes.<sup>42</sup> Because of a lawmaker’s invitation, a LAB attorney was able to participate in a state Senate Finance Committee workgroup on revising

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consumer protection safeguards that was otherwise composed of representatives from the lending, mortgage and banking industries.<sup>43</sup> The LAB attorney was the only person in the workgroup positioned to represent the interests of borrowers.<sup>44</sup> Input from this attorney ensured that the proposed consumer protections were not unduly limited to the most extreme types of loan products and resulted in a more wide-ranging consumer protection bill being passed by the Legislature.

**B. Restriction on State, Local, Private and Other Funds Wastes Precious Dollars That Could be Used to Serve More Clients.**

This restriction on non-LSC funds – all the money possessed by LSC recipient programs from sources other than LSC, including state and local governments, private donors, IOLTA revenue and other sources – 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 in which organizations may engage with their own, private funds.

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.<sup>45</sup> 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.<sup>46</sup>

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 state and 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 a physically separate organization, 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

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physically separate offices throughout much of the state. If the restriction on non-LSC funds 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 access to legal assistance is limited. Removing the restriction would encourage more private donors to be brought into the system as well.

**III. Conclusion**

For all these reasons, the Brennan Center urges Congress to pass the Civil Access to Justice Act of 2009 and revitalize the infrastructure of equal justice for the poor.

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<sup>1</sup> 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.

<sup>2</sup> Those reports are attached hereto as Appendices A and B, respectively.

<sup>3</sup> U.S. Census Bureau, *People Below 125 Percent of Poverty Level and the Near Poor*, available at <http://www.census.gov/hhes/www/poverty/histpov/hstpov6.xls>.

<sup>4</sup> See *Foreclosure Activity Hits Record High in Third Quarter*, RealtyTrac, Oct. 15, 2009, available at <http://www.realtytrac.com/foreclosure/foreclosure-rates.html>.

<sup>5</sup> See Mike Stuckey, *The Home You Save Could be Your Own: In Foreclosure Crisis More Homeowners Representing Themselves in Court*, MSNBC, Jan. 28, 2009, <http://www.msnbc.msn.com/id/28877173/>; (“There’s no way to know how many *pro se* foreclosure cases are currently moving through U.S. courts, but anecdotal accounts from lawyers and others indicate the number is growing along with the nation’s mortgage crisis, which has reached unprecedented proportions.”).

<sup>6</sup> Based on calls by the Brennan Center to county court clerks in Florida, Ohio, Illinois, Nevada, California, Arizona, Idaho, Michigan, Georgia and Oregon.

<sup>7</sup> In Stark County, Ohio, the court provided mediation in a total of 387 out of several thousand foreclosure cases, with nearly half being settled through this process in 2008. See Laurie Huffman, *Help Available to Avoid Foreclosure*, Apr. 25, 2009, *The Review*, available at <http://www.the-review.com/news/article/4574235>. Connecticut has a court-run mediation program in place that became mandatory for lenders in June of 2009. To date, 34% of eligible homeowners (defined as an owner-occupant of a one, two, three or four family residential property) have taken advantage of the program. See Douglas S. Malan, *Foreclosure Mediation Becomes Mandatory*, Conn. Law Trib., Jun. 8, 2009, available at <http://www.ctlawtribune.com/getarticle.aspx?ID=33993>. New York has a court-run mandatory mediation program available to homeowners with “sub prime,” “high cost,” or “non-traditional” mortgages, as defined by statute. A bill is currently being considered in the New York State Senate that would extend the program to non-subprime mortgage holders. See James Pethokoukis, *US Mayors Urge States to Require Mortgage Mediation*, Reuters, Jun. 11, 2009, available at <http://www.reuters.com/article/companyNewsAndPR/idUSN115228752009061>. Other jurisdictions throughout the country have in place or are contemplating similar programs. See *Id.* Mediation programs are a welcome intervention where the alternative is to allow homeowners to “go it alone” through the entire process. This is most true when a homeowner does not possess complicated legal claims against the lender. However, such forums can be an inadequate substitute for full legal representation where legal claims do exist, even in the few jurisdictions that routinely provide access to at least some form of free assistance from lawyers in settlement or mediation conferences, as in New York City. This is because mediation conferences primarily focus on determining whether the lender will agree to modify some term of the loan, but is not the forum in which a homeowner can raise, much less prevail on, legal claims. Telephone Interviews, Meghan Faux, South Brooklyn Legal Services; Mark Lawson, Legal Aid Society of Greater Cincinnati; Jonathan Levy, Legal Services for New York City; Andrew Pizor, National Consumer Law Center; Marshall Greene, Bronx Neighborhood Office of the Legal Aid Society (September 14 - 18, 2009). For an overview and analysis of the promise and limitations of foreclosure mediation programs around the country, see Geoffrey Walsh, National Consumer Law Center, *State and Local Foreclosure Mediation Programs: Can They Save Homes?* (September 2009).

<sup>8</sup> Based on the Brennan Center’s own review of 269 docket sheets representing a sample of the 2685 foreclosure cases filed in Stark County, Ohio in 2008, available on-line at <http://www.starkcjis.org/docket/main.html>. Docket numbers for the 2008 foreclosure filings were provided to the Brennan Center by the Stark County Clerk of Court’s Office. Note that the data

\*The two reports noted in footnote 2 above, are not reprinted with this submitted statement but are on file with the Subcommittee. They may also be accessed at:

[http://brennan.3cdn.net/a5bf8a685cd0885f72\\_s8m6bevkvx.pdf](http://brennan.3cdn.net/a5bf8a685cd0885f72_s8m6bevkvx.pdf)

[http://brennan.3cdn.net/7e05061cc505311545\\_75m6ivw3x.pdf](http://brennan.3cdn.net/7e05061cc505311545_75m6ivw3x.pdf)

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describe only the representation status of the first defendant named in the case caption, since the first party is typically the property owner (although entities possessing a legal interest in the property are routinely named as additional defendants in the foreclosure complaint). A defendant was counted as having legal representation when the docket indicated that an attorney for the defendant entered an appearance in the case, or where a defendant filed an answer in the case, with the following single exception. Defendants described in the docket as proceeding *pro se* were counted as unrepresented even if they had filed an answer; however, this occurred in only nine of the 269 cases that the Brennan Center reviewed. Commercial and other non-owner occupied property foreclosures were not excluded from the data.

<sup>9</sup> Data obtained from Connecticut Judicial Branch Court Operations office (on file with Brennan Center) for Fiscal Year 2007 through 2008. Note that the data describe only the representation status of the property owner (although additional entities possessing a legal interest in the property are routinely named as additional defendants on the foreclosure complaint). Commercial and other non-owner occupied property foreclosures are included in the data, although a court official for the Connecticut Judicial Branch, conveyed to the authors his observation that these constituted only about 10 to 15 percent of the total foreclosure proceedings. Telephone Interview, Gregory Pac, Judicial statistician, Connecticut Judicial Branch, September 15, 2009.

<sup>10</sup> Data obtained from the Office of Court Administration, New York State Unified Court System for “subprime,” “high-cost,” and “non-traditional” mortgage foreclosure cases in which a Request for Judicial Intervention was filed between November 1, 2008 through May 1, 2009 (on file with Brennan Center). In New York, “subprime,” “high-cost,” and “non-traditional” loans are defined by statute, and include home loans originated between January 1, 2003 and September 1, 2008, with high interest rates and/or points and fees. See Foreclosure Prevention and Responsible Lending Act, 2008 N.Y. Laws ch. 472; N.Y. Banking L § 6-1 (2009). Representation rates were calculated as a percent of all defendants for whom legal representation information was recorded. Clerks in Richmond County (Staten Island), Queens, and Nassau County stated that it is not common practice within their respective offices to record attorney of record information for “incidental” or additional defendants, e.g., entities possessing a legal interest in the property. Legal representation information also may not have been recorded for homeowner defendants that failed to respond to a foreclosure notice, and did not request or attend a settlement conference. If such homeowners were included in the data, defendant legal representation rates would be even lower than that reported here. Telephone Interviews, Joseph Como, Chief Clerk, Richmond County Supreme Court; Maureen Daquila, First Deputy Chief Clerk, Queens County Clerk’s Office; Kathryn Driscoll Hopkins, Chief Clerk, Nassau County Supreme Court; Stanley Drosky, Principal Management Analyst, New York Supreme Court, Office of Court Administration, Division of Technology (Sept. 14 - 28, 2009).

<sup>11</sup> Barbara Rabinowitz, *Mortgage Woes in Massachusetts Lead to Spike in Pro Se Debtors Under Chapter 13*, Mass. L. Wkly., Oct. 8, 2007.

<sup>12</sup> Letter from Chief Judge Robert M. Bell, Md. Ct. App., to Maryland Lawyers (July 7, 2007) (on file with the Brennan Center).

<sup>13</sup> See Michael Powell, *Prosecutions Lag as N.Y. Foreclosure Frauds Surge*, N.Y. Times, Apr. 14, 2009, at A1.

<sup>14</sup> Congressional Oversight Panel, *Foreclosure Crisis: Working Toward a Solution* 39 (Mar. 6, 2009), available at <http://cop.senate.gov/documents/cop-030609-report.pdf>.

<sup>15</sup> Katherine M. Porter, *Misbehavior and Mistake in Bankruptcy*, 87 Tex. L. Rev. 17 (2008).

<sup>16</sup> *Id.* at 121.

<sup>17</sup> Danilo Pelletiere, National Low Income Housing Coalition, *Recognizing Renters in the Foreclosure Crisis* 9 (2009), available at <http://www.nlihc.org/doc/NLIHC-Renters-in-Foreclosure-UCLA-5-2009.pdf>; see also Rhode Island Legal Services, *Moving Out Rhode Island: An Analysis of 2008 Foreclosure Related Evictions* (June 2009), available at <http://www.rhomeless.org/Portals/0/Uploads/Documents/Public/Eviction%20Report.pdf> (highlighting

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extent of evictions in Rhode Island caused by foreclosures and noting that over two thirds of evictions occurred in minority communities).

<sup>18</sup> 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.

<sup>19</sup> See *id.* at 1321-55 to -56.

<sup>20</sup> See Legal Servs. Corp., Fact Book 2008, at 6 (2009), available at [https://grants.lsc.gov/Easygrants\\_Web\\_LSC/Implementation/Modules/Login/Controls/PDFs/factbook2008forRIN.pdf](https://grants.lsc.gov/Easygrants_Web_LSC/Implementation/Modules/Login/Controls/PDFs/factbook2008forRIN.pdf).

<sup>21</sup> It is becoming increasingly acknowledged that the subprime mortgage meltdown was not just the result of objective economic forces but also the product of fraud in the mortgage business. As Sen. Patrick Leahy recently stated when introducing a bill to help federal agencies crack down on mortgage and other financial fraud, law enforcement cannot keep pace with the number of complaints: “. . . suspicious activity reports alleging mortgage fraud that have been filed with the Treasury Department have increased more than tenfold, from about 5,400 in 2002 to more than 60,000 in 2008.” 155 Cong. Rec. S1679, S1682 (2009) (statement of Sen. Leahy).

<sup>22</sup> See Laura K. Abel, *Lawyers for the Poor Muzzled in Subprime Mess*, The Nation, Jan. 16, 2008, available at <http://www.thenation.com/doc/20080128/abel..>

<sup>23</sup> See *id.*

<sup>24</sup> See, e.g., *Duell v. Condon*, 84 N.Y.2d 773, 780 (1995); *Maplewood Mgmt. v. Best*, 533 N.Y.S.2d 612, 613-14 (N.Y. App. Div. 1988); Cal. Legal Servs. Coordinating Comm., *California State Justice Plan 2001: Response to LSC Program Letter 2000-1*, at 32 (2001), available at [http://www.lri.lsc.gov/state\\_planning/slfevals/ca\\_slfeval\\_01.pdf](http://www.lri.lsc.gov/state_planning/slfevals/ca_slfeval_01.pdf).

<sup>25</sup> *Duell v. Condon*, 84 N.Y.2d 773, 780 (1995) (describing New York’s Real Property Law § 234, which permits tenants to obtain attorneys’ fees when a residential lease term permits landlords to collect fees).

<sup>26</sup> Rebekah Diller & Emily Savner, Brennan Center for Justice, *A Call to End Federal Restrictions on Legal Aid for the Poor* (2009).

<sup>27</sup> Cal. Civ. Code § 2945(c)(1) (1980).

<sup>28</sup> Diller & Savner, *supra* note 26.

<sup>29</sup> Cal. Legal Servs., *supra* note 24.

<sup>30</sup> *Id.*

<sup>31</sup> See Joshua D. Blank & Eric A. Zacks, *Dismissing the Class: A Practical Approach to the Class Action Restriction on the Legal Services Corporation*, 110 Penn. St. L. Rev. 1, 10-14 (2005).

<sup>32</sup> See *id.* at 11 (describing case brought by the Tennessee Justice Center).

<sup>33</sup> See David S. Udell, *The Legal Services Restrictions: Lawyers in Florida, New York, Virginia and Oregon Describe the Costs*, 17 Yale L. & Pol’y Rev. 337, 340-41 (1998).

<sup>34</sup> See *id.* at 347.

<sup>35</sup> Diller & Savner, *supra* note 26, at 25-33

<sup>36</sup> N.C. Legal Servs. Planning Council, *North Carolina Statewide Legal Needs Assessment 2003*, at 49 (2003), available at [https://www.legalaidnc.org/Public/Participate/Legal\\_Services\\_Community/Planning\\_Council/NC%20Statewide%20Needs%20Assessment%2003%2024%2003.pdf](https://www.legalaidnc.org/Public/Participate/Legal_Services_Community/Planning_Council/NC%20Statewide%20Needs%20Assessment%2003%2024%2003.pdf).

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<sup>37</sup> See generally Barbara Gault *et al.*, *Prospects for Low-Income Mothers' Economic Survival under Welfare Reform*, 28 *Publius* 175 (2008) (describing effects of welfare reform laws and policies on low-income mothers); Christopher Mazzeo *et al.*, *Work-First or Work-Only: Welfare Reform, State Policy, and Access to Postsecondary Education*, 586 *Annals Am. Acad. Pol. & Soc. Sci.* 144 (2003) (describing effects of welfare reform and state implementation on educational attainment of low-income people).

<sup>38</sup> Abel, *supra* note 22.

<sup>39</sup> Diller & Savner, *supra* note 26.

<sup>40</sup> See 45 C.F.R. § 1612.6 (1997).

<sup>41</sup> Abel, *supra* note 22.

<sup>42</sup> See, e.g., Andy Rosen, *Foreclosure Reform Bills Take Stage in Maryland Legislature*, *The Daily Rec.*, Feb. 6, 2008, [http://findarticles.com/p/articles/mi\\_qn4183/is\\_20080206/ai\\_n21226608](http://findarticles.com/p/articles/mi_qn4183/is_20080206/ai_n21226608).

<sup>43</sup> Diller & Savner, *supra* note 26.

<sup>44</sup> *Id.*

<sup>45</sup> 45 C.F.R. § 1610.8.

<sup>46</sup> 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, the federal 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.