

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	Victor Geminiani to Hillary Rodham Clinton (2 pages)	12/15/1992	Personal Misfile
002. letter	Victor Geminiani to Hillary Rodham Clinton (2 pages)	07/21/1992	Personal Misfile

COLLECTION:

Clinton Presidential Records
First Lady's Office
Melanne Verveer
OA/Box Number: 20041

FOLDER TITLE:

Legal Services [Folder 2]

2013-0534-S

rc1688

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

ALEXANDER D. FORGER
430 EAST 57th STREET
NEW YORK, NEW YORK 10022

for legal
services

Dear Melanne March 24 '97

Belatedly my deepest
thanks for dropping in on
the legal services seminar and
being with you (and reading!)
the President's letter. I know
you were "the power behind the
throne" on this (and no doubt
on many other matters). The
State seminar (in which I
detected your fine hand) was
also much appreciated.

Thanks also for your counsel
and advice over the 3 years
in which I had the great
privilege of being involved
with legal services. I hope
to be able to engender
and B. de support & help in any
other way possible. If ever
you have a suggestion please
pass it along -

Fern joins me in
sending our best wishes
in your important & tough job
and of course, our gratitude to you
Alex



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

*file legal
services*

July 11, 1996

The Honorable Bob Livingston
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The purpose of this letter is to provide the Administration's views on the Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Bill, FY 1997, as reported by the House Subcommittee. As the Full Committee develops its version of the bill, your consideration of the Administration's views would be appreciated.

The Administration strongly objects to the Subcommittee's reductions to critical law enforcement, research and technology, international affairs, legal services, and other programs. Such reductions are unacceptable, and the bill requires significant improvements.

The Administration understands that an amendment, discussed in more detail below, may be offered in Full Committee that would limit the President's ability to negotiate issues related to the ABM Treaty that are important to the national security of the United States. Such an amendment would infringe upon the President's ability to conduct foreign relations and is unacceptable.

Legal Services Corporation

The Administration strongly objects to the Subcommittee's funding level of \$141 million for the Legal Services Corporation (LSC). The bill would cut the Corporation's funding level by roughly 50 percent from last year's level of \$278 million and is almost two-thirds below the FY 1995 level. It would provide approximately \$200 million less than the President's request of \$340 million. One fourth of LSC's professional staff have already left, over 100 offices have been closed, and thousands of

low-income individuals who would have been assisted have been denied access to the legal system. Further reductions in funding would deprive LSC of the resources it needs to carry out its mission, essentially bankrupting the Corporation and denying the neediest members of our society access to the Nation's judicial system.

In addition, the Administration notes that the bill contains many restrictions on the activities of LSC grantees that were contained in the FY 1996 appropriations act. The Administration continues to have serious concerns with these restrictions, particularly the restrictions on the use of funds from non-LSC sources.

Department of Commerce

The Subcommittee cuts funding for the Department of Commerce by \$800 million below the request and \$100 million below the FY 1996 level. These reductions would significantly undermine the effectiveness of programs across the Department. The Administration has grave concerns about the amounts provided for advanced technology and manufacturing extension, described below, as well as additional concerns about the Subcommittee's proposed funding levels for other programs, described in the enclosure.

The Subcommittee bill disregards the bipartisan agreement reached last year to maintain the Advanced Technology Program (ATP). The Subcommittee provides inadequate funding to support current commitments and includes language prohibiting new awards as well as applying other restrictions. ATP is a highly competitive, cost-shared program that fosters technology development, promotes industrial alliances, and creates jobs. The ATP program was created with bipartisan support, which it continues to deserve.

The Subcommittee's funding level for the Manufacturing Extension Partnership Program would force the closure of several centers across the country. Large geographic areas and many of our Nation's 381,000 smaller manufacturers would be without access to valuable technical assistance. The Department of Commerce estimates that this assistance has produced over \$1 billion in increased sales and cost reductions and over 13,000

jobs. In addition, the Subcommittee has not provided language that would allow Kansas and Michigan centers, which serve five States, to receive funding beyond the current six-year statutory limit.

The Administration is concerned about the lack of support for key environmental programs. The President's request includes increases for South Florida/Everglades Restoration, coastal pollution control, habitat conservation, global change monitoring and modeling, and the Global Learning and Observations to Benefit the Environment (GLOBE) program, none of which are funded by the Subcommittee. In addition, the Subcommittee has cut funding below the FY 1996 enacted level for ocean assessment programs (42 percent reduction), marine sanctuary management (15 percent reduction), and endangered species recovery plans (46 percent reduction). These actions would undermine NOAA's ability to manage and protect our Nation's ocean and coastal resources.

While the Subcommittee has provided additional resources to the Census Bureau, the amount provided is less than half of the requested increase. This reduction would seriously impair the ability of the Census Bureau to carry out its constitutional and statutory functions, such as the decennial census, the economic census, the census of governments, and efforts to bring the Nation's statistics into the 1990s. The Census Bureau would be forced to choose between equally critical demographic and economic measurement programs that would lead to a more expensive or less accurate Census and to less accurate economic statistics such as the GDP. Failure to provide increases would jeopardize efforts to implement the restructuring of the North American Industry Classification System, which has already been funded by Mexico and Canada.

Department of Justice

The Administration strongly opposes the funding level provided by the Subcommittee for the Community Oriented Policing Services (COPS) program. The Subcommittee mark would provide \$1.4 billion for COPS but would earmark over \$150 million for non-hiring initiatives. The Administration continues to believe that the President's request of \$1.9 billion is the appropriate funding level for the COPS program. The Administration does not believe that the Subcommittee bill keeps us on course for hiring 100,000 additional police officers by the year 2000. Even the

Committee's own Conference Report accompanying the FY 1996 Omnibus Appropriations Act indicated that a level of approximately \$1.4 billion would be required to meet the goal for hiring 100,000 police officers. The extensive set-asides included in the Subcommittee bill would result in inadequate funding for hiring police officers.

The Administration strongly opposes the Subcommittee's funding level for the drug courts program. The drug courts program is a proven, cost-effective means of using the courts' authority to provide sanctions and coerce non-violent offenders into drug treatment programs. The Administration believes that the drug courts program should be funded at the \$100 million level requested. The Administration also strongly opposes the Subcommittee's termination and underfunding of the Administration's initiative to finance drug tests for Federal and State arrestees respectively.

Both the COPS and the drug courts programs could be enhanced by eliminating the Subcommittee's \$68 million increase over the FY 1996 enacted level for the Local Law Enforcement Block Grant program and the additional \$100 million increase over the President's request for Federal prison construction.

The Administration urges the Committee to strike section 103 of the Subcommittee bill, which would prohibit the Bureau of Prisons from funding abortions except in cases of rape or where the life of the mother is endangered. The Department of Justice believes that there is a great likelihood that this provision would be held unconstitutional.

International Affairs

The Administration understands that an amendment may be offered in Full Committee that would infringe upon the ability of the Administration to negotiate issues related to the ABM Treaty with Russia and the Independent States of the former Soviet Union. The amendment would prohibit the use of any funds in this or any other Act for ABM treaty negotiations with the Russians or other States of the former Soviet Union unless the President certifies that any amendments, understandings, or agreements related to the ABM and theater ballistic missiles and anti-ballistic missiles will be presented to the Senate for their advice and consent. The Administration has serious doubts about

the constitutionality of the amendment given two exclusively Executive prerogatives: the power to interpret and execute treaties and the power of recognition. In addition, the amendment would narrow the bipartisan understanding reached with the Senate last fall regarding options for obtaining congressional approval of any demarcation agreement. The Administration would strongly oppose such an amendment.

With regard to funding, the Administration opposes the levels provided by the Subcommittee for the State Department's main operating accounts. In total, these activities are reduced by nearly \$80 million from the President's request. The State Department's ability to modernize its antiquated information management systems and to maintain its overseas facilities in a safe, secure manner would be jeopardized at this funding level. Restoration of this cut is necessary to maintain the Nation's foreign affairs infrastructure.

In addition, funding for international organizations and peacekeeping has been cut by over \$260 million from the FY 1997 request, and no funds are provided for the U.S. to participate in international conferences. Although the Administration has worked diligently with some success to promote fiscal discipline and reform at the U.N. and other organizations, there is limited support in this bill for this effort. The Subcommittee's underfunding of our U.N. assessments will only increase arrears above the already outstanding amount of \$1 billion. Beyond undermining the reform agenda, this bill raises serious questions about the willingness of Congress to work with the Administration to promote U.S. leadership in the international arena in order to promote U.S. global interests. The Administration is concerned about the restrictions on the availability of funds to meet arrearages.

Finally, the Administration is concerned about the reductions in the U.S. Information Agency's (USIA's) public diplomacy activities. Most importantly, the reduction in Salaries and Expenses and Broadcasting Operations accounts would jeopardize USIA's ability to perform its important role in promoting U.S. interests and understanding abroad.

Ounce of Prevention Council

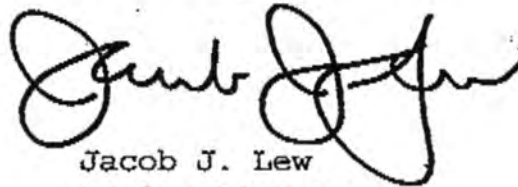
The Subcommittee bill would eliminate funding for the Ounce of Prevention Council. The President's request of \$9 million would allow the Council to award discretionary grants for various crime and substance abuse prevention programs. Elimination of this program would hinder the needed coordination of crime prevention efforts at the Federal level.

Small Business Administration (SBA) Business Loans

The Administration strongly urges the Committee to provide adequate funding to support the Administration's FY 1997 proposed volume of new 7(a) General Business Loan Guarantees. The Subcommittee's mark for SBA business loans is \$156 million less than the FY 1997 request of \$316 million, a 49-percent reduction. It appears that the reduction would occur entirely in 7(a) loan guarantees. In addition, the Subcommittee's mark appears to provide no funding for SBA's 504 loan program. Unless legislation is passed that would reduce the cost of this program to zero, this funding level would shut down SBA's 504 loan program.

Additional concerns with the Subcommittee bill are contained in the enclosure. We look forward to working closely with the Committee to address our mutual concerns.

Sincerely,



Jacob J. Lew
Acting Director

Enclosure

Identical Letters Sent to Honorable Bob Livingston,
Honorable David R. Obey, Honorable Harold Rogers,
and Honorable Alan B. Mollohan

Enclosure
(House Committee)

ADDITIONAL CONCERNS
DEPARTMENTS OF COMMERCE, JUSTICE, STATE, THE JUDICIARY
AND RELATED AGENCIES APPROPRIATIONS BILL, FY 1997
(AS REPORTED BY THE HOUSE SUBCOMMITTEE)

The Administration looks forward to working with the Committee to address the following concerns.

Department of Justice

- o Federal Bureau of Investigation. The Subcommittee would provide the full amount requested by the President, except for \$100 million, to implement the Communications Assistance for Law Enforcement Act (CALEA). Implementation of CALEA is essential to ensure the ability to conduct court-ordered wiretaps in a communications environment that is rapidly shifting to digital equipment. Without the requested funds, carriers would not be able to make the necessary technological changes, and law enforcement agencies would be placed at a serious disadvantage in conducting criminal investigative activities.
- o Violent Crime Reduction Trust Fund (VCRTF). The Administration notes that the Subcommittee would fund the VCRTF \$290 million below the FY 1997 authorized level. The Administration supports full funding of the VCRTF at the requested level.
- o Departmental Leadership. The Administration opposes the Subcommittee's action that would eliminate the Office of the Associate Attorney General (AAG) and reduce significantly positions and funding levels for the Department's Executive Leadership Offices. In particular, the Administration opposes the reductions to the Office of Legislative Affairs (OLA). This action would be detrimental to the effective management of the Department at a time when the need for strong leadership, proper oversight of law enforcement, prompt and effective responses to increasing congressional inquiries, and effective policy-level coordination has never been greater.

- o International Brotherhood of Teamsters Elections. The bill does not provide \$3.8 million requested by the Administration for the U.S. Attorneys to fund the Elections Officer overseeing the 1996 International Brotherhood of Teamsters elections. The work of the Officer is essential to ensuring that the elections are free of influence by organized crime.

Department of Commerce

- o Science and Technology. The Administration urges Congress to support civilian science and technology programs that work to expand our economy during a time of increasingly fierce global competition. The Subcommittee level for the Technology Administration would be inadequate to provide effective advocacy on behalf of U.S. industry. No funding has been provided for construction of new laboratory facilities that are essential to providing precision measurements necessary for U.S. industry to compete in the 21st century. In addition, no expansion has been provided for the highly competitive National Information Infrastructure grants program. This program provides much needed assistance to schools, libraries, and public health facilities to demonstrate how advanced technology can be used to improve service delivery.
- o Spectrum Management. The reductions to National Telecommunications and Information Administration's (NTIA's) Salaries and Expenses account are premature. NTIA has been working closely with the Subcommittee to recover spectrum management fees from other Federal agencies. The Administration believes that this program needs another year to ramp up to full funding. Other Federal agencies did not include these spectrum fees in their FY 1997 budgets. If these cuts are retained, the Administration urges the Committee to ensure that other agencies are directed to pay these fees.
- o National Weather Service Modernization. The Subcommittee's actions would unnecessarily delay deployment of the benefits of the \$4.5 billion weather service modernization initiative to communities across

the country. The Subcommittee has cut base operations and not included language proposed by the Administration to streamline the office closure process. The Subcommittee has also reduced funding for the Advanced Weather Interactive Processing System -- the cornerstone of modernization. The Committee is urged to restore these funding levels to the President's request so that improved forecasts leading to lives and property saved can be realized.

- o National Oceanic and Atmospheric Administration (NOAA). The Administration understands that the Subcommittee has created effectively separate appropriations for the line offices in the Operations, Research, and Facilities account. Many of NOAA's programs are integrated, involving several line offices. Separate appropriations would severely impact NOAA's ability to continue this integrated approach. The Administration considers this to be congressional micro-management, and it would create an administratively complex system under which it would be extremely difficult to operate.
- o Other issues. The Subcommittee's reductions to the Minority Business Development Administration and General Administration would also be difficult to absorb, particularly given the deep cuts to these programs last year.

Department of State

- o State Department Operations. Subcommittee action would reduce funding for State Department operations, including facilities and information technology requirements, by \$38 million below FY 1996 enacted levels and \$80 million below the President's FY 1997 request. Of particular concern is the reduction, for the second straight year, of 50 percent to the request for modernization of the State Department's information technology systems. This cut would further postpone investments necessary to modernize obsolete computer systems and equipment. In addition, the Subcommittee's reduction to the Security and Maintenance of Overseas Missions account would slow efforts to repair and rehabilitate aging overseas facilities. The

President's FY 1997 request for these programs is at the level necessary to maintain our foreign affairs infrastructure.

- o U.N., Other International Organizations, and Conferences. Funding for international organizations and peacekeeping has been reduced by the Subcommittee by over \$260 million from the FY 1997 request. This would add more arrears to the already outstanding \$1 billion of arrears that the United States owes by treaty obligation to the U.N. and other international organizations. The multi-year arrears payment package is not funded. The Administration agrees that reform is needed, has worked diligently to promote fiscal discipline and reform at the U.N. and other organizations over the past year, and is seeing results. However, under the Subcommittee bill, the U.S. would underpay current bills, incur more arrears, and offer no prospect of honoring past obligations, all of which, would devastate our reform agenda. This effort needs joint, continuing congressional and Administration support to build the international consensus to effect these reforms.

Further, the Subcommittee bill provides no funding for International Conferences and Contingencies. This would bar U.S. participation in important international meetings where vital U.S. interests are at stake.

U.S. Information Agency (USIA)

- o The Subcommittee mark would hamper the Administration's ability to pursue foreign policy objectives through important public diplomacy programs by cutting \$80 million from the President's request for the U.S. Information Agency. Of primary concern is the reduction in USIA's salaries and expenses and broadcasting operations, which, following major reductions taken in FY 1996, would result in further staff cuts and overseas post closings. The Subcommittee also has continued reductions in the Exchanges account, which combined with a 20-percent

reduction in FY 1996, would seriously jeopardize important activities such as the Fulbright and International Visitors programs.

Arms Control and Disarmament Agency (ACDA)

- o The Subcommittee mark of \$38.5 million would reduce the request for important arms control and nonproliferation efforts by \$10.0 million -- a 21-percent reduction. Specifically, this reduction would severely impact the ongoing operation of ACDA; jeopardize the Agency's capabilities to complete negotiations on and implement the Comprehensive Test Ban Treaty, which has been a high priority of every Administration since President Eisenhower and is supported by both parties in Congress; and hinder the ability of ACDA to accomplish and verify arms control agreements (including the CWC, START, and the NPT) important to U.S. national security.

Department of Transportation

- o Maritime Administration (MARAD). Under the Subcommittee's mark, MARAD would have to conduct a reduction-in-force affecting 82 employees -- nearly a quarter of its non-Academy employees funded under the Operations and Training account -- severely impairing the Administrator's ability to administer critical MARAD programs. The reduction for school ships would eliminate annual training cruises, preventing school graduates from qualifying for U.S. Coast Guard licenses. The Committee is urged to increase the Operations and Training appropriation by at least \$8 million and to provide the Administrator with the flexibility to allocate the funds among the three major activities.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	Victor Geminiani to Hillary Rodham Clinton (2 pages)	12/15/1992	Personal Misfile

COLLECTION:

Clinton Presidential Records
First Lady's Office
Melanne Verveer
OA/Box Number: 20041

FOLDER TITLE:

Legal Services [Folder 2]

2013-0534-S

rc1688

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
002. letter	Victor Geminiani to Hillary Rodham Clinton (2 pages)	07/21/1992	Personal Misfile

COLLECTION:

Clinton Presidential Records
First Lady's Office
Melanne Verveer
OA/Box Number: 20041

FOLDER TITLE:

Legal Services [Folder 2]

2013-0534-S

rc1688

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

INTERVIEW WITH HILLARY RODHAM CLINTON
DON CESAR HOTEL
ST. PETERSBURG, FL
JULY 21, 1991

VICTOR: I want to thank you on behalf the Southeast Legal Services Region and the National Equal Justice Library for making this opportunity available. You have made major contributions to legal services for low income Americans through the years. We are very much interested in the stories and tales that you have from those years and most importantly the lessons that you can give us. Would you tell us a little about your background?

HILLARY: I was born in Chicago and raised in a suburb called Park Ridge and attended public schools there. I then went off to Welsley College where I received a BA. I received my JD from Yale Law School. While at Yale I started working in legal services with the New Haven Legal Services Organization, which had been one of the very first Ford Foundation Model Projects. I guess I've been involved both directly and indirectly with legal services ever since.

VICTOR: What period of time are you referring to?

HILLARY: I graduated from Yale in 1973, so it was the late 1960's early 1970's.

VICTOR: Did you form any impressions of legal services during your time at Yale while working with the New Haven program?

HILLARY: Oh yes, I was very impressed by legal services. I was impressed by the commitment of the lawyers. It seemed to me that legal services represented what the profession should be about. There was a core of very good people who were full time legal aid lawyers in the office in New Haven and then there was a very active clinical program at Yale that interacted with them. It was very exciting and gave me a real insight into the problems of the low income and the way the legal system actually worked as opposed to what I was being told in the classroom. I learned a great deal and made a lot friends that I still have to this day.

VICTOR: What did you do after graduation from Yale?

HILLARY: When I graduated from Yale I went to work for the Children's Defense Fund (CDF). I had interned for CDF when it used to be the Washington Research Project. That was another way I was combining legal interest with my public policy interest. During my very first couple of

months, while starting law school, I had met Marian Wright-Edelman who was also a graduate of Yale. I worked for her off and on during my time in law school. While at CDF I worked in several areas. We did education and juvenile justice law reform work in places like South Carolina and Massachusetts. I stayed with the Children's Defense Fund until January of 1974 when I received a call from John Doar, who had just been asked to head the Nixon impeachment inquiry staff for the House Judiciary Committee. Peter Rodino was the chairman of the committee. John was very close to Burke Marshall who had been of the faculty at Yale. He had called Burke and said he needed five or six grunt lawyers who are young and don't mind working 24 hours a day. Burke gave John my name and my husband's name - Bill Clinton, we weren't married then - and four or five of our other classmates. John called us and I went to work in Washington on the impeachment staff in January of 1974. That was an incredible experience. It had a profound effect on both my professional and political development. We really did often work 24 hours a day. When Nixon resigned, somewhat unexpectedly, on August 8, 1974 I decided that I would leave the east coast and not commit to doing anything for a while. I had been dating Bill and I visited him in Arkansas. He had gone right home to Arkansas when he graduated and began teaching at the law school. He had decided not to come to Washington to work on the impeachment staff. I had visited him once and had met the dean of the law school at a dinner party and the dean in a very expansive moment said, "Well, if you ever want to teach, call me." So about August 9th or 10th I called him and said, "Do you remember when I was in Arkansas at that dinner party? Is it a serious offer? Would you like me to come teach?" He said, "Sure, sure." I said, "What would I teach?" He replied, "I'll tell you when you get here." Three weeks later I show up and he said, "Well, I want you to teach criminal law and I want you to run a legal aid clinic. I also want you to run prison projects that provide legal assistance to prisoners in the federal and state penitentiaries. And by the way, I also want you to teach a trial advocacy course." I said, "Oh great, fine, when do I start?" He said, "Tomorrow." Several lawyers whom I had been introduced to that day took me to a bar meeting. I was being introduced to all the people when I was brought up to this legendary judge. The lawyer introducing me said, "Well, Judge this is the new lady law professor. She's going to teach criminal law and she's going to run a legal aid clinic." The judge looked at me and he said, "Well, I don't have any use for either lady law professors or legal aid clinics." I thought, "Good, here I'm really starting off on the right foot." The judge and I later had some real running

battles. He's a man of very strong convictions and he didn't believe in legal services. He found all kinds of ancient statues, I think going back to before the Magna Carta, which conclusively proves that you couldn't provide pro bono services for civil matters. We had all kinds of interesting encounters, but he gradually became used to the fact that legal services was there and was going to stay and grow. That was my introduction to teaching at the law school at Fayetteville, Arkansas.

VICTOR: Did you ultimately receive funding from the Legal Services Corporation in order to begin the legal aid clinical program at Fayetteville?

HILLARY: Yes. We started off with just the law school clinical program. It was on very shaky financial grounds. One of the first things I did was to go to the Arkansas Bar Association to ask for financial support. We wanted to expand the legal services program with law students and add a couple of part-time lawyers if we could figure out how to afford that. It was very controversial. I had to speak before the executive committee and my friend the judge was there to speak against it. I was really heartened by the response of the bar, including a man who later became my law partner, Vince Foster. He was one of the main supporters of that very first request to the Arkansas Bar Association for funding. Once the law school program was on a firm footing, we began to gain acceptance from the local and state Bars. We then put in our application to receive LSC funding for legal services, and eventually the program became the Ozark Legal Services. The program was really built on the strength of the bar support for what we were doing at the law school.

VICTOR: Was it difficult to begin a permanent legal aid program staffed with lawyers in that area?

HILLARY: Yes, it was difficult. It was difficult for a lot of reasons. It's hard now to understand why we were so controversial, but there were people like the judge who were just philosophically opposed to legal services for the poor. There were some lawyers who were worried about competition for clients from the program although that fear was clearly unfounded. There were other lawyers who were worried about the salary I paid the clerical help in my legal services operations. I paid what I considered to be a fair wage, which was higher than what the market was paying elsewhere in the private sector. There were all kinds of concerns about government interference, economic pressures, and philosophical concerns that were expressed, but we just gradually built a very strong

constituency. I did a lot of work speaking to bar and civic groups, and did a lot of interviews. We made a point of going out of our way to explain what legal services was and why it was really a fundamental right for people to have. We couldn't have done it in Arkansas or nationwide without the support of some enlightened and progressive bar leaders like we had when I started.

VICTOR: Was there a reaction to the type of litigation that was proposed to be done by the legal aid programs?

HILLARY: There was in other parts of the country. The battles in California and then later in Texas were particularly prominent. In Arkansas, however, we were just trying to get our foot in the door. We still had judges who wouldn't let us represent domestic or tenant matters. It was very tough at times. I remember one judge found a statute that had been on the books for over 100 years which said that if a litigant had more than ten dollars worth of assets then he couldn't be represented by any public money. We used to have to go in and argue all the time about the assets of clients. It took an enormous amount of effort just to get the concept of free legal services accepted. That was really the first part of our struggle. We didn't even get into a lot of the other issues about class actions or larger issues affecting peoples rights.

VICTOR: When the Legal Services Corporation came into effect in 1975 each state formed a State Advisory Committee. I understand that you became a member by appointment to the Arkansas Committee.

HILLARY: That's right. We began talking around the state with supportive private attorneys as to how we could expand legal services statewide. The Advisory Committee was in place and we began to work through that structure to expand legal services. At that time we had very scarce coverage. Most areas of the state had no legal services program. We had to really work together on the State Advisory Council to try to come up with the support that we needed to be able to expand the program throughout Arkansas.

VICTOR: Were there any other goals of the State Advisory Council?

HILLARY: I think our first goal was to try to provide access and at the same time ensure quality representation. We were really at the very beginning of making sure that we could deliver on what legal services initially promised which was that people would have their legal needs met. We wanted that available regardless of where someone lived.

We were intent upon recruiting and retaining good lawyers and on building the private sector support. Those were the initial goals that we had. I think all of those have been achieved over time in our state and I would guess probably nationwide. Once we established the kind of infrastructure that was required, people who were doing the work full time started thinking about more creative ways to use the resources to handle more problems than we could on just an individual case by case basis. All kinds of issues about class actions and other sorts of remedies began to come to the forefront. We never had the level of intense opposition in Arkansas toward those remedies that a lot of other states have had and I think we are lucky for that. Maybe we avoided some of it by building the kind of private attorney support that we've had. We've spent a lot of time recruiting people to be on the advisory council, and visiting people who were not lawyers, but who had leadership positions and needed to understand what legal services did. We tried to shore up our strong support so programs could take a stance that might be unpopular but necessary. We spent a lot of time explaining why certain actions were taken.

VICTOR: Shortly after this, you had the great distinction of being appointed to the Legal Services Corporation Board by President Carter. This was a very important transitional period for legal services in general. Can you tell me how your appointment came about?

HILLARY: I think it came about because both my husband and I got to know Jimmy Carter and worked for him in his 1976 presidential campaign. Actually, I worked full time after the nomination until the general election, as did my husband. We had known him since probably 1973 or 1974 and had met his key advisors, Jody Powell and Hamilton Jordan. After the election I was approached to see whether I wanted an appointment that would fit with my work. By then I was a private lawyer and living in Little Rock. An appointment to the Board of the Legal Services Corporation just seemed like a perfect match for me.

VICTOR: In 1978, you succeeded Roger Cramton as Chairperson of the Legal Services Corporation. Can you tell me whether there were issues involved in that transition that you remember?

HILLARY: When I joined the Board in 1977, it would probably superficially have looked like a split Board because there were a number of appointees like Roger or Glee Smith who had been appointed by either President Nixon or President Ford. Most were Republicans and they were

conservative. I found them extraordinarily helpful and useful in my transition coming on to the Board. I thought that they really had the right attitude toward legal services. They may have approached their position with whatever conservative political philosophies they brought to the Board, but foremost, they were lawyers with a sense of professional responsibility. I found working with them very gratifying. I didn't really think that either the transition onto the Board or the transition from Roger's chair to my chair opportunity was at all rocky for the Corporation. It's been a great regret to me that the Reagan and Bush administrations have gone out of their way to find people who didn't have the same kind of commitment to legal services. It was a real gratifying experience for me.

VICTOR: Did you have a particular vision or particular goal you wished to accomplish when you took over as Chairperson?

HILLARY: We all wanted to expand services. We still had not reached the point where access was a reality to most people in the county. The entire expansion effort that we undertook was aimed at providing that. We were also very interested in making sure that the delivery systems in place were the best ones available and that they were the most cost effective. We wanted them to provide quality services for clients, meet clients needs, and be rooted in the communities in ways that would withstand any political pressure. We were looking at access, and at quality, and we were also concerned about trying to figure out how to support the lawyers. There was a tremendous amount of discussion when I was on the board about the whole support system, the national centers, and how we would provide the expertise that lawyers on the front line needed to do their jobs. That focus was part of the quality and expansion debate because we believed it important not to spread the program so thinly while we were trying to provide access. However, if we were to hold up expansion until we were absolutely sure that the quality was in place and the backup systems were available, then that didn't make sense either. Meshing those two goals together was really what we spent our time doing.

VICTOR: You were chair during the most dramatic period of legal services growth in our nation's history. I think Gerald Ford's budget for LSC was \$96 million. During the four Carter years the budget went from \$96 to \$321 million. Can you remember any particular issues that arose because of that dramatic expansion effort?

HILLARY: We wanted to be good stewards of both the services that were provided and the monies that were spent. We spent a lot of our time trying to make sure that we could spend the money that we were requesting in a really effective manner. When I left, the budget was at \$300 million and it still is approximately at \$300 million. I think that probably the thing that we accomplished best was to expand rapidly, but do it in a way that has withstood the political challenges of the last decade. As everyone knows, legal services has been the favorite whipping boy of the Reagan and Bush administrations in terms of trying to decimate it if not eliminate it. I'm very pleased that the way we expanded services, I think helped save legal services. What we were able to do was to expand broadly enough so that we gave many, many more people a stake in the future of legal services. We established services in all the congressional districts and we developed constituencies around legal services because of our expansion. We were then able to build a much stronger support for the program in the face of the incredible political attacks that it has undergone in the years since I left. I can't say that we sat down and foresaw Ronald Reagan and what he was going to try to do to legal services, but we did think through how we wanted legal services to be institutionalized to be a part of as many communities as possible. The expansion was very important to achieving that. I'm really glad that we got it done as quickly as we did and we got it done with relatively little legitimate opposition. There was a lot of political back and forth and rhetoric. I think by and large it was done in a very professional manner and it was done in a way that really helped the program.

his
Adm

VICTOR: Much of the expansion was in difficult areas to expand into because of the unserved areas that were existing in the country during your term. The southeast, midwest and much of the southwest was still uncovered. There was some political controversy as we moved, with such dramatic growth, into areas where opposition at sometimes had been strong.

HILLARY: Yes there was. We had a number of marathon meetings with a lot of people showing up from communities, making their views known and continuing a lot of the objections that legal services had heard for years before. We were lucky in that, I don't think anybody could really accuse either the board or the LSC staff of being irresponsible in the way that we proceeded. There was a great deal of very thoughtful planning that went into the expansion. I think Tom Ehrlich, Dan Bradley, Bucky Askew, Clint Lyons, and the people who were there really had a good understanding of how to manage that kind of growth,

repeating

especially in the areas that were not naturally friendly to the concept of legal services. We had a number of people like myself who had experienced expanding into an area where there was not a natural constituency. We'd learned a lot of lessons and we knew how to go about doing it. So, yes, it was hard. There was opposition, including speeches on the floor of the House and resolutions in local bar associations. Given the highly professional way the Corporation proceeded, fortunately we were able to deal with that. I give the staff a tremendous amount of credit for that accomplishment.

VICTOR: Three of the four names you mentioned were people that had substantial field experience. Did the Board emphasize an attempt to bring people into the Corporation who were familiar with the delivery of legal services, and were they aware of the potential problems of doing the same?

HILLARY: I think both. I think we wanted people who had a lot of experience, but we wanted people who knew how to place their experience in a broader context. It wouldn't have done us any good for someone to say, "Well, this is the way we've always done it in Fayetteville, Arkansas and this is the way it has to be done in Atlanta, Georgia and Albuquerque, New Mexico." We wanted people who were rooted in their experience, but had much broader horizons than that. We also wanted a mix of people who were not out of legal services world. People who didn't have that immersion who could look at it maybe with a little bit more objectivity and ask some of the hard questions. We looked deliberately for a mix and often debated that among ourselves. When we made the transition, for instance, from Tom Ehrlich as President to Dan Bradley we discussed at length what kind of person we wanted with what kind of skills. I think we were hoping to find somebody who had some experience in a lot of different arenas, not just in legal services, but who could handle the inevitable political issues arising from that kind of rapid expansion.

VICTOR: There were at least two other major issues that the Legal Services Corporation Board dealt with during that period of time. There were the Delivery System Study (DSS) which analyzed a variety of different systems that may be possible for the delivery of legal services and the 1007(h) study, that was mandated by Congress to research the access problems of particular constituency groups, such as the Native Americans, the elderly and those in sparsely populated areas. On both DSS and 1007(h), do you have any memories of the Board deliberations, or of the issues that were considered as you progressed through

those potential minefields?

HILLARY: Yes. I remember the discussions around the two studies were endless. My memory is that we were being shipped thousands of pages to read on a regular basis. I think that 1007(h) was a real gift from the Congress to the Corporation because it basically defined the access problems and gave us an opportunity to say, "Well, gosh, the Congress wants to figure out how to take care of elderly people, or how to deal with Native American problems." That's part of our mandate because Congress asked us to figure out how to do a better job at serving those under-served groups. So, it really fit well with our expansion strategy. It also made us ask a lot of hard questions such as how do you serve people who were more difficult to serve and what can we learn from looking at this effort that would make our whole efforts at service better. So I always saw the 1007(h) study as a very useful tool in helping not only to guide our expansion efforts, but also to legitimize them. We used the study a lot in that manner.

was
The Delivery System Study was more internally generated. People wanted to know that the way that we were expanding legal services the most effective way to deliver those services. Maybe we should look at some other models, or should try some hybrids. I don't know that anyone who comes to legal services with any preconceptions would ever be satisfied by any kind of delivery system study. If you come believing that full-time lawyers are necessary, back up centers are necessary and the whole support system is necessary, a study is not going to convince you that is not the case. If you come believing that all of that is nonsense then you wouldn't support it. So the delivery system study got really mixed down in a lot of back and forth about what would and wouldn't work and how we were going to evaluate various models. At least it laid out a framework for thinking about the delivery issues. For me it was a very useful exercise. I always regretted that it wasn't continued, in what I would consider an objective manner, after the Reagan administration came in. I wouldn't mind trying some different kind of delivery system models. I wouldn't mind continuing to be entrepreneurial and experimental in how we deliver legal services. I would want the people doing it to be committed to the idea of delivering legal services and not viewing that as a way of beginning to eliminate the delivery of legal services. So the delivery system study never really filled the promise that it had from my perspective.

VICTOR: There were a number of divisions within the Legal

Services Corporation, including Office of Field Services, the Research Institute, the Office of Program Support, Government Relations, the Presidents office, and the General Counsel's office. Each had a variety of issues that they had to grapple with internally and with the Board of Directors. Did you have a view of staff relations and Board relations during that period of time?

HILLARY: I thought they were pretty friendly and supportive. I didn't really believe there were any conflicts between the Board and the staff that were outside the ordinary sort of give and take that boards and staff have. I didn't see any effort by anyone undermining the work of the other. I didn't see any disrespect. I thought that the relationships among the Board members and the staff on the issues that we interacted together on were very good and on very positive terms. Partly, I suspect, because we were all "singing out of the same hymn book." We might have disagreements about the best way to deliver legal services but we all wanted to deliver legal services. That was our common bond. Even when we were a split Board in the sense that half of us were appointed by a Democratic president and half of us were appointed by a Republican president - that was all part of it. We would have some great arguments and disagreements. I never felt that anybody was acting in bad faith during the time that I was on the Board. I never felt that any of the staff were doing their jobs for any reasons other than to promote legal services as they saw it. We might disagree, but I never had any opportunity to question anybody's motives. So that was very good for me.

VICTOR: The President of the Corporation in your early years was Tom Ehrlich. Do you have memories of Ehrlich in terms of style, goals or vision?

HILLARY: He was remarkable leader for legal services because at first blush he was the most unlikely person to be the President of the Legal Services Corporation. He was an academic who wore bow ties and he came out of a kind of eastern establishment view of the world. I'm sure people thought, "What is this fellow doing running legal services?" He had such a strong intellectual capacity to envision the whole concept of expansion which really helped shape and drive it when many others would have thought it was foolish to move at the pace we were moving. He had a very effective manner in dealing with problems and conflicts. He was very respectful of everyone, even if he thought that it was the dumbest idea that he'd heard all day. He was unfailingly respectful and very willing to listen for hours and hours. But he had a real backbone about what he wanted to accomplish.

He was very intent upon achieving his goal for legal services, which was expansion with quality. He did an excellent job, I thought. I was very impressed by the way he handled himself all the way through my association with him.

VICTOR: Dan Bradley, who had been a lifelong legal services attorney in a variety of different capacities, succeeded Tom Ehrlich as President of LSC. Did his style or his vision differ in any way?

HILLARY: I think Dan was a very different kind of leader than Tom. I think he was equally effective under some very hard circumstances. Tom had helped lay the ground work for this tremendous expansion. Dan came in when a lot of the implementation had to be done and also a lot of the justification. I think that a lot of people in Congress woke up and said, "My gosh, we've quadrupled their budget. Who are these people?" Dan had to spend countless hours walking around the halls of Congress. He spent a lot of his time and energy justifying what we had done and explaining it to people. Dan was a passionately committed person to justice and fairness and really lived that. His sense of personal involvement in legal services was much more on the line than Tom's more objective view about what needed to be done. They were really a contrast, but they really complimented each other. This is especially true with Tom leading the way with the conceptualizing and the planning, and then Dan understanding the nitty gritty and trying to make it happen, and then going around defending it when necessary. So I thought that I was really lucky to have served with both of them.

VICTOR: Were there any other particularly strong memories you have of any other individuals? I know you met so many during that period, does any one individual really stick in your mind?

HILLARY: I have so many mental pictures. I remember so many long meetings that our Board had. They were better than the long meetings that are currently held by the Corporation. We spent our time listening to people and learning from them. I can remember some marathon meetings that we had at George Washington University and San Diego, and all over the country. I just had a lot of respect for the people who were out in the field at this time because the changes that were occurring were difficult for everybody to deal with. There was just a lot going on. The Corporation had to demand a new set of management responsibilities and performance requirements because of all the money that was rapidly being spent. We had to

make sure that we could justify how it was being spent. A lot of people had some hard transitions to go through. I remember a lot of the folks that were out there. Probably the people that I've spent the most time with were people who were on the staff trying to help manage this incredible expansion. I've already mentioned Bucky and Clint, who did superb jobs. I thought Mary Bourdette was a wonderful lobbyist for the Corporation during some very, very hard times. There were so many people there who, I thought, worked just above and beyond the call.

VICTOR: Bill McCalpin, who was on the Board succeeded you as chair. Were there transitional issues that you saw occur during that period of time?

HILLARY: In my view Bill McCalpin is just one of the heroes of the legal services movement. He has, as much as any private lawyer in the whole country, assured that legal services always had a hearing at the bar, at the Congress or in the state legislatures. I don't think anybody missed a beat when he moved from being on the Board to being Chair of the Board. He was so extraordinarily well prepared and committed to legal services. I just can't say enough about him. I think he has continued to play a very active role in defending and representing legal services. I don't know an adequate way to ever justly reward him for what he's done for legal services all these years. I wish that he or people like him had been permitted to continue on the Board because they really represented the best of the private bar.

VICTOR: As you think back over the 20 years that you've been involved, from clinical courses at Yale, all the way through till today, can you tell me any final impressions you have about the strengths and weaknesses of legal services as it exists today? Are there things that you wish we would improve on or build upon?

HILLARY: I think the most remarkable accomplishment to me is that in only 20 years we are so institutionalized and have withstood the kind of political attacks that have gone on for half of our existence. I think that's a real tribute to the idea behind it and all of the people who've played a role in executing it over all these years. Its real strength has been the way it responded to a very significant need in society, but did so in a very effective and professional manner so that we were able to keep on doing business - and nobody has been able to stop us from doing that. The only kind of weakness that strikes me is the weakness that always happens anytime you have a large enterprise. You have to continually be willing to ask yourself hard questions about how can we

do it better? Just because it worked in the 1970's doesn't mean it's going to work in the 1990's or the 21st century. Because we have been prevented from growing in legal services, there may not be as much new blood and new thinking as the enterprise may require going into the future. I would just hope that we would be able to continue to withstand the political heat and we would have an opportunity at some point to grow to meet the need that is still out there. The demand for legal services today is so much greater given the economic pressures in our society. I would also hope that we would have room for new people with new ideas so that we would always ask ourselves the hard questions that we tried to ask in the delivery system study: What's our purpose? How are we doing it? Are we doing it the best way we can? Are we meeting our clients needs both on an individual level and on a larger social level? As long as we have people who are willing to ask that, then I think we're in good shape.

VICTOR:

I want to thank you very much. You are a hero of mine. While I had the privilege of working in the Legal Services Corporation I observed you many times as you lead the Board through a number of very difficult decisions. You were a critical leader in a transitional point in our history and I very much appreciate your opportunity to tell us what was in your mind during those years and goals that you had. Thank you very much.

END OF INTERVIEW



U.S. Department of Justice

Office of Policy Development

*file
legal
services*

Assistant Attorney General

Washington, D.C. 20530

February 9, 1995

MEMORANDUM FOR THE ATTORNEY GENERAL AND
THE COUNSEL TO THE PRESIDENTTHROUGH: The Deputy Attorney General
The Associate Attorney GeneralFROM: Eleanor D. Acheson *EDA*
Assistant Attorney GeneralPreeta D. Bansal
Counsel

SUBJECT: LEGAL SERVICES CORPORATION

The Legal Services Corporation ("LSC" or "the Corporation") has requested the Administration for assistance and support in resisting threatened attempts by Congress to eliminate LSC's funding, abolish it outright, or substantially limit its activities and independence. This memorandum summarizes likely Congressional action regarding the Corporation, and suggests options for further action by the Department of Justice and/or the Administration. The attached materials analyze more thoroughly proposals regarding the Corporation that have circulated in past years and/or that are likely to surface in the 104th Congress (and review this Administration's and the Department of Justice's efforts with respect to the LSC to date), and describe the structure and work of the LSC.

I. LIKELY CONGRESSIONAL ACTION REGARDING THE LSC

The LSC has not been reauthorized since 1977. Although the reauthorization section of the LSC Act expired in 1980, the Corporation continued in existence because

Congress continued to appropriate funds.¹ Its current appropriation (FY 1995) is \$415 million, up from \$351 million in FY 1992, \$357 million in FY 1993, and \$400 million in FY 1994. (President Clinton requested \$500 million for the LSC in FY 1995, and his 1996 budget requests \$440 million for the LSC.)

The original LSC Authorization Act did not contain a sunset provision and thus remains as the legislative framework for LSC, supplemented by the over 22 riders adopted by Congress in the 1980's to the legislation appropriating funds for LSC. Such appropriations riders (discussed in more detail below in Attachment 1, page 4 -- "Restrictions on Legal Activities") included restrictions both on legal services advocacy (e.g., lobbying, abortion representation) and on the authority of the Corporation to implement certain regulations and policies and to enact new regulations.²

Given its lack of authorization, the LSC is especially vulnerable to elimination -- through either outright abolition, zero-funding proposals, or more general proposals not to appropriate funds for any unauthorized programs. As described more fully in Attachment 1 to this memorandum, the Republicans' Contract With America includes a provision that would absolutely phase out the LSC, and the Corporation is already on the draft Republican House Caucus list of proposed program terminations. In addition, Rep. John Kasich, chair of the House Budget Committee, has eliminated funding for the Legal Services Corporation in each of the last three Republican budgets. If congressional appropriators simply allocate zero dollars for the LSC or for all unauthorized programs,

¹Congress appropriated \$71.5 million for the Corporation in its first year (1975), and continued to expand its funding to \$321.3 million for the 1981 fiscal year. Throughout the 1980's, however, when Congress also failed to reauthorize the LSC, the LSC's appropriation declined. Succumbing to pressure from the Reagan White House -- which sought complete abolition of the Corporation -- Congress reduced funding for the LSC for FY 1982 by 25%, slashing appropriations from \$321 million to \$241 million in FY 1982. With the exception of FY 1988, when he asked Congress to appropriate \$250 million (a reduction of more than \$55 million from the FY 1987 appropriation of \$305.5 million), President Reagan recommended no funding for LSC throughout his presidency. By FY 1990, the congressional appropriation for the LSC was \$316.5 million, still short of the 1981 level of \$321 million (and far below that level in real terms). Not until FY 1991, when the congressional appropriation for LSC reached \$327 million, did funding equal and exceed the 1981 funding level.

²In 1990, for the first time in more than a decade, there began a serious effort in Congress to pass a new reauthorization bill for the LSC, and in May 1992, the House actually passed a bill, HR 2039, reauthorizing LSC for the next five years and codifying many of the restrictions contained in the appropriations riders. A similar bill reauthorizing the LSC for five years, S 2870, was voted out by the Senate Labor and Human Resources Committee and reported to the full Senate, but never reached the floor of the Senate for a full vote.

rather than abolish the LSC outright, its supporters may be powerless because it would be difficult for the President to veto a major spending bill merely to save the relatively small agency.

At the very least, even if the LSC is appropriated funding, it is likely that the Corporation will, as it has in the past, be the subject of numerous "reform proposals" designed to limit substantially its activities and autonomy. These reform proposals, discussed in more detail in Attachment 1 to this memorandum, include proposals to impose competitive bidding requirements on recipients of LSC funds, restrict the use by LSC providers of non-LSC funds, further restrict the permissible range of lobbying and legal activities by LSC providers, and impose burdensome regulations such as timekeeping requirements on recipients of LSC funds.

In a recent meeting with Judge Mikva, Chairman Henry Hyde of the House Judiciary Committee reported bleak prospects for the LSC. He noted that short of outright abolition or lack of funding for the LSC, the most the Administration could hope for would be limited funding for civil legal services to be included in a general welfare block grant to the states. Chairman Hyde suggested that the Administration begin to craft legislation that it could live with along these lines.

II. RECOMMENDATIONS/OPTIONS FOR FURTHER ACTION

A. Direct Legislative Support for the LSC As It Now Exists

Given the full-scale assault on the LSC likely to take place, we believe it is imperative that the Administration, through testimony on the Hill and letters to Congress, offer broad support to the importance of a federally-funded legal services program as it currently exists, and -- as an initial matter -- that it not get mired in the details of particular proposals to "reform" the LSC. On the assumption that legal services will be saved from efforts to eliminate it altogether, the Administration can, if it is absolutely necessary, later seek to craft a compromise on the various reform measures.

B. Assistance in a Grassroots Campaign to Support the LSC

Direct, legislative pressure by you or other members of the Administration may produce only moderate results, given the suspicion with which the majority party has consistently viewed the LSC. In view of the seriousness of the assault on legal services, a full, grassroots mobilization of support from traditional, conservative quarters of the legal community is the most effective (and perhaps only) way to move conservative Congressmen and Senators. The Administration can be helpful both in mobilizing such support and in resonating its message directly to the Congress.

In order for federally-funded legal services to be saved, private attorneys and state and local bar leaders must be convinced that elimination of the LSC will create a hugely difficult and somewhat complex ethical crisis within the profession; unless private attorneys can guarantee a sufficient level of pro bono services to meet the deficiency in the provision of legal services to low-income Americans that will result if the LSC is abolished, the legal profession will suffer immensely. The organized bar has responded in the past to threats to the LSC, and private attorneys must realize that they must be prepared to fill the gap that will result if LSC is eliminated.

Once convinced of this impending crisis, these private lawyers must individually contact their Senators and Representatives. Only a mobilization of support from across the private bar -- **at the grassroots level** -- can offer the chance that individual Congressmen and Senators will appreciate the very real, practical advantage to communities from legal services.

The American Bar Association (through a newly hired full-time staffer devoted to LSC matters) and the LSC have already undertaken efforts to organize such a grassroots campaign, and members of the Administration can facilitate the campaign by speeches to state and local bar associations.

C. Media Event about Access to Justice

In conjunction with the Department of Justice's Access to Justice Initiative -- and perhaps the unveiling of the Department's own pro bono program, the Department could hold a media event highlighting the inadequacies of our civil legal services delivery system, and our attempts to address those inadequacies. Included in this media event could be individuals who have benefited from federally-funded legal services in the past.

ATTACHMENT 1 LIKELY CONGRESSIONAL PROPOSALS REGARDING THE LSC

I. Elimination of the LSC

House of Representatives. The new leadership in the House, Speaker Gingrich, Majority Leader Arme, and Rep. DeLay have all been long-time opponents of the LSC. None of them has ever cast a vote supportive of legal services during his tenure in Congress. Their stated agenda -- the elimination, or block granting to the states, of most federal programs for people in poverty -- indicates likely opposition to federally-supported legal services. Rep. John Bryant (D-TX), a senior minority member of the House Judiciary Subcommittee on Commercial and Administrative Law (the LSC authorizing subcommittee), and Rep. Barney Frank (D-MA), are the strongest House supporters of the Corporation.

- **House Budget Committee**

John Kasich, the new Chairman of the House Budget Committee, has eliminated funding for the Legal Services Corporation in each of the last three Republican budgets, and the latest draft circulating among the Republican Caucus eliminates the LSC. While this scenario is subject to change before the Republican budget is introduced, it appears likely that the House fight for FY 1996 will begin with a zero-funding proposal for the LSC.

- **House Appropriations Committee**

The Appropriations Committee, chaired by Gingrich ally Bob Livingston, has indicated its intention to hold hearings soon to consider what programs it should cut or eliminate for FY 1996. The Subcommittee on Commerce, Justice and State, the Judiciary and Related Agencies (with jurisdiction over the LSC), is chaired by Harold Rogers, who has yet to state any position with respect to legal services, although he has been moderately supportive of the program in the past.

- **House Judiciary Committee**

Henry Hyde, chair of the House Judiciary Committee (which has jurisdiction over LSC authorization) has stated his strong belief that legal services for low-income people should be the responsibility of state and local government, and appears to favor eliminating the LSC altogether and reallocating scarce funds to other activities under the jurisdiction of his committee -- such as crime-fighting and building new prisons. The Committee's Republican leadership, Reps. George Gekas (R-PA), Bill McCollum (R-FL), Carlos Moorhead (R-CA), James Sensenbrenner (R-WI), and Lamar Smith (R-TX), uniformly have opposed reauthorization for the LSC. Rep. Gekas chairs the Subcommittee on Commercial and Administrative Law, which is responsible for LSC authorization.

Senate. The Senate may be more favorable to the LSC, even though Senator Dole in 1993 recommended halving the Corporation's budget. Although no information is currently available regarding likely positions on LSC matters by individual Senators, the new leadership of key committees includes several strong supporters of legal services.

- **Senate Appropriations Committee**

Mark Hatfield, a long-time supporter of the program, chairs the Appropriations Committee. He has indicated his intention generally not to be overwhelmed by the House initiatives to eliminate important social programs, including perhaps the LSC. However, Senator Gramm, the most outspoken critic of the LSC in the Senate, chairs the Appropriations Subcommittee on Commerce, Justice and State, the Judiciary and Related Agencies. During the 1995 appropriations process, Senator Gramm introduced an unsuccessful amendment to prohibit the Corporation from representing poor people pursuing claims for welfare.

- **Senate Budget Committee**

Pete Domenici chairs the Senate Budget Committee and, together with Senator Hatfield, is one of the Senate's stronger legal services supporters. His committee's budget resolution could offer the first signal of support for legal services, in contrast to Rep. Kasich's version in the House.

- **Senate Labor and Human Resources Committee**

Nancy Kassebaum chairs the Labor and Human Resources Committee, which has jurisdiction over legal services authorization in the Senate. She has been a supporter of the LSC in the past and her committee will likely remain favorable toward legal services issues. During the 102nd Congress, however, she inserted committee report language stating that oversight legislation was too restrictive and that competition among grantees might help the Corporation. Senator James Jeffords (R-VT) chairs the Subcommittee on Education, Arts and Humanities, which authorizes the Corporation.

II. Proposals to "Reform" the LSC

Even if the LSC survives proposed "zero-funding" proposals, it will – in reauthorization or appropriations bills – undoubtedly be targeted for criticism and subjected to assaults on its authority to engage in particular activities. Among the categories of reform proposals that have circulated in past years, and are likely to resurface before the LSC is reauthorized or appropriated funds by this Congress, are the following:

- **Competitive Bidding Requirements**

As explained more fully in Attachment 2, the LSC provides federal funding through grants to local, nonprofit legal services providers which in essence have "exclusive franchises" to provide legal services to the poor. Currently, the LSC funds existing recipients unless they are terminated or denied refunding. If LSC is to deny refunding or terminate a local provider, it must hold a hearing before an independent hearing officer.

For years, critics of legal services have insisted that all LSC grants and contracts should be subject to periodic competitive bidding (and that due process rights of recipients in the refunding context should be virtually eliminated), so as to ensure that federal funds are going to the most cost-effective and high-quality local providers rather than to exclusive franchisees. In the past, several amendments have been offered to proposed LSC reauthorization bills that would have imposed competitive bidding for all grants and contracts; these amendments were overwhelmingly rejected in favor of a requirement that would require the Corporation to undertake a study of the feasibility of utilizing competitive bidding. The ABA and the legal services community have vigorously opposed competitive bidding requirements, arguing that the record of competitive bidding in criminal defense services and other civil contexts has been a disaster -- costs rose, services were reduced and quality suffered.

- **Restrictions on Use of Non-LSC Funds**

Under current law, private funds received by an LSC recipient for the provision of legal assistance cannot be used for a prohibited purpose. The LSC has defined prohibited purpose to include most of the activities which are restricted when recipients use LSC funds. LSC recipients can, however, use private funds to represent clients who are aliens and to carry out some other activities for which LSC funds cannot be used (e.g., some lobbying activities and broad, general research).

Also under current law, recipients can use non-LSC public funds to engage in any activity so long as the activity is permitted by the non-LSC funding source. Many recipients receive IOLTA funds and other non-LSC public funds from federal, state, and local sources and are permitted to use these funds for activities that are prohibited with LSC funds.

Various proposals over the years have sought to restrict further the use by LSC recipients of non-LSC public and private funds -- at least with respect to lobbying activities. In September 1993, Associate Attorney General Webster Hubbell testified in favor of eliminating existing restrictions on the use of private funds by local programs.

- **Additional Prohibition of Lobbying and Rulemaking Activities**

Under current law, legal services programs can communicate and provide legal representation to specific clients on their particular legal problems before legislative and administrative bodies after complying with certain requirements. However, legal services programs are prohibited from using LSC and private funds to engage in self-help advocacy or grassroots lobbying on legislative matters and administrative agency policies and rulemaking, and from representation before legislative or administrative bodies that is not directly related to the legal problems of a particular client.

Over the years, critics of the LSC have argued that local providers have veered away from the day-to-day legal needs of clients in favor of using federal LSC funds to engage in grassroots political lobbying. They have thus introduced proposals to ban all grassroots lobbying by local recipients -- as well as lobbying or any other activities with regard to a referendum, initiative, constitutional amendment or other similar procedure -- regardless of the source of the funds -- and have sought to limit further the ability of LSC recipients to engage in legal representation before administrative and legislative bodies.

- **Restriction of Certain Legal Activities with LSC Funds**

Under restrictions contained in the various appropriations riders, LSC recipients are restricted in the categories of aliens they may represent with LSC funds, and cannot participate in any litigation with respect to abortion. Likewise, pursuant to current LSC regulation, LSC recipients cannot use LSC or private funds to participate in any advocacy or litigation that involves alteration, revision or reapportionment of a Congressional or state or local legislative, judicial, or elective district or influencing the timing or manner of taking a census.

In addition to seeking to codify these existing restrictions into the LSC Act, additional proposals in recent years have sought to restrict the ability of LSC providers to use LSC or private funds to engage in representation of certain categories of migrant workers, certain class actions, and representation of convicted drug dealers in public housing eviction proceedings. Critics of legal services also have sought to eliminate funding for the regional and national support centers, which they have argued account greatly for the willingness and ability of LSC lawyers to initiate "impact" litigation.

Given recent press criticism of the LSC's successes over the years in the welfare arena, it is possible that proposals will emerge that would eliminate the LSC's ability to challenge welfare reform legislation. Senator Gramm previously has sponsored measures that would prevent LSC-funded entities from providing representation in suits, including constitutional challenges, concerning federal or state governments' distribution of an individual's welfare benefits; the Clinton Administration, in a letter from the Attorney General last year during the Senate debate on appropriations for the LSC, opposed this measure.

The ABA and legal services community have always opposed restrictions on case types that are set nationally (either by Congress or the LSC) in favor of control by local governing bodies. In his September 1993 testimony, Associate Attorney General Webster Hubbell opposed proposed codification of prohibitions on representation involving alteration, revision or reapportionment of a legislative, judicial or elective district -- at least with respect to local redistricting efforts.

- **Administrative Requirements on LSC providers**

Critics of the LSC have sought to impose burdensome administrative regulations on LSC providers. Among these are timekeeping requirements on all attorneys and paralegals (similar to those maintained in private firms); prohibitions on advocacy training (including prohibitions on dissemination of information about political activities or particular public bodies); prohibitions on recovery of attorneys' fees from non-governmental defendants; and expansion of courts' authority to award costs and legal fees to successful defendants in actions brought by the LSC or an LSC recipient where the court finds that the action was brought for the sole purpose of harassment or where the plaintiff maliciously abused legal process.

ATTACHMENT 2 OVERVIEW OF THE LSC

I. Structure of the LSC

Local control. The Corporation itself does not directly provide legal services to the poor, but instead does so through 320 independent, local legal services programs serving every county in the country. Each local program is funded directly by the LSC, and many programs also receive funding from a variety of other private and public sources. Each local program is a private, non-profit corporation governed by a board of directors. Sixty percent of the members of each local board are attorneys; one-third of the members of each board are eligible clients. A majority of each board is appointed by the local bar associations in the communities served by the program. Most programs are staff attorney programs; a few are judicare or pro bono programs. By LSC regulation, all local programs must expend 12.5% of their basic LSC grant on the involvement of private attorneys in the delivery of legal services; most do this through pro bono programs that are run by the local program in cooperation with local bar associations.

Within the framework set by the LSC Act and appropriations, the board of each program – not the Corporation – decides what the lawyers and paralegals working with the program will do, what kinds of services will be provided, and what types of cases it will handle to meet the needs of the local community. The LSC Board does not make any decisions with regard to the types of cases or representation provided by local programs except where Congress has prohibited or limited certain representation. Thus, the LSC Board can neither require programs to bring particular types of cases nor prohibit programs from bringing specific kinds of cases unless explicitly required by Congress.

Oversight responsibilities. The LSC does provide general oversight and promulgates the rules, regulations and guidelines governing the legal services programs it funds. The Board also submits a budget directly to Congress.

Most importantly, the LSC assures accountability to Congress. The LSC Act sets the boundaries for the operation of the program – eligibility limitations, program governance structures, limitations on certain types of activities and new cases, and financial and management requirements. The Corporation, managed by a Board of Directors appointed by the President, and the Congress -- through its continued oversight, annual consideration of appropriations, and periodic consideration of the authorizing statute -- assure that legal services operate within those boundaries.

The Corporation has a small staff of approximately 100 employees whose main purpose is to make grants and contracts, monitor and evaluate programs, guarantee fiscal integrity, and ensure that technical assistance, training, and other support activities are effectively made available to the programs funded. The Corporation, which administers

federal funding for legal services programs, uses only 3% of its budget for administrative costs. Virtually all of its resources -- 97% -- are distributed as grants to local legal services providers.

National and state support centers. The LSC also funds state support entities that perform a wide variety of support functions, including litigation, legislative advocacy, training, management support and support for fundraising efforts. As of 1992, all 50 states received funds for a state support entity. Some of these are independent programs; others are adjuncts to existing local or statewide legal services programs. The LSC also funds 16 national support centers that provide support and assistance with certain subject matter areas, such as housing, welfare, consumer, elderly, and the like. The LSC also provides support funds for other purposes such as computer-assisted legal research, regional training centers, and the National Clearinghouse for Legal Services which publishes the Clearinghouse Review. These state and national support centers have been the targets of special criticism, and have been accused of promoting the kind of class action and impact litigation that is allegedly designed to effectuate broad social policy rather than to meet the day-to-day needs of individual clients.

II. Legal Service Activities of LSC Recipients

According to 1993 LSC statistics, the kind of cases handled by legal services attorneys are as follows: family law -- 33.19%; consumer finance -- 11.1%; housing -- 22.04%; income maintenance -- 17.02%; health -- 3.26%; education -- .95%; juvenile -- 1.4%; individual rights -- 2.39%; employment -- 2.12%; and miscellaneous (wills/estates) -- 6.53%. Based upon the LSC's case service data, an estimated 78% of the cases handled by local legal services programs involve or directly affect children. The four largest categories (affecting as many as one million poor children annually) are housing, family, public assistance, and consumer protection.

Most legal services clients seek and receive advice, brief service, negotiation or assistance in resolving legal problems without litigation. Of the 1.5 million cases closed in 1993, 9% resulted in court decisions; 4% in decisions of administrative agencies; 6.2% were settled and 58% involved counsel and advice. Programs referred 9% and the client withdrew in 9%. The remainder were not pursued because of insufficient merit.

Moreover, contrary to the cry of critics, less than 0.2% of the cases brought by legal services are brought as class actions, and less than 0.2% of program funds are spent on such controversial activities as legislative representation.

Legal Services attacked just for doing good job

OUR VIEW Some powerful people don't like the Legal Services Corp.'s ability to give the poor their day in court.

Are legal services to the poor just another taxpayer rip-off?

You'd think so from the flak they're taking lately in Congress, where there's a drive to wipe the program out.

Typical is the complaint from a California family farmer who wrote Congress complaining about a Legal Services Corp. suit to "force our family into signing a collective bargaining agreement."

"Virtually each of the jurors expressed their disgust over taxpayer dollars being used to finance such frivolous lawsuits." His letter was presented at a House hearing last week on GOP plans to cancel the \$415 million a year program within two years.

Only, like most such horror stories about Legal Services, the farmer's letter has a hole in it — the facts.

The 7,000-acre family farm is worth \$40 million-plus, according to news reports. And the disgusted jury sided with the plaintiffs — migrant workers.

They found the farm had illegally packed up to 35 workers into houses meant for 10, backing sewage from an overloaded septic system into the housing, which was infested with roaches, flies and mice. The farm also violated safety laws by cramming up to 25 workers into small vans to take them to the fields, charging each \$3.

The jury awarded the seven plaintiffs \$6,000 each, then tacked on \$4,000 each for the farm's violation of state wage laws.

That's what Legal Services is supposed to do. Created under President Nixon because millions of people lacked legal aid, its job is to help balance the scales in a justice system where money is power — a problem anyone who has considered going to court knows well.

A third of the 1.7 million cases each year deal with family matters. Poor women, especially, seek out its 320 programs for protection from spouse abuse and help with divorce, custody and spousal support.

Another 22% of cases deal with housing, like the help given victims of last year's floods so they wouldn't lose their homes for missing a few payments.

Another fifth of cases involve helping people secure public benefits, most often the elderly, the disabled and children.

Legal aid lawyers also help the poor settle debts, recover money taken by fraud and combat job discrimination, among other problems.

That can be upsetting. To landlords. To some husbands and fathers. To state and local officials. And now to Congress.

But Legal Services lawyers don't make the law. They just make sure it's enforced fairly. And they win because the law is on their side. They take only 8% of their cases to court but win 80% of those they do.

Legal Services isn't under attack for failing to do its job. It's under attack for doing that job well. Can't Congress simply stand up for equality under the law?

It's a good idea gone bad

OPPOSING VIEW Legal Services Corp. no longer meets its mandate. It should die.

By Steve Largent,

Ever wonder why some prisoners have cushy amenities such as cable TV, why evicting drug dealers from housing projects is so difficult, or why reforming the welfare system is taking so long? Well wonder no more. We have the Legal Services Corp. to blame.

Possibly the worst part is that the LSC, a private, non-profit organization, is funded by your federal tax dollars, \$415 million in 1995 and a total of \$5 billion since 1974.

In light of its controversial activities and the great need to cut wasteful spending and shift power and money back to local governments and the people, the House Budget Committee has recommended phasing out the LSC by 1999.

Importantly, the legal needs of the poor will still be met in the absence of the LSC. Last year, for example, state and local governments, bar associations, and foundations provided more than \$240 million to legal services programs for the poor. Additionally, lawyers routinely provide tens of millions of dollars in free services for those

in need.

The LSC is the perfect example of a well-intended idea not meeting expectations:

Social reformers: More often than not, LSC-funded lawyers see themselves as social reformers, rather than advocates for the most needy in our society — abused women and children. Whether it is helping fathers avoid paying child support or forcing states to provide reimbursement for sex-change operations, the LSC has failed to fulfill its mandate to help the poor.

Welfare status quo: The LSC-funded lawyers have defended the status quo welfare system through a vigorous campaign of class action lawsuits in order to add a permanent right to receive welfare into the Constitution. For example, an LSC grantee in New Jersey has hampered the state's efforts to reform its failed welfare system.

Lack of oversight: Oversight of the money given to grantees has dropped precipitously since the Clinton administration cleaned house at the LSC. (Two years ago over 150 on-site program audits took place, compared with fewer than 10 this past year.)

The Legal Services Corp. has strayed so far from its mandate it no longer deserves tax dollars and should be phased out.

Rep. Steve Largent, R-Okla., is a member of the House Budget Committee.

Midair medicine

High in the skies over India, Paula Dixon experienced every airline passenger's nightmare — breathtaking chest pains.

She'd broken her ribs in a motorcycle accident on the way to the airport, and 20 minutes into the flight, her lung collapsed.

Tragedy was averted because two doctor-passengers successfully diagnosed Dixon's problem and operated on the spot — using a knife, fork and coat hanger.

Frightening and crude, but that's medical reality on most airlines today.

Despite upgrades over the last decade, in-flight medicine relies on barebones supplies and sawbones luck.

The good news is that there's usually a doctor or other trained emergency technician on board. A two-year Department of



By Doug Marke, AP
WALLACE: Dramatic midair surgery with crude tools.

Transportation study found that when medical kits are used, a doctor, nurse or emergency medical technician is there 93% of the time.

The bad news is there's not much in those kits.

After being hounded by consumer and medical groups, the FAA toughened requirements so the kits now include necessities such as stethoscopes, blood pressure cuffs and a few drugs. But still not required are basic instruments recommended by the American Medical Association. Items such as self-inflating breathing bags, simple scopes, tubes and a wider array of emergency drugs.

The FAA balks at requiring more drugs because of security. But some Canadian and Scandinavian airlines simply lock the better-stocked kits in the cockpits.

Flight attendants, meanwhile, receive some first aid training, as required by the Federal Aviation Administration, but the quality varies by airline. For instance, according to the Association of Flight Attendants, some learn CPR, some don't. The flight attendants want more training. And they should get it.

Passengers don't expect professionally staffed and equipped operating rooms on flights. But they deserve the best possible chance of surviving an emergency.

Better training and upgraded medical kits could improve those odds.

Voices: What do you think of the FBI's progress on the Oklahoma City bombing?

As the nation stood vigil, the Murrah Federal Building was demolished Tuesday with several victims still entombed. Two suspects have been charged, motives suggested, and methods explained. The investigation continues as the FBI follows trails from Arizona to Michigan to New York to Florida. USA TODAY asked for readers' observations.



Pilar Morillo, 21
Psychology student
Jamaica, N.Y.

The FBI and news media aren't giving us enough information. We didn't need to see the federal building's demolition and renew the trauma we felt. We do need and deserve to know much more about the FBI's progress. This has been devastating for all of us.



Johnny Robinson, 55
Sales manager
Fayetteville, N.C.

The FBI's technology and access to information should have moved the investigation faster. They should be closer to apprehending all the people responsible. They must know a lot more than they tell us. But maybe that's necessary to protect the investigation.



Patricia Zwagerman
44, Non-profit exec.
dir., Ventura, Calif.

I'm impressed the FBI found suspects so soon and has given us what information they can without compromising the investigation. This tragedy will have a lasting impact on our nation. But I'm confident those responsible will be brought to timely justice.



James W. Kenney, 57
Private investigator
San Antonio, Texas

McVeigh's apprehension misled the public to expect a quick resolution. The FBI will be tenacious, but also painstaking, methodical and lawful. Citizens' rights must be protected and evidence properly collected and preserved to ensure successful prosecution.



Scott Slous, 33
Radiation therapist
Wichita, Kan.

The FBI has done solid work, matching truck to axle, identifying suspects. But they need to speed up getting suspects arrested and to trial, including anyone with the slightest foreknowledge. And our justice system must not fail. Even so, healing will take generations.

free legal services

STATEMENT OF ABNER J. MIKVA
COUNSEL TO THE PRESIDENT OF THE UNITED STATES

BEFORE

THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 16, 1995

I thank the Committee for the opportunity to testify in support of reauthorization for the Legal Services Corporation.

Initially, I must emphasize that I am not testifying in my current position as the Counsel to the President of the United States. Instead, I am here today speaking as somebody who has practiced law for many, many years, and served in legislative bodies for nearly two decades, and on the federal bench for 15 years. I hope that this white hair -- earned during that time -- entitles me to be heard here as something of a sage, voice of experience on the topic before the Committee.

You are hearing today from Deputy Attorney General Gorelick the view of the Justice Department that the LSC serves an invaluable function, and that it should be reauthorized in its current form as a separate government corporation. John Carey, General Counsel of FEMA will also describe to you the essential work that LSC attorneys do when disasters strike, requiring many poor and middle class people to seek legal assistance. In addition, you will hear from LSC officers precisely what the LSC does and the key impact that it has in providing basic legal services for those in need. It is not my intent to take up your time giving you more statistics and the like to justify the

existence of the LSC. Rather, I am testifying today as one who has seen the litigation system work up close, very close.

I am enthusiastically in favor of reauthorization and appropriate funding for the LSC because the poor deserve legal representation that they cannot otherwise afford for their legitimate grievances. But, in addition, I want to describe to you about how I think the LSC works in a way that lessens the burden on the courts, and is thus in the interests of all, not just the poor who need lawyers at serious times in their lives.

I will take as a given that there is general agreement among us that the poor deserve proper legal representation even if they cannot afford it. They need lawyers for private situations, but they also need them sometimes in dealing with local, state, and federal governments, and housing authorities. As one who has been part of those governments for four decades, I readily admit that government institutions are not perfect, and that they every day take wrongful actions involving poor individuals. These victims can rectify the situation often only with the help of a lawyer.

As an aside, I note that the Congress in the Equal Access to Justice Act has recognized that the federal government makes mistakes, and that individuals (and small businesses) who are not wealthy are in certain circumstances entitled to the costs of their attorneys when the government acts wrongly. Thus, the Congress has already determined that, in some instances, it is proper for the government to pay the costs of private attorneys for those who are not affluent. I assure you that the fees paid under the EAJA are

substantially higher than the portion of legal services lawyers funded by federal appropriations.

The Members of this Committee might not have always agreed with Judge David Bazelon. Nevertheless, I think there can be little disagreement with what he so eloquently stated about 15 years ago on this point:

The opportunity to enter a court of law and seek redress is perhaps the most powerful statement we can make to the poor that, notwithstanding their plight, they have a stake in our society. * * * Legal assistance for the poor embodies our commitment to the rule of law. It displays our confidence in the fairness of our social institutions by permitting all of our citizens to subject them to scrutiny. Most important, it gives meaning to our social contract. If the essential responsibility of citizenship is to obey the law, surely the most important right of citizenship is access to the legal system.

This is a very powerful point that is difficult to ignore. Without the ability to consult an attorney, it is virtually impossible for the poor even to recognize their legal problems. And it is certainly not in the interests of a society as great as the one in which we are privileged to live to have the legal rights of the poor discarded simply because of the lack of a champion to plead their cases.

It may be that the Congress wishes to impose on the LSC reasonable restrictions on how federal funds can be spent; I have no problem with that in the abstract. This is an issue that can be discussed to arrive at a solution acceptable to all interested groups. But I do think it important that any such restrictions not mean that the poor will receive second-class legal representation because the only lawyers they can get are so hamstrung through

restrictions that they cannot properly represent their clients. Thus, the limits that the Congress might place on LSC lawyers should not be so restrictive that they take away with one hand what has been provided by the other.

Even aside from these points, however, there are practical reasons for the Congress to reauthorize the LSC: LSC lawyers help the federal and state courts and administrative bodies run more smoothly.

Wealthy and middle class people are well aware that we have all sorts of levers available to us in order to try to solve our problems, short of litigation. If a product or service is defective, we know how and to whom to complain; when the government mistreats us, we also often know how to get the problem fixed. We have the ability to weave our way through a bureaucratic or corporate structure in order to seek relief. We can even find a Representative to be an ombudsman. But poor people rarely know where the proper levers are, or how to use them, and, if they do know, they often lack sufficient muscle to make them work. Mr. Dooley said: "The poor who need money the most seldom have any." The poor who need friends in high places the most seldom have any.

Faced with these problems, the poor either forfeit their rights, or they resort to the courts, filing massive numbers of pro se cases. For these people, the LSC lawyers, if they still exist, can instead be their first and better resort.

LSC lawyers quickly become quite skilled in the types of housing, domestic relations, and government benefits problems that

face the poor day in and day out. They are often able to resolve a problem through a few telephone calls, leading a poor individual through what otherwise seems like a baffling maze. When this happens successfully, the poor individual is not deprived of his or her benefit or right, and the matter never goes to any court; it is resolved quickly and inexpensively as far as society's resources are concerned.

As a former Member of this body, I know that there are many occasions when constituents contact a Representative's office about a problem, and the best approach is to refer the constituent to the local LSC office because that office is the best equipped to try to assist. If you check with your staffs I am confident you will find that many constituent inquiries are dealt with in this way.

Trained, experienced, and dedicated LSC lawyers serve a very valuable contribution by helping deserving poor protect their rights, and they do so by keeping a matter from going to court.

If a matter must be litigated in court, I can tell you plainly as a former judge that it is vastly better for society to have an individual represented by an LSC lawyer than for the case to proceed pro se -- or even to proceed with a volunteer lawyer who is not schooled in poor people's problems. Pro se cases are often the judges' worst nightmares, as the judges themselves and their clerks must pore over often barely comprehensible filings in order to see if the person has a legitimate grievance.

At that point, the court might appoint a practicing member of the private bar to handle the case. But that is only after

considerable court time might already have been spent analyzing the matter. And, do not forget that for every pro se poor individual with a reasonable legal claim, there are also numerous others with valid claims who simply let their rights drop because of the lack of access to a lawyer.

LSC attorneys help the courts and our society because they have the skill, knowledge, and contacts to help a poor client with a legitimate problem so that it can be resolved relatively simply and informally without the need for any litigation or administrative proceeding. They assist the courts by minimizing the number of pro se cases, which can be the bane of a court's existence since they require so much of a judge's time if they are treated reasonably, as they should be, and not simply discarded out of hand. Once litigation commences, the LSC lawyers can help the proceedings run smoothly because of their knowledge and background dealing with the kinds of problems that arise for the poor over and over again. They can be a great assistance to an overworked trial judge who is struggling to control a massive criminal docket, and needs as much help on other matters as competent and experienced counsel can give.

As a former judge, I know for certain that the legal needs of the poor cannot simply be met through voluntary efforts by private firm lawyers. In many areas of the country, these lawyers are not readily available. And, even if they are available, they are often busy enough meeting the needs of their paying clients, and thus cannot take on a slew of indigent clients, even though they are

willing to donate reasonable amounts of time for pro bono work. Moreover, as I mentioned earlier, these lawyers will often be available through a court appointment only if a poor person has the knowledge and wherewithal to file some sort of legal action on their own. By then, the ability to resolve a matter simply, quickly, and informally has often been lost. In any event, these pro bono lawyers often lack the skills necessary to cope with problems of the poor.

In my considerable years on the bench, I can also assure the Committee that I do not remember a single instance when I encountered an LSC attorney who was disserving the public by bringing a case that should not have been brought, or litigating it in a prolonged and wasteful way. With some inevitable minor exceptions, the LSC attorneys are hard working, skilled members of the profession who help both their clients and the courts through their expertise, professionalism, and experience. (Indeed, some LSC attorneys have gone on to become Assistant Attorneys General and the U.S. Trade Representative, to name just two.)

I am pleased to answer any questions that the Committee has on this subject, and again appreciate the opportunity to be heard on LSC reauthorization, which is so important to me as a citizen, lawyer, former judge, and former Member of this body.

for Legal Services

**Testimony regarding
Legal Services Corporation**

**Before the Judiciary Committee
Subcommittee on Commercial and Administrative Law
U.S. House of Representatives
July 27, 1995**

**Presented by Rev. Fred Kammer, SJ
President, Catholic Charities USA**



**1731 King Street #200
Alexandria, Virginia 22314
Phone: (703) 549-1390**

I appreciate this opportunity to testify on behalf of Catholic Charities USA and its members across the country. As the largest network of private social service organizations in the nation, local Catholic Charities agencies serve more than 10 million people a year. We are proud to be the primary institution through which the Catholic Church works for both charity and justice.

Catholic Charities agencies employ approximately 48,000 paid staff members and supervise nearly 225,000 unpaid volunteers who work in local communities in each of the 50 states and the District of Columbia. We help individuals and families from the earliest stages of their lives, preserving life with prenatal care and crisis pregnancy counseling, to the end of their days, providing comfort and support through respite and hospice care. We help to form families through adoption, reunite families through refugee resettlement, and preserve families through marital counseling, parenting training, and addiction services.

Local Catholic Charities agencies have long waiting lists for day care, foster care, and housing programs, and we are developing new programs to address domestic violence, sexual abuse, and gang violence. We provide safe havens for abandoned teenagers and neglected senior citizens.

Day in and day out, Catholic Charities professionals see poor and vulnerable people who have been mistreated by employers, landlords, relatives, and government agencies. We help them find jobs, apartments, counselors, and sometimes, justice.

But all too frequently, our agencies find that their direct assistance, advice, and advocacy are not enough. Only recourse to the legal system can bring about a just resolution of clients' problems. Our agencies depend on attorneys funded through the Legal Services Corp. to assure their clients the rights that the rest of us take for granted.

In fact, Catholic Charities agencies don't just depend on the legal services attorney; they often have to plead and even beg the already overburdened legal services offices to take on additional cases. For example, when intervention by our social worker doesn't get results, a phone call or letter from an attorney may be the only way to get a nursing home administrator to obey the law and take leather restraints off the wrists of a frail elderly woman.

While professional attorneys serve on local Catholic Charities agency boards and donate time as volunteers, we are convinced that the specialized knowledge and experience of legal services attorneys are essential in providing equal justice for the needy. Our clients seldom need the advice of a corporate tax counsel or an expert on offshore oil leases. They do need lawyers who are well-versed in negotiating with slum landlords and used-car dealers. The specialized services of the LSC-funded national back-up centers in areas such as housing law, education law, and welfare law have made enormous contributions to the professional competence of local legal services lawyers.

As a private, nonprofit, church-affiliated organization, we believe strongly that every person has an obligation to volunteer time, talent, and money as a fundamental expression of love for God and social solidarity. We believe that people with professional or technical skills have a duty to share them with the community, especially with those in need. We are convinced that neighborhood and community groups can alleviate much of the suffering around them through private charitable efforts.

Yet in our Catholic tradition, we also believe each of us “also has the responsibility to work to secure justice and human rights through an organized social response” (U.S. Bishops, *Economic Justice for All*, ¶120). As Pope Pius XI put it, “Charity will never be true charity unless it takes justice into account Let no one attempt with small gifts of charity to exempt himself from the great duties imposed by justice.” (*Divini Redemptoris*, 49)

The Catholic Church believes that all sectors of society, including professional associations, community groups, businesses, unions, churches, and synagogues have important roles to play in securing economic justice. But Catholic teaching also recognizes a fundamental role of government, in fact a moral function, to protect human rights and secure basic justice for all.

In the words of the U.S. bishops’ 1986 pastoral letter *Economic Justice for All*, “Society as a whole and in all its diversity is responsible for building up the common good. But it is government’s role to guarantee the minimum conditions that make this rich social activity possible, namely, human rights and justice” (EJA, 122).

No one in America can be assured of justice without access to the legal system and the legal profession, and access to both requires financial resources that are completely out of reach to low-income people. From the time of the earliest Hebrew Scriptures, God has commanded that a nation’s rules show special concern for justice for the poor. The Law, the Prophets, and the Wisdom literature of the Old Testament all show deep concern for the proper treatment of the widows, orphans, the poor, and the strangers in the land.

While individuals and communities can help to heal, comfort, feed, and minister to the poor and oppressed, government’s role must be to ensure a just society for everyone, including people in need. Without free legal advice and access to the civil courts, poor people simply cannot get justice in this country. Without the Legal Services Corp. and adequate federal funding of it, there will be no justice!

Some have charged that legal services programs are anti-family because they help people to get divorces. Let’s look at that more carefully. In the Catholic Church, remarriage is forbidden after divorce unless the original marriage has been annulled in a Church tribunal. People who can afford the tribunal costs are required to pay, but our Church subsidizes those who are unable to pay. The Church recognizes that not all marriages are valid.

For many poor women, a divorce is the only way to assure child support from a runaway husband or to legitimate a *de facto* second marriage and its children. Other women come

to legal services lawyers for help in divorcing husbands who have abused them or their children. They want to sever marital ties as well as help their children escape the pain associated with a father's behavior.

We in Catholic Charities agencies work hard to keep marriages intact and promote family life, and we share the concern that nearly half of marriages in this country end in divorce. Divorce is now the all-too-common end of failed marriages of all economic classes. Legal services programs do not *cause* the marital problems that end in divorce, and they should not be blamed for them.

Our Catholic tradition says the true test of a community's or nation's justice is the quality of justice for the poorest and weakest among us. Local legal services programs shield the poor from the greed, irresponsibility, cruelty, and indifference of others, especially those who have enough money and connections to push others around.

Under the U.S. Constitution, the laws must apply to all—with "equal justice for all." Yet, without good legal representation, the poor will have no justice.

In closing, I ask you to remember the words of Pope Paul VI, "If you want peace, work for justice."

Legal Services

File

<u>Name</u>		<u>Phone</u>	<u>Fax</u>
Paul Carey		456-6493	456-2604
Gaillardet ^{LSC}	government relations	(202) 336-8815	336-8952
Adam Goldberg ^{LSC}	Government Relations	336-8829	336-8952
Steve Carl	ALADA	452-0620	223-1700
Douglas S Eakeley	LSC Chair	201-992-8700	201-992-5820
Eunice Arneson	SVSNIE	(202) 514-4601	(202) 514-2424
Preeti Bansal	Justice	202/514-4601	514-2424
Cliff Sloan	WH Counsel	456-7900	456-1647
Douglas Letter	WH Counsel	456-7901	456-1647
Nicole Rabner	OFL	456-6266	456-6244
Chris Edley	OMB	395-3120	395-4639
Chris Cera	WH Counsel	456-6229	456-2146
Rob Mikus	WH Counsel	456-2182	456-2146
Alex Fong	LSC	336-7261	
Bob Evans	ABA	331-2680	331-2220
Barbara Chow	WH/leg Aff	456-6493	456-2604
PAUL J. DROET	HOUSE JUDICIARY	225-2329	225-1845
Melanne Verwee	Comm	456-6266	456-6244
Joel Klein	WH Counsel	456-7900	456-2146

file legal services

**STATEMENT OF ISSUES ON LEGAL SERVICES
IN HR 2076**

● **Support increased funding for LSC.** Conference provided only \$278 million for FY 1996 which represents a one-third cut in funding from FY 1995. Senate provided \$340 million (15% cut). At Conference level, 150,000 fewer clients and their families would be served and 100 more legal aid offices would be closed than at the Senate level of \$340 million. *pg 1*

● **Support increased allocation for LSC's Management and Administration.** The Conference Bill allocates only \$6 million for management and administration. This level permits LSC management to make grants under a competitive bidding system, but does not provide sufficient funds to fulfill its other statutory responsibilities including the need to continue monitoring for compliance and evaluating program quality, which are essential functions for LSC to effectively oversee providers funded under competitive bidding. The financial auditing and compliance monitoring to be carried out by the Office of Inspector General will not provide the information LSC will need to responsibly oversee the legal services program. *pg 1*

● **Support adjustments in funding to ensure access to migrant farmworkers.** The Conference Bill does not make the necessary adjustment in funding allocation to preserve access for the 1.6 million migrant farmworkers to legal services. The Census does not count migrant farmworkers in areas where they work or live, and a funding adjustment should be made, like Conference Bill does for Native Americans, Alaska, Hawaii and Virgin Islands and like has been done in the past, to account for unique access problems and to ensure that legal services are available where migrants are most likely to need and use those services. *pg 5 H2*

● **Support a provision to permit recipients to use non-LSC funds to respond to requests for information or testimony from legislators or agency officials.** Legislators and agency officials rely on legal services advocates to provide reliable and often critical information and analysis regarding the ways that proposed legislation and policies would affect poor people. The Conference Bill would preclude government officials from availing themselves of this critical resource. *pg 7*

● **Support a provision to permit legal services recipients to request and collect attorneys' fees for work in pending cases.** The Conference Bill prohibits legal services programs from collecting attorneys' fees in pending cases even where programs have earned the fees over a period of many years, or where they have outstanding orders and judgments awarding fees that have not yet been paid. Even though the Conference Bill permits recipients to continue some categories of prohibited pending cases until July 1, recipients are not permitted to seek or collect attorneys' fees in those cases. Programs should be permitted to seek and collect attorneys' fees in pending cases and should be able to seek and collect fees in newly prohibited pending cases until the end of the transition period, July 1, 1996. *pg 6*

Non LSC funds pg 7 + 8

**CONFERENCE LANGUAGE
AND
CONFERENCE REPORT**

HR 2076

**COMMERCE, JUSTICE, STATE, JUDICIARY
AND RELATED AGENCIES
APPROPRIATION BILL**

LEGAL SERVICES CORPORATION

PAYMENT TO THE LEGAL SERVICES CORPORATION

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, as amended, ~~\$278,000,000~~ **\$309,000,000**, of which ~~\$265,000,000~~ **\$296,000,000** is for basic field programs; **\$10,300,000** is for migrant programs and **\$7,200,000** is for native American programs; ~~\$7,000,000~~ **\$4,000,000** is for the Office of the Inspector General, of which ~~\$5,500,000~~ **\$2,500,000** shall remain available until expended and be used to contract with independent public accountants for financial audits of all recipients in accordance with the requirements of section 509 of this Act; and ~~\$6,000,000~~ **\$9,000,000** is for management and administration: Provided, That **\$198,750,000** of the total amount provided under this heading for basic field programs shall not be available except for the competitive award of grants and contracts under section 503 of this Act.

ADMINISTRATIVE PROVISIONS — LEGAL SERVICES CORPORATION

SEC. 501. (a) Funds appropriated under this Act to the Legal Services Corporation for basic field programs shall be distributed as follows:

(1) The Corporation shall define geographic areas and make the funds available for each geographic area on a per capita basis relative to the number of individuals in poverty determined by the Bureau of the Census to be within the geographic area, except as provided in paragraph (2)(B). Funds for such a geographic area may be distributed by the Corporation to 1 or more persons or entities eligible for funding under section 1006(a)(1)(A) of the Legal Services Corporation Act (42 U.S.C. 2996e(a)(1)(A)), subject to sections 502 and 504.

(2) Funds for grants from the Corporation, and contracts entered into by the Corporation for basic field programs, shall be allocated so as to provide—

(A) except as provided in subparagraph (B), an equal figure per individual in poverty for all geographic areas, as determined on the basis of the most recent decennial census of population conducted pursuant to section 141 of title 13, United States Code (or, in the case of the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, Alaska, Hawaii, and the United States Virgin Islands, on the basis of the adjusted population counts historically used as the basis for such determinations); and

(B) an additional amount for Native American communities that received assistance under the Legal Services Corporation Act for fiscal year 1995, so that the proportion of the funds appropriated to the Legal Services Corporation for basic field programs for fiscal year 1996 that is received by the Native American communities shall be not less than the proportion of such funds appropriated for fiscal year 1995 that was received by the Native American communities.

(C) an additional amount for geographic areas that received assistance under the Legal Service Corporation Act for fiscal year 1995 for the direct delivery of legal services to migrant farmworkers, so that the proportion of the funds appropriated to the Legal Services Corporation for basic field programs for fiscal year 1996 that is received for direct service to migrant farmworkers shall not be less than the proportion of such funds appropriated for fiscal year 1995 that was received by programs directly serving migrant farmworkers.

(b) As used in this section:

(1) The term "individual in poverty" means an individual who is a member of a family (of 1 or more members) with an income at or below the poverty line.

(2) The term "poverty line" means the poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved.

SEC. 502. None of the funds appropriated in this Act to the Legal Services Corporation shall be used by the Corporation to make a grant, or enter into a contract, for the provision of legal assistance unless the Corporation ensures that the person or entity receiving funding to provide such legal assistance is—

- (1) a private attorney admitted to practice in a State or the District of Columbia;
- (2) a qualified nonprofit organization, chartered under the laws of a State or the District of Columbia, that—
 - (A) furnishes legal assistance to eligible clients; and
 - (B) is governed by a board of directors or other governing body, the majority of which is comprised of attorneys who—
 - (i) are admitted to practice in a State or the District of Columbia; and
 - (ii) are appointed to terms of office on such board or body of a State, county, or municipal bar association, the membership of which represents a majority of the attorneys practicing law in the locality in which the organization is to provide legal assistance;
- (3) a State or local government (without regard to section 1006(a)(1)(A)(ii) of the Legal Services Corporation Act (42 U.S.C. 2996e(a)(1)(A)(ii)); or
- (4) a substate regional planning or coordination agency that serves a substate area and whose governing board is controlled by locally elected officials.

SEC. 503. (a)(1) Not later than April 1, 1996, the Legal Services Corporation shall implement a system of competitive awards of grants and contracts for all basic field programs, which shall apply to all such grants and contracts awarded by the Corporation after March 31, 1996, from funds appropriated in this Act.

(2) Any grant or contract awarded before April 1, 1996, by the Legal Services Corporation to a basic field program for 1996—

- (A) shall not be for an amount greater than the amount required for the period ending March 31, 1996;
- (B) shall terminate at the end of such period; and
- (C) shall not be renewable except in accordance with the system implemented under paragraph (1).

(3) The amount of grants and contracts awarded before April 1, 1996, by the Legal Services Corporation for basic field programs for 1996 in any geographic area described in section 501 shall not exceed an amount equal to 3/12 of the total amount to be distributed for such programs for 1996 in such areas.

(b) Not later than 60 days after the date of enactment of this Act, the Legal Services Corporation shall promulgate regulations to implement a competitive selection process for the recipients of such grants and contracts.

(c) Such regulations shall specify selection criteria for the recipients, which shall include—

- (1) a demonstration of a full understanding of the basic legal needs of the eligible clients to be served and a demonstration of the capability of serving the needs;

(2) the quality, feasibility, and cost effectiveness of a plan submitted by an applicant for the delivery of legal assistance to the eligible clients to be served; and

(3) the experience of the Legal Services Corporation with the applicant, if the applicant has previously received financial assistance from the Corporation, including the record of the applicant of past compliance with Corporation policies, practices, and restrictions.

(d) Such regulations shall ensure that timely notice regarding an opportunity to submit an application for such an award is published in periodicals of local and State bar associations and in at least 1 daily newspaper of general circulation in the area to be served by the person or entity receiving the award.

(e) No person or entity that was previously awarded a grant or contract by the Legal Services Corporation for the provision of legal assistance may be given any preference in the competitive selection process.

(f) For the purposes of the funding provided in this Act, rights under sections 1007(a)(9) and 1011 of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(9) and 42 U.S.C. 2996j) shall not apply.

SEC. 504. (a) None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity (which may be referred to in this section as a "recipient")-

(1) that makes available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or represents any party or participates in any other way in litigation, that is intended to or has the effect of altering, revising, or reapportioning a legislative, judicial, or elective district at any level of government, including influencing the timing or manner of the taking of a census;

(2) that attempts to influence the issuance, amendment, or revocation of any executive order, regulation, or other statement of general applicability and future effect by any Federal, State, or local agency;

(3) that attempts to influence any part of any adjudicatory proceeding of any Federal, State, or local agency if such part of the proceeding is designed for the formulation or modification of any agency policy of general applicability and future effect;

(4) that attempts to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, or any similar procedure of the Congress of a State or local legislative body;

(5) that attempts to influence the conduct of oversight proceedings of the Corporation or any person or entity receiving financial assistance provided by the Corporation;

(6) that pays for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense, associated with an activity prohibited in this section;

(7) that initiates or participates in a class action suit;

(8) that files a complaint or otherwise initiates or participates in litigation against a defendant, or engages in a precomplaint settlement negotiation with a prospective defendant, unless-

(A) each plaintiff has been specifically identified, by name, in any complaint filed for purposes of such litigation or prior to the precomplaint settlement negotiation; and

(B) a statement or statements of facts written in English and, if necessary, in a language that the plaintiffs understand, that enumerate the particular facts known to the plaintiffs on which the complaint is based, have been signed by the plaintiffs, are kept on file by the recipient, and are made available to any Federal department or agency that is auditing or monitoring the activities of the Corporation or of the recipient, and to any auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation:

Provided, That upon establishment of reasonable cause that an injunction is necessary to prevent probable, serious harm to such potential plaintiff, a court of competent jurisdiction may enjoin the disclosure of the identity of any potential plaintiff pending the outcome of such litigation or negotiations after notice and an opportunity for a hearing is provided to potential parties to the litigation or the negotiations: Provided further, That other parties to the litigation or negotiation shall be access to the statement of facts referred to in subparagraph (B) only through the discovery process after litigation has begun;

(9) unless-

(A) prior to the provision of financial assistance-

(i) if the person or entity is a nonprofit organization, the governing board of the person or entity has set specific priorities in writing, pursuant to section 1007(a)(2)(C)(i) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)(C)(i)), of the types of matters and cases which the staff of the nonprofit organization shall devote time and resources; and

(ii) the staff of such person or entity has signed a written agreement not to undertake cases or matters other than in accordance with the specific priorities set by such governing board, except in emergency situations defined by such board and in accordance with the written procedures of such board for such situations; and

(B) the staff of such person or entity provides to the governing board, on a quarterly basis, and to the Corporation on an annual basis, information on all cases or matters undertaken other than cases or matters undertaken in accordance with such priorities;

(10) unless-

(A) prior to receiving the financial assistance, such person or entity agrees to maintain records of time spent on each case or matter with respect to which the person or entity is engaged;

(B) any funds, including Interest on Lawyers Trust Account funds, received from a source other than the Corporation by the person or entity, and disbursements of such funds, are accounted for and reported as receipts and disbursements, respectively, separate and distinct from Corporation funds; and

(C) the person or entity agrees (notwithstanding section 1009(d) of the Legal Services Corporation Act (42 U.S.C. 2996h(d))) to make the records

described in this paragraph available to any Federal department or agency that is auditing or monitoring the activities of the Corporation or of the recipient, and to any independent auditor or monitor receiving Federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation;
(11) that provides legal assistance for or on behalf of any alien, unless the alien is present in the United States and is-

(A) an alien lawfully admitted for permanent residence as defined in section 1101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20));

(B) an alien who-

(i) is married to a United States citizen or is a parent or an unmarried child under the age of 21 years of such a citizen; and

(ii) has filed an application to adjust the status of the alien to the status of a lawful permanent resident under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), which application has not been rejected;

(C) an alien who is lawfully present in the United States pursuant to an admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) (relating to refugee admission) or who has been granted asylum by the Attorney General under such Act;

(D) an alien who is lawfully present in the United States as a result of withholding of deportation by the Attorney General pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h));

(E) an alien to whom section 305 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 note) applies, but only to the extent that the legal assistance provided is the legal assistance described in such section; or

(F) an alien who is lawfully present in the United States as a result of being granted conditional entry to the United States before April 1, 1980, pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)), as in effect on March 31, 1980, because of persecution or fear of persecution on account of race, religion, or political calamity;

(12) that supports or conducts a training program for the purpose of advocating a particular public policy or encouraging a political activity, a labor or antilabor activity, a boycott, picketing, a strike, or a demonstration, including the dissemination of information about such a policy or activity, except that this paragraph shall not be construed to prohibit the provision of training to an attorney or a paralegal to prepare the attorney or paralegal to provide-

(A) adequate legal assistance to eligible clients; or

(B) advice to any eligible client as to the legal rights of the client;

(13) that claims (or whose employee claims), or collects and retains, attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees in cases initiated by such recipient after the date of enactment;

(14) that participates in any litigation with respect to abortion;

(15) that participates in any litigation on behalf of a person incarcerated in a Federal, State, or local prison;

(16) that initiates legal representation or participates in any other way, in litigation, lobbying, or rulemaking, involving an effort to reform a Federal or State welfare system, except that this paragraph shall not be construed to preclude a recipient from representing an individual eligible client who is seeking specific relief from a welfare agency if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation;

(17) that defends a person in a proceeding to evict the person from a public housing project if-

(A) the person has been charged with the illegal sale or distribution of a controlled substance; and

(B) the eviction proceeding is brought by a public housing agency because the illegal drug activity of the person threatens the health or safety of another tenant residing in the public housing project or employee of the public housing agency;

(18) unless such person or entity agrees that the person or entity, and the employees of the person or entity, will not accept employment resulting from in-person unsolicited advice to a nonattorney that such nonattorney should obtain counsel or take legal action, and will not refer such nonattorney to another person or entity or an employee of the person or entity, that is receiving financial assistance provided by the Corporation; or

(19) unless such person or entity enters into a contractual agreement to be subject to all provisions of Federal law relating to the proper use of Federal funds, the violation of which shall render any grant or contractual agreement to provide funding null and void, and, for such purposes, the Corporation shall be considered to be a Federal agency and all funds provided by the Corporation shall be considered to be Federal funds provided by grant or contract,

but nothing in this section shall be construed to prohibit a recipient from receiving funds from a source other than the Corporation and expending them in accordance with the purposes for which those funds were provided.

(b) Nothing in this section shall be construed to prohibit a recipient from using funds from a source other than the Legal Services Corporation for the purpose of -

(1) contacting, communicating with, or responding to a request from, a State or local government agency, a State or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient;

(2) responding to a request for public comment in a rulemaking process; or

(3) responding to a written request for information or testimony from a government agency, legislative body or committee, or a member of such an agency, body or committee.

(c) Not later than 30 days after the date of enactment of this Act, the Legal Services Corporation shall promulgate a suggested list of priorities that boards of directors may use in setting priorities under subsection (a)(9).

~~(d)(1) The Legal Services Corporation shall not accept any non-Federal funds, and no recipient shall accept funds from any source other than the Corporation, unless the Corporation or the recipient, as the case may be, notifies in writing the source of the funds that the funds may not be expended for any purpose prohibited by the Legal Services Corporation Act or this title.~~

(d) Nothing in this section (2) Paragraph (1) shall not prevent a recipient from receiving funds from a source other than the Corporation and expending them in accordance with the purposes for which those funds were provided, including, but not limited to—

(1) (A) receiving Indian tribal funds (including funds from private nonprofit organizations for the benefit of Indians or Indian tribes) and expending the tribal funds in accordance with the specific purposes for which the tribal funds are provided; or

(2)(B) using funds received from a source other than the Legal Services Corporation to provide legal assistance to a covered individual if such funds are used for the specific purposes for which such funds were received, ~~except that such funds may not be expended by recipients for any purpose prohibited by this Act or by the Legal Services Corporation Act.~~

(e) As used in this section:

(1) The term "controlled substance" has the meaning given the term in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(2) The term "covered individual" means any person who—

(A) except as provided in subparagraph (B), meets the requirements of this Act and the Legal Services Corporation Act relating to eligibility for legal assistance; and

(B) may or may not be financially unable to afford legal assistance.

(3) The term "public housing project" has the meaning as used within, and the term "public housing agency" has the meaning given the term, in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a).

SEC. 505. None of the funds appropriated in this Act to the Legal Services Corporation or provided by the Corporation to any entity or person may be used to pay membership to any private or nonprofit organization.

SEC. 506. None of the funds appropriated in this Act to the Legal Services Corporation may be used by any person or entity receiving financial assistance from the Corporation to file or pursue a lawsuit against the Corporation.

SEC. 507. None of the funds appropriated in this Act to the Legal Services Corporation may be used for any purpose prohibited or contrary to any of the provisions of authorization legislation for fiscal year 1996 for the Legal Services Corporation that is enacted into law. Upon the enactment of such Legal Services Corporation reauthorization legislation, funding provided in this Act shall from that date be subject to the provisions of that legislation and any provisions in this Act that are inconsistent with that legislation shall no longer have effect.

the enactment of such Legal Services Corporation reauthorization legislation, funding provided in this Act shall from that date be subject to the provisions of that legislation and any provisions in this Act that are inconsistent with that legislation shall no longer have effect.

SEC. 508. (a) The requirements of section 504 shall apply to the activities of a recipient described in section 504, or an employee of such a recipient, during the provision of legal assistance for a case or matter, if the recipient or employee begins to provide the legal assistance on or after the date of enactment of this Act.

(b) If the recipient or employee began to provide legal assistance for the case or matter prior to the date of enactment of this Act-

(1) each of the requirements of section 504 (other than paragraphs (7), (11), and (15) of subsection (a) of such section), shall, beginning on the date of enactment of this Act, apply to the activities of the recipient or employee during the provision of legal assistance for the case or matter; and

(2) the requirements of paragraphs (7), (11), and (15) of section 504(a) shall apply-

(A) beginning on the date of enactment of this Act, to the activities of the recipient or employee during the provision of legal assistance for any additional related claim for which the recipient or employee begins to provide legal assistance on or after such date, and

(B) beginning July 1, 1996, to all other activities of the recipient or employee during the provision of legal assistance for the case or matter.

(c) The Legal Services Corporation shall, every 60 days, submit to the Committees on Appropriations of the Senate and House of Representatives a report setting forth the status of cases and matters referred to in subsection (b)(2).

SEC 509. (a) An audit of each person or entity receiving financial assistance from the Legal Services Corporation under this Act (referred to in this section as a "recipient") shall be conducted in accordance with generally accepted government auditing standards and shall report whether-

(1) the financial statements of the recipient present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) the recipient has internal control systems to provide reasonable assurance that it is managing funds, regardless of source, in compliance with Federal laws and regulations; and

(3) the recipient has complied with Federal laws and regulations applicable to funds received, regardless of source.

(b) In carrying out the requirements of subsection (a)(3), the auditor shall select and test a representative number of transactions. Any noncompliance found by the auditor during the audit under this section shall be reported within 30 days to the Office of the Inspector General.

(c) Audits conducted in accordance with this section shall be in lieu of the financial audits otherwise required by section 1009(c) of the Legal Services Corporation Act (42 U.S.C. 2996h(c)).

(d) Notwithstanding section 1006(b)(3) of the Legal Services Corporation Act (42 U.S.C. 2996e(b)(3)), the Legal Services Corporation shall have access to financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, for each recipient, except for reports or records subject to the attorney-client privilege.

(e) The Legal Services Corporation shall not disclose any name or document referred to in subsection (d), except to—

(1) a Federal, State, or local law enforcement official; or

(2) an official of an appropriate bar association for the purpose of enabling the official to conduct an investigation of a rule of professional conduct.

(f) The requirements of this section shall apply to a recipient for its first fiscal year beginning on or after January 1, 1996.

August 27, 1993

ALAN W. HOUSEMAN
EXECUTIVE DIRECTOR

Melanne Verveer, Deputy Chief of Staff
to the First Lady
Old Executive Office Building
Room 100
Washington, DC 20500

Dear Melanne:

In response to a call from John Dwyer, I prepared the enclosed memorandum and sent him a large amount of material which he requested and which is reflected in the cover letter which I have also enclosed.

I would like to talk with you about the substance of the Administration's position on the House Reauthorization legislation on legal services. Please give me a ring when you have a chance.

Thanks for your continuing help and assistance.

Sincerely,



Alan W. Houseman
Executive Director

Enclosures: a/s



MEMORANDUM

ALAN W. HOUSEMAN
EXECUTIVE DIRECTOR

TO: John Dwyer
FROM: Alan W. Houseman
DATE: August 27, 1993
RE: Administration Reauthorization Testimony

Alan W. Houseman

HR 2644 (the 1993 version of HR 2039 which passed the House in May of 1992) does represent an effective compromise within the context of the House of Representatives.

HR 2644 does strengthen local control and addresses many of the problems with LSC actions of the Reagan-Bush era. Particularly relevant are Sections 6, 11, 12, 21 and 26 of HR 2644. The House bill also ensures fiscal responsibility and preserves the fundamental ability of legal services programs to provide full, professional representation to the poor in all relevant forums.

Our views on HR 2644 are fully set forth in the attached memo. Just to be clear, we prefer the Senate Labor and Human Resources Bill of 1992, S. 2870.

MAJOR PROBLEMS WITH HR 2644

The legal services community and its allies (American Bar Association, UAW and organized labor, Leadership Conference on Civil Rights) have three major concerns with HR 2644:

1. **Restrictions on private and non-LSC funds.** HR 2644 continues the current restrictions on private funds received by LSC recipients and prohibits the use of any non-LSC funds for grassroots lobbying (which is an entirely new restriction on non-LSC public and IOLTA funds).

Under 1010(c) of the LSC Act, private funds received by an LSC recipient for the provision of legal assistance cannot be used for a prohibited purpose. LSC has defined prohibited purpose to include most of the activities which are restricted when recipients use LSC funds. See 45 C.F.R. 1610. Under current law, LSC recipients can use private

funds to represent clients who are not financially eligible and clients who are aliens and to carry out some other activities for which LSC funds cannot be used (e.g. some lobbying activities and broad, general research). HR 2644 would continued these restrictions on private funds. In addition, because alien representation would also be restricted by the LSC Act, HR 2644 would also ban some alien representation with private funds.

Under current law, recipients can use non-LSC public funds to engage in any activity so long as the activity is permitted by the non-LSC funding source. Many recipients receive IOLTA funds and other non-LSC public funds (from federal, state and local sources) and are permitted to use these funds for activities that are prohibited with LSC funds. While HR 2644 would not change the general rule, it does contain a provision in Section 5 which bans the use of **any** funds for grassroots lobbying. This is a new restriction that does not now exist. A number of recipients use IOLTA¹ and other non-LSC public funds to engage in activities that fall within the current LSC definition of grassroots lobbying. See 45 C.F.R. 1612.1(m). While a new LSC Board could narrow its definition of what constitutes grassroots lobbying, HR 2644 would still bar activities that are currently permitted and authorized by non-LSC public funding sources.

We urge the Administration to support the position of the legal services community, the ABA and our allies and the position taken by the Senate Labor and Human Resources Committee including Senators Kennedy and Rudman in 1992 and totally deregulate any restrictions on the use of private and non-LSC public funds.² Such a position is consistent with the position taken by the LSC Board when the First Lady was its chair. See pages 5-8 of the attached memo.

2. Restrictions on Cases and Advocacy. HR 2644 continues existing restrictions on abortion and certain military representation, incorporates most of the restrictions on alien representation that now only exist in appropriation riders, and adds restrictions on representation in Voting Rights cases involving redistricting and certain eviction proceedings. The ABA and legal services community has always opposed restrictions on case types that are set nationally (either by Congress or LSC). In our view, restrictions on case types should only be set by local governing bodies.

HR 2644 generally permits representation of clients in all relevant forums (e.g. administrative and legislative forums) and in class action suits. However, HR 2644 imposes procedural requirements for legislative and administrative advocacy and class actions and some general procedural requirements (e.g. Section 8 on negotiation and ADR, Section 13 on solicitation and Section 15 involving retainer agreements). The ABA and legal services community also oppose restrictions on the scope of

¹IOLTA funds are funds distributed by bar foundations or state entities to a variety of grantees including LSC recipients. Such funds are derived from the interest on lawyers trust accounts.

²Note that Rep. Frank (who was chair of the Administrative Law Subcommittee during 1991-92) supported deregulation of private funds, but made the political judgment that some restrictions would have to continue in order to pass HR 2039.

representation that can be provided by recipients to eligible clients. HR 2644 does permit such representation if the procedural requirements are met. While we do not support the need for procedural requirements, we believe the fundamental principle of no substantive restrictions on representation is carried out by HR 2644.

We urge the Administration to make a strong statement of principle that Congress should not impose substantive restrictions on the types of cases that LSC recipients should be able to handle nor on the scope of representation that recipients should be able to provide. This is consistent with the statement of principles developed by the LSC Board when the First Lady was is chair.

3. Timekeeping. Section 19(b) of HR 2644 requires LSC to adopt a regulation on timekeeping and requires that all attorneys and paralegals "keep contemporaneous records of the time spent by case or matter and the type of case or matter."

The basic requirement was adopted in Subcommittee, although some of the more onerous parts were cleaned up in full Committee. The subcommittee vote was the only vote Rep. Frank lost and some key Democratic members were not present when the subcommittee vote occurred.

The Senate bill took a different approach and was keyed to the complete deregulation of private funds that the bill proposed. Under Section 19(b) of S. 2870, programs must maintain a recordkeeping system "that discloses the types of activities supported by Corporation and non-Corporation funds" and meets "the requirements of time and recordkeeping established by the Office of Management and Budget, Circular A-122" and its successors. OMB A-122 requires a statement from employees every two weeks that allocates their time between federal and non-federal resources, but does not require timekeeping by case or matter at the time when the activity occurred. The rationale was that LSC recipients should be subject to the same requirements as other federal grantees — no less or more restrictive.

We urge the Administration to state the general principle that LSC recipients should be required to maintain a recordkeeping system that effectively distinguishes between LSC and non-LSC funds, but that LSC recipients should not be required to utilize recordkeeping systems that other federal grantees are not required to maintain.

COMPETITION

One of the central issues during House consideration of HR 2039 was whether LSC should competitively bid for all LSC grants. Currently, LSC funds existing recipients unless they are terminated or denied refunding. If LSC is to deny refunding or terminate, it must hold a hearing before an independent hearing officer. HR 2644 continues existing law, although it clarifies more precisely the grounds for refunding and permits LSC to deny refunding if there is a better recipient available. HR 2644 also requires LSC to conduct a study of competitive bidding to determine whether competitive bidding can be used in a legal services context. However, HR 2644 does not mandate competitive bidding or relax the procedural requirements for defunding.

The ABA and the legal services community and its allies support the need for a study and oppose the imposition of competitive bidding. The record of competitive bidding in criminal defense services and in a few civil context is quite clear. It didn't work - indeed, competitive bidding was a disaster. Costs rose, services were reduced and quality suffered. See discussion in House Committee Report pages 55-56, H.Rep. 102-476 (102nd Cong. 2d Sess.). See also arguments against competitive bidding that are attached to the Memo on Possible Amendments and pages 4-5 of the attached memo.

However, we are concerned that the wording of Section 16 of HR 2644 is too focussed on competitive bidding and not on the broader and more important issues of what use, if any, competition should have in legal services delivery. We are seeking to clarify the language of HR 2644 to permit LSC to undertake studies of competition, not just studies of competitive bidding.

If the Administration comments on competitive bidding or competition, we would hope that it would support the basic notion of Section 16 that LSC should study the use of competition within legal services and that Congress should not require competitive bidding until after studies are complete and the issues thoroughly examined.

AGRICULTURAL ISSUES

As I mentioned, I would not deal extensively with the four provisions added to address issues raised by agricultural employers of migrant workers. These are: Sections 8 (negotiation), 13 (solicitation), 15 (procedural safeguards) and 22 (attorneys' fees). While the legal services community and the ABA do not support some of the wording in these Sections and do not accept the rationale that legal services lawyers have acted improperly or unethically in agricultural representation, we are not particularly concerned about these provisions. Most of these provisions contain qualifications and protections sufficient to protect the representation that recipients provide to migrants and other farmworkers.

However, the administration may want to consider a general statement about the agricultural provisions indicating that the four Sections do appear to address many of the concerns raised by agricultural employers while at the same time permitting legal services programs to provide full, effective representation to migrant farmworkers and other clients.

* * * * *

Please let me know if I can provide any more detail about our concerns and do not hesitate to contact me if you have any questions.

VIEWS OF LEGAL SERVICES COMMUNITY ON HR 2644

August 27, 1993

LOCAL CONTROL

A fundamental principle which has been a hallmark of federally-funded legal services since its inception is that the program is controlled and directed, not by bureaucrats in Washington, but by local attorneys, clients and other citizens who understand the needs and resources of the communities in which they live. The LSC Act and the legislative history are replete with provisions and comments about local decisionmaking in the operation of the local programs. One of the basic tenets of this new Administration's notions of reinventing government is permitting local control of programs and encouraging experimentation and innovation to meet local needs and circumstances. LSC was ahead of its time; legal services reinvented government in 1974, twenty years ahead of our current efforts to reform how government functions.

Our strong belief is that the nature and scope of the legal services required in a particular community are best determined by those people in that community who are responsible for the oversight and conduct of the legal services program and those who benefit from its services. Congress required that 60% of the local board members must be lawyers, that 50% must be lawyers named by bar associations representing the majority of attorneys in the local area, and that one-third must be individuals eligible to be served by the program. Those provisions remain, as they should, in this bill. This concept of local decision making is tied directly to the priority-setting provisions in Section 1007(a) (2) (C) of the Legal Services Corporation Act.

Our goal is to **strengthen local control**. Thus, we support the amendment to Section 1007(c) of the Act that appears in this bill. This amendment includes the board appointment provisions described above, known as the McCollum Amendment, that have been included in appropriations riders since 1983. The bill also clarifies a number of provisions contained in current law that have caused confusion or have been interpreted in ways that reduce local control and accountability to the community served by the program.

HR 2644 also specifies that the local board of each recipient, and **not the Legal Services Corporation**, is responsible for the overall governance of the program and should determine broad policy matters related to the recipient. That means the local board, and not LSC, is responsible for establishing financial eligibility criteria within the limits set by law. The local board must establish policies that govern the fiscal, administrative and representational activities of the recipient, including compliance with provisions of the LSC Act and regulations. The local board, and not LSC, should determine the types of cases or matters attorneys may undertake. The local board determines how best to utilize staff attorneys, paralegals and other available and appropriate staff as well as private attorneys and others, to provide legal assistance to

eligible clients and to carry out activities related to the delivery of legal assistance. LSC's role should be limited to ensuring that none of these locally determined policies violate the specific prohibitions and restrictions in the Act, not whether LSC would like to see them done differently.

HR 2644 also specifies that local boards must not interfere with the lawyer/client relationship of program attorneys; that board members must comply with the legal and ethical requirements on board conflicts applicable in the jurisdiction; and that local boards cannot act on a case-by-case basis in determining case types or setting priorities. Section 7 of HR 2644 does, however, permit local governing bodies to expressly disapprove class actions. We will urge the subcommittee to delete that "right of rejection" provision which we believe is inconsistent with the rules of professional responsibility and constitutes an inappropriate interference with the professional judgment of program attorneys.

We also support the provisions of HR 2644 that **strengthen and clarify the local priority setting provisions** of the current LSC Act by amending Section 1007(a)(2)(C). We agree that program priorities should be subject to the principles enunciated in section 1001 of the Act as well as to any goals specifically set forth in legislation by Congress, but that the Legal Services Corporation should not have the authority to establish its own separate goals nor should it have the authority to promulgate national priorities. This limitation is necessary not only to preserve local control, but also to ensure that programs remain immune to political pressures that may, as history has demonstrated all too often, influence LSC.

We also support the provisions of HR 2644 that would require all recipients, through their boards of directors, to undertake an annual review of program priorities and set priorities periodically through a process that involves a review of the legal needs of clients in the community. That legal needs assessment would require the participation of clients, community groups, the organized bar, program staff and private attorneys involved in the delivery of legal services to eligible clients.

We also support the provisions of HR 2644 that **delimit the role of the Corporation**. The bill would amend section 1006(b)(1)(A) of the LSC Act to prevent LSC from imposing restrictions or requirements on representation of clients that are in addition to or are inconsistent with the provisions of the LSC Act or other relevant law. The intent of this provision is quite simply to clarify that Congress retains the sole authority to impose new restrictions on representation by legal services programs.

Our position is simple: the Legal Services Corporation does not now, nor has it ever, nor should it in the future, set national priorities or determine what kinds of cases local programs should undertake or what kinds of services they should provide. Instead, local program boards, based on a legislatively mandated process to determine the needs of clients within their service areas, should decide how to allocate scarce resources and what types of cases to take and services to provide. Local programs should regularly reexamine the needs of the client communities they serve to determine what their program priorities should be. Priority setting should remain with the boards of directors

of legal services programs whose members – attorneys practicing in the community, client representatives and other local citizens – are in the best position to determine the needs of their own communities.

There are two other areas that relate to the principle of local control that need to be addressed as the subcommittee considers the parameters of this reauthorization bill. The first concerns the manner in which LSC conducts the monitoring and evaluation functions that it is required under the Act to perform. The second concerns the issue of competitive bidding as it relates to the review and redesign of the legal services delivery system.

When the Legal Services Corporation was first established, it designed and implemented a **monitoring and evaluation** system that sought to improve the provision of legal services to the poor through program evaluation and technical assistance. While far from perfect, that initial system sought both to ensure compliance with the provisions of the Act and to help programs provide high quality legal assistance that was economic and effective.

During the last twelve years, that system was transformed into a highly adversarial process that sought, as a primary objective, to punish recipients for perceived, and often misperceived, transgressions and violations of overwhelming and unreasonable requirements that often had no basis in the LSC Act or regulations. That process often undermined local control of program operations as LSC began to second-guess virtually every program decision, micro-manage program operations, and sanction programs for actions that did not comport with the LSC staff's view of what constituted appropriate behavior. On the other hand, no serious effort was made to evaluate programs to determine whether they were carrying out high quality legal assistance or producing effective and economic performance, and no assistance was provided to help programs improve their operations or correct problems that were identified.

Section 6 of HR 2644 moves the process back in the direction of firm but fair oversight, clarifies the due process rights of recipients, while including provisions that ensure that when real violations are found, LSC has the capacity to impose appropriate sanctions. It establishes concrete criteria and realistic time frames for investigating complaints against recipients. It requires the Corporation to promulgate standards and procedures to ensure fairness in the monitoring process, as well as in complaint investigation, including standards for access to sensitive client and personnel records. But most significantly, it requires the Corporation to provide for independent evaluation of the quality, effectiveness and efficiency of a recipient's services. It mandates LSC to promulgate criteria to measure performance and to develop an objective process by which program performance will be measured.

HR 2644 also addresses another issue that directly implicates local control – **competitive bidding** for award of LSC grants and contracts. For several years, critics of legal services insisted that all LSC grants and contracts should be subject to periodic competitive bidding and that due process rights of recipients in the refunding context should be virtually eliminated. During last year's debates on HR 2039 several

amendments were offered that would have imposed competitive bidding for all grants and contracts. The House overwhelmingly rejected these amendments. In lieu of those proposals, HR 2039 required the Corporation to undertake a study of the feasibility of utilizing competitive bidding. The purpose of the study was to help determine whether, how and under what circumstances competitive bidding should be used in the legal services context.

If critics of legal services could produce any evidence whatsoever to suggest that competitive bidding had worked in legal services or related service delivery, instituting competitive bidding on some limited basis might arguably make sense. However, all of the research that has been done in this area has produced strong, unrefuted evidence that competitive bidding has been an unmitigated disaster wherever it has been tried in delivering similar services. Over the last several years, this subcommittee has heard substantial amounts of testimony that support that conclusion. There is no evidence to suggest that competitive bidding is appropriate or feasible for legal services delivery or that it would produce any beneficial results at all. Moreover, there exist no standards or guidelines for the implementation of a competitive bidding system. It is clear that the only rationale or justification for competitive bidding is as tool to disrupt the current legal services delivery system.

We understand the desire of the Congress to have LSC study alternatives, including some forms of competition, that could be used to improve the delivery of legal service. We propose that the bill include a study that looks at the feasibility of using competition to improve the delivery of legal services. Under this provision, the Corporation would have the flexibility to study the use of competition in contexts other than competitive bidding and could examine competition along with other proposals to improve the delivery of legal services. We will urge the subcommittee to substitute a new version of the study along these lines, rather than the one in HR 2644, because the latter could be interpreted to require the Corporation to conduct a study solely on competitive bidding.

The Corporation, in conjunction with an advisory group consisting of representatives of the legal services community, the private bar, corporate counsel and nationally known experts on measuring quality in legal delivery, is currently conducting a comparative demonstration project with two objectives: first, to determine how to measure and evaluate legal services program performance; and second, to test the utility of competition among legal services programs for monetary incentives as a tool to improve that performance. Later rounds of the demonstration project envision testing the utility of other tools, including technical assistance, to improve program performance. If this demonstration project is carried out consistent with the recommendations of the advisory group, we believe it could both meet the requirements of the study that we propose and serve the legal services community well. In contrast, a study like that described in HR 2644, focused solely on competitive bidding, would have little utility, if any, beyond the very narrow confines of its charge.

DEREGULATION OF THE USE OF PRIVATE FUNDS

Closely related to our goal of strengthening local control and local priority setting is our proposal to **deregulate the use of private funds** received by LSC grantees. We believe Section 1010(c) of the Legal Services Corporation Act should be amended to provide that non-LSC funds may be used by recipients for any purpose which is permitted by the persons or entities providing them, so long as recipients adopt a system of recordkeeping that clearly discloses the types of activities supported by these non-LSC funds and accounts for them separately from LSC funds.

That was the approach advocated by both this subcommittee and the full House Judiciary Committee when they considered HR 2039 last year. However, when the bill reached the floor of the House an amendment offered by Rep. Fish was adopted that restored the current LSC Act restrictions on private funds. I urge the subcommittee to return to its original position and to amend HR 2644 to remove any restriction on the use of private funds.

Just as we would argue that Congress retains the right to determine what activities may be prohibited using LSC funds, we believe that other funders, whether private charities like United Way or state government agencies or Interest on Lawyers Trust Accounts (IOLTA) programs, should have the same right to determine how their funds are to be used. If the board of directors of a local LSC grantee determines there is a particular need in its community for service to clients or groups or for work on issues which may not be done with LSC funds, why should that grantee not be permitted, and indeed encouraged, to seek private or other alternative funding for that purpose?

During last year's debate on HR 2039 amendments were offered and rejected which would have also restricted all non-LSC public funds, including IOLTA funds that now make up a substantial portion of funding for civil legal services in many states. The House soundly defeated that amendment, presumably because it believed that if a state or local government decided to provide funding for legal services to the poor, whether through direct appropriation or filing fee surcharge or other means, it should be permitted to determine what services could be supported with those funds and to whom those funds would be granted.

That argument applies with equal force to IOLTA funds, which are distributed to civil legal services programs in virtually every state and the District of Columbia. These programs, some of which are legislatively mandated and some of which were established by judicial action, were initially conceived in the early 1980s as a supplement to LSC-supported services, not to duplicate or supplant them. IOLTA grant decisions are generally made by state appointed governing bodies that are acutely aware of critical unmet legal needs in their respective jurisdictions. Those bodies should have the authority to direct their funds to those entities they believe are best qualified to deliver the services they wish to fund, and they should be able to determine what those services will be.

Congress should not claim the authority to substitute its judgment for that of another government entity or private funder, nor should it do anything to discourage these private and public efforts to narrow the huge gaps between available resources and legal need that exist for poor people all over the country. We all recognize that federal funding for legal services meets only a small fraction of the need. Recipients must seek additional outside funding to address the legal needs of their local client communities. Please do not hamstring them in their efforts. We believe that the provision contained in HR 2644 as well as other amendments that may be offered to restrict the use of these critically needed private and non-LSC public funds are unwise and may well be unconstitutional. We will urge the subcommittee to delete the private funds restriction in HR 2644 that was added during the debate on HR 2039 and reject any amendments to restrict the use of non-LSC public funds. This subcommittee followed the correct approach when it first considered HR 2039 and it should readopt that approach as it considers HR 2644.

At the same time, we recognize fully the need for LSC recipients to account for all of the funds they receive from other sources and to report the use of those funds in a manner that separates and distinguishes them from Corporation funds, pursuant to generally accepted accounting principles. Nevertheless, we believe that the timekeeping provision that is included in HR 2644, which would impose burdensome, national timekeeping requirements on all LSC grantees, goes much further than is necessary to ensure accountability. It leaves little room to respond to the needs and characteristics of individual programs and would supplant the locally designed systems that now exist in many programs. In addition, LSC recipients would be subject to unique requirements no federal agency imposes and no other federal grantee must meet.

The price of the timekeeping system required by HR 2644 would not be cheap. Estimates for the initial cost of implementing such a national system for LSC recipients range as high as \$17 million and do not include the ongoing costs of administering the system by grantees or any of LSC's start-up or administrative costs. In effect, all of the costs would be subtracted from the already inadequate resources intended to be used to provide legal services to the poor.

There is a reasonable alternative to a nationally dictated timekeeping system: requiring the governing body of each LSC grantee to adopt a recordkeeping system, consistent with OMB Circular A-122, which discloses the types of activities supported by the non-LSC funds. Many local programs already have devised record-keeping and/or timekeeping systems designed to meet the information needs of local boards and managers and the requirements of other funders, including other federal funders. The alternative approach we will suggest would permit, subject to these locally designed systems of recordkeeping, non-LSC funds to be used in accordance with the purposes for which they are provided by the funding source. It would essentially treat recipients of LSC funds identically to grantees of other federal agencies. We will urge the subcommittee to consider modifying the timekeeping provision in HR 2644 along these lines.

PERMITTING THE FULL SCOPE OF REPRESENTATION

The legal services community and the organized bar have historically opposed restrictions on representation of poor citizens that are not imposed on representation of those who can afford an attorney. HR 2644 takes the positive step of eliminating the provision in the current LSC Act that prohibits advocacy on issues relating to desegregation. We will urge the subcommittee to eliminate the remaining prohibitions, including the restriction on legal assistance with respect to abortion and in desertion or selective service cases. We do recognize that there are special concerns about accountability for the use of federal funds that may dictate special procedural requirements for certain kinds of cases. There is a difference, however, between requiring that procedures be followed with respect to certain forms of advocacy that may be undertaken, and absolutely prohibiting any representation for a particular group of clients or on a particular type of case. We strongly oppose any absolute prohibitions on representation that would totally deny members of the client community access to attorneys to represent their interests simply because of their individual status or the nature of their legal problem.

There are two restrictions contained in HR 2644 that would limit the ability of legal services programs to provide their clients with the full scope of legal representation available to paying clients of private attorneys. First, the bill prohibits the use of both LSC and private resources for the representation of broad categories of **aliens** that are legally in the United States. Current law does not restrict the use of private funds for alien representation, and we can find no rationale for imposing any such restriction on the use of private funds, which are often earmarked by the funder specifically for services to particular groups of aliens, like the Cambodian population that has settled in large numbers in Minnesota and elsewhere in the Midwest. Indeed, in some areas of the country with large immigrant populations, such a restriction on private funds would effectively cripple the ability of legal services programs to meet the legal needs of a substantial proportion of the low income community.

The deregulation of private funds, which is discussed above, would go far to remedy this problem for many programs with substantial non-LSC resources, since it would permit those programs that have private funds to continue to represent those aliens excluded from representation supported with LSC funds. Nevertheless, there are many areas of the country where there are large immigrant populations, but a scarcity of private or other public resources to support legal assistance activities. We will urge the subcommittee to eliminate the restriction on alien representation entirely, leaving to the local priority setting process the task of determining what are the most critical needs of the community that should be met with whatever resources are available. However, in the event that there is not sufficient support for the complete elimination of the ban on alien representation, we will urge the subcommittee to add two new categories of aliens who are legally residing within our borders to those who can be represented by LSC recipients: (1) those with a current authorization to work in the U.S. and (2) alien children who have been abused, neglected or abandoned in the U.S. and have come under protection of the foster care system.

Second, HR 2644 would prohibit legal services attorneys from representing clients in any case where **redistricting** is the remedy sought. The prohibition would apply regardless of the level of government and would affect cases involving all elected judicial and administrative entities, as well as legislative bodies. We will urge the subcommittee to reject this broad prohibition that in many instances would completely deny the poor the opportunity to enforce the Voting Rights Act and to be represented in cases that affect fundamental Constitutional rights.

The argument for permitting legal services to represent clients in those cases which involve purely local concerns is particularly compelling. Local elected bodies, such as school boards, city and county councils, public health and hospital district boards and other similar entities, whose members are often elected in nonpartisan contests, make vital decisions that involve the allocation of scarce government services and benefits. Those decisions often have a disproportionate impact on the lives of poor people who may be more dependant on government programs than are their wealthier neighbors. The actions of those local bodies affect the daily lives of poor people in far more significant ways than anything that you in Congress or your counterparts in state legislatures do.

The vast majority of redistricting cases handled by legal services programs deal with these local issues. Most of these cases originate in areas of the country, particularly the South and Southwest, where poor blacks and Hispanics have been effectively disenfranchised, in violation of the Constitution and the Voting Rights Act. Local elected bodies in these communities are often unresponsive to the needs of the poor whose votes are diluted by local electoral systems that eliminate candidates who might better represent their interests, regardless of political party.

Legal services programs bring these local redistricting cases, not to benefit any specific political party or to elect any particular candidate, but to enforce the legal rights of their clients and to ensure that the voice of the poor community is heard. In my view, that is exactly the kind of activity that Congress intended this program to undertake, and you should take no action to limit its ability to do so.

One area of legal representation that is of tremendous importance to legal services clients is **legislative** and **administrative** advocacy. Section 5 of HR 2644 incorporates into the LSC authorization provisions from the current Act and appropriations bills that have governed administrative and legislative advocacy by LSC recipients for the past eight years. Thus, the bill permits legal services programs to engage in administrative advocacy so long as it is on behalf of a particular eligible client on a matter which directly involves that client's legal rights or responsibilities. In addition, the bill permits communication to a legislative body under certain limited circumstances and subject to numerous limitations and safeguards to protect against perceived abuse. It permits programs to respond to requests for information or assistance from legislators or administrators and to advocate on issues that directly affect the program's funding or ability to operate. However, to prevent legal representation from turning into a full scale lobbying effort, HR 2644 prohibits all grassroots lobbying.

Provisions virtually identically to those in HR 2644 have been in effect since 1984 and have worked well since they were enacted. There have not been any substantiated charges that prove significant violations. Without a framework that permitted this kind of representation, legal services lawyers would have been severely circumscribed in their ability to fully represent their clients' legal interests and secure their clients' legal rights.

Nevertheless, as those subcommittee members who participated in last year's House debate know, there are some who would amend HR 2644 to absolutely bar legal services representation and direct communication in legislative and administrative forums. During the debate on HR 2039, an amendment was proposed but defeated that would have prohibited entirely the representation of eligible indigent clients in two different situations: in the adoption, amendment or revocation of an executive order or an administrative rule by any agency of the Federal, state or local government; and in the passage or defeat of any legislation by any Federal, state or local legislative body or in relation to any initiative, petition or referendum. It would have limited representation before administrative agencies to those adjudicatory proceedings where the legal rights of specific individual clients were being resolved, e.g., a fair hearing in a welfare case. Legal services programs would not, under the amendment, be permitted to participate in rulemaking proceedings even where representation was on behalf of a client whose rights were directly affected by the rulemaking and where no other avenue of recourse was available. The amendment would have also completely eliminated the right of legislators or agency officials to request information from a legal services program, depriving those who make the law of the knowledge and expertise of those attorneys who have first-hand experience in its enforcement and in its effects on the poor.

The approach advocated by the proponents of last year's amendment would have barred representation which has been permitted from the beginning of the Corporation under Section 1007 (a) (5) of the Act as refined by provisions of various appropriations riders since 1984. In all that period, legal services attorneys have been permitted to represent, or communicate on behalf of, eligible clients when such administrative or legislative advocacy was an appropriate means to resolve those clients' problems or when a request was received from an administrative or legislative body seeking assistance in the performance of its responsibilities. The provisions of HR 2644 strike the appropriate balance on these issues and continue the essential elements of current law, while clarifying the language and making several technical adjustments.

We remain concerned about two provisions that appears in the HR 2644 that restrict the ability of legal services advocates to exercise their professional judgment on behalf of the low-income client community. The first provision represents an effort to ensure that legal services attorneys, particularly those attorneys who represent migrant farm workers, do not engage in inappropriate or unethical **solicitation** of clients. This is an admirable goal, however, the language of the HR 2644 would apply to LSC attorneys selective language from an outmoded formulation of the ABA Code of Professional Responsibility that was never intended to apply to legal services attorneys or others working for non-profit organizations in the first place.

When Congress passed the LSC Act, it made it clear that legal services attorneys should practice law on behalf of their clients subject to the same locally determined court rules and precepts of ethics and professional responsibility that were applicable to other attorneys practicing in those jurisdictions. We will urge this subcommittee to remember that basic tenet, and to eliminate any provision that would change the applicability of those rules or permit LSC to substitute its judgment for that of the local or state authorities charged with responsibility for overseeing attorney accountability in their jurisdictions.

Second, HR 2644 would require legal services advocates, before filing suit, to attempt to **negotiate** settlements and use **alternative dispute resolution (ADR)** mechanisms where such mechanisms are appropriate and available. This requirement attempts to accomplish a worthwhile objective — the increased use of negotiation and other alternatives to litigation — but does so by requiring local boards of directors to institute policies that limit the professional judgment of program attorneys. The objectives of encouraging negotiation and using ADR are important, and local boards should be required to adopt appropriate policies regarding their use, consistent with ethical restrictions. However, a far preferable approach would be for the bill to mandate that program boards adopt policies that encourage, rather than require, the use of negotiation and ADR under circumstances where the attorney, in the exercise of his/her professional judgment, thinks they would be beneficial to the client's interests.

Finally, HR 2644 provides for a **five-year LSC authorization** and "such sums as may be necessary" in each of those five years to carry out the activities of the Corporation. A five year authorization is essential, after more than a decade without a current funding authorization, to give the Corporation and its recipients a reasonably long period of stability and certainty. This program must have sufficient time to move forward and revitalize, as well as to allow both the Corporation and its recipients to adjust to the substantive changes required by the reauthorization bill.

MEMORANDUM

TO: Paul Drolet

FROM: Alan W. Houseman *Alan*

DATE: April 20, 1993

RE: Substantive Issues for Discussion – Friday Reauthorization Meeting

Staff

Alan W. Houseman
Executive Director

Paula Roberts
Senior Staff Attorney

Mark H. Greenberg
Senior Staff Attorney

Linda E. Perle
Senior Staff Attorney

Judie Levin-Epstein
Senior Policy Advocate

Avi Fichman
Development Director

Nancye L. Lamb

Mark S. Greenberg
Administration

Board of Directors

Brooksley Born, Esq.
Arnold & Porter

Tom Ehrlich
President
Indiana University

Lawrence J. Latto, Esq.
Shea & Gardner

Sylvia Law
NYU School of Law

Simon Lazarus, Esq.
Powell, Goldstein,
Frazer & Murphy

Margaret L. Miller, Esq.
Irma Neal
IBM Corporation

Joseph Onek, Esq.
Onek, Klein, & Farr

Marna Tucker, Esq.
Tosman, Tucker, Leifer,
Fidell & Bank

In order to help think about the possible provisions of a 1993 House Reauthorization bill, I have organized the substantive issues on reauthorization into five categories. The "House" bill refers to HR 2039 as passed by the full House; the "Senate" bill refers to S. 2870 as adopted by the Labor and Human Resource Committee.

KEY ISSUES

1. **Lobbying:** Can we limit the restriction on grassroots lobbying?

The House provision prohibited grassroots lobbying with all funds. It applied to both legislation and regulations. It defined grassroots lobbying as "publicity and propaganda."

This may be the most important issue for the legal services community in the House bill. Restrictions on public funds are particularly troublesome because there are no limitations on such funds today and, in a number of key states (e.g., CA, Mass, New Jersey, New York, Illinois, Ohio), programs use IOLTA funds to engage in some grassroots lobbying. Obviously, we would prefer to limit the restriction only to LSC funds.

Another approach would be to define grassroots lobbying more narrowly. For example, the lobbying proviso could read as follows:

"but nothing in this paragraph shall be construed to permit an attorney or an employee of a recipient or other grantee or contractor of the Corporation to engage in ~~any publicity or propaganda~~ in grassroots attempts to encourage the general public, through calls to action, intended or designed to support or defeat legislation pending before the Congress or State or local legislative bodies or intended or designed to influence any decision by a Federal, State or local agency ..."

Except for grassroots lobbying, the House provision is better than the Senate provision.

2. **Private Funds:** Can we eliminate restrictions on the use of private funds for some (or all) activities?

As you know, the Senate Bill imposed no restrictions on private funds. The House never voted on the question of whether private funds should be restricted. Instead, it voted on the broader McCollum amendment restricting all non-LSC funds. The debate on the McCollum amendment did not distinguish between private and public funds. Why not begin Subcommittee consideration without restrictions on private funds? If full deregulation is not possible, we would hope to remove the restriction on some activities. The most obvious is alien representation. As you know, current law does not restrict private funds for alien representation. Other key activities include legislative and administrative representation, training, and redistricting.

3. **Competition:** Do we need a section on competition? Should we authorize experimentation on delivery issues as an alternative? If we include a section on competition, should we adopt the Senate approach or stick with the House provision?

Our community would prefer either that we have no provision on competition or that the section authorize, but not mandate, that LSC study and experiment with a variety of delivery methods and not focus solely on competition. This is both a political question (do we need a section on competition to prevent losing) and a substantive question of how best to approach the issue of delivery experimentation. Of course, LSC can today experiment with delivery and does not need additional authorizing language. What has stopped more delivery research and experimentation has been appropriation restrictions or lack of appropriated funds for such activity.

If we are going to include a provision on competition, we need to consider whether the Senate provision is better. The Senate bill would permit LSC to meet the study obligations by completing the Comparative Demonstration Project and discussed competition in a context broader than competitive bidding; the House provision focussed almost exclusively on competitive bidding and, if enacted, would likely require additional studies and possibly additional demonstration projects.

4. **Section 6 – Enforcement and Monitoring:** Can we simplify section 6 in order to defuse LSC opposition? Should we consider the Senate language which incorporated some of the LSC concerns?

By the time Congress considers this legislation, we are likely to have a new Board. Even though the new Board (unlike the old Board) will be supportive of most provisions in the House and Senate bills, they are likely to examine very carefully Section 6 because it does restrict their authority. There are very important provisions in Section

6 that are necessary for protection of the legal services community. However, there are a number of provisions that are not very important and were added primarily to reign in the old LSC Board and staff. I have provided a proposed rewrite of Section 6 (as it passed the House) to give you an idea of what changes we could accept. However, I have also added in some protections that were either not suggested previously or were deleted by the Fish Amendment.

If we go ahead with Section 6, we may also want to consider starting with the Senate provision as modified by the Fish amendment.

ISSUES NEEDING REVIEW

1. **Negotiation/ADR:** Can we remove the mandate?

The Senate provision requires programs to set policies that encourage negotiation and ADR, but it does not require that programs negotiate or use ADR prior to filing suit.

2. **Governing Body:** Can we fix the FRAC (Food Research and Action Center) problem?

The Senate provision fixed the FRAC problem and provided more flexibility for programs that do not have as their primary purpose the provision of legal services to eligible clients. We now support this change.

3. **Abortion:** Can we eliminate the restriction altogether?

Given the change in Administrations, the possible Clinton effort to eliminate the Hyde amendment, and the politics which this issue generates, it may well make sense to propose a bill that has no abortion restrictions (and amend the LSC Act accordingly). The floor vote would be over whether there should be any restriction on abortion activities.

4. **Redistricting:** Can we begin the process without a blanket restriction on all activity?

One approach would be to ban redistricting except when enforcing the Constitution or Voting Rights Act with respect to discrimination on basis of race or national origin.

5. **Training:** Can we clarify the training provision so that programs can train clients, conduct community legal education and provide information about existing law or proposed changes in law?

The House provision made one important change that could be interpreted to permit dissemination of information about existing and proposed law and regulations. The Senate provision is different and made some changes that are an improvement. However, both the House and Senate provisions continue restrictions that could be interpreted to prohibit legitimate training and information dissemination in training. The recently revised LSC regulations on Part 1612 address the issue when programs use private funds, but the new regulations do not affect training using LSC funds.

A possible provision:

"(6) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, ~~as distinguished from the dissemination of information about such policies or activities~~¹, except that this provision shall not be construed to prohibit =

"(A) the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients;

"(B) the advising of ~~to advise~~ any eligible clients as to the nature of the legislative process; or

"(C) the informing of ~~to inform~~ any eligible clients of ~~his or her~~ their rights under any existing or proposed statute, order, or regulation; "

6. **Aliens:** Can we broaden eligibility?

The Senate provision includes two more categories: (a) aliens who are spouses and children of legalization beneficiaries who have been granted work authorization and permission to stay in US [I don't think the Smith-Berman agreement covered these] and (b) alien children who have been abused, neglected or abandoned in US and thus under protection of foster care system. What about PRUCOL? H-2B workers? Other categories?

SENATE PROVISIONS NOT IN HOUSE BILL

1. **Outside Practice:** Should we include a revision in the House Bill? If so, should it be identical to or an improvement on the Senate provision?

A number of problems have arisen about outside practice since we began the House bill process and LSC came up with an unfounded interpretation last year in the

¹The House bill eliminated this phrase; the Senate bill retained this phrase.

Evergreen matter. The Senate bill did propose a helpful revision, but it tracked the existing regulation and did not directly address a couple of major issues (although we did so in Committee report language.) We need to clarify: (a) what is uncompensated outside practice; (b) can staff use program resources for pro bono work; and (c) under what circumstances programs can permit attorneys to engage in uncompensated or pro bono outside practice?

2. **Political Activity:** Should we include a definition of "political activity" in order to clarify that political activity is limited to "engendering public support for or opposition to candidates for elective public office or political parties"?

Section 22 of the Senate bill made such a change. Prior LSC boards and the public have interpreted "political activity" to include legislative work, class actions, administrative advocacy and other controversial activities.

3. **Auditor Selection:** Should we clarify that LSC cannot appoint local program auditors?

Section 6(d)(4) of the Senate bill amended the auditor provisions of the LSC Act to prohibit LSC from selecting local program auditors. This was necessary because LSC staff had interpreted the current provision to permit them to select local program auditors.

4. **Violation of Injunction:** Should we clarify that legal services employees can only be found in violation of the LSC Act when a court determines that an injunction has been violated?

The Senate bill, Sec. 6(d)(1), clarified that only if a court determines that an injunction was violated could a recipient employee be held in violation of the LSC Act. LSC has taken the position that LSC staff can determine whether an employee has violated an injunction, even if a court does not act or finds no violation.

SIGNIFICANT ISSUES NOT ADDRESSED IN EITHER BILL

1. **LSC Board Composition:** Should we attempt to specify in greater detail the requirements for LSC Board membership? Should we attempt to prevent recess appointments to LSC Board?

Some leaders of the legal services community have urged that the reauthorization bill spell out more concrete criteria for LSC Board membership to prevent the President from appointing or the Senate from confirming a hostile board. For example, we could specify that the board include "representatives or organizations involved in the development and provision of legal assistance for the poor," "attorneys who have been previously employed full time in legal services" or that "all board members have

knowledge of and experience with the delivery of legal assistance to the poor." A few leaders of the community have urged that the LSC Act explicitly prohibit recess appointments.

2. **Research Funded by Grant or Contract:** Should we permit LSC to fund general research by grant or contract?

Section 1006(a)(3)(A) prohibits LSC from funding by grant or contract "broad general legal or policy research unrelated to the representation of eligible clients." LSC can undertake such research directly. In the past, LSC did this through a Research Institute (which I ran). This is the last vestige of the old "Green Amendment" that sought to eliminate the national support centers. It is an anachronism. It may be that only Senator Hatch has any interest in this. The consequence of the current law is that LSC can not fund an entity to undertake general research on new developments in poverty law or delivery research.

3. **Delivery System:** Should the bill attempt to set out the functions and activities of the national delivery system?

The 1985 House Bill attempted to define the critical components of a national delivery system. The legal services community still believes that some statutory provision should be included. Our current approach is to specify the critical functions of a national delivery system. See attached proposal.

4. **Judicial Review:** Should the bill spell out the provisions for judicial review of LSC decisions?

The LSC Act does not include a provision for judicial review over LSC actions. Courts have generally applied the Administrative Procedure Act standards as clarified by U.S. Supreme Court decisions. It would be helpful to have a section on judicial review that was not dependent on Supreme Court interpretations or changes in the APA. An example of such a section, based on the 1982 Boren Amendments (which were not adopted), is attached.

5. **Definition of Illegal Activity:** Should the bill clarify the scope of the restriction on illegal activities of legal services program staff when acting on their own time?

Section 1007(b)(7) [as amended by House bill, section 6(d)(1)] prohibits employees of recipients from engaging **at any time** in "any other illegal activity." Technically, an employee could be found in violation of the LSC Act if they committed a traffic offense on their own time. In the Evergreen case, LSC found an Evergreen attorney in violation of LSC for committing a misdemeanor on her own time. This is truly absurd.

We could substitute for "any other illegal activity" the following:

"any other activity relating to program finances, client trust funds, or the practice of law which a court or appropriate state or federal disciplinary body has determined to be illegal."

TECHNICAL AMENDMENTS

1. **Board Term:** Section 1004(b) could be cleaned up so that the board terms are clear and outdated language removed.
2. **Board Chair:** Section 1004(d) is outdated and should be revised to provide that the Board elects its chair.
3. **State Advisory Councils:** Section 1004(f) should be eliminated. These are not functioning and are now irrelevant.
4. **Government Controlled Corporation:** Section 1005(e)(1) should be amended to specifically reference "government controlled corporation". Without this change, LSC may be subjected to laws that are not specifically directed to LSC, such as the Federal Privacy Act. While Congress may want to subject LSC to various laws, the LSC should not be subjected to such laws unless Congress does so explicitly, i.e., if the LSC Act so provides or the other law specifies LSC by name (e.g., Inspector General Act.)
5. **ADR Act:** You may want to specifically subject LSC to the Administrative Dispute Resolution Act (adopted through your subcommittee 3 years ago) and which requires federal entities to use ADR to settle disputes with grantees and contractors.
6. **Transition:** Section 1013 should be eliminated.

Prior to our meeting, Linda and I will spend some more time reviewing the current LSC Act to see if there are any additional "clean-up" issues that we may want to address as we go forward with reauthorization this year. We can discuss any of these issues when we meet.

PROVISION ON JUDICIAL REVIEW
Amendment to Section 1008(e)
New Section 1008(e)(2)

In conducting judicial review of all actions of the Corporation, including but not limited to decisions with respect to individual recipients, grantees or contractors, rules, regulations, guidelines, and instructions, as well as grant conditions or assurances, and all policies or changes in policy affecting recipients or other grantees or contractors of the Corporation, the reviewing court shall independently decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of Corporation action. In making determinations on all questions of law, the court shall require that action by the agency is within the scope of the agency jurisdiction or authority and is otherwise in accordance with the law on the basis of the language of the statute, or, in the event of ambiguity, other evidence of ascertainable legislative intent. The reviewing court shall also hold unlawful and set aside agency actions, findings and conclusions found to be arbitrary, capricious, an abuse of discretion, which exceed provisions of this title or otherwise not in accordance with law. In making such a finding, the court shall determine whether the factual basis of a rule, regulation, guideline or instruction is without substantial support in the rule making record or fails to take into account all relevant factors. The reviewing court shall also hold unlawful and set aside agency actions when they were promulgated without observance of procedure required by law.

DELIVERY SYSTEM
Amendment to Section 1007(a)

"(12) maintain a national system to deliver comprehensive legal services in all appropriate forums to eligible clients. Such delivery system shall be consistent with the provisions of this title and with the findings of the Delivery System Study and the Study on Special Problems of Access carried out under sections 1007(g) and (h) of the Legal Services Corporation Act as Amended in 1977 and consistent with the study required under subsection (m) of Section 1007. The delivery system shall seek to provide through recipients in each geographical area the capacity and structure --

"(A) to deliver comprehensive, economical, effective, and high quality legal services to eligible clients in all geographic areas including particular populations with special access difficulties;

"(B) to assess the most critical legal needs of clients in the geographic area served and the flexibility to be responsive to the legal needs of clients as they may change and develop over time, including newly emerging significant legal problems;

"(C) to engage in necessary outreach to the client populations residing in the service area, preventive law and community legal education, training of board members and staff, and recruitment of qualified staff necessary to serve the client populations in the service area effectively;

"(D) to coordinate with the organized bar, community groups and others involved in the delivery of legal assistance or other services to the poor;

"(E) to assure effective involvement of clients and appropriate use of private attorneys, volunteers and staff in the delivery of legal assistance;

"(F) to develop additional resources, including pro bono services from the private bar;

"(G) to provide comprehensive national support and advocacy, such as training in advocacy skills and substantive law and management, information dissemination, technical assistance, advocacy and coordination of legal work in all appropriate forums on significant types of legal problems encountered by eligible clients, including major issues which affect the significant subgroups and populations of low-income people; and

"(H) to provide at the state level throughout the country comprehensive advocacy, coordination and support activities such as training in advocacy skills, substantive law and management, information dissemination, technical assistance, coordination of legal work, resource development, and advocacy in all appropriate forums on significant types of legal problems affecting eligible clients in the state.

SECTION 6
HR 2039 AS PASSED BY HOUSE

PROPOSED CHANGES SHOWN

(a) ENFORCEMENT. – Section 1006(b)(1)(A) (42 U.S.C.2996e(b)(1)(A) is amended to read as follows:

"(b)(1)(A)(i) The Corporation shall have the authority to ensure the compliance of recipients, other grantees and contractors of the Corporation, and their respective employees with the provisions of this title. The Corporation may issue rules, regulations, guidelines, and instructions to interpret the provisions of this title, but may not impose, by regulation or otherwise, restrictions or limitations on types of cases or forms of representation of clients unless such restrictions or limitations are explicitly authorized by this title or other applicable law, and may not impose, by regulation or otherwise, restrictions or requirements on recipients or other grantees or contractors that are in addition to or ~~inconsistent with~~ not authorized by the provisions of this title and other applicable law.

"(ii) The Corporation shall have the authority to enforce the rules, regulations, guidelines, and instructions issued under this title, and to terminate, in accordance with the standards described in paragraph (5) of this subsection, financial support to a recipient or other grantee or contractor of the Corporation. Pursuant to regulations adopted by the Corporation under section 1008(e), the Corporation shall –

"(I) arrange for independent evaluations to determine whether recipients and other grantees and contractors of the Corporation are providing comprehensive, economical and effective legal assistance of high quality to eligible clients, and

"(II) conduct reasonable monitoring and investigations into allegations that a recipient or other grantee or contractor has violated this title, the rules, regulations, guidelines, or instructions issued under this title, or other laws.

(iii) Not later than 30 days after receiving a written request alleging that a recipient, other grantee, or contractor has violated the provisions of this title, or any rule, regulation, guideline or instruction issued under this title, or any other law, the Corporation may initiate an investigation. A recipient, grantee or contractor that is the subject of such investigation shall be notified by the Corporation and, prior to the completion of the investigation, provided with a reasonable opportunity to respond to the allegations either in writing or in person, as determined by the Corporation. Unless required by law, the Corporation shall not make the findings of its investigation public until a final report is issued or unless such disclosure is made with the consent of such recipient, grantee, or contractor. If, at the conclusion of the investigation, the Corporation determines that it will take action under paragraph (5) of this subsection, it shall notify the recipient, grantee, or contractor of its right to request a hearing. ~~A hearing must be requested not later than 30 days after receiving the notification.~~

(b) REGULATIONS FOR ENFORCEMENT. — Section 1006(b)(5) (42 U.S.C. 2996e(b)(5)) is amended to read as follows:

"(5)(A) The Board shall issue regulations to provide for the enforcement of this title. Such regulations may include, among available remedies, provisions for the immediate suspension of financial assistance under this title, suspension or termination of an employee of the Corporation, or of any employee of a recipient or other grantee or contractor by such recipient, grantee, or contractor, the reduction or termination of such financial assistance or employment, and denial of an application for refunding. Any such employee may be terminated only after consideration of other remedial measures and only after the employee has been afforded reasonable notice and opportunity for a timely, full, and fair hearing. When requested, such hearing shall be conducted by an independent hearing examiner. The Corporation may suspend, reduce, or terminate financial assistance under this title, or deny an application for refunding under this title —

"(i) when there has been a substantial failure to comply with the provisions of this title, or rules, regulations, guidelines, or instructions issued under this title, or of other laws, and after notice and an opportunity to correct such failure has been provided to the recipient or other grantee or contractor involved; or

"(ii) when independent evaluations demonstrate that a recipient or other grantee or contractor has consistently failed to use its resources to provide economical and effective legal assistance of high quality as measured by generally accepted professional standards, and after notice and an opportunity to correct such failure has been provided to the recipient or other grantee or contractor involved.

The Corporation may deny an application for refunding of a recipient or other grantee or contractor when the Corporation has identified an applicant for financial assistance under this title that is better able to provide high quality, comprehensive, economical, and effective legal assistance for the geographic area served by such recipient or other grantee or contractor, consistent with the provisions of sections 1007(a)(2) and 1007(c) of this title.

"(B) Financial assistance under this title may not be terminated or suspended, an application for refunding under this title may not be denied, and the annual level of financial assistance under this title may not be reduced by more than 5 percent or \$20,000, whichever is less, unless the recipient or other grantee or contractor involved has been afforded reasonable notice and, at the request of the recipient, grantee, or contractor, a timely and fair hearing before an independent hearing examiner pursuant to regulations issued by the Corporation. Such

regulations shall provide for commencement of the hearing before an independent hearing examiner at the earliest appropriate date, ~~but in no case more than 45 days after a request for such a hearing is received.~~ As soon as practical after the hearing, ~~but in no case more than 60 days after its conclusion,~~ the independent hearing examiner shall make a recommended decision on the matter involved. A copy of the recommended decision shall be sent to the Corporation and the recipient, grantee, or contractor involved. If neither the Corporation nor the recipient, grantee, or contractor involved requests review by the president of the Corporation of that recommended decision ~~within 10 days after the date the recipient, grantee or contractor receives a copy of the decision,~~ that decision shall become final. ~~Within 30 days after receipt of a~~ If either party does request for a review of a recommended decision, the president of the Corporation shall make a final decision with respect to that recommended decision. In addition to judicial review or other remedies provided by law, the recipient, grantee, or contractor may appeal the final decision to the Board."

(c) MONITORING AND INDEPENDENT EVALUATIONS OF PROGRAMS. – Section 1007(d)

(42 U.S.C. 2996f(d) is amended to read as follows:

"(d)(1) The Corporation shall monitor recipients and other grantees and contractors in order to ensure that the provisions of this title, the rules, regulations, guidelines, and instructions issued under this title, and other laws are carried out by such recipients and other grantees and contractors, and shall provide for independent evaluations to determine whether recipients, grantees, and contractors are providing economical and effective legal assistance of high quality to eligible clients. The Corporation shall adopt standards and procedures to implement the provisions of section 1006(b)(1)(A) and this subsection as regulations under section 1008(e).

"(2) The standards and procedures adopted under paragraph (1) shall take into account

~~"(A) that the responsibility of the Corporation with regard to monitoring and evaluation is to ensure compliance with this title, the rules, regulations, guidelines and instructions issued under this title, and any other laws and to provide for independent evaluations to assess the extent to which the overall delivery of legal assistance of a recipient or other grantee or contractor is economical, effective, and of high quality and not to manage the day-to-day operations of recipients;~~

~~"(B) that each recipient or other grantee or contractor has the responsibility to manage its day-to-day operations and to assure that its employees comply with all applicable law and deliver high quality legal assistance in an effective and economical manner;~~

~~(C)~~ that the personal privacy of eligible clients could be adversely affected by the public disclosure of records or documents obtained in connection with monitoring under paragraph (1) or an investigation pursuant to section 1006(b)(1)(A); ~~and~~

~~"(D)-(B)~~ the rules of ethics and professional responsibility that are applicable in the jurisdiction where a recipient or other grantee or contractor delivers legal assistance; and

"(C) the principle that matters and that are personal or private and that relate to an individual employee should not be examined by the Corporation unless ~~The Corporation may not require disclosure of records described in subparagraph (C) except to the extent~~ such records can be expected to contain information directly pertinent and necessary to an investigation of a likely pattern of discrimination, lack of compliance with the law, or poor performance by a recipient or other grantee or contractor which is indicated by other external evidence.

"(3) The Corporation shall ensure that the monitoring process is fair, ~~and~~ conducted in a manner that does not cause more than necessary disruption to the provision of legal services provided by the recipient, grantee, or contractor, and ~~provides~~

—

~~"(A) sufficient notice before monitoring is conducted;~~

~~"(B) flexibility to negotiate with the Corporation when disagreements arise over the timing and conduct of monitoring;~~

~~"(D) protection from disclosure to third parties of the results of monitoring and the contents of any draft reports on monitoring before a final report on the monitoring is issued; and~~

~~"(E) protection from disclosure to third parties of any documents obtained during monitoring except to the extent necessary to carry out the monitoring, consistent with the laws and the rules of ethics and professional responsibility applicable to the jurisdiction where such documents are maintained, except that the Corporation shall at all times have the authority to make evidence of criminal conduct available to the appropriate legal authority.~~

~~The Corporation shall ensure that the monitoring process is reasonably related to the purposes which the monitoring is intended to accomplish.~~

"(4) The Corporation, in cooperation with recipients and other appropriate groups, shall develop criteria for evaluating the capability and performance of recipients and other grantees and contractors of the Corporation. ~~Such criteria shall provide for the assessment—~~

~~"(A) the degree to which a recipient or other grantee or contractor provides a comprehensive range of legal assistance to eligible clients including, in the case of support entities, a comprehensive range of appropriate support services;~~

~~(B) the past demonstrated record of a recipient or other grantee or contractor in providing effective, economical, and high quality legal services to~~

~~poor individuals and in developing additional resources, including pro bono services from the private bar;~~

~~"(C) the ability of a recipient or other grantee or contractor to determine and address the needs of eligible clients for particular services, including, in the case of support entities, the range of support services needed in the geographical or subject matter area served;~~

~~"(D) the adherence by a recipient or other grantee or contractor to accepted norms of performance to guide the provision of legal assistance to poor individuals; and~~

~~"(E) the adherence by a recipient or other grantee or contractor to applicable rules of professional responsibility for attorneys providing legal assistance to poor individuals.~~

"(5) Notwithstanding the preceding provisions of this subsection, the Inspector General of the Corporation shall not, in carrying out his or her functions, be subject to any restriction that –

"(A) is contained in the standards and procedures adopted by the Corporation under this subsection; and

"(B) limits access by the Corporation to documents or other information.

(d) TECHNICAL AMENDMENTS -

(1) Section 1006(b) (42 U.S.C. 2996e(b)) is amended by adding at the end of the following:

"(7) The Corporation shall ensure that —

"(A) no employee of the Corporation or of any recipient or other grantee or contractor of the Corporation (except as permitted by law in connection with such employee's own employment situation), while carrying out legal assistance activities supported under this title, engages in, or encourages others to engage in, any public demonstration or picketing, boycott, or strike; and

"(B) no such employee, at any time, engages in, or encourages others to engage in —

"(i) any rioting or civil disturbance,

"(ii) any activity which is determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction,

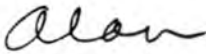
"(iii) any other ~~illegal~~ activity relating to program finances, client trust funds, or the practice of law which a court or appropriate state or federal disciplinary body has determined to be illegal, or

"(iv) any intentional identification of the Corporation or any recipient with any political activity prohibited by section 1007(a)(6)."

(2) Section 1006(b)(2)...."

Alan W. Houseman
Executive Director

MEMORANDUM

TO: Paul Drolet
FROM: Alan W. Houseman 
DATE: May 12, 1993
RE: Timekeeping

As we discussed, a few thoughts about timekeeping.

Section 19(b) of the House bill requires LSC to adopt a regulation on timekeeping and requires that all attorneys and paralegals "keep contemporaneous records of the time spent by case or matter and the type of case or matter."

The basic requirement was adopted in Subcommittee, although some of the more onerous parts were cleaned up in full Committee. The subcommittee vote was the only vote Barney lost and we were short some key members when it occurred.

Originally, our rationale was that timekeeping requirements were keyed to deregulation of private funds -- if there will be no restrictions on private funds, then we need strick accounting for such funds to make sure no LSC funds used for restricted activities. Of course, the Fish amendment putting § 1010(c) back in, effectively negated any remaining basis for our rationale. Proponents of timekeeping used a different rationale -- accountability and compliance.

The Senate bill took a different approach and was keyed to the complete deregulation of private funds that was proposed. Programs must maintain a recordkeeping system "that discloses the types of activities supported by Corporation and non-Corporation funds" and meets "the requirements of time and recordkeeping established by the Office of Management and Budget, Circular A-122" and its successors. OMB A-122 requires a statement from employees every two weeks that allocates their time between federal and non-federal resources, but does not require timekeeping by case or matter at the time when the activity occurred. The rationale was that LSC recipients should be subject to the same requirements as other federal grantees -- no less or more restrictive. A nice political argument, to be sure.

You need to decide whether to stick with the House provision or shift to something like the Senate approach. NOLSW will strongly urge that the 1993 House bill remove restrictions on timekeeping; it is one of their top 2 or 3 priorities.

TESTIMONY OF JEREMY LANE

EXECUTIVE DIRECTOR
MID-MINNESOTA LEGAL ASSISTANCE

MEMBER OF THE CIVIL COUNCIL OF
THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

Before the

SUBCOMMITTEE ON
ADMINISTRATIVE LAW AND GOVERNMENT OPERATIONS

OF THE
HOUSE JUDICIARY COMMITTEE

of the

UNITED STATES HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 1993

Mr. Chairman and members of the subcommittee, my name is Jeremy Lane. I am Executive Director of the Mid-Minnesota Legal Assistance Program, but I appear before you today as a member of the Civil Council of the National Legal Aid and Defender Association. Last year, the past President of NLADA, F. William McCalpin, had the honor of appearing before this subcommittee to urge its members to consider several proposals to amend the Legal Services Corporation Act which had been developed by NLADA¹, our companion organization the Project Advisory Group², and other individuals and entities engaged on a daily basis in delivering civil legal services to low income clients in communities across this country. Last year, this subcommittee, under the able Chairmanship of Representative Barney Frank, labored long and hard to craft a bill, HR 2039, which provided a framework for the continued operation of the Legal Services Corporation and the program that it administers. We were pleased that a number of our proposals were adopted by this subcommittee, as well as by the House Judiciary Committee and the full House in their deliberations on HR 2039. That bill passed the House last May on a bi-partisan

¹NLADA, which was founded in 1911, includes among its membership 741 civil legal aid programs throughout the United States, as well as 1,047 individual members, the great majority of whom are lawyers.

²The Project Advisory Group is the national organization of federally funded legal service programs. Through both the NLADA and PAG staffs here in Washington and our officers, boards of directors and committees, we provide our members with information, training and support to assist them in providing legal services to poor people across America.

vote by a comfortable margin. Unfortunately, the Senate, faced with limited time in the middle of an election campaign and veto threats from the President, never had an opportunity to vote on the Senate version of the LSC reauthorization bill, S 2870, that emerged from the Senate Committee on Labor and Human Resource chaired by Senator Kennedy.

Hopefully, this session of Congress will present fewer obstacles to passage of a new reauthorization for the Legal Services Corporation. The new Administration has signalled its unwavering support for the legal services program, and has requested a substantial increase in funding. The President has recently nominated a new and more knowledgeable LSC Board that will be willing to speak out more forcefully and effectively on behalf of the legal services program. We urge the Congress to move quickly. The time is long overdue to resolve the issues over LSC, restore the integrity of the Corporation and provide the statutory framework for revitalizing the legal services program.

The entire legal services community owes much to this subcommittee, which labored so diligently last year on HR 2039, and to Rep. Barney Frank for his effective leadership. Fortunately, you can begin your work now on the firm footing established by that bill which has been reintroduced in this Congress as HR 2644.

My principal purpose today is to provide the members of this Committee with our perspective on the proposals contained within HR 2644, which will form the basis for your deliberations on a new authorization bill for the Legal Services Corporation, and to urge

your favorable consideration of several issues of great importance to the legal services community.

First let me thank you, Mr. Chairman, for agreeing to move forward expeditiously with consideration of the reauthorization of the Legal Services Corporation. It is now 19 years since the original Legal Services Corporation Act was signed into law by President Nixon in July 1974. Sixteen years have passed since the Corporation was last reauthorized by the Legal Services Corporation Act Amendments of 1977. The Corporation has been without Congressional authorization since the 1977 reauthorization expired on September 30, 1980. With the passage of HR 2039 during the last session of Congress, the House took a giant step toward reauthorization of LSC. It is now time to follow through on the action that the House began last year.

The Context for Reauthorization

Much has happened since the Corporation was last reauthorized. We have today a substantially larger and different poverty population. New ethical rules governing the conduct of lawyers have been adopted in nearly every jurisdiction and opinions have been issued interpreting those rules in the context of legal services to the poor. There have been substantial changes in the legal profession in general and legal services attorneys have become a more established and respected segment of that profession.

The Legal Services Corporation has seen a succession of directors and officers, some of them openly bent on destroying the Corporation or severely hampering the efforts of its recipients to

provide high quality legal services as contemplated by the Congress. Today, as we await confirmation of a new Board of Directors and appointment of a new staff at LSC, we have high hopes for the future of the legal services program--a program that we know needs to be reinvigorated and revitalized after twelve years of stagnation and uncertainty.

This is the eighth Congress to sit since the Corporation was last reauthorized, and the personnel on the relevant committees of both Houses have changed significantly. This subcommittee has a new Chairman and several new members, some of whom who did not participate in last year's debate over HR 2039. In view of these facts, I think it may be useful to review a bit of history and restate some underlying basic principles.

I need not remind members of this subcommittee that the Preamble to the Constitution states clearly the purpose of our government:

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense

and so on. It is noteworthy that "establish justice" precedes and is the basis for "domestic tranquility" and that both come before "provide for the common defense". I think that sequence and those priorities are not accidental, and recent events in Los Angeles and elsewhere only serve to underscore that "justice" is an undeniable predicate for "domestic tranquility".

Until passage and implementation of the Economic Opportunity Act of 1964, the federal government had done nothing to ensure that poor people had access to justice through legal representation in civil legal matters. With the passage of the OEO Act and the establishment of the legal services program within OEO, for the first time the nation began to fulfill the promise made by our forefathers in the Preamble of the Constitution, i.e. "to establish justice".

From the outset, the legal services program has had many powerful political foes. Senator George Murphy of California led an unsuccessful drive for an amendment to the OEO Act to prohibit legal services programs from bringing actions against government at any level. Senator Russell Long sought a similar ban during consideration of the LSC Act in 1974. Governor Reagan tried to veto funds for legal services in California. Vice President Spiro Agnew levied virulent attacks on all legal services programs simply because program one had represented indigents being displaced from their homes by a highway project. In 1973, efforts were made by Howard Phillips, acting director of the Community Services Administration, to do away with the legal services program entirely.

By the early 1970s supporters of legal services and President Nixon began to view the creation of an independent, private non-profit corporation, funded by Congress but outside the direct control of the executive branch, as the only way to ensure the survival of the legal services program as an effective and

aggressive advocate for the poor. After a long and tortured gestation period, the Legal Services Corporation was enacted and signed into law in July of 1974.

Critics of the legal services program in recent years, to support a series of restrictive legislative proposals, have frequently misrepresented the basic function and purpose of the program by insisting that it has departed from the originally intended Congressional scheme of one-on-one representation of poor people in basic day-to-day problems and has erroneously strayed into representation of the poor in controversial political issues. Such assertions are totally at variance with the history of the legislation.

The House Report, No. 93-247, which accompanied the LSC Act, quoted President Nixon's recommendation contained in his 1971 message urging creation of the Corporation:

Much of the litigation initiated by legal services has placed it in direct conflict with local and State governments. The program is concerned with social issues and is thus subject to unusually strong political pressures. . . . However, if we are to preserve the strength of the program we must make it immune to political pressures and make it a permanent part of our system of justice.

That House Report also quoted Frank Carlucci, former OEO director, and Robert W. Meserve and Edward L. Wright, both presidents of the American Bar Association, to the same effect. The Senate Report (No. 93-495) contained similar views of the late Senator Robert Taft.

The LSC Act is really quite clear about what type of program legal services was expected to be. The Corporation is to fund

programs that are "economic and effective", §1007(a)(3), and maintain "the highest quality of service and professional standards, §1007(a)(1). The Statement of Findings and Declaration of Purpose contained in Section 1001(2) finds and declares that it is the purpose and intent of the Act ". . . to continue the present vital legal services program." If there were any doubt as to what that "present vital legal services program" meant, that doubt was resolved when the Congress amended the Act in 1977. The House Conference Report, No. 95-825, at page 9, stated:

The Senate amendment clarifies the Congressional intent respecting the scope and purpose of the legal services program by specifying that the program is intended to assist in the improving opportunities for low income persons consistent with the purposes of the Economic Opportunity Act of 1964, as amended.

Since at least 1967, the OEO legal services program had included as an important element so-called impact litigation, much of it directed at changing the way government at all levels treated poor people. While Congress has, in the meantime, imposed certain procedural limitations on class action litigation, there is clearly no support in the Act or the legislative history for the notion that representation of poor persons was intended to be limited to non-controversial, one-on-one representation. From the very beginning Congress recognized that poverty advocacy is often controversial and involves social issues, it often challenges state and local government action and may have political repercussions. Nevertheless, Congress also recognized that such advocacy is essential if poor people are to have meaningful access to justice

and it is at the core of what Congress recognized as the vital legal services program begun under OEO.

Thus, it is clear from the findings and declarations contained in Section 1001 of the Act that LSC was intended to implement the Constitutional mandate "to establish justice" for poor people. It is also quite obvious from the history of the LSC Act, the reauthorization and the appropriation riders, that the Congress expressed its intent with respect to the scope of representation to be provided and that it is inappropriate for the administrators of the program or those who make policy to impose restrictions on substantive or procedural representation not specified by the Congress. Finally, the *raison d'etre* for the creation of the Corporation mandates that the legal representation supported with LSC funds must not be forced to conform to narrow partisan political or ideological considerations.

Against this background, and from my own experience in legal services and as a member of the Civil Council of NLADA, I would like to share with you some of my thoughts and offer some recommendations from the legal services community that I hope you will consider and adopt as you proceed to restructure the LSC Act.

What we have today is a fundamentally sound legal services delivery system that continues to work extraordinarily well for our clients, even though over the past twelve years it has been woefully underfunded and continually besieged by enemies, often from within the Legal Services Corporation itself. I believe wholeheartedly, as I am confident that you do, that the basic

system which has served our clients well for years should be preserved and not undermined.

Nevertheless, there are few within our community who would deny that the system can be made to work better. Clearly, there is no enterprise that cannot benefit from time to time from efforts to enhance and improve it. Anything we do, whether it be in government or in the private sector, we can do better. 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. We must, in order to preserve and extend the benefits guaranteed by our constitution, continually reinvent the institutions created and supported by our government.

Indeed, now is the time to take a careful and thoughtful look at legal services and consider what new directions should be taken to help revitalize the program and make it even more effective and efficient than it has been in the past. While this responsibility rests primarily with the LSC Board and staff, as well as with those within the leadership of the legal services program itself, there are legislative changes that are necessary in order to stimulate innovation and improve delivery.

As I have indicated, NLADA, PAG and others who are interested in improving legal services for the poor have been working for some time to develop specific proposals that we believe can both strengthen the program and lower the decibel level of the recent divisive public debate. Last year, the House incorporated some but not all of those proposals when it adopted HR 2039, and those have

been preserved in HR 2644, the bill now under consideration by this subcommittee. I would like to briefly summarize those proposals that we consider to be of critical importance. They fall into three broad categories:

1. Preserving and strengthening local control;
2. Deregulation of the use of private funds and accounting for those funds; and
3. Permitting full scope of representation.

LOCAL CONTROL

A fundamental principle which has been a hallmark of federally-funded legal services since its inception is that the program is controlled and directed, not by bureaucrats in Washington, but by local attorneys, clients and other citizens who understand the needs and resources of the communities in which they live. The LSC Act and the legislative history are replete with provisions and comments about local decisionmaking in the operation of the local programs. One of the basic tenets of this new Administration's notions of reinventing government is permitting local control of programs and encouraging experimentation and innovation to meet local needs and circumstances. LSC was ahead of its time; legal services reinvented government in 1974, twenty years ahead of our current efforts to reform how government functions.

Our strong belief is that the nature and scope of the legal services required in a particular community are best determined by those people in that community who are responsible for the

oversight and conduct of the legal services program and those who benefit from its services. Congress required that 60% of the local board members must be lawyers, that 50% must be lawyers named by bar associations representing the majority of attorneys in the local area, and that one-third must be individuals eligible to be served by the program. Those provisions remain, as they should, in this bill. This concept of local decision making is tied directly to the priority-setting provisions in Section 1007(a) (2) (C) of the Legal Services Corporation Act.

Our goal is to **strengthen local control**. Thus, we support the amendment to Section 1007(c) of the Act that appears in this bill. This amendment includes the board appointment provisions described above, known as the McCollum Amendment, that have been included in appropriations riders since 1983. The bill also clarifies a number of provisions contained in current law that have caused confusion or have been interpreted in ways that reduce local control and accountability to the community served by the program.

HR 2644 also specifies that the local board of each recipient, and **not the Legal Services Corporation**, is responsible for the overall governance of the program and should determine broad policy matters related to the recipient. That means the local board, and not LSC, is responsible for establishing financial eligibility criteria within the limits set by law. The local board must establish policies that govern the fiscal, administrative and representational activities of the recipient, including compliance with provisions of the LSC Act and regulations. The local board,

and not LSC, should determine the types of cases or matters attorneys may undertake. The local board determines how best to utilize staff attorneys, paralegals and other available and appropriate staff as well as private attorneys and others, to provide legal assistance to eligible clients and to carry out activities related to the delivery of legal assistance. LSC's role should be limited to ensuring that none of these locally determined policies violate the specific prohibitions and restrictions in the Act, not whether LSC would like to see them done differently.

HR 2644 also specifies that local boards must not interfere with the lawyer/client relationship of program attorneys; that board members must comply with the legal and ethical requirements on board conflicts applicable in the jurisdiction; and that local boards cannot act on a case-by-case basis in determining case types or setting priorities. Section 7 of HR 2644 does, however, permit local governing bodies to expressly disapprove class actions. We urge the subcommittee to delete that "right of rejection" provision which we believe is inconsistent with the rules of professional responsibility and constitutes an inappropriate interference with the professional judgment of program attorneys.

We also support the provisions of HR 2644 that **strengthen and clarify the local priority setting provisions** of the current LSC Act by amending Section 1007(a)(2)(C). We agree that program priorities should be subject to the principles enunciated in section 1001 of the Act as well as to any goals specifically set forth in legislation by Congress, but that the Legal Services

Corporation should not have the authority to establish its own separate goals nor should it have the authority to promulgate national priorities. This limitation is necessary not only to preserve local control, but also to ensure that programs remain immune to political pressures that may, as history has demonstrated all too often, influence LSC.

We also support the provisions of HR 2644 that would require all recipients, through their boards of directors, to undertake an annual review of program priorities and set priorities periodically through a process that involves a review of the legal needs of clients in the community. That legal needs assessment would require the participation of clients, community groups, the organized bar, program staff and private attorneys involved in the delivery of legal services to eligible clients.

We also support the provisions of HR 2644 that **delimit the role of the Corporation**. The bill would amend section 1006(b)(1)(A) of the LSC Act to prevent LSC from imposing restrictions or requirements on representation of clients that are in addition to or are inconsistent with the provisions of the LSC Act or other relevant law. The intent of this provision is quite simply to clarify that Congress retains the sole authority to impose new restrictions on representation by legal services programs.

Our position is simple: the Legal Services Corporation does not now, nor has it ever, nor should it in the future, set national priorities or determine what kinds of cases local programs should

undertake or what kinds of services they should provide. Instead, local program boards, based on a legislatively mandated process to determine the needs of clients within their service areas, should decide how to allocate scarce resources and what types of cases to take and services to provide. Local programs should regularly reexamine the needs of the client communities they serve to determine what their program priorities should be. Priority setting should remain with the boards of directors of legal services programs whose members -- attorneys practicing in the community, client representatives and other local citizens -- are in the best position to determine the needs of their own communities.

There are two other areas that relate to the principle of local control that need to be addressed as the subcommittee considers the parameters of this reauthorization bill. The first concerns the manner in which LSC conducts the monitoring and evaluation functions that it is required under the Act to perform. The second concerns the issue of competitive bidding as it relates to the review and redesign of the legal services delivery system.

When the Legal Services Corporation was first established, it designed and implemented a monitoring and evaluation system that sought to improve the provision of legal services to the poor through program evaluation and technical assistance. While far from perfect, that initial system sought both to ensure compliance with the provisions of the Act and to help programs provide high quality legal assistance that was economic and effective.

During the last twelve years, that system was transformed into a highly adversarial process that sought, as a primary objective, to punish recipients for perceived, and often misperceived, transgressions and violations of overwhelming and unreasonable requirements that often had no basis in the LSC Act or regulations. That process often undermined local control of program operations as LSC began to second-guess virtually every program decision, micro-manage program operations, and sanction programs for actions that did not comport with the LSC staff's view of what constituted appropriate behavior. On the other hand, no serious effort was made to evaluate programs to determine whether they were carrying out high quality legal assistance or producing effective and economic performance, and no assistance was provided to help programs improve their operations or correct problems that were identified.

Section 6 of HR 2644 moves the process back in the direction of firm but fair oversight, clarifies the due process rights of recipients, while including provisions that ensure that when real violations are found, LSC has the capacity to impose appropriate sanctions. It establishes concrete criteria and realistic time frames for investigating complaints against recipients. It requires the Corporation to promulgate standards and procedures to ensure fairness in the monitoring process, as well as in complaint investigation, including standards for access to sensitive client and personnel records. But most significantly, it requires the Corporation to provide for independent evaluation of the quality,

effectiveness and efficiency of a recipient's services. It mandates LSC to promulgate criteria to measure performance and to develop an objective process by which program performance will be measured.

We urge the subcommittee to preserve the balance between accountability and fundamental protections that is incorporated into Section 6 of the bill before you. While we are confident that the new LSC Board and staff will be substantially more cognizant of the need for fair play and due process for recipients than were those who controlled the Corporation over the last twelve years, we have learned that the good intentions of those who may soon occupy positions of authority are not sufficient protection against abuses that may occur in the future. We are willing to work with the subcommittee to simplify some of the language of Section 6 and to eliminate some of the less essential verbiage, but we cannot stress enough the importance of preserving the basic structure that is contained in the bill.

HR 2644 also addresses another issue that directly implicates local control - competitive bidding for award of LSC grants and contracts. For several years, critics of legal services insisted that all LSC grants and contracts should be subject to periodic competitive bidding and that due process rights of recipients in the refunding context should be virtually eliminated. During last year's debates on HR 2039 several amendments were offered that would have imposed competitive bidding for all grants and contracts. The House overwhelmingly rejected these amendments. In

lieu of those proposals, HR 2039 required the Corporation to undertake a study of the feasibility of utilizing competitive bidding. The purpose of the study was to help determine whether, how and under what circumstances competitive bidding should be used in the legal services context.

If critics of legal services could produce any evidence whatsoever to suggest that competitive bidding had worked in legal services or related service delivery, instituting competitive bidding on some limited basis might arguably make sense. However, all of the research that has been done in this area has produced strong, unrefuted evidence that competitive bidding has been an unmitigated disaster wherever it has been tried in delivering similar services. Over the last several years, this subcommittee has heard substantial amounts of testimony that support that conclusion. There is no evidence to suggest that competitive bidding is appropriate or feasible for legal services delivery or that it would produce any beneficial results at all. Moreover, there exist no standards or guidelines for the implementation of a competitive bidding system. It is clear that the only rationale or justification for competitive bidding is as tool to disrupt the current legal services delivery system.

We understand the desire of the Congress to have LSC study alternatives, including some forms of competition, that could be used to improve the delivery of legal service. We propose that the bill include a study that looks at the feasibility of using competition to improve the delivery of legal services. Under this

provision, the Corporation would have the flexibility to study the use of competition in contexts other than competitive bidding and could examine competition along with other proposals to improve the delivery of legal services. We urge the subcommittee to substitute a new version of the study along these lines, rather than the one in HR 2644, because the latter could be interpreted to require the Corporation to conduct a study solely on competitive bidding.

As you may be aware, the Corporation, in conjunction with an advisory group consisting of representatives of the legal services community, the private bar, corporate counsel and nationally known experts on measuring quality in legal delivery, is currently conducting a comparative demonstration project with two objectives: first, to determine how to measure and evaluate legal services program performance; and second, to test the utility of competition among legal services programs for monetary incentives as a tool to improve that performance. Later rounds of the demonstration project envision testing the utility of other tools, including technical assistance, to improve program performance. If this demonstration project is carried out consistent with the recommendations of the advisory group, we believe it could both meet the requirements of the study that we propose and serve the legal services community well. In contrast, a study like that described in HR 2644, focussed solely on competitive bidding, would have little utility, if any, beyond the very narrow confines of its charge.

DEREGULATION OF THE USE OF PRIVATE FUNDS

Closely related to our goal of strengthening local control and local priority setting is our proposal to **deregulate the use of private funds** received by LSC grantees. We believe Section 1010(c) of the Legal Services Corporation Act should be amended to provide that non-LSC funds may be used by recipients for any purpose which is permitted by the persons or entities providing them, so long as recipients adopt a system of recordkeeping that clearly discloses the types of activities supported by these non-LSC funds and accounts for them separately from LSC funds.

That was the approach advocated by both this subcommittee and the full House Judiciary Committee when they considered HR 2039 last year. However, when the bill reached the floor of the House an amendment offered by Rep. Fish was adopted that restored the current LSC Act restrictions on private funds. I urge the subcommittee to return to its original position and to amend HR 2644 to remove any restriction on the use of private funds.

Just as we would argue that Congress retains the right to determine what activities may be prohibited using LSC funds, we believe that other funders, whether private charities like United Way or state government agencies or Interest on Lawyers Trust Accounts (IOLTA) programs, should have the same right to determine how their funds are to be used. If the board of directors of a local LSC grantee determines there is a particular need in its community for service to clients or groups or for work on issues which may not be done with LSC funds, why should that grantee not

be permitted, and indeed encouraged, to seek private or other alternative funding for that purpose?

During last year's debate on HR 2039 amendments were offered and rejected which would have also restricted all non-LSC public funds, including IOLTA funds that now make up a substantial portion of funding for civil legal services in many states. The House soundly defeated that amendment, presumably because it believed that if a state or local government decided to provide funding for legal services to the poor, whether through direct appropriation or filing fee surcharge or other means, it should be permitted to determine what services could be supported with those funds and to whom those funds would be granted.

That argument applies with equal force to IOLTA funds, which are distributed to civil legal services programs in virtually every state and the District of Columbia. These programs, some of which are legislatively mandated and some of which were established by judicial action, were initially conceived in the early 1980s as a supplement to LSC-supported services, not to duplicate or supplant them. IOLTA grant decisions are generally made by state appointed governing bodies that are acutely aware of critical unmet legal needs in their respective jurisdictions. Those bodies should have the authority to direct their funds to those entities they believe are best qualified to deliver the services they wish to fund, and they should be able to determine what those services will be.

Congress should not claim the authority to substitute its judgment for that of another government entity or private funder,

nor should it do anything to discourage these private and public efforts to narrow the huge gaps between available resources and legal need that exist for poor people all over the country. We all recognize that federal funding for legal services meets only a small fraction of the need. Recipients must seek additional outside funding to address the legal needs of their local client communities. Please do not hamstring them in their efforts. We believe that the provision contained in HR 2644 as well as other amendments that may be offered to restrict the use of these critically needed private and non-LSC public funds are unwise and may well be unconstitutional. We urge the subcommittee to delete the private funds restriction in HR 2644 that was added during the debate on HR 2039 and reject any amendments to restrict the use of non-LSC public funds. This subcommittee followed the correct approach when it first considered HR 2039 and it should readopt that approach as it considers HR 2644.

At the same time, we recognize fully the need for LSC recipients to account for all of the funds they receive from other sources and to report the use of those funds in a manner that separates and distinguishes them from Corporation funds, pursuant to generally accepted accounting principles. Nevertheless, we believe that the timekeeping provision that is included in HR 2644, which would impose burdensome, national timekeeping requirements on all LSC grantees, goes much further than is necessary to ensure accountability. It leaves little room to respond to the needs and characteristics of individual programs and would supplant the

locally designed systems that now exist in many programs. In addition, LSC recipients would be subject to unique requirements no federal agency imposes and no other federal grantee must meet.

The price of the timekeeping system required by HR 2644 would not be cheap. Estimates for the initial cost of implementing such a national system for LSC recipients range as high as \$17 million and do not include the ongoing costs of administering the system by grantees or any of LSC's start-up or administrative costs. In effect, all of the costs would be subtracted from the already inadequate resources intended to be used to provide legal services to the poor.

There is a reasonable alternative to a nationally dictated timekeeping system: requiring the governing body of each LSC grantee to adopt a recordkeeping system, consistent with OMB Circular A-122, which discloses the types of activities supported by the non-LSC funds. Many local programs already have devised record-keeping and/or timekeeping systems designed to meet the information needs of local boards and managers and the requirements of other funders, including other federal funders. The alternative approach we suggest would permit, subject to these locally designed systems of recordkeeping, non-LSC funds to be used in accordance with the purposes for which they are provided by the funding source. It would essentially treat recipients of LSC funds identically to grantees of other federal agencies. We urge the subcommittee to consider modifying the timekeeping provision in HR 2644 along these lines. We would be happy to work with the

subcommittee staff to craft language that would ensure adequate controls and accountability and meet the Corporation's legitimate information needs, without overburdening local programs.

PERMITTING THE FULL SCOPE OF REPRESENTATION

The legal services community and the organized bar have historically opposed restrictions on representation of poor citizens that are not imposed on representation of those who can afford an attorney. HR 2644 takes the positive step of eliminating the provision in the current LSC Act that prohibits advocacy on issues relating to desegregation. We would urge the subcommittee to eliminate the remaining prohibitions, including the restriction on legal assistance with respect to abortion and in desertion or selective service cases. We do recognize that there are special concerns about accountability for the use of federal funds that may dictate special procedural requirements for certain kinds of cases. There is a difference, however, between requiring that procedures be followed with respect to certain forms of advocacy that may be undertaken, and absolutely prohibiting any representation for a particular group of clients or on a particular type of case. We strongly oppose any absolute prohibitions on representation that would totally deny members of the client community access to attorneys to represent their interests simply because of their individual status or the nature of their legal problem.

There are two restrictions contained in HR 2644 that would limit the ability of legal services programs to provide their clients with the full scope of legal representation available to

paying clients of private attorneys. First, the bill prohibits the use of both LSC and private resources for the representation of broad categories of aliens that are legally in the United States. Current law does not restrict the use of private funds for alien representation, and I can find no rationale for imposing any such restriction on the use of private funds, which are often earmarked by the funder specifically for services to particular groups of aliens, like the Cambodian population that has settled in large numbers in Minnesota and elsewhere in the Midwest. Indeed, in some areas of the country with large immigrant populations, such a restriction on private funds would effectively cripple the ability of legal services programs to meet the legal needs of a substantial proportion of the low income community. **[Jerry may want to beef up this section with his personal observations].**

The deregulation of private funds, which is discussed above, would go far to remedy this problem for many programs with substantial non-LSC resources, since it would permit those programs that have private funds to continue to represent those aliens excluded from representation supported with LSC funds. Nevertheless, there are many areas of the country where there are large immigrant populations, but a scarcity of private or other public resources to support legal assistance activities. We would urge the subcommittee to eliminate the restriction on alien representation entirely, leaving to the local priority setting process the task of determining what are the most critical needs of the community that should be met with whatever resources are

available. However, in the event that there is not sufficient support for the complete elimination of the ban on alien representation, we would urge the subcommittee to add two new categories of aliens who are legally residing within our borders to those who can be represented by LSC recipients: (1) those with a current authorization to work in the U.S. and (2) alien children who have been abused, neglected or abandoned in the U.S. and have come under protection of the foster care system. We would also urge the subcommittee to consider extending the range of permissible representation to include all aliens residing in the United States under color of law, the so-called "PRUCOL" category of aliens. **[Note: do we need to include PRUCOLS?]**

Second, HR 2644 would prohibit legal services attorneys from representing clients in any case where redistricting is the remedy sought. The prohibition would apply regardless of the level of government and would affect cases involving all elected judicial and administrative entities, as well as legislative bodies. We urge the subcommittee to reject this broad prohibition that in many instances would completely deny the poor the opportunity to enforce the Voting Rights Act and to be represented in cases that affect fundamental Constitutional rights.

The argument for permitting legal services to represent clients in those cases which involve purely local concerns is particularly compelling. Local elected bodies, such as school boards, city and county councils, public health and hospital district boards and other similar entities, whose members are often

elected in non-partisan contests, make vital decisions that involve the allocation of scarce government services and benefits. Those decisions often have a disproportionate impact on the lives of poor people who may be more dependant on government programs than are their wealthier neighbors. The actions of those local bodies affect the daily lives of poor people in far more significant ways than anything that you in Congress or your counterparts in state legislatures do.

The vast majority of redistricting cases handled by legal services programs deal with these local issues. Most of these cases originate in areas of the country, particularly the South and Southwest, where poor blacks and Hispanics have been effectively disenfranchised, in violation of the Constitution and the Voting Rights Act. Local elected bodies in these communities are often unresponsive to the needs of the poor whose votes are diluted by local electoral systems that eliminate candidates who might better represent their interests, regardless of political party.

Legal services programs bring these local redistricting cases, not to benefit any specific political party or to elect any particular candidate, but to enforce the legal rights of their clients and to ensure that the voice of the poor community is heard. In my view, that is exactly the kind of activity that Congress intended this program to undertake, and you should take no action to limit its ability to do so.

One area of legal representation that is of tremendous importance to legal services clients is legislative and

administrative advocacy. Section 5 of HR 2644 incorporates into the LSC authorization provisions from the current Act and appropriations bills that have governed administrative and legislative advocacy by LSC recipients for the past eight years. Thus, the bill permits legal services programs to engage in administrative advocacy so long as it is on behalf of a particular eligible client on a matter which directly involves that client's legal rights or responsibilities. In addition, the bill permits communication to a legislative body under certain limited circumstances and subject to numerous limitations and safeguards to protect against perceived abuse. It permits programs to respond to requests for information or assistance from legislators or administrators and to advocate on issues that directly affect the program's funding or ability to operate. However, to prevent legal representation from turning into a full scale lobbying effort, HR 2644 prohibits all grassroots lobbying.

Provisions virtually identically to those in HR 2644 have been in effect since 1984 and have worked well since they were enacted. There have not been any substantiated charges that prove significant violations. Without a framework that permitted this kind of representation, legal services lawyers would have been severely circumscribed in their ability to fully represent their clients' legal interests and secure their clients' legal rights.

Nevertheless, as those subcommittee members who participated in last year's House debate know, there are some who would amend HR 2644 to absolutely bar legal services representation and direct

communication in legislative and administrative forums. During the debate on HR 2039, an amendment was proposed but defeated that would have prohibited entirely the representation of eligible indigent clients in two different situations: in the adoption, amendment or revocation of an executive order or an administrative rule by any agency of the Federal, state or local government; and in the passage or defeat of any legislation by any Federal, state or local legislative body or in relation to any initiative, petition or referendum. It would have limited representation before administrative agencies to those adjudicatory proceedings where the legal rights of specific individual clients were being resolved, e.g., a fair hearing in a welfare case. Legal services programs would not, under the amendment, be permitted to participate in rulemaking proceedings even where representation was on behalf of a client whose rights were directly affected by the rulemaking and where no other avenue of recourse was available. The amendment would have also completely eliminated the right of legislators or agency officials to request information from a legal services program, depriving those who make the law of the knowledge and expertise of those attorneys who have first-hand experience in its enforcement and in its effects on the poor.

The approach advocated by the proponents of last year's amendment would have barred representation which has been permitted from the beginning of the Corporation under Section 1007 (a) (5) of the Act as refined by provisions of various appropriations riders since 1984. In all that period, legal services attorneys have been

permitted to represent, or communicate on behalf of, eligible clients when such administrative or legislative advocacy was an appropriate means to resolve those clients' problems or when a request was received from an administrative or legislative body seeking assistance in the performance of its responsibilities. The provisions of HR 2644 that you have before you strike the appropriate balance on these issues and continue the essential elements of current law, while clarifying the language and making several technical adjustments. I would simply urge that subcommittee members resist any attempt to further restrict the ability of legal services advocates to fully represent their clients in the legislative or administrative arena beyond those limitations in the bill you now have under consideration.

I remain concerned about two provisions that appears in the HR 2644 that restrict the ability of legal services advocates to exercise their professional judgment on behalf of the low-income client community. The first provision represents an effort to ensure that legal services attorneys, particularly those attorneys who represent migrant farm workers, do not engage in inappropriate or unethical solicitation of clients. This is an admirable goal, however, the language of the HR 2644 would apply to LSC attorneys selective language from an outmoded formulation of the ABA Code of Professional Responsibility that was never intended to apply to legal services attorneys or others working for non-profit organizations in the first place. .

When Congress passed the LSC Act, it made it clear that legal services attorneys should practice law on behalf of their clients subject to the same locally determined court rules and precepts of ethics and professional responsibility that were applicable to other attorneys practicing in those jurisdictions. I urge this subcommittee to remember that basic tenet, and to eliminate any provision that would change the applicability of those rules or permit LSC to substitute its judgment for that of the local or state authorities charged with responsibility for overseeing attorney accountability in their jurisdictions.

Second, HR 2644 would require legal services advocates, before filing suit, to attempt to negotiate settlements and use alternative dispute resolution (ADR) mechanisms where such mechanisms are appropriate and available. This requirement attempts to accomplish a worthwhile objective -- the increased use of negotiation and other alternatives to litigation -- but does so by requiring local boards of directors to institute policies that limit the professional judgment of program attorneys. The objectives of encouraging negotiation and using ADR are important, and local boards should be required to adopt appropriate policies regarding their use, consistent with ethical restrictions. However, a far preferable approach would be for the bill to mandate that program boards adopt policies that encourage, rather than require, the use of negotiation and ADR under circumstances where the attorney, in the exercise of his/her professional judgment,

thinks they would be beneficial to the client's interests. I urge the subcommittee to revise the bill to reflect that approach.

There is one final provision of this bill that I would like to address. The HR 2644 provides for a five-year LSC authorization and "such sums as may be necessary" in each of those five years to carry out the activities of the Corporation. A five year authorization is essential, after more than a decade without a current funding authorization, to give the Corporation and its recipients a reasonably long period of stability and certainty. This program must have sufficient time to move forward and revitalize, as well as to allow both the Corporation and its recipients to adjust to the substantive changes required by the reauthorization bill. **[Note: Not sure ththe following language will still be timely in September. If not, we may want to change it to deal with the issue prospectively.]** In addition to preserving the five year authorization period, I would urge the subcommittee to adopt a specific budget authorization for FY 1994 of \$432 million, the amount requested by the Administration in its supplemental budget request. Such an authorization would emphasize both this subcommittee's commitment to continued funding for the legal services program as well as its recognition of the enormous unmet legal needs of the client community that is served by that program. Your support for the funding level requested by the Administration would send a strong message to the other members of Congress that the subcommittee most familiar with this essential

program acknowledges the critical value of its work and recognizes the desperate need for additional resources to continue that work.

To summarize, Mr. Chairman, I urge you to adopt a bill to reauthorize the Legal Service Corporation for five years with a mandate at least as broad as envisioned in 1974 and 1977 and without further restrictions, so that, as our Pledge of Allegiance aspires, there may be "liberty and justice for all". The proposals I bring to you today are intended to attain that goal by strengthening local control and local priority setting while clarifying the authority and role of the Corporation; permitting the use of private and non-LSC public funds for the purposes for which they are provided, so long as a recipient adopts an appropriate recordkeeping system; ensuring that legal services clients and their attorneys have available the full range of tools for representation that are available to clients of private attorneys.

We in the legal services community have given much thought to these proposals and to language that would implement them. I want to thank the Chairman and the members of the subcommittee for giving me the opportunity to present this testimony. My colleagues and I will be happy to work with the staff of the subcommittee as you craft the legislation that you will ultimately report to the full Judiciary Committee.

Again, Mr. Chairman, I commend you and you colleagues for your work in the past in support of the legal services program and for your willingness to undertake this important task anew.

SUMMARY AND ANALYSIS OF HR 2039 THE HOUSE REAUTHORIZATION LEGISLATION

PREPARED BY:

**ALAN W. HOUSEMAN
LINDA E. PERLE
CENTER FOR LAW AND SOCIAL POLICY
MAY 25, 1993**

On May 12, 1992, the House of Representatives passed the Legal Services Reauthorization Act of 1992 by a margin of 253-154. This Summary and Analysis provides a detailed overview of the legislation.

HISTORY OF HR 2039

Ever since the appropriation authorization for the Legal Services Corporation expired in 1980, the House of Representatives has struggled to enact new authorizing legislation for the legal services program. In 1981, the Judiciary Committee reported a bill, HR 3480, which passed the House, but was never enacted into law. However, many provisions of HR 3480 were included in whole or in part in riders to LSC appropriations from 1983 through the present appropriation. Subsequently, bills were reported out of the House Judiciary Committee in 1983 and 1985. In addition, bills were considered by the Subcommittee on Courts, Civil Liberties and the Administration of Justice in 1987 and 1988, but never reached the full committee.

In 1989, oversight responsibility for LSC was shifted to the Subcommittee on Administrative Law and Governmental Relations, chaired by Barney Frank (D-MA). The subcommittee held oversight hearings on March 16 and July 19, 1989. The subcommittee did not consider a legal services reauthorization bill during 1989, but several so-called "reform" bills, driven by agricultural interests' displeasure with migrant legal services, were introduced, including the first version of the McCollum-Stenholm bill.

On May 9 and May 23, 1990, the subcommittee held additional oversight hearings on LSC. Subsequent to the 1990 hearings, the subcommittee considered and adopted a compromise bill (HR 5271) reauthorizing legal services, but that bill was never considered by the full Judiciary Committee. On March 13, 1991, the subcommittee held an additional hearing on legal services. On March 7, 1991, just prior to the last hearing, the 1991 version of the McCollum-Stenholm bill (HR 1345) was introduced and referred to the subcommittee. The subcommittee bill, HR 2039, was introduced in early April, 1991. The subcommittee met on April 15, 1991, and adopted HR 2039, with two amendments proposed by the ranking minority, Mr. Gekas (R-PA). A number of other amendments, based on the McCollum-Stenholm bill provisions, were considered by the subcommittee but were rejected. The final subcommittee version of HR 2039 was reported out of subcommittee on a unanimous vote and sent to the full committee.

The full House Judiciary Committee met on June 25 and July 16, 1991 to mark up HR 2039, although proponents of the McCollum-Stenholm package attempted unsuccessfully to postpone the mark-up. In all, 27 amendments were offered, including one amendment to substitute all of HR 1345 for HR 2039. After extensive debate, seven of the amendments passed, eighteen were defeated, including the HR 1345 substitution, and two were withdrawn. The Committee then voted to report HR 2039 as amended to the full House on a bipartisan vote of 25 to 7, with two members not voting.

During House floor consideration on May 6 and 12, eleven (11) substantive amendments were considered (in addition to consideration of the rule, a vote against recommittal and the vote for final passage). Five of the amendments passed:

- (1) an en bloc amendment authored by Rep. Frank and offered by Rep. Brooks which made a number of technical corrections to the Judiciary Committee bill;
- (2) a Frank/Brooks amendment to permit outreach activities related to legal services work to be sponsored by church groups;
- (3) an amendment by Rep. Fish which (a) restored section 1010(c) of the current LSC Act, (b) eased the restrictions on LSC investigations of complaints, and (c) replaced the protections of program employee privacy with protections on client privacy during monitoring and evaluation;
- (4) an amendment by Rep. Stenholm which banned all redistricting representation; and,
- (5) an amendment by Rep. Frank that banned the use of all non-LSC funds for grassroots lobbying.

The House defeated the following five amendments taken from the McCollum-Stenholm bill that would have:

- (1) required competitive bidding (McCollum);
- (2) prohibited the recovery of attorneys' fees from non-governmental defendants (Stenholm);
- (3) prohibited all lobbying activity and rulemaking (Gekas);
- (4) restricted all non-LSC funds including public and IOLTA funds (McCollum); and
- (5) prohibited all abortion representation (Gekas).

The House agreed to a compromise amendment proposed by Rep. Smith and negotiated by Rep. Berman which permitted the use of LSC funds for representation of certain aliens engaging in agricultural work and spouses and children of amnesty aliens, but prohibited representation of aliens residing in the U.S. under color of law.

SUMMARY AND ANALYSIS

Sec. 3 — Authorization of Appropriations

Section 3 of HR 2039 extends the authorization for appropriations for LSC for five fiscal years, 1992-1996. The bill authorizes "such sums as may be necessary" for each of the five fiscal years.

Prior authorization periods were only for three years, but the House agreed that after more than a decade without an authorization for appropriations, the Corporation needed a longer period of stability and certainty to give the program time to move forward and revitalize and to permit both LSC and its recipients to adjust to the substantive changes in this bill.

Sec. 4 — Protection Against Theft and Fraud

Section 4 provides that federal criminal laws applicable to federal funds are to apply to the Corporation and to recipients, grantees or contractors, as well as subrecipients and subcontractors, who receive Corporation funds. The House Bill specifies that particular federal fraud and embezzlement statutes, such as 18 U.S.C. §§286, 287, 641, 666, 1001 and 1002 will apply to LSC funds. In addition, the House included a general provision deeming Corporation funds to be Federal appropriations for the purpose of all Federal criminal laws in order to incorporate federal criminal provisions that were not specifically included or which might be adopted in the future.

The House took this action to remove any doubt that federal criminal laws against theft, fraud and embezzlement apply to Corporation funds. Proponents of reform argued that such laws did not apply to LSC and its recipients, even though there have been federal criminal prosecutions against Corporation recipient employees and the Corporation's General Counsel concluded in an opinion rendered June 5, 1989, that federal criminal laws applied to an officer or employee of a recipient who stole or embezzled program funds.

The House Bill also specifies that the False Claims Act, 31 U.S.C. §§3729-3733, applies to the Corporation, thus giving the Attorney General the authority to bring a civil action against any person employed by or contracting with a recipient, subrecipient, grantee or contractor who perpetrates a fraud with Corporation funds. However, the House Bill explicitly excludes from applying to the Corporation and its recipients the provisions of the False Claims Act which permit a private person, a *qui tam* plaintiff, to initiate a false claims action. Permitting private parties to sue could be construed to permit a private right of action against recipients or subrecipients.¹

¹The LSC Act does not permit private rights of action to enforce the Corporation Act by private parties against LSC or its recipients [*Grassley v. LSC*, 535 F.Supp. 818 (1982)], although it does permit suits brought by recipients, subrecipients or their staffs against LSC for alleged violations of the LSC Act, the Constitution, general principles of administrative law or other applicable law [*National Senior Citizens Law Center v. LSC*, 581 F.Supp. 1362 (D.D.C. 1982) *aff'd* 751 F.2d 1391 (1985)].

Finally, the House Bill included a provision applying the federal criminal statute against obstructing a federal audit, 18 U.S.C. 1516, to auditors employed or retained by the Corporation with regard to grants and contracts made by the Corporation. However, LSC auditors are not given authority to engage in monitoring or compliance activities or obtain information and documents except as provided in sections 6, 11, 12 and 25 of the House Bill and provisions of the LSC Act.

Sec. 5 – Prohibitions on Lobbying

The House Bill basically maintains the 1984 Congressional compromise on legislative lobbying and participation in administrative rulemaking, although it makes several modifications and clarifications. This compromise, reflected in current appropriation rider provisions, assured that legal services programs could communicate and provide legal representation to specific clients on their particular legal problems before legislative and administrative bodies. However, legal services programs were prohibited from engaging in grassroots lobbying before both legislative and administrative bodies and prohibited from representation that was not directly related to the legal problems of a particular client. The compromise also prohibited self-help lobbying with LSC funds.

The Prohibitions of the House Bill

First, the House Bill bans all grassroots lobbying (with both LSC and non-LSC funds including IOLTA funds) on legislative matters and administrative agency policies and rulemaking. This is consistent with the current appropriations riders (which applies only to LSC funds) and much more restrictive than current section 1007(a)(5) of the LSC Act which applies to LSC and private funds, and which permits grassroots lobbying under certain circumstances. There are no exceptions to the prohibition in the House Bill.

Second, the House Bill prohibits any and all lobbying or any other activities with regard to a referendum, initiative, constitutional amendments or similar procedures of Federal, state or local units of government. This absolute ban (consistent with the rider) is far more restrictive than provisions in the LSC Act which permit some legal advice and representation on these issues. It applies to LSC and private funds.

Third, the House Bill prohibits a recipient from soliciting a client in violation of professional responsibilities while engaging in either legislative lobbying or administrative rulemaking.

Administrative Agency Representation

Under the House Bill, a recipient may provide legal representation before an administrative agency on behalf of an eligible client if such client has a particular application, claim, case or matter which will be directly affected by an action or inaction of the agency. Such representation may involve participating in agency rulemaking proceedings as well as other agency policy development. In addition, recipients may communicate to an agency engaged in rulemaking or policy development if the communication is in response to a request of an agency or elected official.

Legal Representation Before Legislative Bodies

The House Bill permits legal representation before legislative bodies, but only if two substantive and two procedural conditions are met. First, a legal services program can provide legislative representation to an eligible client only if (a) the client seeks representation to protect the client's existing legal rights or interests or (b) if the client is in need of relief which can be provided by the legislative body involved. Second, the eligible client must provide the legal services program with specific authorization for such representation and the program must have appropriate documentation of that authorization.

Before undertaking representation before or communications to a legislative body, the project director or designee must expressly approve such representation and determine that the above two conditions have been met. Moreover, the governing body must establish express policies on representation before legislative bodies to determine the parameters of program representation and to guide the project director or designee in the appropriate determinations.

Except for the absolute prohibition on grassroots lobbying, the House Bill does not artificially limit how a legal services program can lobby on behalf of an client eligible for representation. For example, programs are permitted to draft legislation and amendments, testify, analyze or review legislation, provide factual information or data, communicate and meet with legislators and other lobbyists about particular legislation, participate in meetings with other groups, and undertake activities similar to those of other lawyers representing clients before a legislative body.

Responding to Requests

The House continued the current provisions in the LSC Act and the appropriation laws which permit a legal services program to respond to requests of elected or appointed officials. However, the absolute prohibition against grass roots lobbying applies equally to communications made in response to requests.

Legislation Regarding Authorization, Appropriation and Oversight of LSC and Recipients

Finally, the House Bill permits a legal services program to communicate to a Federal, State or local elected official when a legislative body is considering authorization or appropriation of funds or any other measure affecting the authority, functions or funding of a recipient or the Corporation or is conducting oversight affecting a recipient or the Corporation. The particular legislative forum involved must be considering an authorization or appropriation measure or other relevant measure or conducting oversight activities. Determinations of this condition precedent to any communication must be made expressly by the project director or designee of the recipient. Grassroots lobbying on these measures is absolutely prohibited.

Sec. 6 – Enforcement, Sanctions and Monitoring

Section 6 of the House Bill is a long and complicated set of three provisions (which affect three different sections of the LSC Act) that attempt to both strengthen the protections contained in the current law and clarify the role of the Corporation in monitoring and evaluation.

Subsection (a) on enforcement amends section 1006(b)(1)(A) [42 U.S.C. 2996e(b)(1)(A)] of the LSC Act to provide comprehensive tools for enforcement, including reasonable monitoring, effective and timely complaint investigations, and independent evaluations to determine whether programs are providing comprehensive, economical and effective legal assistance of high quality to eligible clients. The Corporation can issue rules, regulations, guidelines, instructions and grant conditions to ensure compliance with the Act or regulations. It cannot, however, impose restrictions or limitations on types of cases or forms of representation of clients unless such restrictions or limitations are explicitly authorized by Congress, and may not impose restrictions or requirements on recipients (such as past proposed regulations on governing bodies and fee-generating cases) that are in addition to or inconsistent with the provisions of the law applicable to the Corporation. This provision is particularly important in light of the *TRLA v. LSC*, 940 F.2d 685 (D.C.Cir. 1991) decision which upheld the Corporation's assertion of authority to impose restrictions on representation of clients that Congress had not imposed.

This subsection of the House Bill spells out the procedures the Corporation must use to investigate complaints filed by third parties alleging a violation of the Act or regulations. These procedures do not apply to the Corporation Inspector General. The procedures include appropriate notice to the recipient, an opportunity to respond, protection against unauthorized disclosure of information, and a time limit in which a recipient can request a hearing if the Corporation is taking action to suspend, reduce, terminate or deny refunding.

Subsection (b) tracks current law on suspension or termination of financial assistance to a recipient and suspension or termination of Corporation or recipient employees. Any disciplinary actions taken against employees of a recipient must be consistent with any other requirements of the Constitution, other applicable statutes, and collective bargaining agreements and must provide for a full and fair hearing before an independent hearing officer. Procedures for suspension or termination of recipient employees are consistent with current law.

Unlike the current LSC Act, subsection (b) specifies the circumstances under which the Corporation may suspend, reduce or terminate financial assistance or deny an application for refunding. LSC can defund a program for systematic and substantial violation of the Act, regulations, guidelines, instructions or grant conditions or when the recipient has failed to use its resources to provide economic and effective legal assistance of high quality as measured by generally accepted professional standards. In both instances, recipients must be provided an opportunity to correct deficiencies before defunding proceeds. In addition, this subsection explicitly provides authority for LSC to

deny refunding when the Corporation has identified an applicant for financial assistance that is better able to provide high-quality, comprehensive, economical and effective legal assistance for the geographic areas served.

To prevent the Corporation from making substantial grant reductions without a hearing, as was attempted for TRLA, CRLA and the National Center for Youth Law, the House Bill precludes reductions of more than 5% or \$20,000, whichever is less. The bill also makes clear that LSC cannot deny a hearing based on its unilateral determination that there are no facts in issue. If LSC decides to defund a recipient, the recipient is entitled to a hearing before an independent hearing officer even if LSC believes that no facts are in issue. It is the independent hearing officer who must determine whether facts are in issue, and who must decide whether to utilize a summary judgment procedure similar to that provided by current regulations, 45 C.F.R. 1625.7(a)(3).

Finally, the subsection provides for an appeal to the Corporation Board at the recipient's option if the LSC President makes a final determination to defund a recipient. This appeal would be on the record and limited to questions of law and the appropriateness of the penalty. This remedy is, of course, in addition to seeking review in federal or state court.

The House Bill continues current law requiring an independent hearing officer in order to insure that any decision to defund or replace a current recipient with a new recipient would be made on the basis of objective factors after full opportunity to contest both the facts and the judgments made by Corporation staff.

Subsection (c), monitoring and independent evaluations of programs, makes substantial revisions in section 1007(d) of the Act. This subsection addresses past Corporation deficiencies and overreaching into internal recipient affairs and insures that the Corporation conducts appropriate evaluations, pursuant to objective criteria, to determine whether recipients are providing economic and effective legal assistance of high quality.

The Corporation is required to promulgate a regulation, subject to requirements of section 1008(e), adopting standards and procedures on monitoring, evaluation and complaint investigation. These standards must balance recipient rights and prerogatives with the Corporation's statutory and fiduciary obligations. According to the Committee Report, the Corporation should adhere to the *Standards for the Monitoring and Evaluation of Providers of Legal Services for the Poor* adopted by the American Bar Association in February of 1991 when developing its standards and procedures.

The subsection makes clear that the Corporation must honor the rules of ethics and professional responsibility that are applicable in the jurisdiction where a recipient delivers legal assistance. However, the privacy rights of recipient employees did not fair as well. The Fish Amendment rejected the Judiciary Committee provision that sought to incorporate the federal Privacy Act, 5 U.S.C. 552a and required that the Corporation abide by privacy protections of state law and respect the privacy rights of individual

employees. In its place, the Fish Amendment provided protection for the privacy rights of clients.

Sec. 7 – Class Actions

This section of the House Bill continued the current procedural provisions in section 1006(d)(5) of the LSC Act and incorporated the applicable provisions from the current appropriation act (Pub. L. 101-515).

The House added language permitting the governing body to expressly disapprove certain class actions. This language was not intended to permit a governing body to review a specific class action request as that would violate ethical provisions on the independent professional judgment of attorneys. However, the language does permit the governing body to establish before-hand specific types of class actions that the recipient will not bring.

Sec. 8 – Negotiation Requirement

The House added a new requirement that recipients adopt policies, consistent with applicable ethical rules, to require professional staff to attempt, where appropriate, to negotiate settlements and to use alternative dispute resolution (ADR) mechanisms where such mechanisms are appropriate and available. This requirement was added to ensure that, where mechanisms are available and appropriate, recipient staff attempt to resolve disputes without resort to litigation, unless negotiation or use of available ADR would be adverse to the eligible client's interests.

This new requirement is a mandate to the governing bodies of recipients. The policies adopted must be consistent with state ethical rules and the provisions of this part. This section does not authorize the Corporation to impose any procedural or substantive requirements on recipients; it only authorizes the Corporation to ensure that each governing body adopts a policy that the governing body deems appropriate. In fact, the provision specifically prohibits the Corporation from requiring the adoption of policies which restrict representation of clients to matters where the clients agree to such negotiation or use of alternative dispute mechanisms.

The requirement does permit recipients to file suit without negotiation, notice or use of alternative dispute resolution when the circumstances of the case, as determined by the professional judgment of the attorneys involved, necessitate initiating action to protect the interests of the client. Nothing in this section authorizes the Corporation to create ADR programs or to fund ADR mechanisms.

Sec. 9 – Redistricting

The House Bill prohibits legal services programs from using LSC or private funds to participate in any advocacy or litigation that involves alteration, revision or reapportionment of a Congressional or state or local legislative, judicial or elective district or influencing the timing or manner of taking a census. This provision is

identical to the current LSC regulation, 45 C.F.R. 1633 that is now in effect and was upheld by the Court of Appeals for the D.C. Circuit in *TRLA v. LSC*.

Sec. 10 — Restrictions on Use of Funds for Legal Assistance to Aliens

Section 10 generally incorporates the restrictions on the use of LSC funds for legal representation of aliens currently included in the rider to the Corporation appropriation, but makes some small but important changes in the language of the provision.

The first change is intended to codify that those aliens who resided unlawfully in the U.S. prior to January 1, 1982, but were granted amnesty under Sec. 245A of the Immigration Reform and Control Act of 1986 (IRCA), are eligible for legal assistance under the LSC Act. The Corporation had amended its regulation on legal assistance to aliens (45 CFR 1626) to include a five-year disqualification for these so-called general amnesty aliens. That provision of the Corporation regulation was enjoined by the U.S. District Court for the Northern District of California in a case that was affirmed on appeal by the U.S. Court of Appeals for the Ninth Circuit, *CRLA v. LSC*, 917 F.2d 1171 (9th Cir. 1990). The House adopted clarifying language that is consistent with the appropriations language, with the court's decision and with the original intent of Congress when it adopted IRCA.²

The second change clarifies that, in contrast to the position taken in the Corporation regulation, 45 CFR 1626.11, aliens whose employment to perform temporary labor or services is authorized by INS (H-2 workers) are generally eligible for legal services regardless of whether or not the matters "arise under the provisions of the worker's specific employment contract."

The House Bill authorizes representation of family unity aliens who are spouses and children of amnesty aliens who have been granted work authorization and permission to stay in the U.S. while their visa application is pending. However, the final House Bill did not extend services to several other categories of aliens. The House Committee bill had granted eligibility for legal services to aliens who were "permanently residing in the United States under color of law" or PRUCOL. A compromise amendment worked out between Rep. Lamar Smith (R-TX) and Howard Berman (D-CA) removed the PRUCOL provision from the bill and substituted the family unity aliens provision.

The final change extends eligibility for legal assistance to those aliens who are now eligible for treatment of an emergency medical condition under Medicaid (Title XIX of the Social Security Act). This legal assistance is limited, however, to services needed to help obtain such emergency medical assistance. This change is consistent with the 1986 change in the Medicaid law, 42 U.S.C. Sec. 1396(b), that extended Medicaid

²IRCA also provided that seasonal agricultural workers (SAWs) and replenishment agricultural workers (RAWs) are considered lawful residents. These groups are permanent residents, thus eligible for representation under both IRCA and this bill.

coverage for emergency medical care, including emergency labor and delivery, to all persons otherwise eligible for Medicaid, regardless of their immigration status.

Sec. 11 – Governing Bodies of Recipients

Section 11 of the House Bill amends section 1007(c) of the LSC Act to incorporate the McCollum bar appointment provision that has been included in each appropriation act since 1983. The Section also ensures that all grantees and contractors providing legal assistance are governed by a policy body consistent with the McCollum provisions. Thus, a majority of the governing or policy body of any recipient, grantee or contractor must be appointed by the governing bodies of State, county or local bar associations, the memberships of which represents a majority of the attorneys practicing law in the locality in which the recipient is to provide legal assistance or, in the case of programs providing services in more than one State, in the State or locality in which the principal office of the recipient is located.

The House continued the requirements currently in section 1007(c) that at least 60 percent of the governing body consist of attorneys who are members of the bar of a State in which the legal assistance is to be provided and that at least one-third of the body consists of persons who are, when selected, are eligible for services from that recipient. The House Committee Report provided some helpful comments which attempted to address several LSC interpretations that had arisen under prior governing body provisions. For example, the Committee report suggested that while recipients were to designate client groups to make client selections, there were circumstances when client groups do not exist or do not carry out their appointment responsibilities. In these and similar situations, recipient governing bodies should be permitted to select eligible clients to fill these slots. Responsibility for determining whether a client selected is eligible rests with the recipient; the recipient should exercise such responsibility with sensitivity to the privacy interests of proposed client board members.

The House also continued the existing waiver provision for the 60 percent attorney requirements, including the specific provision designated for programs serving Native Americans. The Corporation is authorized to waive the 60 percent requirement if, because of the nature of the population they serve, recipients cannot easily comply.

Unlike the House Bill, current law under Section 1007(c) only requires 60% attorneys and one-third eligible clients when a recipient is "organized solely for the purpose of providing legal assistance to eligible clients." The House Bill applies these requirements to any recipient "which has as one of its purposes the provision of legal assistance to eligible clients."

Thus the House Bill clarifies that any recipient, grantee or contractor receiving funds from the Corporation for the provision of legal assistance under sections 1006(a)(1) should have either a governing body or a policy body which meets the governing body requirements and which sets policy for the Corporation grant or contract. Any recipient, grantee or contractor providing legal assistance to eligible clients or otherwise assisting eligible clients should be governed by a policy body on which clients and the appropriate bars are represented.

The House modified the language of the provision in current law that prohibited payment of compensation by a recipient to a member of the governing body of a recipient. In 1987, the Corporation changed its long-standing interpretation of the statutory language. The new interpretation prohibits an employee of one recipient from sitting on the board of another recipient. See 45 C.F.R. 1607.6. As a consequence, many support centers as well as other recipients lost board members who were knowledgeable about poverty law and could help ensure that support centers were accountable to the needs of local recipients. The House Bill clarifies that a board member cannot receive compensation from the recipient upon whose board the member serves, but can receive compensation from another Corporation recipient.

The House continued the provision in current appropriation riders that precludes the Corporation from imposing requirements or limitations on the governing or policy bodies of recipients that are additional to, or more restrictive than, the provisions of this section. This includes, but is not limited to, the procedures of appointment, the political affiliations, or the length of terms of board members; the size, quorum requirements, and House operations of such governing bodies; the content of a recipient's bylaws; and the communications between governing bodies and appointing authorities. These limitations resulted from Corporation staff efforts to micro-manage recipient governing bodies and a Corporation board proposal in 1987 to change Part 1607 to require certain political qualifications of members and to restrict communications between bar associations and recipients when the bar associations were considering board appointments.

To ensure effective local control within the parameters of ethical requirements and to prevent the Corporation from again attempting to micro-manage programs or interfere with local priority setting, the House Bill specifies that the recipient, pursuant to the direction and control of its governing or policy body, and not the Corporation, determines all broad policies concerning its provision of legal assistance and other activities. The House Bill relied upon the standards and opinions of the American Bar Association with regard to the role of governing bodies of legal aid societies in setting out the appropriate role and authority of local governing bodies.³ The House Bill also clarifies that it is the recipient that is to ensure that its legal assistance activities are to be carried out in a manner consistent with attorneys' professional responsibilities to a client as established by the rules of ethics and professional responsibility that apply in the jurisdiction where legal assistance is provided.

Sec. 12 – Professional Responsibilities

Section 12 updates the provisions of Sections 1001(6), 1006(b)(3) and 1007(a)(10) to incorporate the changes made in the rules of professional conduct by the American Bar Association [Model Rules of Professional Conduct] and state bar associations. Instead of referring to a specific set of rules, the language now refers to the "rules of ethics and professional responsibility that apply in the jurisdiction where legal assistance is provided."

³. See Formal Opinion 334 (August 10, 1974) and Formal Opinion 324 (August 9, 1970) issued by the Committee on Ethics and Professional Responsibility of the American Bar Association. See also, *Standards for Providers of Civil Legal Assistance to the Poor*.

In addition, Section 1009(d) is amended to clarify that neither the Corporation nor the General Accounting Office can obtain information that is protected from disclosure by the laws or the rules of professional responsibility that apply in the jurisdiction where such reports or records are maintained. Whether information is protected from disclosure is determined by the appropriate state body, not by the Corporation. This addition was necessary to clarify that the limitations on Corporation action provided in section 1006(b)(3) apply also to Corporation access to records and reports. Recent Corporation staff have claimed that section 1006(b)(3) did not limit Corporation access to records because reference to ethical restrictions did not appear in section 1009(d).

Sec. 13 – Solicitation

Section 13 was amended in House to restrict legal services attorneys and other employees of a recipient in regard to in-person unsolicited advice to a nonattorney to obtain counsel or take legal action. Generally, a recipient is barred from representing such a nonattorney or referring the nonattorney to another recipient. In addition to this restriction, legal services attorneys are bound by state ethical restrictions on solicitation which, in most states, prohibit solicitation if the nonattorney has made known a desire not to be solicited or if the solicitation involves coercion, duress or harassment.

There are three exceptions to the restrictions on solicitation. First, such solicitation is permitted if advice is given to a close friend, relative, former client (if the advice given is germane to the previous employment by the client) or person whom the recipient reasonably believes to be a client because the recipient is currently handling an active legal matter or case for that specific person. This exception tracks the 1970 provisions of the Code of Professional Responsibility.

Second, recipient employees may speak publicly or write for publication on legal topics so long as they do not emphasize their own professional experience or reputation and do not undertake to give individual advice in such speech or publication. This does not preclude recipient employees from publishing articles in the *Clearinghouse Review* or law reviews about poverty law issues, preparing manuals, training materials, legal memorandum and the like if such materials are addressed to other recipients and their employees or to other providers of legal services, preparing information about the services offered by the recipient or preparing appropriate community legal education materials.

The most critical exception permits a recipient and its employees to represent a nonattorney or refer the nonattorney to another recipient when the employment or referral results from the participation by a recipient employee in activities designed to educate nonattorneys about their legal rights, to recognize legal problems, to make intelligent selection of counsel or to utilize available legal services, if such outreach activities are conducted or sponsored by the recipient or another legal assistance or church organization. Representation or referral resulting from these outreach activities is permissible even if the activity would have been otherwise barred by the provision on in-person, unsolicited advice.

Under the outreach provision, recipient staff can travel to persons who may be eligible clients and who are located in isolated or institutional settings, such as nursing homes, farm labor camps, mental health facilities, and the like. There, recipient staff can discuss with potential clients their legal rights under federal, state or local law and help such potential clients recognize legal problems with their employment, housing, income support, living conditions and the like. Recipient staff are not precluded from advising such potential clients about existing or possible lawsuits which may affect the legal rights or interests of the potential client. Recipient staff can also advise such potential clients about available legal services, including those provided by the recipient, how to decide whether they want to use such services and how they can utilize such services.

The additional solicitation restrictions on recipients and their staff in the House Bill go far beyond the restrictions imposed either on private lawyers or on legal aid or public interest lawyers not working for an organization funded by the Corporation. The restriction itself is modeled on the 1970 Provisions of the Code of Professional Responsibility which applied to some private lawyers, but did not apply to lawyers who were "furnished or paid by a qualified legal assistance organization." The original 1970 Code provision on solicitation is not in effect in any state as it was modified substantially in light of Supreme Court decisions during the 1970s and 1980s.⁴ Moreover, today, almost all of the nation's lawyers are governed by state-adopted versions of the new Model Rules that permit solicitation when the motive for the solicitation is not the lawyer's pecuniary gain, if the person solicited has a prior family or professional relationship with the lawyer, or if the lawyer is participating in a prepaid or group legal services plan.

Sec. 14 — Certain Eviction Proceedings

Because of the perceived need to rid public housing projects of drug dealers, the House added a restriction on representation in certain public housing eviction proceedings of individuals convicted of the illegal sale or distribution of drugs. Specifically, persons who have been convicted or who have pled guilty to the illegal sale or distribution of a controlled substance may not be represented by legal services in public housing eviction proceedings brought by a public housing agency when the illegal drug activity of that person threatens the health or safety of other tenants or employees of the public housing agency.

The House did not restrict representation of persons who had not been found guilty by a court or whose family members or friends were alleged to be involved in drug activity, because prohibiting representation in those cases would deprive legal assistance to individuals who may themselves be innocent of drug activity.

The House Bill also provides a clear test so that recipients can easily determine whether its staff can engage in representation. When representation is requested, the

⁴See, e.g., *Bates v. State Bar*, 433 U.S. 350 (1977); *In Re Primus*, 436 U.S. 412 (1978) and *Shapiro v. Kentucky Bar*, 108 S. Ct. 1916 (1988).

recipient must ascertain whether the person seeking representation has been convicted or has plead guilty to the illegal sale or distribution of a controlled substance. The recipient is not required to undertake an exhaustive investigation to make such a determination, but should use reasonable care under the circumstances. If the recipient determines that the person seeking representation has a conviction, then the recipient must ascertain, based on the pleadings, whether the eviction proceeding was brought by the public housing agency because the illegal drug activity of the convicted person threatens the health or safety of other tenants or employees of the public housing agency.

Sec. 15 – Procedural Safeguards for Litigation

The House addressed concerns raised by agricultural employers about legal services representation of clients in lawsuits without a factual basis or where individual plaintiffs were allegedly not identified. The House Bill requires that, before recipients can engage in precomplaint negotiations, file a complaint or otherwise pursue litigation against a defendant, recipients must obtain a written retainer agreement signed by the plaintiffs which enumerates the particular facts on which the claim or controversy is initially based. This requirement is in addition to restrictions on solicitation and new requirements on negotiation and use of alternative dispute resolution that were also addressed to concerns raised by agricultural employers. On the floor, an amendment was also added that required recipients to disclose plaintiff identity when filing a complaint, unless they obtained a court order permitting a "John Doe" complaint.

Recipients are required to keep the written retainer agreements on file and make them available to any Federal department of agency auditing the activities of the Corporation or any recipient and to any auditor receiving Federal funds to conduct such auditing, including Corporation auditors or monitors and representatives of the Government Accounting Office. Other parties have access to such agreements only through the applicable rules of discovery in the particular jurisdiction after litigation has begun. Of course, recipients may not disclose information in written retainer agreements that is protected by the attorney-client privilege or the rules of ethics or professional responsibility that apply in the jurisdiction in which the legal assistance is provided. The Committee added an amendment to clarify that information in the retainer agreement that initially would be protected by the attorney-client privilege can be disclosed to auditors or monitors if, after the agreement is signed, the plaintiff or plaintiff's counsel has disclosed such information to third parties during precomplaint settlement negotiations or litigation.

The House Bill tracks current Corporation regulations that do not require a written retainer agreement when the only service to be provided is brief advice and consultation and which permit recipients to execute written retainer agreements as soon as is practicable after representation commences because of an emergency situation. See 45 C.F.R. 1611.8.

Sec. 16 – Competition Study

This section requires the Corporation to study the feasibility of a system of competition that could be used in awarding some or all grants or contracts for legal assistance and related activities. The Corporation is required to undertake this study and provide Congress with the results no later than three years after the date of the enactment of this legislation. The House rejected a proposal requiring the Corporation to implement competition over a three-year period.

To assure that the study is carried out objectively and professionally, the House Bill requires that it be subject to an independent evaluation. In addition, the House requires the Corporation to establish an advisory Committee to oversee the study from its inception to conclusion. This advisory committee must include project directors, attorneys providing legal assistance, representatives of the organized bar and eligible clients. The Committee will be selected, not by the Corporation, but by the appropriate representatives of these groups, including the American Bar Association, the National Legal Aid and Defender Association, the Project Advisory Group and the National Organization of Legal Services Workers.

According to the Committee Report, a study was necessary because the Committee was not convinced that competition will work in awarding grants and contracts for civil legal services. A study of feasibility of using competition for awarding civil legal services grants to provide full services to a geographic area was deemed critical in order to determine whether, how, and under what circumstances competition will work, and to require the Corporation and proponents to prove, if possible, that competition is appropriate for legal services. In addition, standards or guidelines for the implementation of a competitive bidding system are needed but have not been developed. Without such standards, grant awards could be made on impermissible political or ideological grounds or solely on cost considerations that ignored quality, institutional stability and other relevant criteria. To guide the study required of the Corporation, the House Bill specifies that the study shall examine five critical issues:

First, any system of competition must ensure access to, and the continued provision of, high quality, economical, and effective legal services to resolve problems of clients, consistent with the purposes of the LSC Act. Competition must maintain full-service providers, so that all locally-determined priorities are addressed and clients do not have to use several different Corporation funded providers to meet their legal needs.

Second, competition must take into account locally determined needs for particular kinds of cases or services. Corporation bureaucrats in Washington cannot be given authority to disregard locally-identified needs and priorities in determining what kinds of activities to fund.

Third, the use of competition must take into account the ongoing ethical and professional responsibilities of recipients and their attorneys for existing cases, the potential disruption in client services, and loss of experienced staff, pro bono

services, funds from sources other than the Corporation and other resources if an existing recipient were replaced.

Fourth, competition must also ensure that every applicant seeking a grant or contract through a competitive bidding process will comply with all provisions of the Act and the rules, regulations, guidelines, instructions and grant conditions issued under the Act that are applicable to those recipients organized for the purpose of providing legal services to eligible clients. Competition should be carried out on a level playing field and all competitors must have the same governing body requirements and operating responsibilities.

Finally, any system of competition must ensure that a new recipient selected will provide a sufficient level of quality, economy and effectiveness to justify the burdens of replacing the current recipient, taking into account the factors discussed above and the criteria for performance developed by the Corporation under section 1007(d)(4).

Sec. 17 – Training

The House amended section 1007(b)(6) of the Act by removing the language from the current appropriation's rider that prohibited the dissemination of information about public policies. The House Bill rejected the language of the current appropriation rider because it had been interpreted by the Corporation in 45 C.F.R. 1612.9 to prevent training of clients, community workers, volunteers and others about current law, including existing statutes and regulations. The amendment thus clarifies that the Act does not prohibit recipients from conducting, supporting or participating in community legal education, preventive law or self-help efforts directed toward eligible clients.

The House Bill would preclude a recipient from using Corporation funds to support, participate in or conduct a training program to advocate for or against particular legislative proposals, regulations or public policies or to encourage grassroots lobbying. Corporation funds also could not be used to support, participate in or conduct a training program to encourage political activities, labor or antilabor activities, boycotts, picketing, strikes or demonstrations. However, attorneys and paralegal personnel could participate in, and recipients could support or conduct training programs that help prepare such advocates to: provide adequate legal assistance to eligible clients (including training in advocacy techniques); advise any eligible clients as to the nature of the legislative or regulatory process; or inform any eligible client of his or her rights under any statute, order or regulation or about the meaning or significance of particular bills or regulations.

Sec. 18 – Limitation on Use Amendments

The House Bill deleted the existing provision in the Corporation Act which prohibits representation in school desegregation litigation, but retained the bar against certain representation pertaining to the Selective Service Act and desertion from the Armed Forces. The existing prohibition on representation in desertion cases does not restrict legal services from civil representation of financially eligible clients in all other

issues affecting military personnel nor does it restrict representation of veterans on the full range of veterans issues.

Sec. 19 – Recordkeeping and Non-Corporation Funds

Private Funds: Section 1010(c) remains in effect. Subsection (a) of the Committee bill sought to deregulate restrictions on private funds except for certain specific activities that the Committee believed should be restricted in order to preserve the integrity of the legal services program. However, during debate an amendment by Rep. Fish (R-NY) was accepted that substituted section 1010(c) of the current Act for Section 19 of the House Bill, and thus continued restrictions on the use of private funds provided for the provision of legal assistance. Section 1010(c) does permit recipients to use public and IOLTA funds for any activity without restriction so long as the funds are used in accordance with the purposes for which they were provided. The House rejected a McCollum proposal that would have fully restricted all private and public funds.

Unfortunately, the Fish amendment also restricts the use of private funds for certain alien representation that is now permitted under current law. Currently, recipients can use private funds for representation of aliens.

Timekeeping: Subsection (b) of the House Bill mandates timekeeping. The Corporation, by regulation adopted pursuant to section 1008(e), must require each recipient to maintain records of time spent on the cases or matters with respect to which that recipient is engaged in activities and to maintain a recordkeeping system that discloses the source of funds to be charged for each such case or matter. The regulation must also require each employee of a recipient who is an attorney or paralegal to keep contemporaneous records of the time spent by case or matter and the type of case or matter.

However, the House Bill also makes clear that the specific time and record-keeping system to be employed shall be determined by each recipient in a manner that meets both Corporation requirements and those imposed by other funders. Under the bill, it is the responsibility of the recipient, not the Corporation, to design and develop whatever recordkeeping and timekeeping systems are appropriate and useful. The Corporation can set requirements and define particular types of cases which recipients must report to LSC.

The House Bill did not go as far as the original McCollum amendment on time-keeping and limited the requirements which the Corporation may impose on individual program staff members. Under the House Bill, the Corporation cannot require individual attorneys and paralegals to designate the particular source of funds for each case or matter when there are multiple funding sources.

In addition, the Corporation may not require time to be recorded by client name or the name of the case. Such a requirement would create a serious ethical dilemma for recipients in virtually all states whose ethical rules protect the name of a client from disclosure to third parties until the name has been made public through court or other public proceedings. However, the House Bill does authorize the Corporation to require

recipient employees to maintain contemporaneous records of time spent by case or matter (the case or matter identified by some numbering system). The McCollum proposal went further and required that the employee must designate the time spent on a case or matter at the time such employee actually engages in the activity on that case or matter. The recipient is to decide how to ensure that employees maintain contemporaneous and accurate time records.

The House Bill requires the Corporation to use the rulemaking process pursuant to section 1008(e) in implementing any timekeeping requirements. This is consistent with current appropriation provisions. The House Bill does not require the Corporation to undertake a study suggested by the Government Accounting Office in its March 1988 Report, but the Committee Report strongly encourages such a study.

Sec. 20 — Evasion

Section 20 responds to the 1985 Report of the General Accounting Office on the establishment of "alternative corporations" by three Corporation recipients in 1981. The House Bill prohibits the use of alternative corporations to avoid or otherwise evade the provisions of the Corporation Act. The GAO report found that with respect to two of the Corporation recipients, the alternative corporations created had a single identity of interest with the recipients and used funds in a manner inconsistent with Corporation restrictions on recipient fund balances and use of private funds. While the GAO report found that neither recipient had violated the law or promoted a fraud, and indeed had been encouraged to establish such alternative corporations by Corporation officials, GAO recommended that the Corporation treat the alternative corporations and recipients as single entities for the purpose of Corporation restrictions.

The House Bill defines an alternative corporation as any corporation, law firm, business association, group, entity, or enterprise which, through shared staff or control over workload or interlocking boards of directors, has a single identity of interest with a recipient. These criteria were taken from the GAO report as a means of determining whether a recipient and another corporation or other entity had a single identity of interest. However, as pointed out by the GAO report, the fact that a recipient and another organization shared staff would not in and of itself imply that they had a single identity of interest. Therefore, the House Bill also provides that if a recipient shares staff with any other corporation, law firm, business association, group, entity, or enterprise, the recipient shall specify with particularity the use of any funds by such employees in accordance with the timekeeping and recordkeeping requirements imposed by Section 18 of the bill. The implication is that if such records are kept and there were no other indicia of "a single identity of interest," there would not be an alternative corporation for purposes of LSC.

Sec 21 — Fee-Generating Cases

The House Bill makes two changes in the language of the provision of the current LSC Act dealing with fee-generating cases. The first change simply restates existing law which has been in effect since 1977 and incorporates the substance of the section of Part 1609 of the Corporation's regulations dealing with receipt of attorneys' fees (45 C.F.R.

1609.5). The House recognizes that Part 1609's treatment of Social Security retirement and SSI disability cases authorizing legal services representation is correct, but also recognizes that opinions of the Corporation's General Counsel precluding legal services programs from recovering attorneys' fees in those cases are consistent with prior legislative history and with the provisions of this bill.

The second change is based on a provision from the current appropriations rider and is intended to prevent the Corporation from taking any action to impose a recapture provision or otherwise offset attorneys' fees awarded to legal services programs against the funds available under their Legal Services grant or contract. This rider was passed in response to a regulation adopted by the LSC Board in 1989 that would have permitted LSC to offset against grant funds or recover from program resources attorneys' fees that had been awarded to programs by courts or administrative agencies or included in settlements. The regulation also would have permitted the Corporation to redistribute the funds it had recovered to other legal services programs. The rider prohibited LSC from implementing the regulation. The LSC Board rescinded the regulation in 1993.

Sec. 22 — Attorneys' Fees Provisions

The House Bill amends the current provision of the LSC Act, sec. 1006(f), that permits a court to award costs and legal fees to a successful defendant in an action brought by LSC or a recipient where the court finds that the action was brought for the sole purpose of harassment or the plaintiff maliciously abused legal process. The House Bill expands the circumstances under which the court can award costs and fees to a defendant. The new provision states that if a court finds, based on substantial evidence, that a legal services grantee or contractor commenced an action for the purpose of harassment or maliciously abused legal process, or that the action was frivolous, unreasonable, or without foundation, the court may award the defendant reasonable costs and attorney's fees. Both the current Act and the House Bill provide that such costs and fees are to be paid directly by the Corporation. The House Bill, however, also provides that the Corporation may recover the amount paid by it from the grantee or contractor against whom the award was made by offsetting the amount against future grant awards made by LSC. Unless otherwise agreed by LSC and the grantee or contractor, no more than 5% of a grant may be deducted in any one grant year for the purposes of such recoupment.

As is true under current law, the defendant's costs and attorney's fees are to be paid, in the first instance, by the Corporation, in order to insure that the defendant who has been abused will be assured of receiving recompense. The House Bill, however, explicitly provides that the Corporation may recoup from the recipient the amounts that LSC has paid (and only those amounts) to a defendant. The recovery is limited, however, to an annual offset of 5% of the recipient's grant. This provision is intended to ensure that the client community served by the recipient does not suffer a significant loss of legal services and so that the recipient can adjust its operations to absorb the reduction over a longer period of time. The Committee Report indicates that the recipient and LSC are permitted to work out a mutually agreeable alternative schedule for repayment.

The House rejected a Stenholm proposal that would have prohibited legal services programs from claiming or collecting attorneys' fees from nongovernmental parties.

Sec. 23 – Corporation Board Control Over Policy

This section was added to clarify that the Board of the Corporation, appointed by the President, should make the general policy of the Corporation and that the staff should administer the program and carry out Board policy. Recently, Corporation staff have made broad, general policy directly affecting recipients without approval, or in some cases, even discussion or notice to the Board. The Board must adopt all rules, regulations, guidelines, instructions and general grant conditions as well as other policies or changes in policy directly affecting all recipients or all recipients of a particular class.

The section makes clear, however, that Corporation staff are fully able to take any and all enforcement actions and to impose specific, individualized grant conditions on particular recipients when they have determined that the recipient has not complied with the law or the rules, regulations, guidelines, instructions, grant conditions or policies of the Corporation.

The House Bill required that Corporation policies affecting recipients should be adopted by the Board after appropriate notice and comment from affected recipients or other parties. In addition to Sec. 1008(e) that requires full rulemaking procedures for all rules, regulations and guidelines, the House Bill also requires that instructions, grant conditions or any proposed policy or policy change be noticed by the Board prior to its meeting and that the public and those affected be given an opportunity to comment at the meeting.

Sec. 24 – Reprogramming Provisions

The House Bill continued the requirement which has been included in the appropriations laws since 1984 that the Corporation notify the House and Senate Appropriation committees at least 15 days before final publication of all rules and regulations. In addition to rules and regulations, the House Bill includes reprogramming notice on all Corporation guidelines and instructions. To assure effective notice to, and an opportunity to express their views on, all critical Corporation policies affecting recipients, the House Bill also requires notice to the two authorizing committees.

Sec. 25 – 12-Month Grants

The House Bill continued the Appropriation Act requirement that Corporation grants be provided for a period of 12 months. A floor amendment provided that grants which began during the year could be for a shorter period. This responds to the 1989 Corporation staff attempt to fund recipients for less than 12-month grants without any notice to recipients and without any Congressional authorization. The Corporation retains considerable flexibility because the House Bill retains the provisions of Section 1007(a)(9) of the LSC Act which permits the Corporation to use month-to-month funding when the Corporation is considering denial of refunding. However, the Committee report suggests that the Corporation should determine whether to refund or

to begin denial of refunding proceedings soon after the grant year begins and does not approve Corporation practices which continue recipients on month-to-month funding for the entire grant period or a substantial portion thereof.

Sec. 26 — Establishment of Local Priorities

Because setting priorities by recipients is the key to local control over legal services, the House Bill specifies the procedure to be used to set priorities and reaffirms prior Congressional intent that recipients and not the Corporation are to set case priorities. The House Bill provides that priorities are to be consistent with the principles of Section 1001 of the LSC Act and any goals explicitly established by Congress, but deletes the reference in Section 1007(a)(2)(C)(i) to goals established by the Corporation. This change was necessary to clarify that, contrary to the LSC position, the Corporation does not have authority to subordinate local priorities to national goals established by the Corporation and cannot prohibit specific case types to further such goals.

The procedures required of all recipients by the House Bill are generally consistent with Part 1620 of the Corporation regulations and will require little change in recipient practices. The Corporation can monitor recipients to make sure they set priorities consistent with these procedures, but it is not authorized to overrule recipient priorities that are consistent with the LSC Act.

Sec. 27 — New Staff Attorney Definition

A new definition of "staff attorney" was added to clarify that attorneys working for all recipients are staff attorneys if they receive more than one-half of their professional salary from the proceeds of an LSC grant or contract.

Sec. 28 — Study on Legal Assistance to Older Americans

The House Bill requires the Corporation to study the extent and effectiveness of legal assistance provided to older Americans by recipients. The legal needs of frail and elderly poor persons may not be adequately met both because of insufficient resources and because of isolation, immobility and other factors as described in the Corporation's 1980 study on the **Special Difficulties of Access and Special Unmet Legal Problems of the Elderly and Handicapped**. The Corporation is to examine the delivery of legal assistance to elderly populations, including consideration of resources necessary to serve older persons living in institutions, and coordination of assistance available under the Older Americans Act.



August 27, 1993

ALAN W. HOUSEMAN
EXECUTIVE DIRECTOR

By Messenger:

John Dwyer
Department of Justice
Room 5131
10th and Constitution Avenue, NW
Washington, DC 20530

Dear John:

Pursuant to our conversation, I have am enclosing the following information:

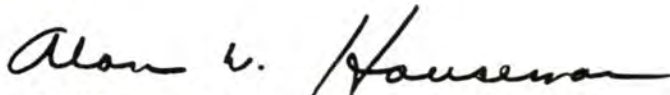
1. A memo on Administration testimony and a memo describing our views on the House Reauthorization legislation passed last year and reintroduced as HR 2644.
2. An analysis of HR 2039.
3. The Senate Labor and Human Resources Committee Bill S. 2870.
4. An analysis of S. 2870.
5. The Transition Memorandum.
6. A short history of legal services by my colleague Linda Perle.
7. A longer history of legal services which includes the Carter years. See Chapters 2 and 3. I think you will find pages 1 through 25 of Chapter 3 particularly helpful in understanding what happened at the Corporation during the Carter years.
8. A memo on likely amendments with attachments which analyze the amendments.
9. The provisions of the current appropriation riders.

One small point. President Carter and his Administration did not play a particularly significant role with regard to the work of the Legal Services Corporation, although the Administration at a key point supported substantial increased funding which was extremely helpful to persuade Congress to approve a substantial funding increase.

I'm sure some of this is more than you needed.

Please give me a call if you have questions.

Sincerely,

A handwritten signature in cursive script, reading "Alan W. Houseman". The signature is written in dark ink and is positioned above the printed name.

Alan W. Houseman
Executive Director

Enclosures: a/s



MEMORANDUM

ALAN W. HOUSEMAN
EXECUTIVE DIRECTOR

TO: John Dwyer
FROM: Alan W. Houseman *Alan W. Houseman*
DATE: August 27, 1993
RE: Possible Adverse Amendments to HR 2644

We anticipate that during Subcommittee, Committee and Floor consideration of HR 2644, the McCollum–Stenholm forces (joined by other Republicans) will seek to make the following amendments:

COMPETITION

Phase in competitive bidding for all grants and contracts; Eliminate procedural rights for grantees subject to competitive bidding; Redistribute funds based solely on 1990 census.

ATTORNEYS' FEES

Prohibit legal services from seeking or receiving attorneys' fees from private parties.

APPROPRIATIONS

Reduce 1994 authorization from \$ "such sums" to \$350; freezes 1995-97 at same level plus CPI increase.

CLIENT IDENTITY

Create new federal court procedure to determine whether client identity must be revealed in precomplaint negotiations and litigation; even if federal court orders identity protected, must still reveal client identity to defendant's attorney.

LOBBYING

Ban representation of clients before all legislative bodies and in all administrative rulemaking proceedings; prohibit responding to requests from legislators or administrative officials.

PRIVATE FUNDS

Assuming the Subcommittee deregulates private funds, we would anticipate an amendment to restrict private funds to same degree as LSC funds.

NON-LSC FUNDS

Restrict all non-LSC funds, private and public, including IOLTA, to same degree as LSC funds except for financial eligibility and Indian tribal funds.

ABORTION

Prohibit use of all funds, LSC or non-LSC, private or public, including IOLTA, for participation in proceedings, litigation, legislative or administrative advocacy pertaining to abortion.

REDISTRICTING

If we succeed in permitting local redistricting, we would anticipate an amendment to extend redistricting ban to local government and prohibit representation in census cases.

* * * * *

I have attached some argument one-pagers on some of these amendments.

Enclosures: a/s

COMPETITION

WHAT IT MIGHT DO: The amendment would probably have three parts.

1. The amendment would phase in competitive bidding, providing that 10% of all grants and contracts in FY 93 and another 10% in FY 94 shall be awarded by competitive bidding. Subsequently, the Corporation is authorized to implement a competitive bidding system for all remaining grants and contracts over the next three fiscal years. The Corporation must report back to Congress within 18 months after implementation of the first phase and determine whether to proceed based on three criteria set forth in the bill.
2. In addition, the amendment would eliminate the procedural rights of a grantee to a hearing if the grantee were denied refunding or terminated as a result of competitive bidding.
3. The amendment would also redistributes existing funding to all grantees and contractors based solely on the result of the 1990 census.

ARGUMENTS AGAINST

Competitive Bidding

Proponents of competition now recognize that implementation raises significant problems and that it may not be the most appropriate or feasible approach to improving the performance of programs. However, instead of accepting the need to conduct a careful study of feasibility before disrupting the existing system, proponents propose to proceed with phased implementation and a narrowly focused report by the Corporation.

By far the wiser course is that proposed under Section 16 of the Committee bill – to undertake a careful feasibility study to determine whether, how and under what circumstances competitive bidding can and should be used to improve the delivery of legal services for the poor.

1. Competitive bidding for awarding grants has **not worked in criminal defense** or in civil legal aid programs where it has been tried. In contract criminal defense bidding:
 - low-ball bidding was the norm;
 - over time, costs rose substantially;
 - quality of representation deteriorated;
 - the most experienced and qualified lawyers left;
 - effective programs were dismantled, then later reinstated at great cost because they proved to be better; and
 - courts held the systems unconstitutional.
2. There is **no evidence** to suggest that competitive bidding is **appropriate or feasible** for legal services delivery or that it would produce any beneficial results at all. The only clear result of the system as proposed would be to enable LSC to more easily defund programs that it no longer wishes to support. A study of the feasibility of competition is critical to determine under what circumstances competition is appropriate for legal services.
3. **Standards** or guidelines for the implementation of a competitive bidding system are needed but have **not yet** been developed. Without standards, grant awards would likely be made on impermissible political or ideological grounds or solely on cost considerations.

4. Implementing competition without study or standards is likely to **dismantle** the existing system of **locally-based, full service programs staffed by specialized poverty law advocates, which are** accessible to clients. They would be replaced with a hodgepodge of providers without expertise in poverty law, who, unlike current recipients, are not coordinated with each other and not integrated into a system of support and training.

The Committee bill provisions also assure that the study addresses the following critical issues which are **not included** in the proposed **amendment**:

1. **Preserving local control** by bar controlled program boards with representation from the client community. Competition must not override locally identified needs and priorities.
2. Assuring that legal services providers can continue to act under **ethical requirements** imposed upon all lawyers by state court and bar ethical rules with respect to completion of ongoing cases, conflicts of interest and quality of representation.
3. Assuring that competition does not substantially **discourage** and reduce **pro bono** efforts by the private bar.
4. Assuring that **clients** do **not** have to **use several different providers** to meet their legal needs.

Eliminating Procedural Rights

1. There is no need to eliminate procedural rights in order to carry out competitive bidding. Under section 6(b) of HR 2644 bill, the Corporation can deny refunding when it has identified an applicant for financial assistance that is better able to provide high quality, comprehensive, economic and effective legal assistance.
2. Hearings serve to assure a rational and professional decision by Corporation staff, protect the Corporation's action from judicial challenge and enhance public acceptance of the decision.
3. Hearings diminish the possibility that a program will be defunded because of pressure from its adversaries and subjected to politically motivated, arbitrary decisions.

New Funding Formula

1. Decisions about funding have always been made and should continue to be made by the appropriations committee.
2. The amendment's proposed distribution of funds would cause **tremendous disruption of funds** without taking into account funding history, variations in the cost of doing business and other relevant factors.
3. Practical proposals to redistribute funds without causing massive disruption are being advanced by the legal services community and the Corporation and should be given careful consideration by the appropriations committees.
4. The amendment does not take into account funding for migrants, Native Americans and support entities.

ATTORNEYS' FEES

WHAT THE AMENDMENT MIGHT DO:

- Prohibit legal services programs and their clients from claiming or collecting **attorneys' fees from private parties**, i.e. "non-governmental parties in litigation."
- Apply to **all legal services cases** where attorneys' fees are otherwise available to successful litigants, regardless of the statute under which the fees are provided.

What Current Law Provides:

Under both current law and HR 2644, **poor people** represented by legal services lawyers are **treated the same** as all other litigants:

- Absent a fee-shifting statute, no attorneys' fees are paid to successful litigants.
- In cases covered by fee-shifting statutes, attorney's fees are **only awarded when the plaintiff prevails** in the litigation and where a court has found the **defendant has violated the plaintiff's rights**. Attorneys' fees are not awarded against innocent victims of harassment.
- **No distinction** is made **between private parties** or institutions and **public agencies**, so long as there is a fee-shifting statute that applies in the case.
- **Fees are awarded regardless of whether the client must pay the lawyer**. Legal services and public interest lawyers who, by law, cannot charge fees to their clients, are still entitled to receive attorneys' fee awards on the same basis as private attorneys who bill their clients for their time.

What Cases Produce Attorneys' Fees Against Private Parties:

Legal services programs seek and receive attorneys' fees under a wide variety of **federal and state** statutes that provide for **fee-shifting** to encourage enforcement of fundamental rights and important public policies. The kinds of cases depend on a program's **locally determined priorities**.

- Attorneys' fees are awarded under **federal** fee-shifting statutes that include the **Civil Rights Attorneys Fees Act**, Title VI, Title VII, Title VIII, the **Truth-in-Lending Act**, **Bankruptcy** laws, federal racketeering statutes (**RICO**), **Fair Labor Standards Act**, and numerous others. Attorneys' fees are also awarded to legal services clients under **Rule 11** of the Federal Rules of Civil Procedure when opposing parties abuse the legal process in federal court.
- The **vast majority** of attorneys' fee awards paid by private parties to legal services attorneys and clients are awarded under **state fee-shifting statutes**, which were enacted as remedies to promote enforcement of important **state created and protected rights**. Fees are provided under state **consumer protection** and **usury** laws, **domestic relations** and **spousal abuse** statutes, **landlord-tenant** laws, **fair housing** laws, and other **anti-discrimination** provisions, as well as state "Rule 11" provisions.

Arguments Against the Amendment:

Treat poor people to second-class justice.

- It would exempt from the operation of law private defendants who have violated the rights of poor plaintiffs, simply because those plaintiffs were represented by legal services lawyers.
- Legal services programs and their clients should not be punished because their attorneys have been successful in enforcing statutory and constitutional rights.

Undermine the purposes of fee-shifting statutes which are:

- Not just to reimburse clients for attorneys' fees;
- Also to promote enforcement of fundamental rights and important public policies by:

--Punishing and deterring illegal conduct:

Without the deterrence of attorneys' fees, private parties would feel free to violate the rights of poor people with impunity, since large damage awards are unlikely and the risks of litigation would be minimal.

While a few legal services programs receive large attorneys' fee awards from private institutions, including banks, major corporate employers and insurance companies in class action suits, **most attorneys' fee awards against private parties are modest but sufficient to deter** individual defendants from repeating their illegal actions.

--Making resources available to encourage attorneys to handle cases they might not otherwise be able to take.

When pooled, modest attorneys' fee awards provide **substantial resources** for legal services programs which permit them to provide additional legal assistance to poor people **to enforce those rights** that fee-shifting statutes were designed to promote.

Was designed to **protect the narrow economic interest** of a specific group--**agricultural employers**--who consistently violate the rights of exploited migrant farmworkers.

- Since the Agricultural Workers Protection Act (AWPA) **does not provide for attorneys' fees**, few farmworker cases actually result in significant awards of attorneys' fees.
- The **amendment**, however, would **apply to all cases brought by legal services attorneys against private parties**, regardless of the nature of the rights sought to be enforced or the status of the client.

CLIENT IDENTITY

WHAT THE AMENDMENT MIGHT DO

1. Require that client identity be revealed before engaging in **precomplaint negotiations**, filing a **complaint**, or otherwise pursuing litigation against a defendant, unless a court of competent jurisdiction has granted leave to protect client identity.

2. Federal District Court may, after notice and a hearing, enjoin disclosure of identity of potential plaintiff pending the outcome of negotiations or litigation, upon finding of reasonable cause to believe that injunction is necessary to prevent **probable, serious harm to such potential plaintiff**.

3. **However**, court must make the plaintiff's identity available to **counsel for potential defendants**, who **may not disclose the identity**, presumably to the potential defendant, unless authorized by potential plaintiff's counsel or the court.

4. In lieu of court procedure, counsel for potential plaintiff and defendant may agree on disclosure of identity.

5. Provides for contempt of court for violation of injunction or agreement.

ARGUMENTS AGAINST

1. Imposes, without any factual justification, special burdens on clients represented by legal services attorneys that do not apply to any other group of clients, rich or poor.

2. Creates a new and wholly unprecedented federal court procedure that would apply only to poor clients of legal services programs. There is no need to create an entirely new cause of action in already overburdened federal courts.

3. Invites court intervention in pre-complaint negotiations, when issues are better resolved between the parties to the dispute. Wastes valuable time and limited resources of both the courts and the parties, requiring hearings on issues that may never have to be reached if the parties can negotiate a settlement of the dispute.

4. Establishes an unprecedented requirement that an attorney withhold information from his client under threat of contempt of court, setting up a conflict between the interests of the attorney and those of his client.

5. Permits the court to enforce, through contempt of court proceedings, agreements reached between private parties, prior to commencement of litigation.

6. This amendment is an overbroad, intrusive attempt to roll back the rights of migrant farmworkers by creating special procedural obstacles, applicable to all legal services clients, that hinder the ability of legal services attorneys to pursue their clients' rights under laws created by Congress to prevent exploitation of farmworkers.

LOBBYING

WHAT THE AMENDMENT MIGHT DO

1. Bans all legal representation of eligible clients before any legislative body.
2. Bans all legal representation of eligible clients before an administrative agency on rulemaking or policy issuances affecting clients.
3. Bars a grantee from responding to a request of an elected official (such as a Member of Congress or state or local legislator) or the request of an appointed agency official.
4. Bans all self-help lobbying.
5. Applies to all funding sources, private and public.

ARGUMENTS AGAINST

Direct legislative advocacy on behalf of an eligible client:

1. Denies equal access to a critical component of the justice system whose decisions regulate and directly affect vital matters of safety, health, nutrition, housing and income. Eligible clients often require assistance of legal services advocates in order to effectively express views on legislative matters and thus protect existing legal rights or obtain relief which can often only be provided by the legislative body.
2. Prevents legal services from protecting hard-won judicial or administrative victories when legislation seeks to overturn them.
3. By denying access to legislative bodies it encourages protracted and expensive litigation on matters that are best resolved by legislative bodies and wastes scarce program and judicial resources.
4. Prohibiting legislative advocacy deprives legislators of an important and unique source of information about the effects existing or pending legislation on the poor.
5. Legal services should be in a position to provide the same range of legal advice and representation for the indigent that is now routinely available through the private bar to those who can afford counsel.

In contrast, the HR 2644 draws an appropriate balance between broad general policy advocacy, **which is prohibited**, and limited legal representation of specific eligible clients where the client (1) seeks to protect existing rights or (2) is in need of relief which is best provided by a legislative body. The eligible client must provide specific written authorization before any legislative advocacy is undertaken on his/her behalf and the recipient must retain appropriate documentation. Pursuant to specific policies established by the program's governing body, the project director must approve all representation, after determining that all above conditions are met.

Responding to requests:

1. There is no justification to deny elected officials unfettered access to critical information they need to effectively legislate.
2. Legislators should not be kept in the dark about issues on which legal services has expertise and practical knowledge that is unavailable elsewhere.
3. Legal services grantee staff should be able to respond to request from legislators just as federal, state and local employees (or attorneys for private parties) or can.

HR 2644 permits legislative officials to obtain, from what is often the best source, information on the effect of existing or proposed legislation on the poor.

Moreover, the Committee Bill is consistent with the policy governing federal agency employees who are permitted to respond to Congressional inquiries.

Administrative Rulemaking

1. A ban on representation in administrative rulemaking would, for the first time in the history of legal services, deny to the poor use of an essential and routine tool in the practice of law.
2. A significant percentage of the legal problems of greatest importance to poor people (family safety, health care, nutrition, housing, consumer credit and income support) directly arise out of administrative agency policies that affect how the poor are treated and the benefits to which they are entitled. Agency staff flesh out the policies enacted by legislative bodies and often add restrictions or additional requirements that can negate or substantially alter legislative provisions. Representation is essential to protect existing rights, assure conformity with legislative intent, and inform agency officials of the impact which the proposed policies will have on the poor.
3. Communication by recipients in response to requests assures that agency officials have access to information about the potential effect of proposed policies and the actual effect of existing policies. Agencies can thus make more informed and defensible decisions.
4. Prohibiting such representation would:
 - deprive the poor of access to critical decisionmaking which those who can afford an attorney have and routinely use;
 - force legal services into needless and costly litigation that frequently could be obviated through advocacy before administrative agencies; and
 - deprive agency officials of vital information about the effect of existing or proposed policies.

Self-Help Lobbying

1. Grantees should be able to seek funding from state and local governmental bodies and develop other public funding sources in addition to LSC.

2. Grantees should be able to maintain governmental funding and oppose questionable restrictions or challenge proposals directly affecting the operation of the grantee. Many programs receive funds from public sources for representation of mental patients, child in foster care, child welfare, juveniles, the elderly, disabled and others.

3. Self-help advocacy has always been permitted to be conducted with non-LSC funds and should be allowed to continue. There have been no allegations or complaints raised to suggest that self-help lobbying has been an issue or subject of abuse.

PRIVATE FUNDS

WHAT IT MIGHT DO:

Delete Section 19 of the Committee Bill which hopefully will deregulate private funds and replace it with current law under 1010(c).

ARGUMENTS AGAINST

1. Congress should not interfere in decisions by other funders, including funding decisions of the private sector, on how to allocate their funds and with whom to contract.
2. Congress should encourage, rather than discourage, the creation of alternative funding sources for civil legal services.
3. Congress should encourage public-private cooperation to promote the effective legal services and efficient use of resources, rather than stimulate wasteful duplication of programs if private funders are forced to put their resources elsewhere in order to accomplish their purposes.
4. There are ample protections in the LSC Act and the Committee bill to ensure that LSC funds are not used, directly or indirectly, to support prohibited activities, and private funds are not used for activities that are inconsistent with the basic purposes of the LSC Act.
5. Congress should not single out legal services recipients and the poor that they serve by denying them the use of private funds that it has permitted other nonprofit and profit-making organizations receiving federal funds to use without restriction.
6. The Legal Services Corporation should not be permitted to extend its authority and restrict or question legal services program activity supported by private funds.

PROHIBITION ON NON-LSC FUNDS

WHAT THE AMENDMENT MIGHT DO

1. Apply all prohibitions that are imposed on LSC funds by the LSC Act to ALL NON-LSC FUNDS, regardless of their source.
2. Specifically apply restrictions to IOLTA funds.
3. Changes current law with respect to public and IOLTA funds , so long as they are used for the purposes for which they are provided.
4. Require notice to non-LSC funder that funds may not be used for LSC-restricted purposes.
5. Retain exception for Indian tribal funds.
6. Permit non-LSC funds to be used for clients who are not financially eligible, as long as used for specific purpose provided which is not otherwise prohibited by LSC Act.

ARGUMENTS AGAINST

Congress Should Not Interfere With Decisions By Other Public Funders

1. This amendment would constitute an unacceptable infringement on the sovereignty and prerogatives of other public funding agencies.
2. Other public funding agencies are fully capable of determining what constitutes an appropriate use of their funds and what entities are best suited to carry them out.
3. Congress should not give LSC authority to determine whether resources provided by another public agency are appropriately spent.
4. Other public funders should be free to adopt goals and purposes that are different from those adopted by Congress, and should be free to fund legal services programs to accomplish those goals and purposes.

Congress Should Not Intrude into the Funding Decisions of Private Donors

1. Private donors, like public funders, should have the right to determine how their funds are spent and by whom.
2. Any restrictions that are placed on the use of private funds, should be limited to those that are essential to preserve the integrity of the legal services program.
3. Private funds should be available to meet the legitimate needs of the client community, regardless of whether those needs could appropriately be met using federal funds.

Congress Should Encourage, Rather Than Discourage the Creation of Additional Resources for Legal Services Programs

1. This amendment would discourage public-private cooperation for legal services by limiting the ability of legal services programs to seek and accept non-LSC funds to meet their community's needs.
2. This amendment force non-LSC donors to allocate their resources to other entities not subject to the restrictions or create new duplicate programs to carry out their goals.
3. This amendment would divert funds from legal assistance for eligible clients to wasteful duplicate administrative expenditures needed to support separate entities.
4. If non-LSC funders are not permitted to fund legal services programs, they may put their resources into non-legal services, further limiting the availability of legal services for the poor.

Congress Should Not Single Out Legal Services Programs and The Poor

1. Congress has generally permitted other recipients of federal funds to use their non-federal funds without restriction.

ABORTION

WHAT THE AMENDMENT MIGHT DO:

- Delete the prohibition in the LSC Act preserved by the House Bill on legal assistance to procure a **nontherapeutic abortion** or to compel the performance of an abortion contrary to religious beliefs or moral convictions.
- Substitute a **blanket prohibition** on participation in any proceeding, litigation, legislative or administrative advocacy pertaining to abortion.
- Apply the prohibition to **all funds**, regardless of source, that are available to an LSC-funded program, including **IOLTA funds** and other public, non-LSC funds.

ARGUMENTS AGAINST THE AMENDMENT:

- **Eliminate entirely the ability of poor women to protect and enforce their legal rights** with respect to abortion, promoting second-class justice and severely limiting access to the legal system.
- Go far **beyond current law and what is reasonably necessary** to ensure that LSC funds are not used for activity that Congress has determined should not be supported with federal funds.
- **Usurp the rightful role of other public funders**, including sovereign states, as well as private donors to determine appropriate uses and purposes of the funds they provide and to decide who can best fulfill those purposes.
- **Permit LSC** rather than the funder **to determine** whether an activity, wholly supported by non-LSC funds, pertained to abortion.
- Operate as a **gag rule** by severely **chilling** the willingness of legal services programs to provide **advice and counsel to poor women** with respect to abortion, family planning services and other health-related services, for fear that LSC would broadly interpret the provision and sanction programs for activities not intended to be prohibited.
- Eliminate the ability of poor people to **oppose abortions** under appropriate circumstances, which is now protected under both the House Bill and current law.

REDISTRICTING

WHAT THE AMENDMENT MIGHT DO

1. Extend the ban contained in what we hope will be the House Judiciary Committee Bill which would prohibit advocacy and representation in state legislative and Congressional redistricting cases to **redistricting of all legislative, judicial or elective districts at any level of government.**

2. Prohibit representation in census cases.

ARGUMENTS AGAINST

House Judiciary Committee Bill Deals with the Alleged Problems

1. Sec. 9 of the Committee Bill prohibits legal services involvement in redistricting cases on the Congressional and state legislative level.

2. The prohibition on state and Congressional redistricting cases will ensure that legal services programs do not become enmeshed in highly charged cases pitting major political parties against one another in battles for control of Congress or state legislatures.

3. It will, however, permit legal services to take cases of purely local importance to the poor community that seek redistricting as a remedy under the Voting Rights Act for the community's problems.

Local Redistricting is Vital For Poor Communities

1. Local redistricting cases comprise the vast majority of legal services redistricting cases.

2. Most LSC-supported redistricting cases involve issues that are of primary importance only to the local community served by the recipients.

3. These cases deal almost exclusively with non-partisan elections for school boards, city or county councils and other local government bodies that control education, police, fire, health care and other critical public services of paramount importance to poor people, who often rely on those services more heavily than do their more affluent neighbors.

4. The kind of local redistricting cases that legal services programs handle are of tremendous importance to the clients who are served because they involve challenges to the processes for electing representatives to local governmental entities that exert a

direct and enormous influence on the quality of life for poor people in the particular locale served.

5. These cases are brought to preserve for the poor the meaningful exercise of basic statutory and constitutional rights guaranteed to all citizens—the right to vote for local elected officials who represent their communities in making decisions that directly affect their lives in very basic ways.

Local Redistricting Cases Do Not Involve Partisan Political Issues.

1. Many local redistricting cases involve challenges to non partisan elections.

2. Local redistricting cases brought under the Voting Rights Act are not intended to benefit any particular party or to elect any specific candidate for office, but to enforce the legal rights of members of the poor and disadvantaged communities who seek legal assistance and to insure that the voice of those communities are heard in the decisions that affect their lives.

Legal Services Programs Are the Only Sources of Representation Available.

1. National civil rights organizations have no resources to bring redistricting cases with purely local implications.

2. Few private attorneys have the expertise, inclination or resources to prosecute complex Voting Rights Act cases.

3. If legal services cannot bring these cases, they won't be brought and poor people will continue to be inadequately served by the local elected public bodies that exert tremendous impact on their daily lives.

Census Cases Are Not Redistricting Cases.

1. Legal Services programs traditionally bring few census challenges, but those that have been brought are not brought for the purpose of redistricting.

2. Census figures are used, not simply to support legislative redistricting, but to allocate a wide range of benefits and services that are allocated on the basis of population, income levels, prevalence of particular subgroups within a population and other formulas that are based on census data. Even legal services funding is allocated on the basis of census figures that count the number of poor people in a service area.

3. Poor people, especially minorities, homeless, migrants workers and other subgroups within the poor population are historically undercounted.

Legal Services for Poor Face Fun

By RICHARD B. SCHMITT

Staff Reporter of THE WALL STREET JOURNAL

Legal services for the poor, once identified as a Clinton administration priority, apparently have become a casualty of Congress' anticrime agenda.

The Legal Services Corp. was slated for a 25% increase in funding in the budget that the president submitted to Congress in February. The proposed \$500 million outlay was considered a shot in the arm for an agency that hadn't been in favor with either of the past two administrations.



But Congress is resisting the idea of major new funding. The House approved a nearly flat \$415 million budget, and late last week the Senate recommended that the program receive no increase at all.

Although some advocates say that the corporation is doing well to avoid outright cuts—and it won a 12% increase last year—the situation illustrates how law-enforcement has taken center stage on Capitol Hill in issues affecting the justice system, sending programs with different missions to the wings. An anticrime bill supported by the administration and currently being hammered out by House-Senate conferees is expected to result in billions of dollars for new prisons and cops and other programs.

"It seems that FBI agents are more popular than lawyers for the poor," said Alexander D. Forger, president of the corporation, which disburses funds to about 320 legal-aid groups around the country. Congress is "beefing up law enforcement at the expense of equal justice," adds Douglas S. Eakeley, the corporation's board chairman.

Mr. Eakeley, a New Jersey lawyer who attended Oxford University and Yale Law School with the president, was named to oversee a new Legal Services board late last year. Mr. Forger, former chairman of the Wall Street firm, Milbank, Tweed, Hadley & McCloy, and a longtime director of the Legal Aid Society of New York, was recently retained to handle daily operations.

The new regime has made it a goal to improve strained relations that have evolved over the years between the Washington staff and legal-aid lawyers in the field. To that end, a number of Republican holdovers have been given pink slips, and a system of peer review for evaluating programs is being considered.

Officials also hope to elevate legal-services' standing with skeptical members of Congress by positioning the corporation as "an institution that is not ideologically driven ... but which is performing a fundamental mission," according to Mr. Forger.

While the corporation has clearly entered a new era after years of withering partisan attacks in the 1980s, the turnaround is hardly complete. The \$500 million request from Mr. Clinton was below the \$848 million that the corporation requested to restore it to what it maintains are minimum funding levels—enough to provide two attorneys for every 10,000 poor people.

Supporters of the corporation have also deferred efforts to obtain legislation this

year modifying Reagan-era restrictions that prevent legal-services' attorneys from accepting certain politically sensitive cases. Proponents hope to have the ban lifted at least as it applies to the use of millions of dollars in nonfederal aid that the corporation receives. Such a measure stalled after being approved by a House subcommittee.

Indeed, some lawmakers would like to see legal-services' role even further circumscribed. Last week, Texas Republican Phil Gramm proposed legislation in the Senate that would have barred legal-services' attorneys from suing over changes in welfare laws. New welfare restrictions are being actively considered at the state and federal levels.

in Congress

The Senate defeated the measure, by the fairly narrow margin of 56-44. "It makes no sense when the country is going broke for us to be funding lawsuits against welfare reform which both parties and the president and the American people strongly support," according to Mr.

Gramm. The senator said his bill was a response to a recent New Jersey case in which legal-services' attorneys are helping plaintiffs challenge a state law that cuts off benefits to welfare mothers who have additional children while on government assistance.

* * *

EPA Is Negotiating With Auto Makers Over Northeast Air-Quality Proposal

By OSCAR SURIS

Staff Reporter of THE WALL STREET JOURNAL

DETROIT — Hoping to avoid a major legal battle with the auto industry, the Environmental Protection Agency is trying to broker a compromise between Detroit's Big Three and environmental regulators in the Northeast, who are seeking permission to adopt a tough air-quality program that would, in effect, require the companies to build electric cars.

People close to the effort say the EPA has proposed a beefed-up version of a plan first proposed last year by the auto makers: making vehicles for all states, except California, that would be cleaner, and become available sooner, than those currently required under federal law.

However, the proposal is likely to draw opposition from states such as Massachusetts and New York, which both have passed their own programs mandating electric-vehicle sales. They were among the 12 Northeast states, along with the District of Columbia, that asked the EPA in February to allow them to adopt a program modeled after California's, which is the world's toughest against vehicle emissions. Auto makers have vigorously opposed that request, citing its costs, while promising to sue if the EPA approves it.

Officials at the EPA and the Big Three's lobbying arm, the American Automobile Manufacturers Association, confirmed that a compromise is being discussed but declined to comment on its specifics.

Under the federal Clean Air Act, the EPA has until November to act on the northeastern states' request. That is when dozens of states are required to file state-wide, ozone-reduction plans to the agency. States that fail to file risk losing hundreds of millions of dollars in federal highway funds.

The Northeast states petitioned to file their ozone-reduction plan as a group, hoping to adopt a California-style program that would meet most of their ozone-reduction goals under the Clean Air Act. But people familiar with discussions among the regulators, the auto industry and the EPA say the EPA is proposing a watered-down version of California's program, which was created specifically to address

that state's severe air-quality problems.

These people say the EPA favors the Northeast states' accepting a compromise that would have the auto makers produce vehicles in 1999 for their region and the rest of the nation that would meet only California's Low Emissions Vehicle Standard, a standard two steps short of its so-called Zero Emissions Vehicle Standard that would require electric cars.

While such so-called LEV cars would be cleaner and made available sooner than those under an original plan offered by Detroit last year, the EPA proposal still would give a major victory to auto makers, since it would essentially stem the spread of electric-vehicle mandates beyond California. Under the California program, the major auto companies must have 2% of their sales in the state coming from electric vehicles beginning in 1998.

It's unclear whether Detroit will agree to tougher emissions requirements outside of California before 2000, the first year covered by the industry's original proposal. Also unclear is whether Massachusetts and New York are willing to scuttle their electric-vehicle mandates since it appears that would have to be part of any compromise. The auto makers have sued both states over the matter.

In Massachusetts, some state officials already have expressed doubts about the proposal. "It really disturbs us that it appears that EPA is trying to put a stake in the heart of the electric-vehicle industry," said Trudy Cox, secretary for Massachusetts' executive office of environmental affairs.

The EPA also faces considerable pressure from environmental groups, which have begun to question whether the agency has the authority to broker such a compromise. They note that it would affect pollution-reduction policies nationwide, going beyond the scope of the Northeast's original request to the agency.

"Legally this is something that the EPA can't do at this point," said Jaime Steve, a spokesman for the Union of Concerned Scientists, a Washington-based lobbying group. "This will not solve the problem in the Northeast."

PHOTOCOPY
PRESERVATION

	RELEASE DATE	PREVIOUS ACTUAL	TECHNICAL DATA CONSENSUS FORECAST
	Tuesday	92.0%	91.0%
	Wednesday	+1.1%	+0.5%
Jobless Cl...	July 23 Thursday	392,000	365,000
Money Supply: M2	July 18 Thursday	+\$0.5 billion	+\$2.0 billion
GDP (ann. rate)	2nd qtr. Friday	+3.4%	+3.6%

Source: Technical Data

THE WALL STREET JOURNAL MONDAY, JULY 25, 1994

Fed Nominee Cites Goal of Low Inflation While Keeping the Jobless Rate Down

By DAVID WESSEL

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — President Clinton's nominee to the Federal Reserve Board, economist Janet Yellen, said that fighting inflation should be "a central goal of monetary policy," but underscored the Fed's responsibility to keep the unemployment rate down.

At a Senate confirmation hearing, Ms. Yellen endorsed the Fed's recent increases in interest rates, but cautioned that "it is difficult to know" whether they "will prove sufficient to prevent overheating, insufficient... or possibly excessive."

Fed Chairman Alan Greenspan, appearing before a House subcommittee on Friday, repeated the message he delivered to a Senate panel earlier in the week, noting signs of building inflationary pressures and rising inflationary expectations. Unlike Ms. Yellen, Mr. Greenspan didn't raise the possibility that the Fed may have gone too far in raising interest rates.

Stronger Dollar Is Sought

Mr. Greenspan reiterated that both the Fed and the Clinton administration want the value of the dollar to rise. A "stronger dollar essentially helps the United States and, indeed, helps our trading partners, as best we can judge," he said. In responding to questions, the Fed chairman said that government purchases or sales of dollars can counter "temporary imbalance[s]" in currency markets "if you can catch the markets at the appropriate time."

Ms. Yellen, a professor at the Haas School of Business at the University of

California at Berkeley, is Mr. Clinton's second nominee to the seven-member reserve board. Like the other choice, Fed Vice Chairman Alan Blinder, Ms. Yellen is a liberal academic economist in the Keynesian tradition. Both are suspected by some Wall Street analysts of being soft on inflation.

Implicitly responding to that characterization, Ms. Yellen said it would be "foolhardy" for the Fed to squander the gains it has made against inflation. "A monetary policy which pushes the economy beyond its potential for the sake of current job gains is shortsighted," she said.

But Ms. Yellen declined to take the advice of Sen. Lauch Faircloth (R., N.C.) who said she ought to declare that the Fed's first, second and third priorities ought to be "no inflation, no inflation and no inflation." Her rhetoric offered a sharp contrast to that of Wayne Angell, a hard-line inflation foe whom she is to replace on the Fed board. "My personal agenda as an economist" she said, "has been to understand the causes of unemployment and discover ways to alleviate its pain." She noted that every additional percentage point of unemployment costs the economy about \$130 billion in lost output.

Demand and Growth

Ms. Yellen described the Fed's current task as slowing the pace of demand in the economy to the rate at which the economy has the potential to grow. She gave no hint whether she expects the economy to slow to the desired pace without further increases in interest rates.

Mr. Greenspan, in his testimony, reit-

erated his longstanding advice that Congress needs to slow the growth of federal spending, and he predicted that long-term interest rates would fall if Congress acted to reduce deficits projected for the years beyond 2000.

But he wouldn't be drawn into the contentious debate over the wisdom of requiring employers to provide health care. "I have... been rather successful in being rather evasive on this issue," Mr. Greenspan said, "and I've learned how to do it, I think, with a great degree of skill."

IRA's Political Wing Refuses to Accept Terms of British-Irish Peace Initiative

By JUDITH VALENTE

Staff Reporter of THE WALL STREET JOURNAL

LONDON — The latest effort to bring peace to Northern Ireland appears doomed after the political wing of the Irish Republican Party failed to embrace a peace initiative which has the support of both the Irish and British governments.

Meeting in County Donegal in the Irish Republic, Sinn Fein, the IRA's political voice, raised several objections to the terms of the Irish-English peace initiative, the so-called Downing Street Declaration, and failed to deliver the key element that would have furthered the peace process: an agreement by the IRA to cease terrorist activity.

However, Sinn Fein leader Gerry Adams stopped short of sounding the death knell for the peace effort. "We are determined to build upon the progress that has been made and to bridge the gaps which still clearly exist," Mr. Adams said.

In its criticism, Sinn Fein said the Downing Street declaration—a joint initiative between British Prime Minister John Major and Irish Republic Prime Minister Albert Reynolds—went too far in pacifying Northern Ireland Protestants, the so-called Ulster Unionists, who make up the majority of Northern Ireland's nearly two million inhabitants. Sinn Fein complained the Major-Reynolds initiative was "replete" with reassurances to Northern Ireland Protestants that weren't matched with similar recognition of the rights of Irish nationalists.

Sinn Fein's reaction was hardly a surprise. It took seven months to formally respond to the peace initiative, after insisting for months that the British government clarify certain aspects of the declaration.

Both governments accused Sinn Fein of merely trying to stall the peace process. Indeed, Sinn Fein seemed to be buying time in order to deal with the conflict within its own ranks between hard-liners and moderates over how to respond.

Despite Sinn Fein's reaction, Mr. Reynolds and Mr. Major are likely to still try to move the process forward, although that will be difficult without some indication that the IRA is willing to renounce terrorism. Violence on by both sides has claimed 50 lives in just the seven months since the peace declaration was announced. The task of the two prime ministers is further complicated by the fact that

the Ulster Unionists have objected to the peace declaration since day one.

Meanwhile, the violence continues. In one of the more tragic episodes, timed to coincide with the World Cup games, six Catholic men who had gathered to watch the matches were gunned down at their local pub in County Down — itself a retaliation for the previous killings in Belfast of three members of a Protestant paramilitary organization.

The violence continued even on the eve of the Sinn Fein conclave. On Friday, police said agents of the Protestant Ulster Defense Association burst into the bedroom of an apartment in a north Belfast housing complex, and killed a 44-year-old Catholic man who lived in the complex with his Protestant girlfriend. Hours before the conference began, four officers of the Royal Ulster Constabulary and a 14-year-old girl narrowly escaped a bomb blast on a main road in County Down.

Mr. Adams' assurances that he is committed to a peaceful solution to the Northern Ireland "troubles" isn't likely to inspire confidence. He told the 800 delegates attending Sinn Fein's conference that the IRA would take its own counsel with regard to the future conduct of its armed campaign. However, he said he welcomed a statement last Thursday by the IRA leadership pledging a positive approach to the peace process.

Mr. Adams also appealed to the Ulster Unionists. "I acknowledge the need to reach out to our political opponents in the ranks of Unionism," he said. "Despite the wrongs that have been inflicted by Unionists upon us, or indeed that we have inflicted upon the Unionists, there is a need to heal the wounds."

Several members of Parliament expressed disappointment over Sinn Fein's response. "I am afraid we have now come up against a stone wall," said James Cran, a Conservative Party member of Parliament and vice chairman of a committee on Northern Ireland.

"This will obviously mean continued terrorist violence both by the IRA and the loyalist murder gangs carrying out tit-for-tat killings," said Labor Party member of Parliament David Winnick.