

Legal Services Faces Cuts in Funds, Authority

Corporation Set Up to Help Fight for Rights of the Indigent Is Target of Christian Conservatives

By Sarah Neville
Washington Post Staff Writer

The future of the Legal Services Corp. is in the balance as the Senate prepares to vote on a bill that could radically reduce funding for the agency that provides free legal service to America's poor.

The bill, sponsored by Sen. Phil Gramm (Tex.), a candidate for the Republican presidential nomination, and which passed the Senate Appropriations Committee on Tuesday, would reduce funding for the Legal Services Corp. from \$400 million to \$210 million and channel the funds through block grants to the state.

If the full Senate approves the measure, an LSC spokesman said, "The corporation would be left with neither funding nor function."

The \$22 billion appropriations bill, which also funds the Commerce, State, and Justice departments, also would impose a range of restrictions that would bar the use of federal funds for divorces and in cases concerning discrimination in housing and hiring, consumer fraud and defective products, utility shutoffs, patients' rights and adoptions.

Under the bill, Legal Services Corp. lawyers also would be forbidden to engage in litigation to obtain welfare benefits even where individuals were legally entitled to it. And no LSC money could be used to fund class action suits against state, local or federal governments, a move that the independent Center for Law and Social Policy argues "deprives the poor of access to the justice system and creates a second-class system of justice for them."

Clients also would be forbidden to challenge the constitutionality of any statute. A spokesman for the Legal Services Corp. described that as "a fairly startling concept, that you may not challenge the law."

Funding for programs that serve migrant workers and native Americans would be eliminated.

Yesterday the House Judiciary Committee approved a similar bill sponsored by Rep. George W. Gekas (R-Pa.) that also would curtail the agency's activities but provides funding for divorces. Earlier, House appropriators voted to fund the agency at \$278 million, a higher level than the Senate.

Yesterday at an emotional news conference organized by the American Bar Association, church leaders and victims of marital and child abuse called on Congress to save the Legal Services Corp.

ABA President Roberta Cooper Ramo said, "The proposals would severely reduce or eliminate the ability of lawyers for the poor to address through the legal system problems of domestic violence, homelessness, inadequate medical care, consumer fraud and a myriad of other problems."

LSC supporters hope the appropriations bill will be amended on the Senate floor to eliminate block grant funding and allow funding for divorces. To its detractors the Legal Services Corp. represents the worst excesses of big government, staffed by liberal litigators who crusade to change rather than just enforce the law.

But its supporters argue the LSC embodies the constitutional right to equal justice under the law. They say its meager funding is dwarfed by tax breaks that offset the

cost of legal representation for America's wealthiest individuals and that a world away from the glitz and procedural maneuvering of the O.J. Simpson murder trial, Legal Services Corp. lawyers defend America's poor.

At the Brooklyn neighborhood office of the New York Legal Aid Society's Homeless Family Rights Project, which is partly funded by the LSC, attorney Jose Perez copes with a parade of people seeking resolution of housing and welfare problems.

On an Indian reservation in the heart of rural Arizona, Sarah Krakoff practices law from an office in a community center where scorpions are a regular hazard.

"Whatever one thinks of a particular trial or lawyer we are the key to the access to the system," said Legal Services Corp. President Alex Forger.

But two powerful groups are pressuring for the corporation's demise: the Christian Coalition and the American Farm Bureau Federation.

Coalition executive director Ralph Reed, who has issued a written appeal to his members to lobby their representatives for abolition of the corporation, protests its involvement in divorces for poor women. He says: "We would obviously not be in favor of a woman remaining in an abusive or violent marriage. What we are complaining about is the systematic subsidy for the break-up of families in the inner cities."

Reed shares with the Farm Bureau a conviction that LSC attorneys systematically flout the rules under which the agency was established by engaging in political advocacy.

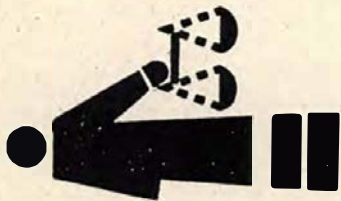
Bryan Little, the bureau's director for intergovernmental relations, claims rather than just providing legal services to the indigent, Legal Services Corp. lawyers spend much of their time pursuing "frivolous" cases under the Migrant and Seasonal Workers Protection Act in which only small amounts of unpaid wages or benefits are at stake.

Steven Banks, coordinating attorney for the Homeless Family Rights Project, strongly rejects the allegation that he and his colleagues indulge in political activism at taxpayers' expense. He also rejects the "radical" tag, arguing, "All of our work is essentially conservative in nature because these types of cases only seek to enforce the law. . . ."

While serving as Republican senator from New Hampshire, Warren B. Rudman fought almost single-handedly to keep the program alive. He questions the rigor of some of the restrictions being proposed by members of his party and the move to ban funding of class-action suits.

"Poor people also belong to classes occasionally," he said.

LEGAL SERVICES AT A GLANCE



FOUNDED by Congress in 1974 to ensure poor Americans receive equal access to justice.

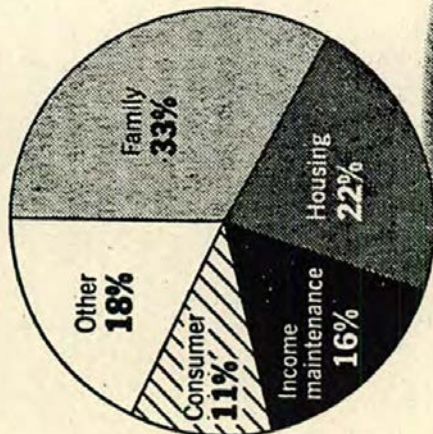
FUNDS 323 programs operating more than 1,200 neighborhood law offices and employing 11,000 people.

SERVES 1.7 million clients annually.

STAFF: Just over 100 at Washington administrative office.

STARTING SALARY: \$25,337 is the average for entry-level attorneys.

TYPES OF LEGAL SERVICES CASES CLOSED IN 1994



SOURCE: Legal Services Corp.

INSIDE:
EPA



Anxious Workers Given No Assurances on Jobs

By Gary Lee
Washington Post Staff Writer

During a chance meeting with Environmental Protection Agency Administrator Carol M. Browner earlier this week, an agency staff member seized the opportunity to ask a burning question: "By the end of this month, will I still have a job?"

Unable to give the reassurances the employee sought, Browner paused. "We're fighting," she finally said.

The exchange, which took place in an EPA elevator, reflects the somber mood hanging over the agency's Southwest Washington headquarters.

With Congress moving to slash the EPA's budget by a third, thousands of employees are bracing for massive cuts in the agency's staff and programs. By year's end, as many as 5,000 of the EPA's staff members may be out of work. Even if such dramatic layoffs are avoided, the bitter, ongoing congressional fight over the agency's budget could bring a protracted shutdown, which would mean furloughs and lost pay for thousands of employees.

Tensions at the agency began to rise in August, when the House voted a 34 percent cut in the EPA's budget. The Senate is weighing a 23 percent budget cut from the Clinton administration's proposal, which would put the budget at \$5.66 billion for fiscal year 1996. A Senate floor vote is expected before the end of September, followed by a conference debate to resolve the differences.

Already, Browner has informed 450 temporary workers that their jobs will be terminated, including 300 who were hired in a work-study program designed as an incentive to keep students from dropping out of area high schools and colleges. She has also imposed across-the-board freezes on hiring and promotions.

According to federal personnel rules, furloughs and other staff reductions cannot be imposed until temporary employees are let go.

"Regulations require us to make some moves," Browner explained. "I was sorry to have to do it."

In response, the agency is suffering a bad case of jitters. "Everybody is depressed and anxious," said Dwight Welch, a senior EPA biologist and union organizer for professional employees. "It's all we're talking about."

"We've become used to Congress using us as a political football," added Steve Spiegel, an attorney in the agency's office of enforcement.

"We're barely able to protect the environment with the money and staff that we have. It will be impossible under the situation that they're proposing."

— EPA attorney Steve Spiegel

"But this time they're displaying a total disregard for the welfare of the country and the work we're doing to protect and preserve it."

In an attempt to allay fears, Browner and deputy administrator Fred Hanson held an outdoor town meeting for agency employees on Monday. "We will fight any cut that denies us the ability to keep the environment safe for the American people," she said then. "I believe that ultimately we will prevail, but it

will not be without a very difficult, mean fight."

Browner apparently failed to reassure the crowd.

"She was very condescending to us," Welch said afterward. While EPA management is making contingency plans for some layoffs, he said, they have neglected to pursue other options, such as cutting some contract workers. "There's been no sense of partnership in the way that management is dealing with us," he added.

In response, Browner said that since the proposed budget cuts are tied to specific programs, she has little control over which, if any, offices will be reduced or jobs will be terminated. "We would like to work with Congress," she said, "but that's impossible if they don't share our commitment to environmental protection."

With a staff of 18,500, including several thousand employees in field offices across the country, the EPA is less prepared than agencies who have many more employees to absorb the reductions. Beyond reducing staff, the cuts could also drive some of the best environmental specialists in the agency into the private sector.

The agency may take years to recover from the cuts, officials say. In the early 1980s, when then-EPA Administrator Ann Gorsuch reduced the agency's budget by 25 percent, the staff fell from 13,000 to 11,000. Since 1983, the staff has gradually grown to the current level.

More than jobs are at stake. The proposed budget includes a 50 percent cut in the agency's budget for enforcing federal environmental laws, a 36 percent reduction in the budget for cleanup of toxic waste dumps and \$600 million decrease in funding for removing raw sewage from rivers and lakes.

"We're barely able to protect the environment with the money and staff that we have," said Spiegel. "It will be impossible under the situation that they're proposing."

As the budget ax comes closer, some EPA staffers are not waiting for it to fall. "The more recent employees in particular see the handwriting on the wall," explained Welch.

"They're already sending out resumes and looking for other possibilities."

ALIEN DOMESTIC VIOLENCE AMENDMENT PERMITTING REPRESENTATION WITH NON-LSC FUNDS

Senator Kennedy will introduce an amendment to permit recipients to use non-LSC funds to represent (1) aliens who have been battered or subject to extreme cruelty by a spouse, parent or family member and (2) aliens whose children have been battered or subject to extreme cruelty in the United States by a spouse, parent or other family member.

Section 17 of S. 1221 permits representation of certain aliens but does not permit representation of all aliens or their children who are subject to battering or extreme cruelty. Currently, recipients can use non-LSC funds to provide such representation. This amendment would restore the status quo and permit such representation with non-LSC funds.

The amendment should be supported for the following reasons:

1. **Aliens** or their **children** residing in the U.S. who have been **battered or subjected to extreme cruelty** because of a spouse, parent or other family member often **need immediate legal assistance** in order to **prevent future harm** to themselves or their children. When they come to a legal services office they are in a crisis situation and have nowhere else to turn for critical help in prevent further battering or cruelty. Legal services lawyers should be able to provide such assistance to all such persons in order to prevent future harm and should not have to determine and document whether they are eligible under the alien categories of S. 1221.
2. Alien women should be able to seek assistance from LSC recipients to file a petition for a permanent resident visa for themselves under the **Violence Against Women Act (VAWA)**. This Act provides an exception for women who can show that they have been subject to extreme cruelty or physical violence. They can petition for a permanent resident visa. Normally such petitions are filed by the US citizen or permanent resident spouse and are contingent on the continuation of a marriage. **Without the assistance of legal services, poor alien women who have been battered or subject to extreme cruelty will not be able to utilize the protections of the VAWA.**
3. **Alien women** should also be able to obtain **legal assistance** to seek

suspension of deportation under the residency requirements for battered immigrant women under VAWA. Suspension of deportation is very important in domestic abuse cases involving immigrant women, because they need **to stay in the country to prosecute their husbands for the abuse, or to obtain custody of their children**. If the woman is deported to another country, the state no longer has jurisdiction over her and abuse cases are not addressed. In addition, when a woman is out of a state's jurisdiction, any civil protection or child custody orders are not enforceable. Providing legal assistance to such women to help them obtain suspension of deportation is a critically important step in helping battered women and their children.

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WILLIAM S. COHEN
MAIL

United States Senate

WASHINGTON, DC 20510-1901

March 4, 1996

Copies to

Foley, Lew, Kieffer,

Hann Schwartz,

Melanne Verveer

From Bob

Leban

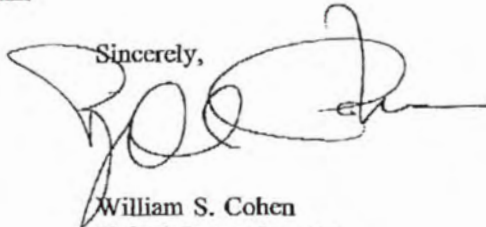
The President
The White House
Washington, D.C. 20500

Dear Mr. President:

As the attached letter to Senator Hatfield indicates, there is support among a group of Republican Senators to reduce the proposed budget cut for the Legal Services Corporation and relieve the restrictions that the vetoed appropriation bill would have placed on legal services organizations. I will continue to work toward achieving these goals during the appropriations process. I hope you will attempt to further these ends as well in negotiations over the 1996 budget.

With warmest regards, I am

Sincerely,



William S. Cohen
United States Senator

HSC - doesn't
comply w intent
- interim regs +
asking Congress to
Commit
Can't anticipate
intent

Enclosure

WSC:dhs

* Domestic violence - Kennedy
added on floor needs to CR
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from amendments?
\$250 - H

where's Hatfield
Melanne Verveer

higher - go for \$300
fall back to \$288 + H

expect'n: \$278

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unlikely - Conf -
for continuation

WILLIAM S. COHEN
NAME

United States Senate

WASHINGTON, DC 20510-1901

March 1, 1996

The Honorable Mark O. Hatfield
Chairman
Senate Appropriations Committee
United States Capitol, Rm. S-128
Washington, D.C. 20510

Dear Mark:

We are writing as supporters of the Legal Services Corporation (LSC). It is our understanding that an omnibus continuing resolution may be proposed to provide funding for the remainder of the year to departments that have not yet received their annual appropriation. In the event this occurs, we urge you to negotiate with the Administration and the House for legislation that will enable legal services organizations across the country to continue providing high quality legal representation to the most needy and vulnerable of our citizens.

As to funding, we support the original Senate position of a \$340 million appropriation for the LSC. While we understand that compromise is necessary, we hope that the eventual appropriation will be much closer to the original Senate position than the \$278 million approved in the conference report to the CJS Appropriations Bill.

Our primary purpose in writing is to express our support for limiting the restrictions that the resolution will place on recipients of LSC funds. In the past, Congress has restricted the purposes for which federal funds distributed by LSC could be used. Legal services organizations that received LSC grants, however, have always been free to use funds obtained from other sources, such as state governments, bar associations, and private donors, as they saw fit. The original CJS Appropriations Bill, however, would have placed 19 separate restrictions on the activities of any legal services organization that received federal funds, effectively precluding them from choosing how to spend their non-federal funds. In our view, this unwarranted federal mandate runs entirely counter to the prevailing sentiment that the federal government should be minimizing the extent to which it interferes with state governments and private organizations. Moreover, during this period of scarce federal resources, we should be encouraging, not discouraging, the development of alternative funding sources for legal services.

The Honorable Mark O. Hatfield
March 1, 1996
Page 2

We urge you to negotiate for an I.SC appropriation that provides legal services organizations with discretion to spend their own funds in a manner that they believe will best serve the indigent citizens in their own communities.

Sincerely,


Bill Clinton
Peter DeLoach
Jim Jeffords


J. H. Chazy

criteria, more caseload reductions, and more skeletal forms of service.

"We're doing a kind of triage," laments Phyllis Holmen, executive director of the Georgia Legal Services Program based in Atlanta, which so far lost a fourth of its staff, going from 185 to 139 in the past year. "We're only taking emergency cases, meaning those that

threaten life or shelter."

Often in the past, legal services couldn't take on divorce cases unless spousal abuse was involved.

"Now," says Paula Zimmer, president of Legal Services Association of Michigan, an ad hoc group representing the state's legal aid offices, "we have to ask, 'How many times were you hit? And was there

a weapon involved?' I'm afraid we're sending the message that some level of violence is acceptable."

Client populations, whose legal needs were estimated as being met only 20 percent of the time prior to the cuts, can expect to receive hastier, more cursory representation, or none at all.

Rural Legal Services of Ten-

COMMENTARY

Don't Let Them Kill the LSC

BY JOHN J. CURTIN JR.

We spend a lot of time talking about tort reform and about improving the civil justice system. Too often, these discussions are centered on big cases, complex litigation and big money matters. For too many Americans, however, the legal system is not a matter of dollars and cents—it is a matter of life and death.

Our support for local legal services programs funded through the Legal Services Corp. is, at its core, support for people in these life and death situations. It is about providing people a measure of dignity in dealing with their most difficult problems.

Last year, lawyers around the country rallied to save the LSC. Despite some claims to the contrary, the LSC remains alive. Yes, the LSC now has fewer resources—a cut from \$400 million to \$278 nationally. Local legal services lawyers are further restricted in the work they can do. But we still believe that the LSC—even with less money and more restrictions—is worth saving.

This "saving" in and of itself is no small feat. Many had predicted and worked for the demise of the LSC. One senator, at least according to a story that may be apocryphal, was quoted last year as saying that even prayer would not save the LSC. But prayer, hard work and the collective commitment of thousands of lawyers from across the country paid off—in part.

However, the battle to save the

John J. Curtin Jr. of Boston was president of the ABA during 1990-91 and is chair of the Ad Hoc Committee on State Justice Initiatives.



Legal Services Corp. is far from over. The battle to protect access to justice is not over.

Ongoing Battles

The effort to kill LSC is as old as the act itself. Twenty-one years ago when the original Legal Services Corp. Act was before Congress, the very concept was attacked.

Some said that creating local legal services programs would allow members of the bar to escape their pro bono obligations, that creating a federal program would only increase litigation. Some even said there really was no need for free legal services.

In the 1981 campaign to kill the program, there was a new twist to an old argument. Critics said then that local legal services programs were the tools of the ideological left, that programs were being directed by 1960s radicals forcing their agenda through class action lawsuits and politically motivated litigation.

In the past several months, the historic opponents of legal services have added new arguments to the old, that local legal services programs are anti-family—fostering divorces.

Opponents charge that legal services programs are destructive to the community, more concerned with defending drug dealers than with cleaning up inner-city housing projects.

Most recently, it is said that the programs attempt to thwart the political winds of change by opposing welfare reform, so popular among the American people.

Lawyers know the truth. Lawyers know that what local legal services programs really provide is hope, dignity

and compassion.

Does it serve a left-wing agenda to help a farmer in Missouri who is threatened with losing his farm because an illness has led to a fight with an insurance company? There were 250,000 improper farm foreclosures by the Federal Housing Administration in the last decade.

Is it anti-family to help a young woman seek a divorce from and protective order against an abusive husband, to work to ensure that a divorced father meet his obligations to his own children?

Are we really at the point where we defeat the will of the American people if we demand that reforms of government programs meet a simple test—that they be constitutional?

Yes, legal services lawyers have offended many. Because of their success, the LSC will continue to be under siege.

There are those on Capitol Hill who would strip the Legal Services Corp. of any funding in favor of block grants directly to states. Yet even under ideal conditions, block grants would provide far fewer resources than are necessary to meet even the baseline of legal services to the poor.

Opponents Are Active

The recently imposed restrictions on local programs make clear that opponents of legal services will try to kill the LSC, using the strategy of "death by a thousand cuts."

If you still doubt that our battle to save the Legal Services Corporation is really a battle to preserve legal services for the poor, consider this. Local legal services programs are now prohibited from using money they raise on their own in pursuit of any case of activity restricted by Congress. Does this strike you as incongruous?

Imagine a Congress committed to "divesting" power to the states suddenly taking such a contrary position of federal control. Congress has limited the advisory boards of local programs from

JUSTICE



welfare reform

immigration

landlord-tenant

school enrollment

car repossessions

not-for-profit on Jan. 1 of this year, the date Congress cut LSC funds by one-third, from \$400 million to \$278 million.

The LSC transfers federal grant money to 323 legal services programs, which in turn operate about 1,200 neighborhood law offices throughout the nation. Because of cuts in LSC funds, 300 to 400 of those offices will be forced to close this year, hundreds of the 4,700 lawyers employed by LSC grantees will be laid off, and the 1.7 million cases typically handled will fall by an estimated one-third.

When Congress finally adopted

the 1996 federal budget in April, it also restricted the types of cases LSC grantees could handle for the poor. In anticipation of the limitations, along with the possibility that the LSC could be eliminated by 1998, the Rochester project, like most legal services organizations, had already begun planning for the future.

"I look out at the Genesee River and feel nostalgic and depressed," says Brown, who echoes the attitude prevailing among legal services directors. "But I manage to pull myself out of my nihilism. While I'm still here, I'll do what

I'm supposed to do."

Although legal services have successfully run the gauntlets of previous government threats, most notably under the Nixon and Reagan administrations, this time the future is bleak and the mood funereal.

At an April congressional hearing before an appropriations subcommittee, LSC President Alexander Forger reported on the impact of the funding cuts, but committee members were more interested in the viability of alternatives than the severity of damage.

The main difference between now and the 1980s is fiscal pressure, says Kenneth F. Boehm, the chairman of the National Legal and Policy Center in Vienna, Va., and a former LSC official who is now one of its critics. "Because [LSC funds] are discretionary domestic funds, they're easy to cut."

Diré Straits

The funding cuts have necessitated radical measures of self-preservation, including office closings, layoffs, hiring freezes and salary cuts.

Neighborhood Legal Services in Washington, D.C., for example, laid off 23 of 46 staffers, closed three of four offices, and expects to reduce services to clients by more than 50 percent.

Employees at Texas Rural Legal Aid voluntarily took a 12.5 percent pay cut, which means the lawyers there now make about \$24,000 a year.

Anishinabe Legal Services in Minnesota, which serves 15,000 clients, most of them Native Americans, is now open one day less a week, and its eight workers are taking a 20 percent across-the-board pay cut.

Distressed over seeing colleagues laid off and fearing future layoffs, many legal services staff members nationwide have resigned, and many others are actively job-hunting. Four staff members resigned from the Georgia Legal Services Program, and in Michigan, the trend of jumping ship has resulted in legal aid programs actually advertising job openings in newspapers.

Although legal services programs have always had to turn away a substantial percentage of potential clients for lack of resources, the current bout of attrition has bred even stricter intake

nessee is trying to spread the impact of handling 10 percent to 20 percent fewer cases across the board, while Georgia Legal Services has dropped representation on consumer and education matters.

"These are excruciating choices," Holmen says.

With incomes of no more than 25 percent above the national pov-

erty level of \$15,455 for a family of four, clients of LSC grantees are by definition vulnerable. With a third of all cases involving family issues, women and children are likely to suffer the brunt of the funding cuts.

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The most vulnerable populations, however, are the geographically, culturally or linguistically isolated. The rural poor, for instance, may lack alternatives as well as transportation.

"If they can't get help from us," says Neil McBride, the director of Rural Legal Services of Tennessee, based in Oak Ridge, which serves 19 Appalachian coal-field counties, "they won't get help at all."

In addition, the closing of a nearby rural office often encourages the exploitation of those who now have no recourse. Almost as a guardian against the opportunistic, "The mere presence of an office sometimes helps a lot," notes Linda Clingan, executive director of Oregon's Campaign for Equal Justice.

For some populations, culture and language can be as great a barrier as geography. In 1995, 30 percent of the clients of the MFY Legal Services office in Manhattan's Chinatown were Chinese immigrants. With that office closed by funding cuts, many Chinatown residents, unable to speak English, are at risk of being cut off from legal help because they are unlikely to cross the cultural and linguistic divides to other offices.

As for programs serving migrant farm workers, a population widely conceded to be vulnerable to exploitation, Congress decided to allow only basic field funding on a per capita basis (according to the census) because of lobbying by farming interests. In contrast, a special-funding designation allows separate offices serving these workers.

In Michigan, for example, 90 percent of the 160,000 seasonal workers are Hispanic and predominantly Spanish-speaking.

An average migrant family of four makes about \$8,000 a year. They are transient, moving throughout the year according to crop seasons, and housed by their employ-

ers in remote, rural locations where they often have no access to a phone, let alone a lawyer. Few have education beyond the eighth grade, and the average life span is 50 years.

As a result of all these barriers, one of the only means for legal services to contact these people, and represent their interests, is through outreach efforts.

"When we go out and talk to a family, we find that they're likely sitting on significant legal problems," says Phil Reilly, managing attorney of the Michigan Migrant Legal Assistance Project headquartered in Berrien Springs.

But like the large programs for migrant farm workers in California, Texas and Florida, the Michigan effort has suffered from serious layoffs as a result of funding cuts. "We're like the British in World War II," Reilly says of staff morale. "We're trying to keep a stiff upper lip."

While Michigan migrant-worker legal aid lawyers are struggling to meet their clients' most dire needs related to substandard housing, wages and field sanitation, as

setting their own priorities. All this sends the clear and unmistakable signal that continued vigilance and advocacy on behalf of the LSC is necessary. If you are still unconvinced, consider this: House Speaker Newt Gingrich, Majority Leader Dick Armey and House Rules Committee Chair Gerald Solomon have signed on to a plan to kill the LSC at the end of this fiscal year.

Lawyers must meet political pressure with political pressure. Every lawyer must redouble efforts to involve business, the media and the public to support access to justice, and to make them allies in the fight to preserve the LSC.

This is not a battle about lawyers and bar associations demonstrating raw political power. This fight is not to avoid fulfilling our individual and collective responsibility to provide pro bono legal services in our communities.

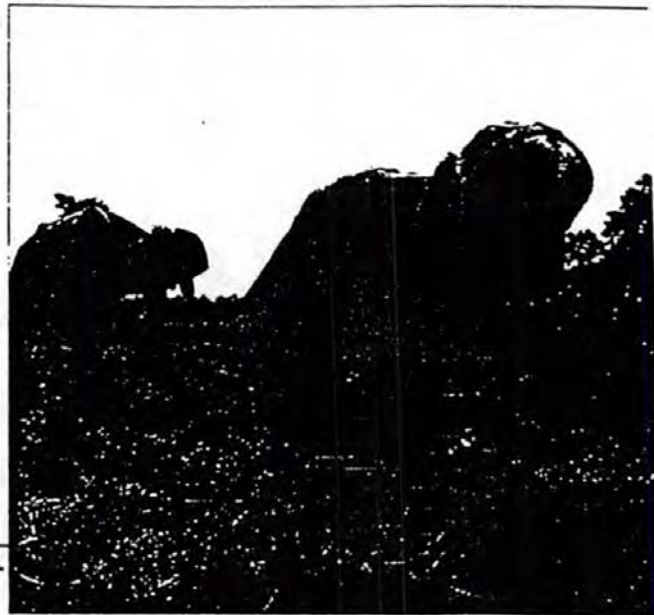
The essence of our effort can be captured simply: Will we give people at or below the poverty level the dignity of justice? Will the poor men, women and children in each of our communities be deprived of even access to justice?

Without access to justice, there can be no justice. Without justice, there can be no respect for the law. Without respect for the law, the rights protected by the rule of law are just an illusion. Without these protections, what kind of nation are we leaving for our children and our grandchildren?

Our goal—the traditional goal of lawyers—is to save and preserve the fundamental rights of our neighbors, so that the motto "Justice for All" is not an empty phrase. □

Get Involved

Turn to page 8 for a special message to each member of the American Bar Association from ABA President Roberta Cooper Ramo.



Michigan migrant workers, mainly Hispanic, face substandard housing, wages and field sanitation conditions.

well as exposure to toxic chemicals, the migrant workers themselves are just beginning to express concern.

"They have only an inchoate sense that something is going wrong," says Reilly. "But there is a real stirring."

Impact of Restrictions

Although legal aid providers have had to react to the impact of funding cuts, by thinning their troops and resorting to rationing of services, they also have had to address an identity crisis created by new restrictions.

Regardless of where the money it actually spends comes from, no legal services agency that takes federal funds can pursue cases involving legislative redistricting, abortion, prisoners' rights, welfare reform, public housing evictions for alleged drug crimes, alien representation, or class actions. The only way around the restrictions is to create a separate agency that receives no federal money.

Federally funded legal-services attorneys also are prohibited from seeking attorney fees, except in cases begun prior to adoption of the restrictions, and may not lobby or give advice on poverty law except with LSC funds and in response to written requests from legislators and public officials.

In Oregon, where statutes grant attorney fees to the prevailing party in a variety of claims, legal services lawyers are particularly handicapped. Settlements will be harder to negotiate, and ethical questions may prompt them to refer cases to private lawyers who can collect attorney fees.

The justification for most of the restrictions has been that taxpayer money should not be used for legal representation that many opponents interpret as political advocacy. After all, agribusiness interests dislike class actions on behalf

of migrant farm workers; social conservatives dislike class actions challenging welfare reform; fundamentalist religious groups dislike divorce; and members of Congress dislike litigation that challenges the districting that got them there.

"As a result of the latter," observes Boehm, who was LSC director of policy development and communications from 1989 to 1994, "the LSC never made strong allies on the Hill."

Political motivations aside, however, if the restrictions had been in

place, none of the following lawsuits could have been brought:

- Rural Legal Services of Tennessee would not have successfully sued for a 3-year-old child to receive a life-saving liver and bowel transplant that a federally subsidized state health-care program had refused to authorize.

- Oregon Legal Services would not have won a consent judgment that recovered car titles and awarded damages in a class action on behalf of 68 individuals who had lost titles to their cars under a fraudulent loan scheme.

- Alameda County Legal Services would not have secured a federal court order requiring California to comply with the Family Support Act of 1988 and provide child-care funds to welfare recipients enrolled in state-approved job training.

- Michigan Legal Services would not have conducted trial-skills seminars for legal services staff, worked to convert a condemned public-housing facility into housing for homeless people with AIDS, and collaborated with the city of Detroit to draft ordinances regulating conditions in emergency shelters for the homeless.

Split Personality

To cope with the effects of restrictions in Washington state, the Access to Justice Board, created by the state supreme court, recommended in 1995 what has been called a companion-delivery system.

That has meant the state's three legal services organizations were

merged into one, Columbia Legal Services, which receives no federal funds and can take cases proscribed under congressional restrictions. A federally funded LSC grantee, the Northwest Justice Project, was also created, along with a central intake and referral system that directs clients to either the state or LSC program where appropriate. Consequently, when the fund-



Many Chinese Immigrants In Manhattan are poor and culturally isolated, and thus vulnerable.

An LSC grantee, before restrictions, got court-ordered child-care funds for California welfare moms in job training.

center and Florida Rural Legal Services, which no longer receive LSC funds.

What is the reaction of LSC critics to this two-tier system? "Theoretically, if the split is total and the groups act separately, then that would really take the wind out of the sails of their opponents," says Boehm. "The attitude would probably be live and let live."

To replace some of the lost funding, the non-LSC programs are looking to sources that in the past have contributed relatively small amounts, compared to the LSC grants, which for many programs have comprised more than 60 percent of total funding.

Minor, but not negligible, sources include taxes, fee-generating cases, private donations, foundation grants and fundraising.

The largest secondary sources, most significant perhaps because of their mandatory nature, are IOLTA funds and court filing fees. The non-LSC-funded programs in Washington and New York rely primarily on IOLTA funds, while Tennessee's filing-fee increase replaced half of the \$225,000 the state's legal services lost in LSC funds.

To save money, legal service agencies are hoping for increased pro bono involvement. Of the approximately 700,000 lawyers in the country, more than

130,000 private lawyers are currently volunteering through pro bono programs. But with 50 million people eligible for legal services, the ratio is daunting. Pro bono can help, according to general wisdom, but it cannot fill the void.

Nevertheless, 54 of the largest Washington, D.C., law firms responded to the crisis there by pledging more pro bono work, rotating lawyers through legal-clinic staff positions, pursuing impact litigation and advocacy for the elderly, and donating money.

Although he appreciates the

efforts of private firms, Willie Cook Jr., the executive director of Washington's hard-hit Neighborhood Legal Services that lost \$876,000 in LSC funds, has to be realistic.

"Our top priority, at this moment of major devastation, is to replace the money we lost," Cook says. "We can't absorb pro bono help because we don't have the staff necessary to give expert advice and support. 'Give us \$1,000.' That's my first request of each member of the D.C. bar. After that, then, of course give whatever hours you can."

Tightening Up

While efforts continue to raise money, and save money, legal services are focusing heavily on strategies for using money efficiently.

Guided by the State Planning Assistance Network, which is a joint American Bar Association/National Legal Aid and Defender Association project providing transition support, legal services are pursuing state-wide coordination and technological upgrades.

To avoid the doubling of administration that would occur in a companion-delivery system, Washington state's program involves a central intake and referral system. Its phone and voice-mail service is accessible in Spanish as well as English. During an in-person or telephone interview, client information is entered into a computer data base to identify conflicts of interest and appropriate services, which include brief advice, educational clinics, self-help options, referral and representation.

E-mail in Washington's legal services offices enables lawyers to maximize the central intake data base as well as pool legal research and plug into brief banks.

"It will take several months to get the software going well," admits Pat McIntyre, executive director of Washington's Northwest Justice Project in Seattle. "But it's very exciting." Like other legal services directors, McIntyre acknowledges mixed feelings about the present situation. He is frustrated about the funding cuts, the restrictions, and the possibility that present successes may be undone if the LSC is killed in 1998. But he is excited about new beginnings and improved efficiency.

"However," he says soberly, "the excitement is not yet shared by our clients." ■

ing cuts went into effect in January, the state of Washington was able to shift into action delivering services, while most other states were stuck in reaction.

Some of those other states are taking cues from Washington's strategy. The LSC grantee in New York state, for example, withdrew its bid for IOLTA (Interest on Lawyers' Trust Accounts) funds so that the law project in Rochester, which is not receiving LSC funds, could get them. Similarly, the Florida Bar Foundation is making grants to programs like the state support





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September 10, 1996

The Honorable Judd Gregg
Chairman
Subcommittee on Commerce, Justice
State, the Judiciary and Related Agencies
Committee on Appropriations
U.S. Senate

The Honorable Harold Rogers
Chairman
Subcommittee on Commerce, Justice,
State, the Judiciary and Related Agencies
Committee on Appropriations
U.S. House of Representatives

The Honorable Ernest F. Hollings
Ranking Minority Member
Subcommittee on Commerce, Justice,
Committee on Appropriations
U.S. Senate

The Honorable Alan B. Mollohan
Ranking Minority Member
Subcommittee on Commerce, Justice,
Committee on Appropriations
U.S. House of Representatives

Gentlemen:

On August 22, 1996, we sent you a letter reporting on certain newly proposed regulations. Unfortunately, that letter was incomplete and a copy of the proposed regulations was not attached. What follows is the corrected version of this letter and a copy of the proposed regulations for your review and comment.

In our June 4, 1996, reprogramming notice, I reported to you that the Board of Directors had begun the process of promulgating regulations to implement the new restrictions included in the appropriation, Pub.L. 104-134. I am writing now to provide you with more information about that process and to alert you to the Board's interpretation of the restrictions should you wish to offer comments before final regulations are adopted.

At its July 20, 1996, meeting, the Board adopted fourteen interim rules either revising existing regulations or promulgating new regulations to implement the new restrictions. Four of these were published in the Federal Register on August 13, 1996. The remaining ten interim rules and proposed revisions to an additional existing regulation were published on August 29, 1996.

BOARD OF DIRECTORS - Douglas S. Eakley, Chairman, Richmond, NJ

Hallett H. Ashby
Atlanta, GA

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Birmingham, AL

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Marie L. Mercado
Galveston, TX

Alan Falkenberg, Williamsport, PA

The interim rules are effective upon publication in order to provide prompt and necessary guidance to LSC recipients on legislation that is already effective and carries severe penalties for noncompliance. Through publication, the Board also solicits comments on the fourteen interim rules and the revised regulation for review and consideration prior to adoption of final rules which will supersede the interim rules.

I have enclosed copies of the fourteen interim rules and the revised regulation for your consideration. These rules are listed below in order to call your attention to several issues of interpretation on which you may wish to comment. Since the Board's operations and regulations committee will consider comments on the four interim rules already published (45 CFR Parts 1610, 1617, 1632 and 1633) at its September 29 meeting, we would very much appreciate receiving any comments you may have on these rules by September 12. The committee will meet in early December to consider comments on the remaining rules, so comments on these rules need not be given to us until November.

45 CFR Part 1609 - Fee-Generating Cases: This proposed regulation is the one rule that is not being published as an interim rule to take immediate effect. The major revision is the removal of the current rule's provisions on attorneys' fees, which have been dealt with as an interim rule in Part 1642, below. Publication of Part 1642 will supersede the attorneys' fees provisions of the current Part 1609.

45 CFR Part 1610 - Use of Non-LSC Funds: This interim rule completely revises the Corporation's current rule governing restrictions on recipient's non-LSC funds. The rule now includes the broader restrictions contained in Pub.L. 104-134 on a recipient's non-LSC funds as well as the exception for tribal funds. In addition, the rule updates the provisions implementing the LSC Act's restrictions on a recipient's non-LSC funds to conform with current law. Finally, the rule implements the requirement in Pub.L. 104-134 that recipients notify their non-LSC funders of the application of the restrictions to their funds, with a de minimis exception in the case of donors of sums under \$250.

MSBA

45 CFR Part 1612 - Restrictions on lobbying and certain other activities: This interim rule completely revises the current rule. It is intended to implement the provisions of Pub.L. 104-134 which prohibit recipients from engaging in any agency rulemaking, lobbying activity or in advocacy training. It also implements statutory exceptions to the prohibitions on rulemaking and lobbying, which permit recipients to use non-LSC funds to comment in public rulemaking, respond to requests from legislative and administrative bodies, and engage in state and local fundraising activities. It continues the pre-existing prohibitions on participation in public demonstrations and organizing activities.

45 CFR Part 1617 - Class actions: This interim rule constitutes a complete revision of the current rule and is intended to implement the restriction of Pub. L. 104-134 which prohibits LSC recipients from initiating or participating in class action suits. No exceptions to the general prohibition and no waiver provisions have been included in the rule. The definition of

- 3 -

"class action" defers to widely accepted Federal and local court rules and statutory definitions.

"Initiating or participating in any class action" is defined broadly as including any involvement at any stage of a class action prior to an order granting relief, including acting as amicus curiae, co-counsel or providing legal assistance to an individual client who seeks to withdraw from, intervene in, opt out of, modify, or challenge the adequacy of the representation of a class. The rule clarifies that certain situations are not within this definition and are therefore not prohibited by the rule. For example, recipients may advise clients about the pendency of a class action or its effect on the client and what the client would need to do to benefit from the case.

Certain other actions related to a class action are not included because they involve actions taken after liability has been determined and an order of relief has been entered. Accordingly, under the definition in the interim rule, recipients may be involved in non-adversarial monitoring of an order granting relief or representation of an individual client seeking the benefit of the order.

45 CFR Part 1620 - Priorities in use of resources: This interim rule completely revises the current rule. The revisions are intended to implement the restriction of Pub.L. 104-134 that LSC recipients are prohibited from expending resources on activities outside their specific priorities. The rule requires recipient governing bodies to adopt procedures for establishing priorities for the use of its LSC and non-LSC resources and to adopt a statement of priorities. It also requires recipient governing bodies to adopt procedures to cover the emergency situations in which handling a case or matter outside the priorities would be permitted. The rule also contains the requirement that case handlers sign an agreement not to undertake any case or matter that is not a priority or an emergency.

45 CFR Part 1626 - Restrictions on legal assistance to aliens: This interim rule revises the current rule in order to implement the restriction of Pub.L. 104-134 that prohibits LSC recipients from using LSC or non-LSC funds to provide legal assistance to ineligible aliens. The prior rule had expressly allowed recipients to use their non-LSC funds to provide such assistance.

45 CFR Part 1627 - Subgrants and dues: This interim rule amends the fees and dues provisions of the current regulation concerning subgrants, fees and dues to implement the restriction of Pub. L. 104-134 which prohibits the use of LSC funds to pay membership dues to any private or nonprofit organization. The prior rule had permitted recipients to pay such dues from LSC funds subject to certain limitations. The interim rule defines dues as payments for membership or to acquire voting or participatory rights in an organization. The prohibition does not extend to the payment of dues mandated as a requirement of practice by a governmental organization or to the payment of dues from non-LSC funds. The commentary to the rule notes the intention of the Board that payment of dues to a State supreme court or to a bar association acting in a governmental capacity as a requirement for an attorney to practice in that state be deemed to be payment of dues to a governmental body and is not prohibited by this rule.

- 4 -

45 CFR Part 1632 - Redistricting: This interim rule revises the current rule on redistricting to implement the restriction of Pub.L. 104-134 that LSC recipients are prohibited from involvement in redistricting activities, regardless of the source of funds used to finance the activities. The prior rule had applied only to activities financed with LSC and private funds.

45 CFR Part 1633 - Restriction on representation in certain eviction proceedings: This interim rule revises the current rule to implement the restriction of Pub.L. 104-134 by extending its application to activities financed with non-LSC funds.

45 CFR Part 1636 - Client identity and statement of facts: This new interim rule is intended to implement the provision of Pub.L. 104-134 requiring LSC recipients to identify each plaintiff they represent in litigation and to require plaintiffs to sign statements of fact underlying their claims. The rule incorporates the statutory provisions concerning non-disclosure of client identity in certain circumstances and concerning access to statements of fact.

45 CFR Part 1637 - Representation of prisoners: This interim rule implements the provision of Pub. L. 104-134 prohibiting LSC recipients from participating in any civil litigation on behalf of persons incarcerated in a Federal, State or local prison, whether as a plaintiff or defendant. The rule extends the statutory prohibition by prohibiting participation in administrative proceedings challenging the conditions of incarceration.

The rule addresses the difficulties which will be presented by changes in circumstances occurring after litigation has been undertaken, as for example, a proceeding for divorce or child support, on behalf of someone who thereafter becomes incarcerated. It provides that if, to the knowledge of the recipient, a client becomes incarcerated after litigation has commenced, the recipient must use its best efforts to withdraw promptly from the litigation, unless the period of incarceration is likely to be brief and the litigation is likely to continue beyond the period of incarceration. This exception to the general prohibition is intended to address the situation in which incarceration may be of such short duration that, by the time the recipient has succeeded in withdrawing from the matter consistent with its ethical duty to the client, the incarceration may have ended and with it the basis for the prohibition. The commentary to the rule suggests that an expected incarceration of less than three months could be considered brief. The commentary also addresses the circumstance in which a program is prevented by court decree from withdrawing from representation.

45 CFR Part 1638 - Restriction on solicitation: This interim rule is intended to implement the restriction of Pub.L. 104-134 prohibiting LSC recipients from soliciting clients by prohibiting recipients and their employees from representing a client as a result of in-person unsolicited advice and from referring to other recipients individuals to whom they have given in-person unsolicited advice.

- 5 -

The rule does not prohibit recipients or their employees from providing information regarding legal rights and responsibilities or providing information regarding the recipient's services and intake procedures or from representing eligible individuals who seek legal assistance as a result of such information.

45 CFR Part 1639 - Welfare reform: This interim rule is intended to implement the restriction of Pub. L. 104-134 prohibiting LSC recipients from initiating legal representation or challenging or participating in an effort to reform a Federal or State welfare system. The rule incorporates the statutory prohibition as well as the statutory exception that permits recipients to use non-LSC funds to comment on public rulemaking or respond to requests from legislative or administrative officials. In addition, the rule clarifies when recipients can engage in representation on behalf of a client seeking specific relief from a welfare agency.

The rule's definitions of a "Federal or State welfare system" are based on the Corporation's understanding of Congressional intent set out in the legislative history of the statutory restriction.

45 CFR Part 1640 - Application of federal law to LSC recipients: This interim rule implements a provision of Pub.L. 104-134 which subjects LSC recipients to Federal law relating to the waste, fraud and abuse of Federal funds. This rule requires LSC recipients to agree to be subject to "Federal laws relating to the proper use of Federal funds" in their use of LSC funds. This rule puts recipients and their employees on notice that LSC funds are Federal funds for the purposes of the applicable Federal laws cited in the rule and that a violation of such laws would subject the recipient or individual employee to serious statutory and regulatory sanctions.

45 CFR Part 1642 - Attorneys' fees: This interim rule implements a provision of Pub.L. 104-134 that prohibits LSC recipients from claiming, or collecting and retaining attorneys' fees in cases filed after the date of enactment of the appropriation. This rule is, in part, based on and supersedes the attorney's fees provisions of the current Part 1609. (See Part 1609 above.) This rule prohibits recipients and their employees from claiming, or collecting and retaining attorneys' fees in any case undertaken on behalf of a client of the recipient.

The rule defines "attorneys' fees" as an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees. It defines an "award" as an order by a court or administrative agency that the unsuccessful party pay the attorneys' fees of the prevailing party or an order by a court or administrative agency approving a settlement agreement of the parties which provides for payment of attorneys' fees by an adversarial party. Under these definitions, the regulation permits the acceptance of fees in certain circumstances. For example, the prohibition of the rule does not apply to receipt of attorney's fees from a recipient's clients directly or indirectly, as in the case of attorney's fees withheld from a client's back benefits in a Social Security Disability

or Supplemental Security Income case.

In addition, the prohibition on the collection of attorneys' fees does not apply in four specified circumstances: (1) cases filed prior to April 26, 1996, the date of enactment of Pub.L. 104-134, except that the prohibition does apply to any additional claim made in a case pending on April 26, 1996; (2) court appointments made pursuant to a generally applicable court rule or practice; (3) sanctions imposed by a court for violations of court rules; and (4) reimbursement of costs and expenses from an opposing party.

Thank you for taking the time to consider the issues highlighted in this letter, as well as to review the enclosed rules in full, and to provide us with whatever comments you think our committee and board should consider in their deliberations. If you have any questions or need further information, please contact me.

Sincerely,



Alexander D. Forger
President

Enclosures

file legal services

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Secretary, Treasurer

Richard A. Horder
Immediate Past President

June 21, 1999

The First Lady
Hillary Rodham Clinton
1600 Pennsylvania Avenue, NW
Washington DC 20500

Attention: Melanne Verveer

Dear Ms. Clinton:

Thank you for sending us the videotaped greetings on our 75th Anniversary and to congratulate Randolph Thrower on his 60 years of association with the Atlanta Legal Aid Society. Your videotape was certainly a high point of our celebration.

I am very proud of our long history of high quality advocacy for poor people; to have you recognize it was special. We could not have done better than to have the attendance and support of the First Lady, the Governor, the Chief Justice of the Georgia Supreme Court (a former Legal Aid lawyer, by the way) and, of course, of Randolph Thrower. It was a special affair. I'm sorry you could not be there is person, but your presence was felt.

Thank you again for your support.

Sincerely,

Steve Gottlieb
Executive Director

SUMMARY OF BLOCK GRANT CONCEPT FOR LEGAL SERVICES CORPORATION REAUTHORIZATION

Funding Level

- * The funding level for FY96 would be \$278 million.

General Concepts

- * The legislation would replace the current Legal Services Corporation, with a block grant competitive bid process through which qualified providers can be awarded funding for the provision of qualified services.
- * Qualified providers would be generally defined as individuals licensed to practice law for 5 years or more, who have not been convicted of a crime, suspended or disbarred from practice for misconduct etc.
- * Qualified actions would be set out in the legislation. They would include among others, eviction (except for reasons associated with criminal conduct), foreclosures, bankruptcies, debt collections, applications for a statutory benefit, divorces, child custody, spousal abuse, insurance claims, competency hearings and probate. The legislation would specifically state that funding could not be used to file class actions or to challenge the constitutionality of any statute.
- * Qualified clients would be defined as U.S. Citizens or permanent alien residents who reside in a household whose income is equal to or less than the poverty line established in the Community development Block Grant (CDBG) Act.
- * The Attorney General of the U.S. would be given the authority to make grants to the states. The formula allocation would be proportional based on the number of residents in each state living in poverty based on the CDBG formula.
- * The Governors of the states would be responsible for designating an entity to administer the grants. Designated service areas would be established and contracts would be awarded for the provision of services within the designated area. Contracts would be awarded to the prospective provider whose bid offers to provide the greatest number of hours of service in the area. The contract will provide for the submission of monthly billing statements and time records. Payments would be made in arrears for services rendered.
- * Contract terms will be 2 years. Daily time records of work would be required by providers. GAO would be given the authority to audit any provider. Breach of contract by the provider would allow the Governor's office to terminate the contract and recover any funds improperly paid out.

ATP accelerates the development of enabling technologies with commercial potential and broad-based economic benefits through a rigorous, merit-based competition. The program provides an effective mechanism for augmenting U.S. economic growth through highly-leveraged, industry-led research and development. Analysis of ATP awards to date shows that they foster important technology development, enable research to be performed more quickly and aggressively, promote industrial alliances, and create jobs. The Administration strongly urges the Congress to restore funding for this valuable program.

Other Commerce Programs

The Committee mark would make substantial reductions to the President's requests for the Economics and Statistics Administration and the National Oceanic and Atmospheric Administration (NOAA). These cuts would reduce our investment in the Nation's statistical system, which provides policymakers critical economic and demographic indicators about our Nation. The reductions to NOAA would undermine efforts to manage the Nation's marine fisheries and coastal areas and reduce our efforts to monitor global environmental changes. The Administration finds particularly objectionable the Committee's elimination of the Global Learning and Observations to Benefit the Environment (GLOBE) program.

The Committee's funding reductions to Commerce programs would require substantial staffing reductions across virtually the entire Department. In certain areas of Commerce, these staffing reductions could approach 20 to 40 percent and require significant reductions-in-force.

The Administration's concerns about the impact of these funding and staffing reductions are discussed further in the attachment.

Legal Services Corporation (LSC)

The Committee mark of \$278 million -- a one-third reduction in funding below the FY 1995 level -- would result in more than a one-third reduction in civil legal services to the poor, particularly in rural areas and in areas with programs that receive a large portion of their total funding from the LSC. This reduction, coupled with severe new restrictions on how the Corporation and its grantees may utilize their funding -- regardless of the source -- may drive away a significant portion of non-Federal funding and *pro bono* involvement. Nationwide, 40 percent of the funding for the LSC's programs comes from private sources. State and local governments, as well as private groups, charities, and individuals do not want the Federal government restricting the use of funds they provide to address the particular legal needs of the poor in their communities.



LEGAL SERVICES CORPORATION

WHY LSC REQUIRES A MANAGEMENT AND ADMINISTRATION BUDGET OF \$8 MILLION; WHY A \$5 MILLION BUDGET WOULD GUT LSC AND JEOPARDIZE THE FUTURE OF LEGAL SERVICES FOR THE POOR

The consequence of the House Appropriations bill as it relates to the management and administration budget of LSC would be to cut our staff to approximately fifteen people -- in effect, virtually eliminating the Corporation.

LSC management has made every effort to be responsive to the will of Congress and to anticipate a significant cut in our management and administration budget for FY 1996. All our actions have been taken in consultation with House and Senate Appropriations staff.

Through Phase I of our Reduction-in-Force we have already cut our staff from approximately 95 in FY 1995 to approximately 70 as of October 31, 1996. The effect has been to reduce our management and administration budget from the post-rescission FY 1995 level of approximately \$10 million (exclusive of the Office of the Inspector General) to \$8.3 million. We have held our spending to this lower rate even though the Continuing Resolution permitted us to continue spending at the rate of \$10 million.

Because of the 30-day notice period required by the Reduction-in-Force provisions of our Personnel Manual, it is not possible for us to implement further staff reductions before the end of December. This means that we will have been operating for a full quarter of FY 1996 at an \$8.3 million annualized rate, resulting in expenditures of roughly \$2.1 million. This does not include the obligation of \$580,000 we incurred for severance payments and other costs associated with Phase I of the RIF.

Our current lease obligation for January-September 1996 is \$900,000. Although obviously we will need less space with a reduced staff, it will take time to sublet the unused space, and we cannot depend on any reduction of this obligation. Our insurance obligation for the rest of the year is \$20,000. The total of our fixed costs for the year is thus \$3.6 million (\$2.1 million plus \$580,000 plus \$900,000 plus \$20,000).

Consequently, if our management and administration budget is reduced to \$5 million, as provided by the House bill, we will be left with only \$1.4 million to meet all our expenses for the rest of the year, including severance for the additional employees we must lay off. We estimate that at this level of funding we will be forced to lay off at least an additional 50 employees immediately. Severance payments would total approximately \$500,000, leaving only \$900,000 remaining for operating expenses for the rest of FY 1996 and permitting a staff of approximately 15.

A cut of this magnitude would present an extraordinary challenge, leaving in doubt our ability to carry out the responsibilities imposed upon us by Congress, in particular the implementation of competition. We have already received a large volume of paperwork in response to our Request for Proposals. If we are forced to slash our staff so drastically, the new grantmaking process will lack the thoroughness it deserves, particularly with regard to the technical assistance to new applicants to enable them to compete effectively.

Thus if the House provisions are enacted without change, next spring LSC will face an Appropriations process with a staff that has been slashed by more than four-fifths but is nevertheless expected to implement a competitive system for grants, investigate complaints, enforce sanctions, respond to Congressional requests for information, develop and promulgate regulations on a variety of new restrictions, and generally operate the Corporation in an efficient and responsible manner. Although we are determined to carry on whatever the circumstances, it is clear that such a situation would not enable us to perform to the standard which we and the Congress would expect, leaving us extremely vulnerable to criticism by our opponents. For this reason, we believe that the ultimate survival of legal services to the poor could depend on this issue.

We have previously provided House and Senate staff with information that we believe amply justifies our position that an \$8 million budget for LSC's management and administration is the minimum necessary to enable us to carry out our responsibilities, including the implementation of competition. This level of funding would still allow \$5 million of the \$13 million allocated for overall management and administration to go to the Inspector General, a fivefold increase over his FY 1995 budget and a figure which in our view is sufficient to provide for program and financial audits of grantees. Any reduction below the \$8 million level will impair our ability to fulfill our functions. Note that any level below \$8 million will require additional lay-offs and consequent severance payments, so that as the cut becomes larger, the percentage of the remaining funds that must be devoted to severance payments increases and the percentage available for operating expenses decreases even further.¹

The following chart shows the effect of an LSC management and administration budget (exclusive of the Office of the Inspector General) at the following levels: \$9 million; \$8 million; \$6.5 million; \$5 million.

¹ The \$8 million figure does not include the costs of any compliance monitoring on the part of LSC management and administration. The House bill would turn this function in its entirety over to LSC's Office of the Inspector General, which would contract with independent auditors to conduct financial and program audits of grantees. It is our belief that at this point in the fiscal year it will not be possible to contract with auditors to provide ongoing monitoring of grantees regarding the new FY 1996 restrictions. Rather, any monitoring on these issues may be deferred until the end of fiscal 1996. For this reason, we continue to believe that even if the basic responsibility for this function is transferred, some limited ongoing compliance monitoring of the new restrictions by LSC management and administration on an interim basis is essential. We have estimated that if Congress were to ask us to perform this function it would cost an additional \$1 million, for a total budget of \$9 million.

LEGAL SERVICES CORPORATION
OPERATING COSTS AT VARIOUS APPROPRIATION LEVELS

FIXED OBLIGATIONS AND COSTS TO DATE

REMAINING COST OF PHASE I SEVERANCE	\$580,000
OPERATING COST FOR 1ST QUARTER	2,100,000
RENT OBLIGATION FOR JAN THRU SEPTEMBER	900,000
INSURANCE OBLIGATION	20,000
TOTAL	<u>-----</u> \$3,600,000 <u>=====</u>

TOTAL M&A APPROPRIATION	SEVERANCE COSTS FOR ADD'L STAFF REDUCTION	+	REMAINING AMOUNT FOR OPERATING COSTS JAN - SEPT 96	+	FIXED OBLIGATIONS AS SHOWN ABOVE	NUMBER M&A STAFF PROJECTED
9,000,000 =	0	+	5,400,000	+	3,600,000	77
8,000,000 =	0	+	4,400,000	+	3,600,000	70
6,500,000 =	350,000	+	2,550,000	+	3,600,000	37
5,000,000 =	500,000	+	900,000	+	3,600,000	15

WHY CONFEREES SHOULD SUPPORT THE SENATE PROVISION FOR COMPLIANCE MONITORING OF LSC GRANTEEES

One of the principal oversight responsibilities of the Legal Services Corporation (LSC) is monitoring and auditing grantees for compliance with restrictions imposed by Congress and LSC regulations. The House and Senate Appropriations bills differ in their treatment of and budgeting for this important function. This memo describes the current system and the different approaches of the bills. It also explains both LSC's preference for the Senate approach and our response to the House language.

LSC'S Current Compliance Monitoring System

The current compliance monitoring system was developed in 1994 after a thorough planning process to respond to an independent report conducted at the request of LSC's Office of Inspector General (OIG). The report concluded that the system then in place was ineffective and inefficient. Currently, LSC's Office of Program Evaluation, Analysis and Review (OPEAR) monitors compliance through 1) annual desk reviews of grantee documents, policies and procedures, and 2) on-site compliance visits by LSC staff. The current monitoring system is consistent with the practices of other federal agencies.

In May 1995, the LSC Board of Directors (LSC Board) transferred to the OIG the responsibility for a third aspect of compliance monitoring, namely the review of grantees' annual financial audits, which are conducted by independent auditors and paid for by grantees. Beginning with audits of FY 1995 funds, audits will be conducted pursuant to the more stringent standards of OMB Circular A-133, and will include monitoring of compliance with selected aspects of LSC regulations. These independent audits are now reviewed by the OIG rather than by LSC management.

Current Management and Administration Budget

LSC's post-rescission FY 1995 budget for Management and Administration (M&A) is \$11 million. Of this amount the LSC Board has allocated about \$1 million for OIG operations and \$10 million for the remainder of M&A. LSC currently expends about \$3.3 million for the functions performed by OPEAR, of which just over \$1 million is for compliance monitoring and the remainder is for complaint investigation, enforcement and performance evaluation. Local program audits are paid for out of recipient grant funds. We estimate that about \$3 million is expended by recipients for that purpose.

House Provision

The House bill provides for a total of \$13 million for M&A. Of that amount, \$5 million is allocated for management and \$8 million for the OIG, of which \$5.75 million is to be used by the OIG to contract with independent auditing agencies to conduct financial and program

audits in accordance with OMB Circular A-133.

Under this plan, LSC's management budget would be cut by half from \$10 million to \$5 million; the cost of contracting for annual financial and program audits, estimated at \$5.75 million would be borne by the OIG rather than by grantees; and the OIG's budget would be increased from \$1 million to \$8 million.

Senate Provision

The Senate bill provides for \$13 million for M&A, including the OIG, to be allocated by LSC's Board of Directors. The Board would continue to place responsibility for compliance monitoring with management and responsibility for financial audits conducted by independent audit agencies, as described above, with the OIG.

Why the Senate plan is better

The Senate plan takes advantage of a compliance monitoring system that is already in place and functioning, designed after a careful planning and development process. It ensures that monitoring and enforcement will remain closely linked, and avoids potential problems likely to result from incomplete information and lack of continuity in LSC's contacts with grantees. The House plan would lessen the frequency of contact between LSC and its programs and eliminate a major source of information that will be increasingly important in the context of our new system of competition.

The Senate plan ensures that monitoring will continue without interruption through 1996. Under the House plan there would be no monitoring during 1996 of the new restrictions imposed by the FY 1996 Appropriation, because the independent auditors would not begin to review compliance with FY 1996 restrictions until they conduct their audit of 1996 funds in the spring of 1997. Thus LSC would face a 1997 Appropriations process with no monitoring of the new restrictions having been conducted, a situation that would constitute an erosion of the accountability required by Congress.

Moreover, even when the system provided by the House plan is fully in place, it will rely entirely upon auditors to monitor compliance. We believe that certain programmatic, non-financial requirements are best monitored by LSC staff with expertise in the issues rather than by auditors (for example, whether or not the program has provided a plaintiff's statement of facts in all cases required by LSC appropriations legislation).

Finally, the House plan would increase the cost of compliance monitoring, without assurance that the system will be any more comprehensive or productive, while cutting LSC's Management and Administration budget by 50 percent, leaving us unable to perform our statutory responsibilities effectively.

Response to House Concerns

We recognize that for some critics of LSC, the Corporation's monitoring efforts have lacked credibility, leading them to believe that this function or its oversight should be performed by an independent entity. We believe that LSC's new audit guide requiring local programs to be audited pursuant to OMB Circular A-133 and its shift of responsibility for these audits to the OIG meets this concern, and that allocation of Management and Administration costs between LSC and OIG should be made by the LSC Board, as provided in the Senate bill.

While we believe the Senate provision is the best choice, we have provided House Appropriations staff with alternative statutory language (attached) that would specify that grantees must be audited according to OMB Circular A-133; allocate \$9 million to LSC for Management and Administration (exclusive of OIG), a sum which we believe is the minimum necessary to permit us to perform our oversight functions effectively; and provide OIG with its own specified allocation. We believe that the remaining \$4 million of the \$13 million now earmarked for Management and Administration in the House bill would be more than sufficient to provide for the cost to OIG of overseeing and reviewing A-133 audits, contracting for any additional audits which may be required to monitor specific problems, and meeting OIG's other responsibilities.

This compromise would thus accomplish the purpose of the House plan at a lower cost, maintain a more effective monitoring program, ensure that monitoring continues without interruption through 1996, and provide LSC with a Management and Administration budget that enables it to meet its responsibilities effectively.

Summary

	M&A	OIG	TOTAL
Post-Rescission FY 95 Budget	\$10m.	\$1m.	\$11m.
House Bill	\$5m.	\$8m.	\$13m.
Senate Bill	LSC Board to allocate		\$13m.
Possible Alternative	\$9m.	*	\$13m.

*Remaining \$4 million to be apportioned between the OIG and grantee programs to meet additional cost of A-133 audits.

Alternative Provision on LSC Compliance Monitoring

Amendment on Page 78, Line 10, delete everything before the "." on Line 16 and replace it with:

"\$* * * is for basic field programs; \$* * * is for the Office of the Inspector General, which shall be responsible for annual financial and program audits of all grantees by independent auditing agencies in accordance with Office of Management and Budget Circular A-133; and \$9,000,000 is for management and administration"

Amendment on Page 91, Line 7, delete the word "or", and on Line 17 add the following before the ".":

": or

(21) unless such person or entity agrees that it will conduct annual audits in accordance with Office of Management and Budget Circular A-133."

How this language would be implemented:

- *Grantees would be required to conduct their annual audits pursuant to OMB Circular A-133. The grantees would pay for the audits themselves. This has the advantage of being consistent with the standards and procedures of A-133 audits, which provide that grantees will pay for audits themselves, and would eliminate procurement costs for OIG.*
- *OIG would promulgate a Compliance Supplement to the LSC Audit Guide setting forth the requirements of the LSC regulations and provide technical assistance to the independent local auditors. An Audit Guide requiring A-133 audits has already been finalized and a proposed Compliance Supplement has been drafted. A new Compliance Supplement could be developed to cover aspects of LSC regulations not currently addressed.*
- *OIG would assure that the independent local auditors properly carry out their responsibilities through increased use of Quality Assessment Reviews (QAR), i.e., review of the work papers of local auditors to assure that the audits are carried out in accordance with auditing standards.*
- *OIG could contract for special additional audits to monitor particular issues or programs in which problems appear to exist.*
- *LSC would continue to inform and educate grantees about compliance requirements; conduct desk reviews of grantee documents, policies and procedures to identify problems or potential problems; and conduct on-site compliance visits. During 1996, LSC's continuing involvement in monitoring will be of particular importance because there will be no other monitoring of compliance issues created by the FY 1996 Appropriation until FY 1996 is over.*

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**LSC FISCAL YEAR 1996 APPROPRIATIONS BILLS
H.R. 2076**

HOUSE

**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 of which \$265,000,000 is for basic field programs; \$8,000,000 is for the Office of the Inspector General, of which \$1,750,000 shall be used to contract with independent auditing agencies for annual financial and program audits of all grantees in accordance with Office of Management and budget Circular A-133; and \$5,000,000 is for management and administration.

**ADMINISTRATIVE PROVISIONS
LEGAL SERVICES
CORPORATION**

SEC. 501. Funds appropriated under this Act to the Legal Services Corporation shall be distributed as follows:

(1) The Corporation shall define geographic areas and funds available for each geographic area shall be on a per capita basis pursuant to the number of poor people determined by the Bureau of the Census to be within that geographic area: *Provided*, That funds for a geographic area may be distributed by the Corporation to one or more persons or entities eligible for funding under section 1006(a)(1)(A) of the Legal Services Corporation Act, subject to sections 502 and 504 of this Act;

**SENATE
(DOMENICI AMD)**

**PAYMENT TO THE LEGAL SERVICES
CORPORATION**

For payment to the Legal Services Corporation to carry out the Legal Services Corporation Act, \$340,000,000, of which \$327,000,000 is for direct delivery of legal assistance, including basic field programs; and \$13,000,000 (to be allocated by the Board of Directors of the Corporation) is for management, administration, and the Office of Inspector General: *Provided*, That \$115,000,000 of the total amount provided under this heading shall not be available until the date on which the Corporation commences implementation of the system of competitive awards of grants and contracts under section 13.

**ADMINISTRATIVE PROVISIONS
LEGAL SERVICES
CORPORATION**

SEC. 11. 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 12 and 14.

(2) The amount of the grants from the Corporation and of the contracts entered into by the Corporation in accordance with paragraph (1) shall be an equal figure per poor persons for all geographic areas, based on the most recent decennial census of population conducted pursuant to section 141 of title 13, United States Code.

(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.

SEC. 502. None of the funds appropriated in this Act to the Legal Services Corporation shall be used by the Corporation in making grants or entering into contracts 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 or attorneys admitted to practice in one of the States or the District of Columbia;

(2) a qualified nonprofit organization chartered under the laws of

SEC. 12. None of the funds appropriated under 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—

one of the States or the District of Columbia, a purpose of which is furnishing legal assistance to eligible clients, the majority of the board of directors or other governing body of which is comprised of attorneys who are admitted to practice in one of the States or the District of Columbia and who are appointed to terms of office on such board or body by the governing bodies of State, county, or municipal bar associations 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); or

(4) a substate regional planning or coordination agency which is composed of a substate area whose governing board is controlled by locally-elected officials.

SEC. 503. None of the funds appropriated in this Act to the Legal Services Corporation for grants or contracts to basic field programs may be obligated unless such grants or contracts are awarded on a competitive basis: *Provided*, That not later than sixty days after enactment of this Act, the Legal Services Corporation shall promulgate regulations to implement a competitive selection process: *Provided further*, That such regulations shall include, but not be limited to, the following selection criteria:

(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 by the governing 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. 13. (a) Not later than September 1, 1996, the Corporation shall implement a system of competitive awards of grants and contracts that will apply to all grants and contracts for the delivery of legal assistance awarded by the Corporation after the date of implementation of the system.

(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) The 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 those needs.

(2) The quality, feasibility, and cost effectiveness of plans submitted by the applicant for the delivery of legal assistance to the eligible clients to be served.

(3) The experiences of the Corporation with the applicant, if the applicant has previously received financial assistance from the Corporation, including the applicant's record of past compliance with Corporation policies, practices, and restrictions:

Provided further, That, such regulations shall ensure that timely notice for the submission of applications for awards is published in periodicals of local and State bar associations and in at least one daily newspaper of general circulation in the area to be served by the person or entity receiving the award: *Providing further*, 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: *Provided further*, That 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. 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—

(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 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) 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 to grants and contracts awarded under the system of competitive awards for grants and contracts for the delivery of legal assistance.

SEC. 14. (a) None of the funds appropriated under 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 similar promulgation by any Federal, State, or local agency;

(3) that attempts to influence any decisions by a Federal, State, or local agency, except when legal assistance is provided by an employee of a grantee to an eligible client on a particular application, claim, or case, which directly involves the client's legal rights or responsibilities, and which does not involve the issuance, amendment, or revocation of any agency promulgation described in paragraph (2);

(4) that attempts to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, or any similar procedure of the Congress of the United States, or by any 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 expenses, or related expenses, associated with an activity prohibited in paragraph (1), (2), (3), (4), or (5);

(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 similar promulgation by any Federal, State, or local agency, except as permitted in paragraph (3);

(3) that attempts to influence any decision by a Federal, State, or local agency, except when legal assistance is provided by an employee of a recipient to an eligible client on a particular application, claim, or case—

(A) that directly involves a legal right or responsibility of the client; and

(B) that does not involve the issuance, amendment, or revocation of any agency promulgation described in paragraph (2);

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(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 brings a class action suit against the Federal Government or any State or local government;

(8) that files a complaint or otherwise pursues litigation against a defendant, or engaged in precomplaint settlement negotiations with a prospective defendant, unless—

(A) all plaintiffs have been specifically identified, by name, in any complaint filed for purposes of litigation; and

(B) a statement or statements of facts written in English and, if necessary, in a language which the plaintiffs understand, which enumerate the particular facts known to the plaintiffs on which the complaint is based, have been signed by the plaintiffs (including named plaintiffs in a class action), are kept on file by the person or entity provided financial assistance by the Corporation, and are made available to any Federal department or agency that is auditing the activities of the Corporation or of any recipient, and to any auditor receiving Federal funds to conduct such auditing, 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 shall be access to the statement of facts referred to in subparagraph (B) only through the discovery process after litigation has begun;

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

(8) that files a complaint or otherwise initiates 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 of facts written in English and, if necessary, in a language that the plaintiff understands, that enumerates the particular facts known to the plaintiff on which the complaint is based, has been signed by the plaintiff, is kept on file by the recipient, and is 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, except that—

(i) on establishment of reasonable cause that an injunction is necessary to prevent probable, serious harm to a potential plaintiff, a court of competent jurisdiction may enjoin the disclosure of the identity of the potential plaintiff pending the outcome of such litigation or negotiation after notice and an opportunity for a hearing is provided to potential parties to the litigation or the negotiation; and

(ii) other parties to the litigation or negotiation shall have access to the statement of facts only through the discovery process after litigation has begun;

(9) unless, after January 1, 1996, and prior to the provision of financial assistance—

(A) the governing board of a person or entity receiving financial assistance provided by the Legal Services Corporation has set specific priorities in writing, pursuant to section 1007(a)(2)(C)(i) of the Legal Services Corporation Act, of the types of matters and cases to which the staff of the nonprofit organization shall devote its time and resources; and

(B) the staff of such person or entity receiving financial assistance provided by the Legal Services Corporation 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 such board's written procedures for such situations:

Provided, That the staff of such person or entity receiving financial assistance provided by the Legal Services Corporation shall provide to their respective governing board on a quarterly basis, and to the Corporation on an annual basis, all cases undertaken other than those in accordance with such priorities: *Provided further*, That not later than 30 days after enactment of this Act, the Corporation shall promulgate a suggested list of priorities which boards of directors may use in setting priorities under this paragraph;

(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 to 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, prior to receiving financial assistance provided by the Legal Services Corporation, such person or entity agrees to maintain records of time spent on each case or matter with respect to which that person or entity is engaged in activities: *Provided*, That any non-Federal funds received by any person or entity provided financial assistance by the Corporation shall be accounted for and reported as receipts and disbursements separate and distinct from Corporation funds: *Provided further*, That such person or entity receiving financial assistance provided by the Corporation agrees (notwithstanding section 1009(d) of the Legal Services Corporation Act) to make such records described in this paragraph available to any Federal department, or agency or independent auditor receiving Federal funds to conduct an audit of the activities of the Corporation or recipient receiving funding under this Act;

(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 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20));

(B) an alien who is either 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 who has filed an application for adjustment of status to permanent resident under the Immigration and Nationality Act, and such application has not been rejected;

(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 subparagraph (A) 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;

(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 101(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;

(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 the Attorney General's withholding of deportation pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)); or

(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 applies but only to the extent that the legal assistance provided is that described in such section:

(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

Provided, That an alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political calamity shall be deemed, for purposes of this section, to be an alien described in subparagraph (C);

(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 such date, because of persecution on account of race, religion, or political calamity;

(12) that supports or conducts training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, including the dissemination of information about such policies or activities, except that this paragraph shall not be construed to prohibit the training of attorneys or paralegal personnel to prepare them to provide adequate legal assistance to eligible clients or to advise any eligible client as to the nature of the

(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—

(2) the Corporation from responding to a request for comments regarding a Federal funding proposal.

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

(20) 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 or provide funding null and void: *Provided*, That 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.

(d)(1) The 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.

(2) Paragraph (1) shall not prevent a recipient from—

(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

(B) using funds received from a source other than the Corporation to provide legal assistance to a client who is not an eligible client 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 the Legal Services Corporation Act or this title (other than any requirement regarding the eligibility of clients).

(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 "fee-generating case" means a case that, if undertaken on behalf of an eligible client by a private attorney would reasonably be expected to result in a fee for legal services from an award to an eligible client from public funds, from the opposing party, or from any other source.

(3) 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.

(4) 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.

(5) The term "public housing project" has the meaning as used within section 3, 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 dues 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. 15. None of the funds appropriated under this Act to the Legal Services Corporation or provided by the Corporation to any entity or person may be used to pay membership dues to any private or nonprofit organization.

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: *Provided*, That, upon enactment of 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. 16. The requirements of sections 14 and 15 shall apply to the activities of a recipient described in section 14, 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. If the recipient or employee began to provide legal assistance for the case or matter prior to such date, and begins to provide legal assistance for an additional related claim on or after such date, the requirements shall apply to the activities of the recipient or employee during the provision of legal assistance for the claim.

the eviction proceeding is brought by a public housing agency because the illegal drug activity of that person threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency:

Provided, That for the purposes of this paragraph, the term "controlled substance" has the meaning given that term in section 102 of the Controlled Substances Act (21 U.S.C. 802); *Provided further*, That for the purposes of this paragraph, the terms "public housing project" and "public housing agency" have the meanings given those terms in section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437a);

(19) unless such person or entity agrees that it and its employees will not accept employment resulting from in-person unsolicited advice to a nonattorney that such nonattorney should obtain counsel or take legal action:

Provided, That such person or entity or its employees receiving financial assistance provided by the Corporation shall also agree that such person or entity will not refer such nonattorney to another person or entity or its employees that are receiving financial assistance provided by the Legal Services Corporation; or

(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; or

(19) 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 a second person or entity or an employee of the person or entity, that is receiving financial assistance provided by the Legal Services Corporation, except that this paragraph shall not be construed to prohibit such first person or entity or an employee of the person or entity from referring such nonattorney to the appropriate Federal, State, or local agency with jurisdiction over the matter involved.

(b) Nothing in this section shall be interpreted to prohibit—

(1) a recipient from using funds from a source other than the Corporation for the purpose of 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; or

legislative process or inform any eligible client of his or her rights under statute, order, or regulation;

(13) that provides legal assistance with respect to any fee-generating case: *Provided*, That for the purposes of this paragraph the term "fee-generating case" means any case which, if undertaken on behalf of an eligible client by an attorney in private practice may reasonably be expected to result in a fee for legal services from an award to a client from public funds, from the opposing party, or from any other source;

(14) that claims, or whose employees or clients claim, or collect attorneys' fees from nongovernmental parties to litigation initiated by such client with the assistance of such recipient or its employees;

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

(16) that participates in any litigation on behalf of a local, State, or Federal prisoner;

(17) that provides legal representation for any person, or participates in any other way, in litigation, lobbying, or rulemaking involving efforts to reform a State or Federal welfare system, except that this paragraph shall not preclude a recipient from representing an individual client who is seeking specific relief from a welfare agency where such relief does not involve an effort to amend or otherwise challenge existing law;

(18) that defends a person in a proceeding to evict that person from a public housing project if that person has been charged with the illegal sale or distribution of a controlled substance and if

(A) adequate legal assistance to eligible clients; or

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

(13) that provides legal assistance with respect to any fee-generating case, if a private attorney is available and willing to take the case;

(14) that claims, or whose employee or eligible client claims, or collects, attorneys' fees from a nongovernmental party to litigation, initiated after January 1, 1996, by such client with the assistance of such recipient or an employee of the recipient;

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

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

(17) 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 (as of the date of the effort);

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

TO: Melanne
FROM: CHRIS CERT

FYI



Office of the Attorney General
Washington, D. C. 20530

November 29, 1995

The Honorable Judd Gregg
Chairman
Subcommittee on Commerce, Justice,
State and The Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

By this letter, we want to convey the Administration's strong support for the reauthorization and appropriate funding of the Legal Services Corporation as you consider the Commerce, Justice, State, the Judiciary and Related Agencies FY 96 Appropriations Conference Report (H.R. 2076).

The Legal Services Corporation ("LSC") delivers a broad array of needed legal services to poor and low-income citizens nationwide at levels of economy, efficiency, and effectiveness rarely realized in either public or private management. Legal Services Corporation providers nationwide handle more than 1.7 million cases each year, improving the lives of families and the quality of life in their communities. Program providers help families secure safe housing, prevent illegal evictions, and protect clients' health, educational, and employment rights. The Corporation's management devotes only three percent of its budget to its administrative functions.

In the strongest terms, therefore, we wish to convey the Administration's view that the Corporation's funding should be sufficient for it to continue to provide these vital services to poor and low-income citizens and their families throughout the country.

Most important, we support the Senate bill's recognition that the Corporation's Board must retain discretion to allocate \$13 million in funds as needed among administration and management and the Office of the Inspector General. This provision in the Senate bill is crucial to the Corporation's continued operation. The House bill's mandatory division of those funds -- \$8 million to the Office of Inspector General, leaving only \$5 million for LSC administration and management -- would prevent the Corporation from fulfilling its statutory duties. The House provision would cripple the Corporation, without saving any money. It must not be adopted.

We wish to make several additional points about practical implications of the two bills. First, we support the Senate bill's allocation of funds at the national level for grantees directly to deliver legal assistance to Native Americans, and the Senate bill's permission for the Corporation to continue its current practice of funding programs in Alaska, Hawaii and the Virgin Islands in a way that accounts for the high costs of delivering services there.

Second, we support the provision in the Senate bill that would permit legal services programs to complete existing cases begun before the Appropriations Act becomes law, but which could no longer be brought under the restrictions in that Act. This Senate provision is necessary, if for no other reason than to permit legal services attorneys to fulfill their ethical obligations to their clients under state law.

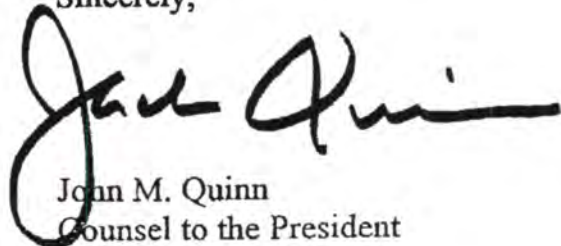
Third, we support the provision in the Senate bill providing for a date of September 1, 1996 for the implementation of a competitive system for awarding grants. The House bill's requirement of January 1, 1996, imposes an unworkably abbreviated implementation period.

Fourth, we support the provision in the Senate bill that would clearly permit legal services programs to accept otherwise eligible cases if private attorneys are not available or willing to take them, even if the cases are potentially "fee-generating." The possibility of payment is so remote or so minimal in many important cases that no private attorney will take them. Poor or low-income citizens in such circumstances should be permitted to continue to turn to the legal services system to protect them. To mention but one example, under the House provision, Black Lung victims and their families may be unable to secure legal representation in many cases.


Finally, we support the provisions of the Senate bill that allow recipients to use non-LSC funds to seek or maintain state and local funding to expand the availability of legal services to the poor, and to communicate with and respond to such bodies when they are considering issues affecting the recipient's funding.

We urge you to permit the Legal Services Corporation to continue to serve as an important source of protection and hope for so many of our citizens.

Sincerely,



Joan M. Quinn
Counsel to the President



Janet Reno
Attorney General



Office of the Attorney General
Washington, D. C. 20530

November 29, 1995

The Honorable Harold Rogers
Chairman
Subcommittee on Commerce Justice,
State, and Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

By this letter, we want to convey the Administration's strong support for the reauthorization and appropriate funding of the Legal Services Corporation as you consider the Commerce, Justice, State, the Judiciary and Related Agencies FY 96 Appropriations Conference Report (H.R. 2076).

The Legal Services Corporation ("LSC") delivers a broad array of needed legal services to poor and low-income citizens nationwide at levels of economy, efficiency, and effectiveness rarely realized in either public or private management. Legal Services Corporation providers nationwide handle more than 1.7 million cases each year, improving the lives of families and the quality of life in their communities. Program providers help families secure safe housing, prevent illegal evictions, and protect clients' health, educational, and employment rights. The Corporation's management devotes only three percent of its budget to its administrative functions.

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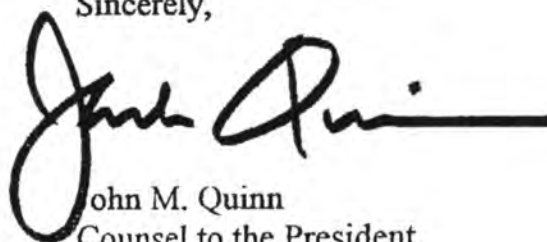
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We urge you to permit the Legal Services Corporation to continue to serve as an important source of protection and hope for so many of our citizens.

Sincerely,



Janet Reno
Attorney General



John M. Quinn
Counsel to the President



Office of the Attorney General
Washington, D. C. 20530

November 29, 1995

The Honorable Alan B. Mollohan
Ranking Minority Member
Subcommittee on Commerce, Justice,
State, and Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Mollohan:

By this letter, we want to convey the Administration's strong support for the reauthorization and appropriate funding of the Legal Services Corporation as you consider the Commerce, Justice, State, the Judiciary and Related Agencies FY 96 Appropriations Conference Report (H.R. 2076).

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Most important, we support the Senate bill's recognition that the Corporation's Board must retain discretion to allocate \$13 million in funds as needed among administration and management and the Office of the Inspector General. This provision in the Senate bill is crucial to the Corporation's continued operation. The House bill's mandatory division of those funds -- \$8 million to the Office of Inspector General, leaving only \$5 million for LSC administration and management -- would prevent the Corporation from fulfilling its statutory duties. The House provision would cripple the Corporation, without saving any money. It must not be adopted.

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Second, we support the provision in the Senate bill that would permit legal services programs to complete existing cases begun before the Appropriations Act becomes law, but which could no longer be brought under the restrictions in that Act. This Senate provision is necessary, if for no other reason than to permit legal services attorneys to fulfill their ethical obligations to their clients under state law.

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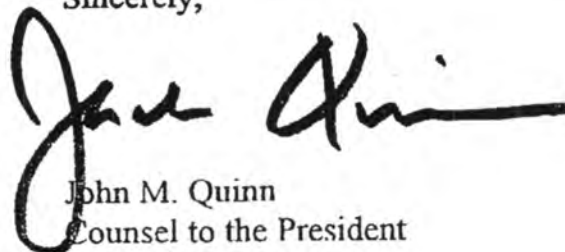
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We urge you to permit the Legal Services Corporation to continue to serve as an important source of protection and hope for so many of our citizens.

Sincerely,



Janet Reno
Attorney General



John M. Quinn
Counsel to the President



Office of the Attorney General
Washington, D. C. 20530

November 29, 1995

The Honorable Ernest F. Hollings
Ranking Minority Member
Subcommittee on Commerce, Justice,
State, and The Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Hollings:

By this letter, we want to convey the Administration's strong support for the reauthorization and appropriate funding of the Legal Services Corporation as you consider the Commerce, Justice, State, the Judiciary and Related Agencies FY 96 Appropriations Conference Report (H.R. 2076).

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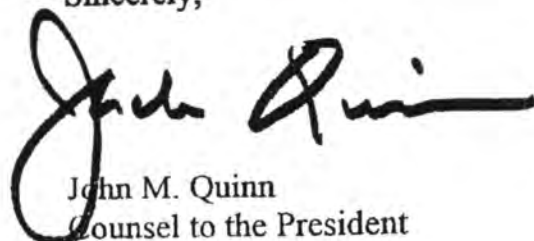
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Sincerely,



Janet Reno
Attorney General



John M. Quinn
Counsel to the President



Office of the Attorney General
Washington, D. C. 20530

November 29, 1995

The Honorable Pete V. Domenici
United States Senate
Washington, D.C. 20510

Dear Senator Domenici:

Thank you for your continued strong support for the Legal Services Corporation. By this letter, we want to convey the Administration's strong support for the reauthorization and appropriate funding of the Legal Services Corporation as you consider the Commerce, Justice, State, the Judiciary and Related Agencies FY 96 Appropriations Conference Report (H.R. 2076).

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We wish to make several additional points about practical implications of the two bills. First, we support the Senate bill's allocation of funds at the national level for grantees directly to deliver legal assistance to Native Americans, and the Senate bill's permission for the Corporation to continue its current practice of funding programs in Alaska, Hawaii and the Virgin Islands in a way that accounts for the high costs of delivering services there.

Second, we support the provision in the Senate bill that would permit legal services programs to complete existing cases begun before the Appropriations Act becomes law, but which could no longer be brought under the restrictions in that Act. This Senate provision is necessary, if for no other reason than to permit legal services attorneys to fulfill their ethical obligations to their clients under state law.

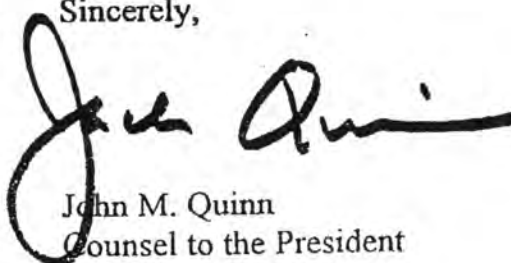
Third, we support the provision in the Senate bill providing for a date of September 1, 1996 for the implementation of a competitive system for awarding grants. The House bill's requirement of January 1, 1996, imposes an unworkably abbreviated implementation period.

Fourth, we support the provision in the Senate bill that would clearly permit legal services programs to accept otherwise eligible cases if private attorneys are not available or willing to take them, even if the cases are potentially "fee-generating." The possibility of payment is so remote or so minimal in many important cases that no private attorney will take them. Poor or low-income citizens in such circumstances should be permitted to continue to turn to the legal services system to protect them. To mention but one example, under the House provision, Black Lung victims and their families may be unable to secure legal representation in many cases.

Finally, we support the provisions of the Senate bill that allow recipients to use non-LSC funds to seek or maintain state and local funding to expand the availability of legal services to the poor, and to communicate with and respond to such bodies when they are considering issues affecting the recipient's funding.

We urge you to permit the Legal Services Corporation to continue to serve as an important source of protection and hope for so many of our citizens.

Sincerely,



John M. Quinn
Counsel to the President



Janet Reno
Attorney General

03/04/96

17:13

202 224 7042

SUBCOM GEN FED

WILLIAM S. COHEN
MAINE

United States Senate

WASHINGTON, DC 20510-1901

March 4, 1996

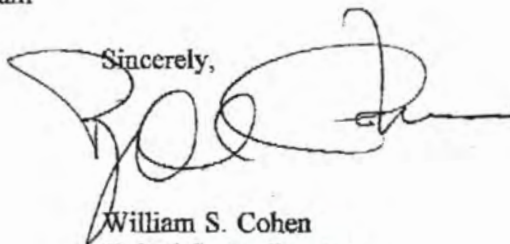
The President
The White House
Washington, D.C. 20500

Dear Mr. President:

As the attached letter to Senator Hatfield indicates, there is support among a group of Republican Senators to reduce the proposed budget cut for the Legal Services Corporation and relieve the restrictions that the vetoed appropriation bill would have placed on legal services organizations. I will continue to work toward achieving these goals during the appropriations process. I hope you will attempt to further these ends as well in negotiations over the 1996 budget.

With warmest regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read 'W. S. Cohen', written over the word 'Sincerely,'.

William S. Cohen
United States Senator

Enclosure

WSC:dhs

WILLIAM S. COHEN
MAINE

United States Senate

WASHINGTON, DC 20510-1901

March 1, 1996

The Honorable Mark O. Hatfield
Chairman
Senate Appropriations Committee
United States Capitol, Rm. S-128
Washington, D.C. 20510

Dear Mark:

We are writing as supporters of the Legal Services Corporation (LSC). It is our understanding that an omnibus continuing resolution may be proposed to provide funding for the remainder of the year to departments that have not yet received their annual appropriation. In the event this occurs, we urge you to negotiate with the Administration and the House for legislation that will enable legal services organizations across the country to continue providing high quality legal representation to the most needy and vulnerable of our citizens.

As to funding, we support the original Senate position of a \$340 million appropriation for the LSC. While we understand that compromise is necessary, we hope that the eventual appropriation will be much closer to the original Senate position than the \$278 million approved in the conference report to the CJS Appropriations Bill.

Our primary purpose in writing is to express our support for limiting the restrictions that the resolution will place on recipients of LSC funds. In the past, Congress has restricted the purposes for which federal funds distributed by LSC could be used. Legal services organizations that received LSC grants, however, have always been free to use funds obtained from other sources, such as state governments, bar associations, and private donors, as they saw fit. The original CJS Appropriations Bill, however, would have placed 19 separate restrictions on the activities of any legal services organization that received federal funds, effectively precluding them from choosing how to spend their non-federal funds. In our view, this unwarranted federal mandate runs entirely counter to the prevailing sentiment that the federal government should be minimizing the extent to which it interferes with state governments and private organizations. Moreover, during this period of scarce federal resources, we should be encouraging, not discouraging, the development of alternative funding sources for legal services.

The Honorable Mark O. Hatfield
March 1, 1996
Page 2

We urge you to negotiate for an LSC appropriation that provides legal services organizations with discretion to spend their own funds in a manner that they believe will best serve the indigent citizens in their own communities.

Sincerely,

Bill Coon
Allen Felt
Jim Gifford

Jim H. Chase
Debra Anderson

PHYLLIS SCHLAFLY

Outgoing tide for Legal Services Corp.?

The Legal Services Corp. is the acid test to demonstrate whether the new Republican majority really intends to reform and reduce big government. If the Republicans merely play around with smoke and mirrors, pretending to correct abuses, but leave the money faucet turned on, they will have betrayed their mandate from the 1994 election and left their enemies with a gun pointed at their head.

Budget leader Rep. John Kasich, Ohio Republican, has scheduled LSC for termination, except for some shutdown expenses. Sen. Phil Gramm, Texas Republican, is trying to get the Senate to agree. Unfortunately, Rep. Bill McCollum, Florida Republican, is working with the Democrats to reauthorize (i.e., to save) LSC under the euphemism of "reform."

The ideological incompatibility of the LSC with the new Republican regime is indicated by the fact that Hillary Rodham Clinton used to be its chairman of the board. LSC has continued to be peopled with leftist activists who share her class-warfare ideology and socialist goals. The record of LSC shows that it functions not to provide services to the needy, but to serve as a pot of gold for left-wing activists to litigate and lobby for radical causes.

LSC has spent \$5 billion since 1974. If the left-wing lawyers had merely torched the money, that wouldn't have been nearly as

destructive as spending the money the way they did.

In fact, they spent the money to litigate and lobby to increase entitlements (for welfare, aliens, criminals, etc.) that are the chief cause of federal deficits. Howard Phillips, who has been monitoring LSC since 1970 when President Nixon appointed him to a position that included that responsibility, asserts that LSC activism has added \$2 trillion to the national debt.

The LSC lawyers have constructed for themselves such a Byzantine, self-perpetuating infrastructure and grant-making mechanism that they are accountable to no one: not to Congress, or to the administration, or to the people they serve, or to the taxpayers who foot the bills.

When most people think of legal aid services for the poor, they think of helping victims, especially women and children. Instead, LSC works for such causes as preventing the eviction of drug dealers from public housing, shielding violent offenders' criminal records from the public, getting perks for prison inmates, and releasing mental patients (who often then join the ranks of the homeless).

When LSC lawyers talk about conducting "research" and facili-

tating "training," they are using euphemisms for political organizing and lobbying for pro-abortion, pro-gay rights, pro-welfare entitlement, pro-criminal, pro-drug and pro-illegal alien causes.

LSC's litigation deserves a large share of the blame for the out-of-control, failed welfare crisis we have today. LSC initiated the case, *King vs. Smith*, in which the Supreme Court ruled in 1968 that the behavior of welfare mothers, including cohabiting with wage-earning males, could not be considered when determining eligibility for benefits.

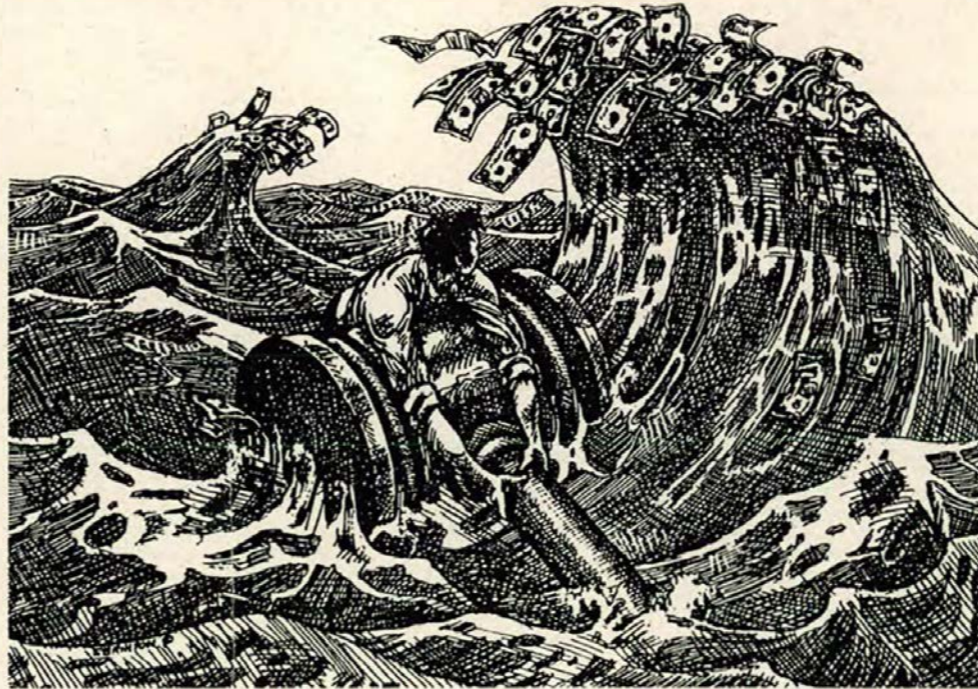
In *Shapiro vs. Thompson*, in 1969, LSC got the Supreme Court to ban the one-year residency requirement for welfare eligibility. In 1970, in *Goldberg vs. Kelly*, LSC persuaded the Supreme Court to require a hearing process before

benefits can be cut off for any reason. As a result, hardly anyone is ever cut off.

The theory behind these cases, invented by LSC tax-funded lawyers, is that welfare recipients have a property right in their benefits, just like the rest of us have a

property right in our houses or automobiles. This off-the-wall rationale has become the cornerstone of the welfare rights movement, which has changed our laws and picked the pockets of taxpayers.

Another favorite LSC constituency is incarcerated convicted



felons. LSC's class action suit against the North Carolina prison system resulted in a requirement that each of 13 prisons provide softball and basketball equipment for two teams, a piano, a set of drums, three guitars and five Frisbees. Another LSC victory was to establish Chicago prisoners' rights to cable television and expensive weight rooms.

Other exotic LSC lawsuits included representing transsexuals in an effort to overturn Georgia's prohibition on Medicaid reimbursement for sex change operations, forcing public housing officials to rent apartments to unemancipated minors, and trying to define opium and alcohol addiction as disabilities under the Americans with Disabilities Act.

LSC's current president, Alexander Forger (best known as Jacqueline Kennedy Onassis' lawyer), was questioned in April by a congressional committee about the imposition of certain limitations on the way LSC funds are spent. He impudently replied: "There is a legal case, if we choose to assert it, that the House Committee does not have the authority to make that decision."

Radical left-wing activism is part and parcel of LSC. It is a fraud on the public to pretend it can be reformed. It must be abolished.

Phyllis Schlafly is a nationally syndicated columnist.

He came, he saw, he lost everything

By David J. Kramer

Imagine the following scenario: On the eve of last week's Group of Seven meeting, 70 heavily armed paramilitary radicals storm a small city in America's heartland, killing dozens of civilians and taking more than 1,000 hostages. Should Bill Clinton go to Halifax, Nova Scotia, for the G-7 meeting or stay in Washington to oversee the situation and provide a sense of leadership as he did after the Oklahoma bombing? The choice is obvious: Crises at home take precedence over any international summit; the G-7 would have to wait until next year.

The answer was not so obvious to Boris Yeltsin, who faced a real-life crisis similar to the one described above. Chechen rebels, protesting the brutal six-month Russian military operation against their homeland, stormed the southern city of Budennovsk, killing more than 100 civilians and seizing over 1,000 hostages in a local hospital. Two days after the rebel attack and with the crisis still unresolved, Russian President Boris Yeltsin boarded a plane for Canada to meet with leaders of the G-7.

In an effort to fill the huge leadership void left by Mr. Yeltsin's absence, Russian Prime Minister Viktor Chernomyrdin broke off his vacation and returned to Moscow to deal with the crisis, winning both praise and criticism

David J. Kramer is executive coordinator of Russian and Eurasian programs at the Carnegie Endowment for International Peace in Washington.

for his role. He secured release of the hostages in negotiations seen live on nationwide television, but in granting the rebels free passage back to Chechnya, he also yielded to the rebels' demands. "The hostage crisis finished with the worst scenario," wrote Pavel Felgengauer, a respected columnist for the liberal newspaper Segodnya. "The terrorists reached their goal and returned to the mountains with a victory."

The lower house of the Russian parliament, had scheduled a vote of no confidence in the Chernomyrdin government before the Budennovsk crisis. In voting several days after the crisis ended, the Duma passed the non-binding motion last Wednesday, the first time it had done so since being elected in December 1993. A second no-confidence vote, which under the constitution would force Mr. Yeltsin to either dissolve the parliament or dismiss the Chernomyrdin government, is set for tomorrow. Yet negotiations over the past few days between the parliament and government appear to have headed off such a showdown. They have not, however, ended Mr. Yeltsin's problems.

Indeed, the political fallout from the crisis for the government, and in particular for Mr. Yeltsin, will be felt for a long time. While he has been counted out many times before, only to bounce back, Mr. Yeltsin's inept handling of the crisis in Budennovsk may prove to be the challenge from which he is unable to recover.

Mr. Yeltsin's biggest mistake was going to Canada. After landing in Halifax, he should have turned around and returned immediately to Moscow to deal with the crisis.

Instead, he chose to stay at the G-7 meeting, with Russian television showing him shaking hands with the local population and attending a circus performance, seemingly without a care in the world.

In stark contrast with the image of Mr. Yeltsin in Halifax, Russian television also showed pictures from Budennovsk, where dozens of dead were being brought to an overflowing morgue and hundreds of hostages were at the mercy of the Chechen rebels. Television coverage also showed the results of two abortive rescue missions by Russian forces surrounding the hospital, leading to even more deaths.

While hundreds of Russians were being killed and injured in Budennovsk, Mr. Yeltsin was thousands of miles away, completely removed from the situation. The Russian leader did not help his image on his second day in Halifax, as he gesticulated frantically with President Clinton looking on and angrily denounced the hostage-takers.

Before the latest crisis in Budennovsk, polls showed Mr. Yeltsin's popularity among Russians at an all-time low. His decision last December to send troops into the rebellious republic of Chechnya certainly did not help his cause. That decision, which has led to a brutal six-month occupation of Chechnya, drove a wedge between Mr. Yeltsin and reformist politicians such as Yegor Gaidar who had supported the Russian president, albeit reluctantly. It also led to the terrorist action last week in Budennovsk. After Moscow sent troops into Chechnya, rebels threatened to carry out terrorist acts against Russian targets in retaliation. In Budennovsk,

they followed through on their threat.

The political damage to Mr. Yeltsin from the crisis in Budennovsk, on top of the fallout from the bungled operation in Chechnya, leaves the Russian leader at the most vulnerable point in his political career. Mr. Yeltsin has tried to exploit the hostage crisis, citing it as justification for his policy in Chechnya, which he characterized as "the center of world terrorism, of bribery and corruption and Mafia."

Yet most Russians are uninterested in such arguments. As much as they will blame the Chechens for Budennovsk, Russians will also hold Mr. Yeltsin responsible for what happened there. They will also want to know how the military and security forces could have let the situation in Budennovsk happen and why those forces responded so ineptly to the hostage crisis.

Even Mr. Yeltsin has raised such concerns. "We will have to learn why those who are responsible for maintaining law and order allowed the situation to get out of control," he said before leaving for Halifax. While looking for scapegoats, however, Mr. Yeltsin needs to keep in mind that the forces he is now criticizing are the same ones responsible for keeping him in power.

Some observers cite Mr. Yeltsin's recent actions as further reason to believe that the Russian leader will not be re-elected in presidential elections next June, assuming he runs again. Others suspect that he will use the crisis in Budennovsk to justify declaring a nationwide state of emergency and postponing parliamentary elections scheduled for December and the presidential election, though this seems increasingly unlikely. Either way, Mr. Yeltsin will not have to worry about leaving Moscow to attend next year's G-7 summit meeting in Lyons, France.

New Jersey Law Journal

NEW JERSEY LAW JOURNAL, DECEMBER 26, 1994

OP-ED

Preserve the Legal Services Corporation

By Douglas S. Eakeley*

Once again, the Legal Services Corporation is under attack — and with it, this country's commitment to "liberty and justice for all."

But controversy and adversity are no strangers to the Legal Services program. As former U.S. Senator Warren Rudman aptly observed: "When migrant workers and other poor individuals assert their legal rights, they can offend powerful interests in society. That does not mean there is something wrong with the program; it means that it is doing its job."

With the new Congress preparing to take office, it is appropriate to consider why the LSC deserves continuing bipartisan support for its national mission.

The Legal Services Corporation Act was signed into law by President Nixon in 1974. Its purpose was to "provide financial support for legal

*The author is chairman of the Legal Services Corporation and a partner with Roseland's Lowenstein, Sandler, Kohl, Fisher & Boylan.

assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance." A corporation insulated from political pressures and directed by a bipartisan board of directors appointed by the president and confirmed by the Senate, the LSC was designed to be "a permanent and vital part of the American system of justice," in the words of President Nixon.

Equal Access to Justice

The federal funding provided to the corporation by Congress was intended not merely as a charity, but rather to serve the ends of justice, as its authorizing legislation makes clear:

The Congress finds and declares that —

- (1) there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances;
- (2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program;
- (3) providing legal assistance to those who face an economic barrier

to adequate legal counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of this Act.

OPINION AND COMMENTARY

With the new Congress preparing to take office, it is appropriate to consider why the LSC deserves continuing bipartisan support for its national mission.

In creating LSC, Congress also endorsed a model of federalism: LSC was not to provide legal assistance directly, but rather through local programs responsible for identifying and prioritizing the needs of their communities. Each local program is governed by a board of directors, a majority of whom are attorneys ap-

pointed by local bar associations, with the balance reflecting the local client communities.

These diverse and complementary programs comprise a coherent national delivery system that combines local decision-making and service provision with essential support, coordination, and oversight at the state and national levels. The benefits that it secures extend far beyond those received directly by its clients because its successes provide protection and afford access to many other similarly situated individuals.

Judged by any measure, LSC has been a resounding success. Twenty years after its creation, it supports and oversees 323 programs operating 919 neighborhood law offices located throughout the United States and its territories. Legal Services programs have provided legal assistance and advice to millions of Americans.

In the process, the program has helped poor people to help themselves escape the bonds of poverty; enabled at-risk children to remain in school; prevented families from becoming homeless through wrongful eviction; provided low-income entrepreneurs

with the counseling necessary to start their own businesses; helped the elderly and disabled to maintain independent, dignified ways of life; ensured essential health care and income support for needy children, the elderly, and the disabled; protected low-income consumers from fraudulent or coercive practices; safeguarded abused women and neglected children; and assisted residents of low-income communities to develop stable economic institutions that bring jobs, dignity, and hope.

Cost Effectiveness

LSC is directly accountable to Congress for the federal funds it receives, to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas." LSC meets this responsibility through a combination of means: regular, formal monitoring of its grantees for compliance with statutory and regulatory requirements; evaluation of the quality and effectiveness of program delivery through performance reviews; annual review of mandatory program financial audits, as supplemented by quality assurance reviews performed by LSC's independent Inspector General,

and the provision of technical assistance. It performs these functions on a budget that represents only 3 percent of its total annual appropriation, making LSC one of the more cost effective — if not *the* most cost effective — federally-funded programs in the country.

Also noteworthy is the partnership with the private sector that the program has forged over the years. The private bar has always been supportive of LSC, and each Legal Services program is required to involve private attorneys in the provision of legal services to needy clients. Today, more than 130,000 private attorneys volunteer their time for this purpose.

A large number of clients and client representatives are engaged in lay advocacy and in training nonlawyers how to work within the legal and administrative systems. Legal Services programs have also utilized their federal grants and support from LSC to leverage contributions from a number of other funding sources.

Critics of LSC have erroneously asserted that it engenders unnecessary litigation, and that Legal Services attorneys are engaged in "social engineering" and "lobbying for 'politically correct' causes." Such concerns prompted Congress and LSC boards appointed by Presidents Reagan and Bush to restrict — if not eliminate — through appropriations riders and regulations any tendency in local programs to devote scarce LSC funds to activities other than those addressing the immediate and pressing legal needs of their clients.

The cases that Legal Services attorneys handle today mainly involve family matters (33 percent of all cases), housing (22 percent), income maintenance (17 percent), and consumer finance (11 percent). And only 15 percent of Legal Services cases require representation in court or before administrative agencies — a remarkably low percentage in a society where litigation is commonly used to resolve disputes and protect basic interests.

There are also significant restrictions on recourse to class actions, another source of complaints in the past. Local programs must have procedures in place for review and approval before any class action is initiated, these include consultation with the potential defendant to exhaust the possibilities of amicable resolution before commencing litigation. As a result, class actions are only a small fraction of the overall Legal Services caseload (less than one-half of one percent).

Nevertheless, the class action remains the most efficient and cost-effective vehicle to address widespread abuses affecting large numbers of individuals. A case in point is *Sullivan v. Zebley*, 493 U.S. 521, 541 (1990), in which the Supreme Court determined that the Secretary of Health and Human Services was systematically denying benefits under the Supplemental Security Income Program to large numbers of severely disabled children, in a fashion that was "manifestly contrary to the statute."

There are also those who question the federal interest in continuing the Legal Services program, and suggest that state and local governments and/or private charities can replace LSC and the federal funding it receives. But LSC serves a historic federal role that cannot be effectively or efficiently replicated at the state or local level.

The federal interest in maintaining LSC as "a permanent and vital part of the American system of justice" should be as manifest today as it was in 1974. As former U.S. Supreme Court Justice Lewis Powell Jr. put it at the time, when he was president of the American Bar Association, "[E]qual justice under law is not merely a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists. . . . It is fundamental that justice should be the same, in substance and availability, without regard to economic status."

Funding Cuts Limit Services

Nor can alternative funding sources be expected to replace federal funding. LSC's current fiscal-year appropriation of \$415 million is less than half of its 1980 appropriation, adjusted for inflation and the demographics of poverty. Because of the reductions in funding during the early 1980s, the number of Legal Services offices has been reduced by 36 percent, while the number of Legal Services attorneys and paralegals serving the poor has fallen by 32 percent.

At current funding levels, and supplemented by all other funding sources, Legal Services programs are able to address only about 20 percent of the estimated need for legal services. As former Congressman and LSC director Guy Molinari testified on behalf of LSC's request for an appropriation of \$525 million two years ago, "[W]e can argue about the amount of unmet need; but I don't think there is any dispute about the fact that there is a very substantial amount of people out there who are, in fact, in need of civil legal services

. . . . Whatever figure you come up with in your own generosity will not be anywhere near enough to fully meet the need."

Now more than ever, America needs a vibrant Legal Services program. Despite a solid economic recovery, there are more people living in poverty in America today than at any time since 1961; over the last four years, the poverty rate has increased by almost 18 percent.

Forty percent of our poor are children — more than at any other time in our history: Through no fault of their own, 22 percent of all children in America live in poverty. They suffer from homelessness, malnutrition, sensory deprivation, inadequate schooling, and diseases that are eminently preventable. And they die at rates that make many third-world countries look respectable.

Once again we are at a crossroads. Under the Constitution, the government is charged with establishing justice and securing the blessings of liberty — not for just a few, but for everyone. America's founders understood that democracy is only possible when *all* people have access to a system of justice that protects their rights, resolves their disputes, and provides them with an opportunity for helping themselves to improve their lives.

By providing access to justice for millions of Americans, the Legal Services program has given them a stake in our system, a sense that government is meant to be a servant of the people rather than their master, and a hope that the American pledge of "liberty and justice for all" can become a reality. ■

**PROPOSED VETO LANGUAGE FOR THE LEGAL SERVICES CORPORATION
APPROPRIATION CONTAINED IN THE COMMERCE, JUSTICE, STATE , THE
JUDICIARY AND RELATED AGENCIES FY 96 APPROPRIATION BILL AND
CONFERENCE REPORT**

Funding for the Legal Services Corporation should be increased to \$340 million -- the level contained in the Senate-passed version of the bill for basic field and special population programs. The allocation of \$9 million for management and administration is essential to permit Corporation management to meet its statutory responsibilities, which includes for the first time the awarding of grants on a competitive basis and to ensure the continuity of monitoring for compliance with Congressional restrictions. The restrictions imposed on the representation of clients unduly limit their access to the justice system and restrictions on non-LSC funds raise serious constitutional questions and inappropriately impinge on the rights of states to determine how their own funds are to be used.

A handwritten signature in cursive script, appearing to be "W. J. ...", is located in the lower center of the page.



LEGAL SERVICES CORPORATION

750 1st St., NE, 11th Fl., Washington, D.C. 20002-4250

(202) 336-8800

Fax (202) 336-8959

Alexander D. Forger
President

Writer's Direct Telephone
(202)

336-8800

February 22, 1996

Ms. Melanne Verveer
Deputy Assistant to the President and
Deputy Chief of Staff to the First Lady
Old Executive Office Bldg.
17th and Pennsylvania Avenue, N.W.
Room 100
Washington, D.C. 20503

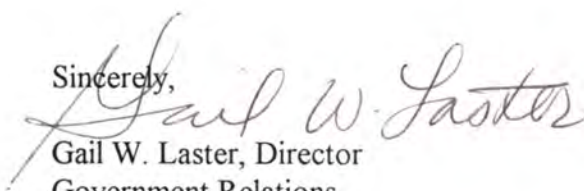
Dear Ms. Verveer:

Enclosed are materials to aid the Administration's efforts to amend provisions concerning the Legal Services Corporation ("LSC") contained in the Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Conference Report (H.R. 2076) which was vetoed by the President on December 19, 1995. These materials include:

- A revised one page statement of LSC major issues in H.R. 2076;
- Suggested amendments to the text of H.R. 2076 (these amendments are identical to those distributed at an earlier date); and
- Background memo and attachments in support of proposed amendments.

Please contact me at 336-8815 if there are any questions or if you require further information. Thank you again for all your efforts.

Sincerely,


Gail W. Laster, Director
Government Relations

BOARD OF DIRECTORS - Douglas S. Eakeley, Chairman, Roseland, NJ

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Fairhaven, VT

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

- **Support increased funding for LSC and increased allocation for LSC's Management and Administration.** 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. The Conference Bill allocates only \$6 million for management and administration which would permit LSC management to make grants under a competitive bidding system, but would not provide sufficient funds to fulfill its other statutory responsibilities including the need to continue monitoring for compliance and evaluating program quality. 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.

- **Support a change in the language of the restrictions provision to permit recipients to use non-LSC funds in accordance with the purposes for which those funds are provided.** While Congress should have the authority to determine how the funds it appropriates should be used, it should not be permitted to impose those determinations on choices private funders, states and other sovereign governmental entities wish to make with respect to the use of their funds. The Conference Bill, with very few exceptions, would apply the restrictions to all of a recipient's funds, regardless of their source.

- **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 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 the Conference Bill does for Native Americans and as 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.

- **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.

- **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 or in cases that are not otherwise prohibited. Programs should be permitted to seek and collect attorneys' fees in all cases pending on the date of enactment..

**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 Palou, 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.

LSC BACKGROUND MEMO FOR PROPOSED CHANGES TO H.R. 2076 CONFERENCE REPORT

This memo is to be read in conjunction with LSC's proposed changes to the Commerce, State, Justice, the Judiciary and Related Agencies Appropriations Conference Report for FY 96. What follows is a brief explanation for each proposed change to the bill. Talking points on key issues and relevant congressional correspondence are also attached.

Page 1, Paragraph Line 2 [Overall appropriation]

Overall appropriation figure is increased from \$278 million in the Conference Report to \$309 million. The Senate bill funded LSC at \$340 million and the House at \$278. LSC's funding for FY 95 was originally \$415 million and \$400 million post rescission.

Page 1, Paragraph 1, Line 3 [Basic Field Programs Appropriation]

Funding for basic field programs is increased from \$265 million in the Conference Report to \$296 million.

Page 1, Paragraph 1, Line 3 [Migrant Programs Appropriation]

Adds funding line for migrant programs of \$10.3 million. This amount is in proportion to the bill's decrease in basic field program funding from FY 95. The Senate and House bills do not include this funding line. In addition, the Conference Report is unclear as to whether migrant farmworker legal services can be directly funded as part of LSC's basic field program. LSC's post rescission FY 95 funding of migrant legal services was \$12.7 million.

*See Attachment 1 for talking points on this issue.

Page 1, Paragraph 1, Line 4 [Native American Programs Appropriation]

Adds funding line for Native American programs of \$7.2 million. This amount is in proportion to the bill's decrease in basic field program funding from FY 95. The Senate and House bills do not include this funding line. However, the Conference Report makes it clear that LSC is to allocate a portion of its basic field appropriation to fund Native American communities. LSC's post rescission FY 95 funding line for Native American legal services was \$8.8 million.

Page 1, Paragraph 1, Lines 4 & 5 [Office of Inspector General Appropriations]

Reduces funding for OIG from \$7 million in the Conference Report to \$4 million, and the amount for contracts with independent auditors from \$5.5 million to \$2.5 million. The House bill provides \$8 million to the OIG and earmarks \$5.7 million of the \$8 million for contracts with auditors. The Senate bill provides \$13 million to the LSC Board of Directors for management, administration, and the OIG. The Senate's approach is consistent with current law which gives the Board the discretion to allocate funds and functions between management and administration and the OIG. LSC's post rescission FY 95 appropriation provided \$11 million to the Board for M&A and the OIG. In FY 95 the Board approved a budget of \$1 million for the OIG.

*In a letter dated December 20, 1995, LSC's Inspector General wrote to Congress to inform it that the OIG would be unlikely to expend at least \$2 million of the \$5.5 million provided for contract audits prior to the end of FY 96. (Attachment 2). The Inspector General also recommended that Congress consider shifting to LSC's M&A \$2 million of the funds provided to the OIG.

Page 1, Paragraph 1, Lines 8 and 9 [Management and Administration Appropriation]

Increases funding for management and administration from \$6 million to \$9 million. The House bill specifies \$5 million for M&A. As stated above, the Senate bill provides \$13 million to the LSC Board of Directors for management, administration, and the OIG. The Senate's approach is consistent with current law which gives the Board the discretion to allocate funds and functions between management and administration and the OIG. LSC's post rescission FY 95 appropriation provided \$11 million to the Board of Directors for M&A and the OIG. In FY 95, the Board approved a budget of \$10 million for M&A.

*In a letter dated December 21, 1995, LSC's bipartisan Board of Directors wrote to Congress in support of the President's veto of H.R. 2076 and a higher allocation for management and administration. (Attachment 3). Also attached to this memo are talking points to support a higher M&A allocation and a chart comparing M&A budget levels and functions. (Attachment 4).

Page 2, SEC. 501. (a) (2) (C) [Pro-Rata funding of Migrant Programs]

Adds language that the proportion of LSC funds for migrant farmworker legal services in FY 96 be equal to the proportion of funds allocated for such purposes in FY 95. This language is not contained in either the Senate or House bills.

*See Attachment 1 in support of funding migrant farmworker programs.

In the event that the amendment that provides for a funding line for migrant programs of \$10.3 million is accepted, this pro-rata funding language for migrant legal services is not required.

Page 6, SEC.(a) (13) [Attorneys' Fees]

Adds language to allow programs to collect attorneys' fees in cases initiated before the date of enactment of the bill. The Senate bill prohibited programs from collecting attorneys' fees from private parties in cases initiated after enactment of the bill. The House bill prohibited collecting attorneys' fees from private parties as of the date of the enactment of the bill.

*See Attachment 5 for talking points on this issue.

Page 7, SEC. 504 (a) (19); Page 8 SEC. 504 (a)(19)(d) [Non-LSC Funds]

Adds language that restrictions in this bill on the use of funds only apply to LSC funds. Pursuant to this language, non-LSC funds, which includes private, public and IOLTA funds would not be subject to the restrictions placed on LSC funds by this bill. Both the Senate and House bills restrict the use of all non-LSC funds with limited exceptions (i.e. financial eligibility requirements). Under current law (the LSC Act and Regulations), non-LSC private funds cannot be used for activities the LSC Act prohibits. Non-LSC public and IOLTA funds are not restricted in this manner. The proposed amendment to the Conference Report would preserve the current law with respect to existing prohibitions on the use of private funds.

* See Attachment 6 for talking points on this issue.

Page 7, SEC. 504 (a)(19)(b)(2) and (3) [Use of Non-LSC funds to Respond to Requests for Information or Testimony from Legislators or Agency Officials]

Adds language to allow use of non-LSC funds to respond to requests for information or testimony from legislators or agency officials. Neither the Senate nor House bills allow this use of non-LSC funds. Current law permits responding to such requests with LSC funds.

*See Attachment 7 for talking points on this issue.

*See Attachment 8 for letter from Senator Cohen to Senator Domenici in support of this amendment.

In the event that the proposed amendment on non-LSC funds is accepted, this language to allow the use of non-LSC funds to respond to requests for information or testimony from legislators or agency officials, is not required.

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WHY CONGRESS SHOULD PRESERVE
THE SPECIAL LEGAL SERVICES DELIVERY SYSTEM
FOR INDIVIDUAL MIGRANT FARM WORKERS

- **The present migrant legal services delivery system provides direct delivery of legal assistance to individual migrant farm workers and their families.** The clients of migrant legal services programs are men, women, and children, often laboring together in family units. They are the quintessential example of the working poor, with a median income of only \$5,000.00 a year. Congress has characterized them as "the most abused of all workers in the United States." Migrant legal services programs provide direct legal assistance to these migrant farm workers on their individual needs such as wage claims against farm labor contractors and other agricultural employment questions.
- **The migrant delivery system fills a large gap in the regular basic field delivery system.** Studies by both the LSC and the ABA* have found that migrant farm workers have very specialized legal needs and face unique barriers which severely limit their ability to get access to legal assistance through the regular basic field programs. In order to address the legal needs of migrants, LSC has therefore created a migrant legal services delivery system which fills this gap in the regular basic field delivery system.
- **Migrant farm workers are generally not able to get access to legal assistance through the regular basic field programs:** (a) Migrants are extremely mobile, staying in one location for only short periods, as they move around the nation pursuing work opportunities; (b) They are most often isolated in temporary residences in remote rural locations (such as migrant labor camps), without access to any transportation or telephone, and without any familiarity with the locale. The local populace and basic field program are typically unaware where these transitory migrants are or that they are even present; (c) Barriers based on language, race, and ethnicity often make it difficult for local basic field programs to serve or even communicate with migrant workers; (d) Migrants are normally unavailable during regular business hours; (e) Migrants are often dependent on farm labor contractors who literally control almost every aspect of their lives (e.g. employment, housing, transportation) and who intimidate or retaliate against the migrant worker who seeks legal help.
- **Migrant farm workers also face unique legal problems which are outside the normal practice and expertise of basic field programs.** Examples include: (a) protections under special wage and employment laws unique to agriculture; (b) employment practices peculiar to agriculture; (c) abuses by farm labor contractors and other interstate recruiting agents (e.g. holding migrant workers in debt bondage); (d) substandard labor camp housing which is not governed by regular landlord-tenant laws; (e) interstate jurisdiction and venue issues; (f) problems involving deductions and credits for employment taxes; (g) unique regulations and *interstate* factual issues related to public benefits and unemployment insurance; (h) unique health and safety problems, such as pesticide exposures, dangerous labor transportation, and work injuries; (i) denial of access to migrant education programs for the workers' children; (j) irregular or fraudulent practices in payroll record-keeping and wage deductions; (k) complex legal and factual disputes over who is the employer, a joint employer, an independent contractor or an employee.

- **Migrant legal services programs provide the special delivery structure and specialized legal expertise which best meet the needs of individual migrant farm workers in the most cost-effective manner.** LSC's migrant delivery system funds one migrant program for each state which is structured to overcome the legal access barriers excluding migrants by using a specialized combination of office locations, bi-lingual staff, outreach services, interstate coordination of services during workers' migration, evening/weekend business hours, etc. In addition by specializing in the unique legal problems which face migrants, migrant legal services staff are able to address the problems of the individual migrant client efficiently and effectively, leaving basic field programs free to concentrate on those issues which more typically confront basic field clients. The LSC and ABA studies* as well as eighteen years of migrant legal services experience confirm that this approach maximizes direct delivery of services to migrant and non-migrant clients.
- **The Census does not purport to identify which individuals are migrant farm workers, where they are located, or where legal assistance for migrants should be made available.** The Census does not provide a basis for allocating migrant legal services money, because the Census does not have a category identifying who is a migrant farm worker. Moreover, the Census records a person's location and work status *at the time the Census is taken* but does not purport to plot their residence, movements or location during the rest of the year. This is not a problem involving a Census undercount; the Census just doesn't seek to obtain information about the number and distribution of migrant farm workers. LSC has historically distributed migrant legal services funding according to a study which estimates where migrants live and work throughout the course of the year. This targets the services based on where migrants are most likely to need and use those services.
- **The vast majority of migrant farm workers are tax-paying citizens and legal residents of the U.S.** Contrary to popular misconception, only a small fraction of migrant farm workers in the U.S. are undocumented aliens. Moreover, LSC programs have long been prohibited from representing undocumented aliens with LSC funds and under either the Rogers and Domenici bills no undocumented aliens may be represented by any legal services programs with any funds.
- **Allegations leveled against migrant legal services programs have been proven unfounded and, even if they were true, would be prohibited by restrictions in both appropriations bills.** Thorough investigations* by the GAO, the ABA, Congressional committees and the LSC have repeatedly shown that such allegations against migrant legal services programs have been unsupported by the actual facts. In addition, even if the alleged activities had occurred in the past, they would now be prohibited by restrictions in both appropriations bills.
- **Elimination of the migrant legal services programs would harm both migrant farm workers and conscientious agricultural employers.** Without the migrant programs migrant farm workers would largely be cut off from the legal system completely. In addition the large majority of agricultural employers who treat their migrant workers honestly and fairly would be placed at a competitive disadvantage as against unscrupulous labor contractors and employers who seek to gain a competitive edge by violating legal protections for migrant farm workers.

Cited References

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United States General Accounting Office (1990), Legal Services Corporation: Grantee Attorney's Handling of Migrant Farmworker Disputes With Growers.

Statement Of Senator Warren Rudman On Reauthorization Of Legal Services, before the Senate Committee on Labor and Human Resources, June 23, 1995, at p. 4

Legal Services Reauthorization Act of 1991, Report No. 102-476, 102nd Cong.; 2d Sess. (March 31, 1992), at pp. 52, 54, 64.



LEGAL SERVICES CORPORATION

750 1st Street, NE, 10th Floor, Washington, D.C. 20002-4250
(202) 336-8830 Fax (202) 336-8955

OFFICE OF INSPECTOR GENERAL

December 20, 1995

The Honorable Harold Rogers
Chairman
The Honorable Alan B. Mollohan
Ranking Minority Member
Subcommittee on Commerce, Justice, State,
The Judiciary, and Related Agencies
Committee on Appropriations
United States House of Representatives
H-309 Capitol Building
Washington, DC 20515

The Honorable Judd Gregg
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Subcommittee on Commerce, Justice, State,
The Judiciary, and Related Agencies
Committee on Appropriations
United States Senate
S-146A Capitol Building
Washington, DC 20510

Re: Conference Version of the LSC Appropriation Bill: H.R. 2076

Dear Senators and Congressmen:

Under the Inspector General Act, it is my responsibility to comment on the impact of proposed legislation on the efficiency and effectiveness of LSC operations, and I write today in regard to the conference version of the LSC Appropriation Bill: H.R. 2076 (the bill).

Insufficiency of Funds for Corporation Management and Administration

The bill provides \$6 million for corporate management and administration (M&A), and \$7 million for the Office of Inspector General (OIG), of which \$5.5 million is to be used to contract for financial and compliance audits of LSC grantees. The \$6 million for M&A is less than would appear. LSC's fixed costs for the remainder of fiscal year 1996 are approximately \$1.5 million, including insurance, real estate lease, and severance payments to employees separated in an earlier downsizing. Taken with first quarter expenditures estimated at \$2 million, there would remain only \$2.5 million available for the remaining three quarters of FY96. Measures being contemplated by the Corporation to further reduce costs would entail up-front costs. Additional staff reductions would result in increased severance costs, and a reduction in office space would mean moving expenses and/or

construction costs to reconfigure existing space. These up-front costs would likely be greater than any savings realized during the remaining three quarters. Management estimates that such costs could reach \$1 million in FY96, leaving only \$1.5 million for the remaining three quarters -- a rate less than a fourth of the previous fiscal year.

Management also estimates that only 28 personnel could be retained at the bill's funding level, as opposed to the 99 on staff after the FY95 rescission and the current staff of 68. At the same time, the bill requires management to convert its grant system from presumptive refunding of a static provider network to one of competitive awards. This change to competition, which was recommended by the OIG in testimony earlier this year, represents a substantial increase in grant evaluation and administration workload. In the view of the OIG, a staff of 28 could not award and administer several hundred grants nationwide in an effective manner.

On the other hand, the OIG is unlikely to expend at least \$2 million of the \$5.5 million provided for contract audits prior to the end of FY96. This situation results from the late start, and from the bill's requirement that the funds be used for financial statement audits of Fiscal Year 1996 grants. Such audits, generally, can occur only after the end of the fiscal year being audited, and therefore most of the audit work would be performed and paid for in FY97. Although the OIG would eventually need the full \$5.5 million for this purpose, at most \$3.5 million would be spent during Fiscal Year 1996, and the remaining \$2 million could be used to fund corporate M&A. We, therefore, recommend that Congress consider shifting to corporate M&A \$2 million of the funds provided to the OIG.

Recommendations for Technical Amendments to the Bill:

Were the bill to become law, the OIG recommends two technical amendments that we believe would not be controversial. In our view, these changes would be very important to the successful implementation of the bill, were it to become law. A detailed supporting analysis is attached.

1. Audit Authority.

Section 509(a) of the bill appears not to allow specific compliance auditing beyond that related to a financial statement audit. We recommend that subsections (d), (e) and (f) be renumbered as subsections (e), (f) and (g), respectively, and that a new subsection which would allow the OIG to contract for compliance audits as follows:

"(d) Any compliance audits will be conducted in accordance with generally accepted government auditing standards."

2. Access Provisions.

A technical inconsistency exists between section 504(a)(10)(c) and section 509(d). We, therefore, recommend deleting the parenthetical "(notwithstanding section 1009(d) of the Legal Services Corporation Act)" from section 504(a)(10)(c) or deleting section 504(a)(10)(c) in its entirety from the bill.

Interpretation of "Enforcement":

Finally, we note that the report states that the conference agreement reflects a transfer to the Inspector General of the function of, and resources for, "enforcement". For your information, we wish to provide an explanation of manner in which we would interpret this language were the bill to become law.

The statutory mission of an Office of Inspector General requires it to develop expertise in fact-finding through audits and investigation, while enforcement through sanctions, such as denial of questioned costs or defunding, is a program operating responsibility assigned to management throughout the Federal government. This division of responsibility is in keeping with the important tradition in our jurisprudence of lodging the power to find the facts and the power to sanction in separate authorities to insure fairness and objectivity. Moreover, despite the language in the report, H.R. 2076 does not transfer to the IG any of the sanctioning authority, or power over the grant, by which LSC may bring pressure to bear on its recipients in enforcing the requirements of the LSC Act and regulations.

Consistent with the above, we would interpret both "monitoring" and "enforcement" as used in the report to relate to the audit of LSC grantees which, under the bill, would be performed by independent public accountants hired by the OIG. The conference bill would transfer to the OIG both the authority and resources to contract for such audits. Thus, the OIG would perform the "monitoring" function referred to in the report almost completely through these audits. Similarly, it would perform the "enforcement" function by seeking to ensure, through audit follow-up and resolution, such as that mandated by Office of Management and Budget Circular A-50, that non-compliance identified through the audits was corrected. Any uncorrected instances of non-compliance at the end of the follow-up process would be referred to Corporation management for consideration of possible additional actions and sanctions, and the ultimate resolution would be tracked and reported on by the OIG.

Sincerely,



Edouard Quatrevaux
Inspector General

Attachment

LSC OIG Recommendations for Technical Amendments to Conference Appropriations Bill

1. Audit Authority

Section 509(a) requires each recipient to have "an audit." The first paragraph of the bill requires that audits under section 509 be conducted by independent public accountants (IPAs) under contract to the OIG. The audit described in section 509(a) through 509(c) is the recipient's annual financial statement audit which will include tests to determine compliance with financially related laws and regulations under government auditing standards. The requirements of this section "apply to a recipient for its first fiscal year beginning on or after January 1, 1996," and, therefore, the audit work would be undertaken largely in 1997, after the end of the fiscal year to which the section applies.

It is arguable that the statutory language does not permit the OIG to contract with IPAs for any additional audits. This would mean that the OIG could not choose to contract with IPAs for compliance audits independent of the financial statement audit of FY96 funds. We believe that it would be more efficient and effective to audit compliance with non-financially related laws and regulations in compliance audits, not tied to the cycle of the annual financial statement audit. The OIG would also desire, if it had the authority and funds, to contract for some compliance audits of the use of FY96 funds to be **performed during FY96**, which would not be possible if it had authority only to contract for the financial statement audit, which must occur after the fiscal year ends.

Recommendation: Therefore, the OIG recommends adding an additional subsection to section 509, as a new subsection (d), and renumbering current subsections (d) and (e) as (e) and (f), respectively. We suggest the following language for the new subsection:

"(d) Any compliance audits will be conducted in accordance with generally accepted government auditing standards."

2. Access Provision

Two separate sections of the LSC appropriation bill authorize corporate access to timekeeping and other recipient records. The sections, 504(a)(10)(C) and 509(d), are redundant, and inconsistent, in part. We recommend deleting 504(a)(10)(C) from the bill.

Section 504(a)(10)(C) grants access to records described in section 504, which consist largely of timekeeping records.¹ Access under 504(a)(10)(C) is 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

¹Section 504(a)(8)(B) contains its own access provision which covers the pre-complaint statement of facts which it requires.

Federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation.

Access under 504(a)(10)(C) is granted "notwithstanding section 1009(d) of the Legal Services Corporation Act," which prohibits access to materials protected by the attorney-client privilege.

Section 509(d) grants access to "financial records, time records, retainer agreements, client trust fund and eligibility records, and client names." Access under 509(d) is available only to LSC. It is granted "notwithstanding 1006(b)(3) of the Legal Services Corporation Act," which has been interpreted by the legal services community to prohibit access to non-privileged materials protected under local rules of professional conduct for attorneys. Under 509(d), however, contrary to 504(a)(1)(C), materials which are attorney-client privileged explicitly retain the protection from disclosure they enjoy under section 1009(d) of the LSC Act. Thus, 509(d) grants access "except for reports or records subject to the attorney-client privilege."

Section 509(d) appears for the first time in the conference version of the bill, and we believe it to be based on language recommended by the OIG. In our view, the section provides the access necessary for the proper performance of oversight functions, without unnecessary intrusion into areas of confidential communications. The addition of section 504(d), which adequately treats the access issue, renders section 504(a)(10)(C) unnecessary. The inconsistencies between the sections will undoubtedly cause problems in implementation, and the fact that 504(a)(10)(C) makes otherwise privileged documents accessible, may discourage attorneys from bidding for LSC grants. If Congress wishes to broaden the entities receiving access under 509(d), it can easily do so by moving the relevant language from 504(a)(10)(C), which is quoted above, to 509(d).

Recommendation: Therefore, the LSC OIG recommends deleting section 504(a)(1)(C) from the bill in its entirety or, in the alternative, deleting the inconsistent language "(notwithstanding section 1009(d) of the Legal Services Corporation Act)" from that section.


LEGAL SERVICES CORPORATION

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Alexander D. Forger
 President

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December 21, 1995

Hon. Harold Rogers, Chairman
 Hon. Alan B. Mollohan,
 Ranking Minority Member
 Subcommittee on Commerce, Justice,
 State and the Judiciary
 Committee on Appropriations
 U.S. House of Representatives
 Washington, D.C. 20515

Hon. Judd Gregg, Chairman
 Hon. Ernest F. Hollings
 Ranking Minority Member
 Subcommittee on Commerce, Justice
 State and the Judiciary
 Committee on Appropriations
 United States Senate
 Washington, D.C. 20510

Dear Sirs:

I am writing on behalf of the bipartisan Board of Directors of the Legal Services Corporation to let you know of our position on issues raised by two recent communications, the President's veto message on H.R. 2076 and the letter to you of December 20, 1995, from LSC's Inspector General.

The Board agrees with the position concerning the Corporation expressed by the President in the veto message. Specifically, we believe that the cut of 30 percent in funding for LSC will cripple our capacity to fulfill our mission of serving people in need by providing access to justice. We urge you to support the Senate's mark of \$340 million, which represents a 15 percent cut, itself a drastic measure in light of the enormous need of the poor for legal services. We estimate that this would result in the provision of legal assistance to an additional 150,000 potential clients and their families, totalling upwards of a half a million people, and would permit as many as 100 additional legal aid offices, a large proportion of them in rural areas, to remain open. Compounding the adverse consequence of the cut in funding is the restriction on the use of non-LSC funds. This gives every indication of driving away outside money which traditionally has been the source of approximately 40 percent of the program's funding. The imposition of this restriction will eliminate the leverage factor that LSC funds have provided.

BOARD OF DIRECTORS - Douglas S. Eakeley, Chairman, Roseland, NJ

 Hulett H. Askew
 Atlanta, GA

 LaVeeda M. Battle
 Birmingham, AL

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 Manchester, NH

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 Galveston, TX

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 St. Louis, MO

 Nancy H. Rogers
 Columbus, OH

 Thomas F. Smegal, Jr.
 San Francisco, CA

 Ernestine P. Watlington
 Harrisburg, PA

 Edna Fairbanks-Williams
 Fairhaven, VT

We share the President's concern about the bill's failure to ensure adequate access to legal services for migrant farmworkers. The provisions allocating funding fail to take into consideration the fact that the Census does not count migrants in areas where they live or work. The funding provision should be amended to provide a specific allocation, as in the case of Native Americans, to ensure that legal services are available where migrants are most likely to need and use them.

In addition, we urge you to support two provisions to correct unintended consequences of H.R. 2076. The current language would prohibit recipients from responding to requests for information or testimony from legislators or agency offices, even with non-LSC funds. During a period in which states will be assuming major new responsibilities for programs affecting the poor, legislators and agency officials should not be prevented from benefitting from the expertise of legal services attorneys if they should choose to seek it. We believe that grantees should be permitted to use non-LSC funds for this purpose.

Secondly, the ban on collection of attorneys' fees should not apply to pending cases. In many instances programs have outstanding judgements and orders awarding fees which have been earned over a period of years and which have not yet been paid. Some programs have relied on such payments in their FY 1996 budgets. We believe that programs should be permitted to seek and collect attorneys' fees in pending cases.

H.R. 2076 implements two major changes in LSC's functions: implementation of a system of awarding grants based on competition and a shift of the compliance monitoring function. As you know, we have already begun to implement the system of competition. Although we continue to believe that compliance monitoring would be more effectively performed by the system currently in place, designed by LSC management at the behest of the Board, we recognize that it is the will of Congress that this system be replaced by one based upon financial and program audits conducted by independent auditors contracted through LSC's Office of the Inspector General. We remain committed to the goal of ensuring strict compliance with all restrictions, and will make every effort to make the new system a success, just as we are doing with regard to competition.

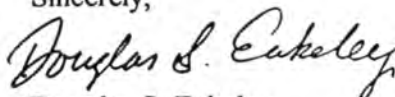
However, as the entity charged by Congress with responsibility for implementing and enforcing the Legal Services Corporation Act, we are deeply concerned about the inadequate funding for the Corporation's management and administration. Because of the delay in enactment of the Appropriation, the costs associated with downsizing, and a lease expense which will take time to mitigate, the \$6 million allocation would require the Corporation to reduce its payroll expenses to a level sufficient to provide for only 28 employees, down from the post-rescission staffing level of 99 and the current level of 68. This would leave the Corporation unable to perform its statutory responsibilities.

Page 3
December 21, 1995

We believe that an allocation of at least \$8 million for management and administration is necessary to enable the Corporation to implement the new systems, through such functions as promoting competition for grants, evaluating the quality of services, educating applicants and grantees about restrictions, and imposing sanctions for violations. Consequently, we endorse the proposal made by the Inspector General in his letter that \$2 million be shifted from the OIG's allocation to management and administration. These funds cannot be expended by OIG during FY 1996. They are, however, essential to the functioning of the Corporation. Shifting the funds will thus ensure the implementation of Congressional intent without increasing the overall cost for management and administration.

We thank you for your continuing support for legal services for the poor.

Sincerely,

A handwritten signature in cursive script that reads "Douglas S. Eakeley".

Douglas S. Eakeley
Chairman



LEGAL SERVICES CORPORATION

**Proposed Staff Allocation and Functions
Total Staff: 70**

EXECUTIVE FUNCTIONS

Executive Office

Primary responsibilities are to provide information, analysis, and policy recommendations to the Board of Directors; to interpret and implement policy as set by the Board; and to coordinate and supervise all aspects of LSC management and administration.

The President serves as spokesman for LSC and liaison to the judiciary, the organized bar, and other elements of the judicial system. The Corporation Secretary is charged with coordinating and providing support for Board meetings; preparation of required notices, statutory reports, minutes, and other records; and coordination of the Board nomination process.

The executive office is also responsible for government relations (including development of budget proposals; liaison with authorizing and appropriating committees; liaison with the executive branch and other government agencies; response to inquiries from Congress and public officials); production of the Annual Report and other publications; response to inquiries from press and public; and cooperation with Office of the Inspector General.

Positions necessary: President; Executive Vice-President; Corporation Secretary; Assistant to President; 2 professionals for government relations; 1 professional for media, public inquiries, annual report and other publications; 2 administrative support. Total: 9.

General Counsel

Responsibilities include drafting regulations, including those implementing competition and other new requirements; internal legal advice; legal advice to grantees and applicants; litigation; response to FOIA requests; Sunshine Act compliance; reprogramming and other reports to Congress.

Positions necessary: General Counsel; 3 attorneys; 1 FOIA officer; 1 administrative support. Total: 6.

PROGRAM OPERATIONS

Office of Competitive Grants

Grants Management responsibilities include developing Request for Proposals; providing notice in all service areas; responding to requests for applications; receiving, tracking and filing completed applications; providing technical assistance to applicants, including response to general inquiries, early review of proposals to check for compliance with technical requirements, and assistance in correcting errors and completing incomplete proposals; evaluating proposals and making staff recommendations for funding; coordinating evaluation by outside evaluators, including recruitment, selection, and training of evaluators; negotiating transition agreements with new grantees; providing technical assistance to new grantees.

Program Review responsibilities include making on-site visits to new applicants as part of the application process; conducting ongoing evaluation of grantees for use in future grant decisions; and designing and maintaining databases for collecting and analyzing information concerning grantees, cases, client statistics, in conjunction with the Office of Information Technology.

Positions needed: Director; 14 professional; 5 administrative support. Initially all OCG staff will work on processing and evaluating 1996 grants. Subsequently, staff will be allocated as follows: Grants Management (responsible for managing the competition process): 8 professionals; Program Review (responsible for on-site evaluation of grantees and new applicants): 6 professionals; Administrative support: 5. Total: 20.

Office of Complaints and Enforcement

Responsibilities related to investigation of complaints include receiving and logging complaints; maintaining records; corresponding with complainants, grantees and interested parties; conducting on-site visits, if required; making findings of fact and conclusions of law; and notifying complainants, grantees, and interested parties.

In response to complaints, referrals from the Inspector General, or matters identified by LSC staff, enforcement-related responsibilities include notifying grantees of corrective action required; documenting compliance; when appropriate, enforcing sanctions or terminating grants outside of the competitive cycle.

Other related responsibilities established by LSC regulations include approving capital expenditures, consultant contracts, subgrants, and mergers, when required; and responding to requests for waiver of Private Attorney Involvement expenditure requirements and waiver of fund balance requirements. All of these require investigation, factual and legal determinations, and record-keeping.

Positions needed: Director; 7 professionals assigned to complaint investigation, waivers and approvals; 4 professionals assigned to enforcement; 3 administrative support. Total: 15.

Note: Under the House Appropriations bill, which transfers basic responsibility for compliance monitoring to the Office of the Inspector General, LSC would no longer perform the following functions: annual desk reviews of each grantee's written policies, board minutes and performance reports to ensure that the grantee's policies and procedures comply with federal restrictions; and on-site compliance monitoring to conduct interviews and examine the grantee's books, records and files and determine whether the grantee is carrying out the required policies and practices. If the above functions are retained at LSC, an additional 6-7 positions will be required.

ADMINISTRATION

Comptroller

The Comptroller serves as the Corporation Treasurer and is responsible for the development of the annual budget submission to OMB and Congress; the development of the fiscal budget; preparation of budget reports to Board and executive staff; maintaining audit preparedness; maintaining accounting systems and cash management; payroll; payroll tax payments and filings; preparation of monthly grant checks, with verification of grantee audit confirmation; assistance to LSC's independent auditor; and preparation of LSC's corporate tax returns and registration.

Positions necessary: Comptroller/Treasurer; 3 accountants; 1 administrative assistant. Total: 5.

Human Resources and Administrative Services

Responsibilities include personnel and administrative policies; recruitment and staffing; compensation and benefit administration; review of employee grievances; compliance with Equal Employment Opportunity requirements; reprographics and mailing; maintenance of archives and library; management of telephones and other property; travel arrangements for the LSC Board, staff and review panels; and general administrative support.

Positions necessary: Director; personnel assistant; benefits administrator; travel coordinator; property coordinator; librarian/archivist; reprographics assistant; building assistant; 2 administrative assistants. Total: 10.

Information Technology

Responsibilities include maintenance of information system and databases, including help desk, internal E-mail, and on-line legal search systems; staff support and training; support for grantee technology needs; entry of data from grantees; production of statistical reports to Congress and others, including case statistics and analyses of grantee timekeeping records.

Positions necessary: Director; 3 professionals, 1 administrative assistant. Total: 5.

LEGAL SERVICES CORPORATION
MANAGEMENT AND ADMINISTRATION

BUDGET CATEGORY	BOARD OF DIRECTORS	EXECUTIVE OFFICES	GENERAL COUNSEL	ADMIN SERV HUMAN RESOURCES	OFFICE OF COMPTROLLER	OFFICE OF INFORMATION TECHNOLOGY	COMPETITION AND ENFORCEMENT	TOTAL BUDGET
PERSONNEL COMPENSATION	\$0	\$499,789	\$285,700	\$419,103	\$278,051	194,808	\$1,845,066	\$3,522,517
TEMP. EMPLOYEE PAY	0	0	0	0	0	0	0	0
PERSONNEL BENEFITS	0	120,311	65,625	139,663	73,949	57,167	489,909	946,624
CONSULTING	86,440	0	100,000	50,000	2,500	130,000	400,000	768,940
TRAVEL & TRANSPORTATION	86,275	40,000	5,000	4,500	3,500	3,000	450,000	592,275
COMMUNICATIONS	12,000	2,000	1,000	95,100	1,000	100	10,000	121,200
OCCUPANCY COSTS	2,250	0	0	1,644,200	0	0	8,400	1,654,850
PRINTING & REPRODUCTION	5,000	150	100	95,100	0	0	2,200	102,550
OTHER OPERATING EXPENSES	10,000	15,000	12,800	210,000	27,500	2,000	287,500	564,800
CAPITAL EXPENDITURES	0	0	0	25,000	0	0	0	25,000
OTHER	0	0	0	0	0	0	0	0
TOTAL	201,965	677,250	470,225	2,682,666	386,500	387,075	3,493,075	8,298,756

LSC MANAGEMENT AND ADMINISTRATION: COMPARISON OF FUNCTIONS AND BUDGET LEVELS

1. Appropriation (column 4 plus column 6)	2. Principal Functions	3. Ability to Perform Functions	4. Annualized Budget Level (after downsizing)	5. Staff Size supportable by annualized budget level	6. One-time Costs associated with downsizing												
\$6 million as enacted in vetoed Appropriation	<ul style="list-style-type: none"> •Support LSC board •Promulgate regulations •Comply with FOIA and other laws •Award grants through competition •Manage grants •Approvals and waivers •Complaints •Collect data and develop statistics •Internal LSC administration •Respond to Congressional inquiries •Respond to public inquiries •Enforcement of OIG findings 	Inadequate	\$4.45 million	29	<table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 80%;">Phase I severance</td><td style="text-align: right;">\$530,000</td></tr> <tr><td>Excess rent</td><td style="text-align: right;">610,000</td></tr> <tr><td>Phase II costs</td><td style="text-align: right;">550,000</td></tr> <tr><td>1st qtr excess*</td><td style="text-align: right;">275,000</td></tr> <tr><td>Carryover and Recovery</td><td style="text-align: right;">(410,000)</td></tr> <tr><td>Net</td><td style="text-align: right;">1,555,000</td></tr> </table>	Phase I severance	\$530,000	Excess rent	610,000	Phase II costs	550,000	1st qtr excess*	275,000	Carryover and Recovery	(410,000)	Net	1,555,000
Phase I severance	\$530,000																
Excess rent	610,000																
Phase II costs	550,000																
1st qtr excess*	275,000																
Carryover and Recovery	(410,000)																
Net	1,555,000																
\$7.2 million	As above	Minimal capacity to award grants competitively: Adequate to process applications Inadequate to promote competition Inadequate to assess quality of grantee services Minimal capacity to perform other functions	\$6 million	51	<table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 80%;">Phase I severance</td><td style="text-align: right;">\$530,000</td></tr> <tr><td>Excess rent</td><td style="text-align: right;">610,000</td></tr> <tr><td>Phase II costs</td><td style="text-align: right;">200,000</td></tr> <tr><td>1st qtr excess*</td><td style="text-align: right;">275,000</td></tr> <tr><td>Carryover and Recovery</td><td style="text-align: right;">(410,000)</td></tr> <tr><td>Net</td><td style="text-align: right;">1,205,000</td></tr> </table>	Phase I severance	\$530,000	Excess rent	610,000	Phase II costs	200,000	1st qtr excess*	275,000	Carryover and Recovery	(410,000)	Net	1,205,000
Phase I severance	\$530,000																
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Net	1,205,000																
\$8 million	As above	Adequate for listed functions	\$7.45 million	70	<table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 80%;">Phase I severance</td><td style="text-align: right;">\$530,000</td></tr> <tr><td>Excess rent</td><td style="text-align: right;">430,000</td></tr> <tr><td>Phase II costs</td><td style="text-align: right;">0</td></tr> <tr><td>1st qtr excess*</td><td style="text-align: right;">0</td></tr> <tr><td>Carryover and Recovery</td><td style="text-align: right;">(410,000)</td></tr> <tr><td>Net</td><td style="text-align: right;">550,000</td></tr> </table>	Phase I severance	\$530,000	Excess rent	430,000	Phase II costs	0	1st qtr excess*	0	Carryover and Recovery	(410,000)	Net	550,000
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Phase II costs	0																
1st qtr excess*	0																
Carryover and Recovery	(410,000)																
Net	550,000																
\$9 million	As above, with the addition of •Compliance monitoring (shared with OIG)	Adequate for listed functions	\$8.45 million	77 Note: staffing for FY 95 was 99	<table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 80%;">Phase I severance</td><td style="text-align: right;">\$530,000</td></tr> <tr><td>Excess rent</td><td style="text-align: right;">430,000</td></tr> <tr><td>Phase II costs</td><td style="text-align: right;">0</td></tr> <tr><td>1st qtr excess*</td><td style="text-align: right;">0</td></tr> <tr><td>Carryover and Recovery</td><td style="text-align: right;">(410,000)</td></tr> <tr><td>Net</td><td style="text-align: right;">550,000</td></tr> </table>	Phase I severance	\$530,000	Excess rent	430,000	Phase II costs	0	1st qtr excess*	0	Carryover and Recovery	(410,000)	Net	550,000
Phase I severance	\$530,000																
Excess rent	430,000																
Phase II costs	0																
1st qtr excess*	0																
Carryover and Recovery	(410,000)																
Net	550,000																

* During the first quarter, pursuant to the C.R., LSC spent at a level consistent with an \$8 million M&A Appropriation. If the Appropriation eventually enacted is less than \$8 million, then first quarter spending will have been over budget. Continued spending at this level during January 1996 and after will increase the level of one-time costs, thereby reducing the annualized budget level after downsizing.

**TALKING POINTS
AMENDMENT TO PERMIT RECIPIENTS
TO SEEK 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 or in case that are not otherwise prohibited. Programs should be permitted to seek and collect attorneys' fees in all cases pending on the date of enactment.

In general, Legal Services Programs should be allowed to seek attorneys' fees for the following reasons:

- There are several purposes for enactment of fee-shifting statutes that permit courts to award attorneys' fees to successful litigants. In addition to encouraging enforcement of important legal and constitutional rights that are at stake, those purposes include punishment and deterrence of illegal conduct, and compensating litigants and their attorneys for their efforts. All of these important purposes are undercut by the prohibition contained in the Bill.
- Legal services programs have limited resources and use the attorneys' fees that they receive for successfully litigating cases to provide additional services to other eligible clients who could not be otherwise served. By denying legal services programs the right to seek and collect attorneys' fees, the Bill limits further the resources available to support desperately needed legal services for the poor.
- Congress and state legislatures have enacted fee-shifting statutes in order to ensure that important statutory and constitutional rights are enforced. For example, the Civil Rights Attorneys' Fees Act is a key part of the Civil Rights enforcement structure in this country. If legal services attorneys are not permitted to recover attorneys' fees in civil rights cases brought by poor minorities whose civil rights have been violated, far fewer of those cases will be able to be brought, and more poor people will continue to be victims of discrimination.
- Attorneys' fees statutes are intended to deter illegal conduct and punish wrongdoers who have violated the rights of those protected under the law. Without the threat of attorneys' fee awards, private interests may feel they are free to violate the rights of poor people with impunity, since the risk of large damage awards is minimal in most cases involving poor people, even though the wrongs committed by the defendants may have had a devastating effect on the poor plaintiff.

- Critics complain that taxpayers support legal services programs, which then turn around and sue those same taxpayers, who then have to pay to hire an attorney to defend the. If they lose the case, taxpayers then also have to pay attorneys' fees to the legal services programs, and that somehow does not seem fair. The answer is simple and twofold. First, taxpayer support for legal services is minimal, with less than \$1.50 of each taxpayer's annual federal taxes going to support legal services. Second, if the taxpayer did not violate the rights of poor people, then he would not have to pay any attorneys' fees. He can avoid paying attorneys' fees by obeying the law. Our legal system is designed so that in cases where important statutory and constitutional rights are at stake, violators are required to pay their victim's attorneys' fees as well as their own, regardless of the economic status of victim or who supported the representation in the first instance. Poor people should not be treated differently under that system.
- Not only does the Bill treat legal services clients differently from other litigants, but it also permits private parties to escape punishment for behavior that is not tolerated from government defendants. It ensures that private parties remain largely unaccountable for violations of the rights of poor people, even though Congress or state legislature have determined that their actions are illegal.

TALKING POINTS

RESTRICTIONS ON NON-LSC FUNDS

The **Conference Bill restricts the use of all of a recipients non-LSC funds** to the same degree as LSC funds are restricted.

- The Conference Bill would put severe limitations on the ability of private funders and state and local governmental agencies, including IOLTA programs, to ensure that legal services they have identified as necessary to meet the full range of legal needs of poor people within their jurisdictions are available.
- The Conference Bill would prohibit recipients from representing a significant number of clients who are today represented using private, public and IOLTA funds such as certain categories of legal aliens, families challenging welfare rules under state law, women seeking family planning assistance, and defendants in proceedings which some states characterize as criminal, such as paternity or child support contempt actions.
- A number of states, including New York, Maryland and North Carolina, now meet their court imposed obligation to provide access to the courts for prison inmates in civil matters by contracting with legal services programs to represent inmates on a wide variety of matters, including custody and other family law issues, bankruptcy, consumer matters, as well a prison conditions cases. States would no longer be able to enter into these contracts under the Conference Bill.
- The Conference Bill would make it impossible for most private attorneys, law firms and bar associations to bid for grants or contracts from LSC, because the bill would restrict all of their non-LSC public and private funds, including fees received by private lawyers from their non-LSC clients.
- The Conference Bill would prohibit private funders, state and local governments from funding legal services programs to provide critical services, including representation on behalf of poor people before administrative rulemaking bodies, even when those governments have determined that such representation is essential to ensure that the laws and regulations they adopt take account of the needs and legal interests of poor people.

While Congress should have the authority to determine how the funds it appropriates should be used, it should not be permitted to impose those determinations on the choices that private funders and other sovereign governmental entities wish to make with respect to their own funds.

- Public and private funders should have the same opportunity as Congress to determine the purposes for which their funds will be used and to select the institutions that can best carry

out those purposes. Congress should not interfere in decisions by other private and public funders, including state IOLTA programs, on how to allocate their funds and with whom to contract. With rare exceptions, restrictions on non-LSC funds should be imposed only by the private or public entity or government agency providing those funds.

- In the event that Congress determines that certain specific activities are inappropriate for any recipient of federal funds to undertake, regardless of the funds used, it should outlaw those specific activities, rather than simply apply the whole panoply of restrictions to the recipient's non-LSC funds.
- Congress should encourage, rather than discourage, the creation of additional funding sources for civil legal services and federal-state cooperation to ensure the effective and efficient use of resources, rather than stimulate wasteful duplication of programs if private and public funders are forced to put their resources elsewhere in order to accomplish their purposes.
- Congress should not single out legal services recipients and the poor that they serve by denying them the use of private and other public funds that it has permitted other nonprofit and profit-making organizations receiving federal funds to use without restriction.
- Recipients should not be forced to choose between receiving LSC funds and providing needed services to their clients that private funders or state or local governments are willing to support. The result of such a choice is that fewer resources will be available to serve eligible clients.
- Timekeeping proposals that will be imposed on recipients will ensure that LSC funds are not used inappropriately to supplement or provide overhead for restricted activities that Congress has determined are inconsistent with the purposes of the LSC Act.
- The Conference Bill's restrictions on the use by recipients of non-LSC public and private funds to conduct Constitutionally protected activities on behalf of their clients raises serious Constitutional questions.

LSC and Recipients Funding* : 1980 - 1995

Year	Total LSC Appropriation (\$)	NON-LSC FUNDING			Total Non-LSC Funding (\$)	Total Funds (\$)
		Other Federal (\$)	Other Public (\$)	Private Funds (\$)		
1980	300,000,000	27,167,000	3,557,000	6,938,000	37,662,000	337,662,000
1981	321,300,000	32,124,000	5,309,000	10,767,000	48,200,000	369,500,000
1982	241,000,000	26,371,686	6,249,644	15,278,776	47,900,106	288,900,106
1983	241,000,000	25,490,293	11,022,332	15,443,426	51,956,051	292,956,051
1984	275,000,000	23,166,872	17,356,678	23,168,566	63,692,116	338,692,116
1985	305,000,000	24,718,960	22,723,891	34,007,507	81,450,358	386,450,358
1986	292,363,000	25,399,966	38,760,315	26,834,413	90,994,694	383,357,694
1987	305,500,000	26,539,000	26,665,000	(N/A)	123,154,565	428,654,565
1988	305,500,000	27,678,482	63,706,311	37,834,710	129,219,503	434,719,503
1989	308,555,000	28,132,139	78,963,189	42,007,908	149,103,236	457,658,236
1990	316,525,000	28,473,066	105,185,868	50,201,397	183,860,331	500,385,331
1991	328,186,000	29,512,709	125,941,484	58,814,990	214,269,183	542,455,183
1992	350,000,000	31,434,331	146,685,756	60,517,386	238,637,473	588,637,473
1993	357,300,000	32,182,415	145,920,735	67,737,581	245,840,731	603,140,731
1994	400,500,000	34,605,425	140,022,406	68,216,677	242,844,508	643,344,508
1995 (Proj.)	415,000,000	37,235,629	133,338,199	68,350,811	238,924,639	653,924,639

Sources: LSC Fact Books, 1980-1985, 1987-1988, 1988-1989, 1989-1990 and 1990-1991
 LSC Annual Appropriations History
 LSC Annual Reports, 1991 - 1993

* The 1995 Non-LSC figures are projections.

**TALKING POINTS
AMENDMENT TO PERMIT RECIPIENTS TO
RESPOND TO REQUESTS OF GOVERNMENT OFFICIALS**

- Proposed provision would permit recipients to use non-LSC funds to respond to requests for information or testimony from legislators or agency officials.
- The amendment would permit a narrow range of activities, limited only to responding to written request from a legislator or agency official. The response could be made only to the official (or staff) making the request. Recipients would not be permitted to evade the general lobbying restrictions by arranging to have a request made.
- Legislators and administrators should not be kept in the dark about issues affecting poor people. They should not be prohibited from calling on, and receiving critical information from, legal services attorneys who are often the only source of expertise on how a particular proposal would affect poor people and their rights.
- Permitting such responses will assist legislators in crafting statutes that will take into consideration the interest of those poor people who may be affected by them and avoid unintended consequences.
- Legal services should also be able to make their expertise available to agency officials by commenting on proposed rules when specifically requested to so by an agency official or when proposals have been published by an agency that is seeking public comment.
- Permitting such comment will provide agencies with valuable information that will ensure that they understand the impact of their proposals on those directly affected by them and, in many instances, prevent litigation challenging those rules that might arise later if poor people's interests had not been considered and addressed at the outset.

TED STEVENS, ALASKA, CHAIRMAN

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LEONARD WISS, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

November 8, 1995

The Honorable Pete V. Domenici
Chairman
Committee on the Budget
Washington, D.C. 20510

Dear Pete:

As we discussed during the debate on funding for the Legal Services Corporation, I remain concerned about some of the restrictions on legal services organizations' use of non-federal funds. In particular, the bill in its current form would prohibit Maine's Pine Tree Legal Assistance from working with the state legislature and executive branch agencies on issues of concern to Maine's indigent population, which it now does with broad bipartisan support. At your suggestion, I spoke with Nancy about this and she urged me not to propose a floor amendment to the appropriations bill, but instead to have the change made in conference and on the reauthorization bill.

I do not believe that legal services organizations should be using their scarce funds, regardless of the source, to engage in grass-roots lobbying or participate in political campaigns. Yet, I believe it is unwise to prohibit legal services attorneys, who are among the leading experts in the country on poverty law, from testifying before legislative committees, commenting on public rulemakings, or working with government officials to develop effective programs and policies. Depriving state and local governments of this source of expertise at this time when we are transferring primary responsibility for welfare and Medicaid to the states may be counterproductive.

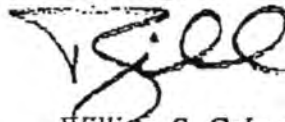
I propose that an exception be written into both the appropriations and authorization bills that would allow legal services organizations to respond to requests for information or testimony from legislators or agency officials. In my view, this is a modest proposal that would enable legal services organizations to make a positive contribution to the development of programs to assist the poor while maintaining the prohibition on the type of lobbying that we all believe should not be occupying the time of legal services attorneys.

The Honorable Pete V. Domenici
November 8, 1995
Page 2

I am attaching proposed legislative language. I hope you will urge the conference to adopt this amendment.

With warmest regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "W. S. Cohen". The signature is written in a cursive style with a large, stylized "W" and "S".

William S. Cohen
United States Senator

WSC:dhs

PROPOSED AMENDMENT TO
COMMERCE, STATE, JUSTICE APPROPRIATIONS BILL

SECTION 504

*

*

(b) Nothing in this section shall be interpreted to prohibit --

*

*

(3) a recipient from using funds from a source other than the Corporation to comment on a public rulemaking or respond to a written request for information or testimony from a State or local agency, legislative body or committee, or a member of such an agency, body, or committee, so long as the response is made only to the parties that make the request and the recipient does not arrange for the request to be made.

LOWENSTEIN, SANDLER, KOHL, FISHER & BOYLAN

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

65 LIVINGSTON AVENUE

ROSELAND, NEW JERSEY

07068-1791

TELEPHONE (201) 992-8700

FACSIMILE (201) 992-5820

Douglas S. Eakeley

March 19, 1996

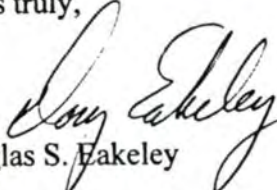
Hon. Bill Clinton
President
The United States of America
The White House
Washington, DC 20500-2000

Dear Mr. President:

Re: Legal Services Corporation

I wanted to share with you the enclosed letter from Harrison McIver, the Executive Director of the Project Advisory Group (the national organization of legal services programs). Harrison speaks from the heart when he expresses our collective anguish over recent Congressional actions to reduce funding, impose new restrictions, and ultimately deny access to justice to the needy. Needless to say, we appreciate all you have done to keep the Legal Services program alive -- and with it, the American dream of "liberty and justice for all." Now more than ever, as we struggle with this year's Continuing Resolution and prepare for next month's appropriations process, we need your continued leadership and support.

Yours truly,


Douglas S. Eakeley

DSE:cw

encl.

cc w/encl.:

Ms. Nancy Hernreich

Melanne Verveer, Esq. ✓

Harrison D. McIver, III, Esq.

1625 K STREET, N.W., SUITE 505
WASHINGTON, D.C. 20006
HARRISON D. McIVER, III
EXECUTIVE DIRECTOR



(202) 223-1760/FAX (202) 223-1803
HANDSET ID #HN 0686
INFORMATION HOTLINE:
1-800-231-7536
202-833-2054 (D.C. Area)

THE NATIONAL ORGANIZATION OF LEGAL SERVICES PROGRAMS

February 28, 1996

LOWENSTEIN, SANDLER

Douglas Eakeley, Chair
Legal Services Corporation
Lowenstein, Sandler, Kohl, Fisher & Boylan
65 Livingston Ave.
Roseland, NJ 07068

MAR 04 1996

RECEIVED

Alex Forger, President
Legal Services Corporation
750 1st St., N.E.
Washington, D.C. 20002

Dear Doug and Alex:

After reflecting on the LSC Board meeting last week, I appreciated even more the very difficult job you have leading a Corporation that is under attack on the Hill and by the right-wing. Similarly, I am moved on a daily basis by the many voices from program leaders who have to inform dedicated staff members who have devoted their lives to the provision of legal services to the poor that their employment will end. Of equal or perhaps greater significance is the unenviable and unavoidable chore of turning away clients in need of services because of the absence of resources.

During the meeting I chose not to speak on the record but I heard in my mind the voices of my colleagues and their clients saying that \$340 million does not nearly approach the resources necessary to meet an ever increasing demand for client services. At the same time, I am not politically naive to think that the final FY 1997 appropriations for LSC likely will be \$340 million. As Don put it in our meeting with LSC a couple of weeks ago, representation that programs will at least provide geographic coverage should be reassessed in light of the reduction in funding. Indeed, can we, with a straight face, continue to tell Congress that geographic coverage is even a plausible goal?

My silence at the meeting was a recognition that you, for practical political reasons, had little choice but to embrace the President's budget figure, though there is precedent to the contrary. It is clearly a different time and indeed a different place. Nonetheless, I submit it is important to inform congressional supporters, and those who are marginally supportive, of the specific impact that the reduced LSC FY 1996 budget will have upon the lives of citizens within their respective districts or states.

We all recognize the existence of a demoralized Legal Services community, grasping for us in Washington to stand up when it is important to do so. This you have done on the migrant funding and other issues, for which I commend you.

ANDREW J. STEINBERG
Chairperson
Western Massachusetts Legal Services
Springfield, Massachusetts

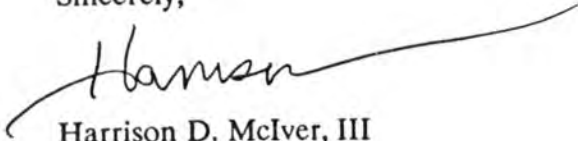
GLADYS BARNES
Vice-Chairperson
Legal Services Corporation of Alabama
Gadsden, Alabama

JOSÉ R. PADILLA
Vice-Chairperson
California Rural Legal Assistance
San Francisco, California

DOROTHY REED
Secretary/Treasurer
Legal Aid Society
Charleston, West Virginia

Please accept this correspondence in the positive manner in which it is intended.

Sincerely,

A handwritten signature in cursive script that reads "Hanson". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

Harrison D. McIver, III
Executive Director



LEGAL SERVICES CORPORATION

Suggested List of Priorities for Programs
Adopted by the Board of Directors of the Legal Services Corporation
May 20, 1996

Public Law 104-134, the omnibus legislation that includes the FY 1996 appropriation for the Legal Services Corporation, contains two modifications of current law relating to grantees' allocation of priorities in the use of resources. The governing boards of grantees are directed to set specific priorities in writing, pursuant to the Legal Services Corporation Act and the Corporation's priority-setting regulation, of the types of matters and cases to which they will devote time and resources, and their staffs must sign written agreements not to undertake cases or matters other than in accordance with these specific priorities except in emergency situations [Section 504 (a)(9)]. The Corporation itself is directed to promulgate a suggested list of priorities that local boards of directors may use in setting their local priorities [Section 504 (c)]. Accordingly, the following suggested list of priorities has been adopted by the Board at its meeting on May 20, 1996.

The one-third reduction in funding for the Legal Services Corporation for Fiscal Year 1996 requires that the Corporation's grantees exercise the utmost care in making the difficult and, at times, painful decisions as to the types of cases they can accept and the nature of the service they will provide. While the ultimate decision in these matters rests with the local program -- which must develop its own priorities within the context of the circumstances in its own community, in consultation with the client community, subject to applicable legislative and regulatory restrictions -- the Corporation expects each program to respond to the most compelling and critical needs of its eligible clients and to leverage its resources in order to compensate to the greatest degree possible for the inevitable reduction in client service resulting from this cut in funding. In meeting this crisis, each program must continue to maintain a high level of professionalism and quality in the delivery of legal services and in the observance of ethical standards.

To this end, and in response to the direction of Congress, the Corporation's Board of Directors has identified the following suggested priorities to help guide local legal services programs as they strive to continue to provide high quality, effective legal services to members of their communities. It has formulated this response in the context of the existing pattern of individual cases being handled nationwide, the largest category of which involves family matters,

in which the client base is disproportionately comprised of women and children. Hence, a principal focus by the Board of Directors is in the context of the family. Recognition is given, however, to other critical case needs comprising the everyday problems encountered by our eligible clients.

Support for Families

The cohesiveness of the family is not only a time-honored value fundamental to our American way of life but also the undergirding of the stability of our American society. Programs should take cognizance of the vulnerability of American families to problems requiring legal assistance for their resolution. The Corporation suggests that programs place a high priority on those cases in which legal assistance supports the integrity, safety, and well-being of the family.

Preserving the Home

Preservation of the home is essential to the well-being of every person. The loss of housing through uninhabitability, eviction or foreclosure can precipitate exposure to physical and medical risks in crowded shelters or the streets, disruption of the schooling of young children, loss of employment, and the splintering of families whose members may be dispersed in seeking alternate shelter. Enabling families to avoid loss of their home should be an important priority for grantees, as should assistance to those families or individuals who have become homeless.

Of equal importance is the assurance that families can be safe and secure in their places of residence. This is of particular concern in public housing complexes where crime and violent behavior put many families at risk. Legal assistance to tenant associations or other groups of eligible clients seeking to ameliorate the condition of a dangerous environment contributes to family well-being and should be a priority where appropriate. The Corporation also encourages grantees to give a high priority to representation of individual families threatened by unsafe or unhealthy conditions in both public and private rental housing.

Help may also be needed when physical harm to family living quarters is caused by natural disaster, such as flood, earthquake, fire and hurricane. Programs are urged to respond to the needs of clients in such emergencies and, when appropriate, to cooperate in joint endeavors with the Federal Emergency Management Agency. Funds may be available through special appropriations which programs can use to provide emergency services to clients in matters such as relocation, repair of housing, filing for benefits, and dealing with insurance, contractors, and creditors.

Maintaining Economic Stability

Families must be economically viable in order to survive. The Corporation encourages programs to give high priority to cases in which the family's source of income is at risk.

For the working poor, those seeking to avoid dependency and find a route out of poverty, the loss of a job may trigger a plummet into abject poverty, possibly leading to the loss of housing, access to health care, and even the breakup of the family. The prevention of unemployment may obviate a sequence of far greater legal activity, and should therefore be a high priority for legal services programs. In addition to matters directly involving employment law, other cases may fall into the category of potentially preventing joblessness, for example consumer cases relating to the tools of a worker's trade or to an automobile which is needed to transport the worker to the site of the job. A category of the working poor whose legal needs should not be overlooked in setting priorities are family farmers, who are especially vulnerable to the vagaries of weather and markets.

The Corporation also suggests that programs accord a high priority to cases involving parental responsibility for the support of their children. In light of recent legislative attention to this issue, the rate of success in obtaining child support from absent parents makes such representation an ever more efficient and cost-effective use of legal time.

For workers who have lost their jobs or become disabled or those who are otherwise unable to obtain employment, representation in cases involving eligibility for benefits to which they have a claim may be the only way to preserve a source of income for the family.

Other legal matters may threaten basic economic stability and therefore merit high priority. For example, a family entrapped by a fraudulent scheme may be forced into bankruptcy if it has no recourse to legal assistance.

Safety, Stability and Health

Domestic violence threatens the security and stability of families at all economic levels. The physical abuse of women, frequently mothers of children in the household, as well as neglect and harm to children themselves, calls for heightened awareness in, and quickened responsiveness by, the justice system. The intervention of legal service lawyers in obtaining judicial remedies, such as orders of protection, can be life-saving. Every program should endeavor to offer that vital assistance.

Representation in legal separation or divorce may also be essential to sustain what remains of a viable family structure, especially as it relates to regularization or clarification of the custody of children. Programs should also consider representation where dissolution of the marital relationship is the result of abandonment or other compelling circumstances, applying their own assessment of priorities to take cognizance of the exigencies of each situation.

Representation in cases involving access to health care may also be essential to preserve the security and stability of families, and should be accorded an appropriate priority.

Populations with Special Vulnerabilities

While the Corporation encourages programs to focus prime attention on providing support for families, this cannot and should not be to the exclusion of assistance to individuals living outside a family context. This is particularly true with respect to the growing numbers of elderly individuals in our population who are among the most vulnerable, particularly as their capacity to make independent and informed judgments diminishes. In addition to assurance of access to basic needs of life -- food, shelter and medical care -- they often require remedies against the unscrupulous who take unfair advantage in their dealings with them.

Programs should also pay particular attention to other similarly vulnerable individuals within their service areas who, in addition to being in a marginal economic status, are less capable of fending for themselves by reason of difference in language, cultural and educational backgrounds, disability, or other special problems of access to legal assistance or special legal needs.

The Delivery of Legal Services

Apart from the focus on substantive issues or client populations, the Corporation expects its grantees to give attention to matters relating to the nature or method of delivery of legal services. The sharp reduction in funding will necessarily cause programs to turn away an increasing number of eligible clients needing assistance. Before the FY 1996 reduction, it had been estimated that only a fraction of the legal needs of low-income clients were being met, perhaps as little as twenty percent. In some of our programs, the turn-away rate of those who sought assistance was over fifty percent. The Corporation understands that a one-third budgetary cut may well, in a given program, translate into a reduction in service capability greater than one-third, as staff and fixed commitments do not yield to simple proportionate reductions. It is therefore essential that each program consider methods by which it can stretch its resources in an effort to compensate in part for the substantial loss in capacity.

To this end, the Corporation urges programs to make maximum use of available technology in screening, researching and responding to client needs. Because the Corporation can offer no assistance with acquisition of equipment, we suggest programs consider discrete fundraising projects for this purpose. Centralized intake through hotlines and computerized networks can facilitate referrals and brief service and result in more efficient use of lawyer time. Similarly, community legal education, *pro se* representation and other forms of self-help can reduce the need for legal intervention, enabling programs to conserve their resources for matters most requiring a lawyer's help.

The Corporation recommends that programs place a high priority on activities designed to involve the entire community in sharing the responsibility for facilitating access to justice. Special attention should be accorded to the involvement of the private bar in the provision of *pro bono* client representation. Although increased *pro bono* services will not make up for the effects of

the current cutbacks in funding for the Corporation, involvement of the private bar represents an important supplement to direct service by Corporation grantees. In addition to *pro bono* representation, the private bar can provide assistance in relevant substantive areas of law, training for staff and volunteers, and both direct financial support and assistance with fundraising. Law schools and other law-related entities can also make unique contributions. The community at large, including clients, religious and civic groups, community service agencies, and business enterprises and organizations should also be included in efforts to broaden each program's outreach effort.

Conclusion

The Legal Services Corporation recognizes that different communities have different needs, and will respect the autonomy of every grantee to make decisions that reflect the resources available to it and the demographics and peculiar circumstances of its client populations. In some communities, issues not touched upon here may be of grave concern to clients, and worthy of being accorded a high priority. Nevertheless, we expect that each grantee will give careful consideration to the issues which have been identified here as priorities from the Corporation's nationwide perspective.

**TALKING POINTS ON LEGAL SERVICES CORPORATION ISSUES
IN THE COMMERCE, JUSTICE, STATE, THE JUDICIARY AND RELATED
AGENCIES FY 96 APPROPRIATIONS CONFERENCE REPORT (H.R. 2076)**

The House and Senate Commerce, Justice, State, the Judiciary and Related Agencies appropriations bills (H.R. 2076) are substantially similar on most issues affecting the Legal Services Corporation (LSC). In most of those areas of difference we favor the Senate language. We urge the Conferees to recede to the Senate provisions on the following issues:

I. Funding and Distribution of Funds

1) Conferees should support the Senate's mark of \$340 million. This amount represents a 15 percent cut from LSC's post-rescission FY 95 funding level compared to the one-third cut in the House bill. LSC estimates that at the House level of funding 150,000 fewer potential clients and their families, totalling upwards of a half million people, would be served and as many as an additional 100 legal aid offices, a large proportion of them in rural areas, would be forced to close.

2) Conferees should support the distribution of funds in the Senate bill, which would provide \$13 million for LSC Management and Administration (M&A), to be allocated by the LSC Board. The House bill would drastically slash LSC's M&A budget from the current level of \$10 million to \$5 million. The total of LSC's fixed obligations for FY 96 is \$3.6 million. If the M&A budget is reduced to \$5 million, M&A is left with only \$1.4 million to meet its expenses for the rest of the year. At this level of funding LSC will be forced to lay off more than 50 employees immediately. (In anticipation of reduced funding, LSC has already reduced its staff from 97 to 68 people.) Severance payments for these employees would total approximately \$500,000, leaving only \$900,000 for operating expenses for the rest of FY 96 and permitting a staff of approximately 15. Clearly this reduction in staff and funding would completely undermine LSC's ability to implement competition and fulfill other programmatic responsibilities. Also, the Senate bill would permit the LSC Board of Directors to allocate its M&A funds in a way that will ensure continuity in the compliance monitoring function.

3) Conferees should support the Senate provision which addresses the special needs of certain populations. Both the House and the Senate bills call for a funding formula based on the 1990 census that would distribute funds equally among geographic regions for basic field programs. However, the Senate bill would allocate an amount of money at the national level from which to make grants for the direct delivery of legal assistance to Native Americans and would permit LSC to allocate an amount of money for migrant farmworker programs. While the House bill does not prevent LSC from serving these special populations, additional assistance would not be possible under the per capita poor person formula. In addition, the Senate bill would allow LSC to continue its current practice of funding programs in Alaska, Hawaii and the Virgin Islands on the basis of an adjusted census count in order to take into account the high costs of delivering services in these areas.

II. Transition and the Date for Implementation of Competition

- 1) Conferees should support the provision in the Senate bill that would permit legal services programs to complete existing cases that were begun before the Appropriations Act becomes law, but which could no longer be brought in 1996 under the restrictions in the Appropriations Act. Such a provision is essential to permit legal services programs to withdraw from pending cases, find alternative counsel and take necessary steps in cases pending before the courts to obtain approval from the judges involved. If programs are not given time for such a transition, they will encounter serious problems in complying with state ethical rules governing representation of clients. Many will be faced with orders from judges requiring the program to continue representation in cases where alternative counsel is not available or where the case is at a stage that requires the continuation of the current attorney. In such cases they would be required to discontinue the provision of services with LSC funds.

- 2) Conferees should support the provision in the Senate bill providing for a date of September 1, 1996, for the implementation of a competitive system for awarding grants. The House bill requires the system to be in operation by January 1, 1996, which is only a few weeks away. While implementation of our competition plan is well under way, additional time is necessary to evaluate applications fully and provide technical assistance to new applicants in order to ensure that the competitive system for awarding grants is fairly implemented.

III. Correcting Unintended Consequences of the House Bill

- 1) Conferees should support the provision in the Senate bill that would permit programs to accept fee-generating cases if private attorneys are not available or are unwilling to take the case. The House bill could be interpreted to prevent a recipient from taking a fee-generating case even if private attorneys were not available or were not willing to take the case. Many nominally fee-generating cases involve such small fees for the work required that private attorneys will not take the cases. For example, Black Lung cases provide for fees, but the fees are so small that private attorneys in Kentucky have not taken and will not take such cases. These are handled today by legal services programs in Kentucky. In Alaska, there is a general fee-shifting provision for all civil cases, so that virtually all the litigation that Alaska Legal Services does could be viewed as fee-generating. In some rural areas of the country there are no private attorneys available to take cases whether or not they are fee-generating.

- 2) Conferees should support the provision of the Senate bill that would permit legal services programs to use non-LSC funds to contact, communicate with and respond to requests regarding the funding of a recipient by a State or local legislative body or administrative agency. Recipients should be encouraged to seek funds from state and local legislative and administrative bodies to expand the availability of legal services to the poor. Recipients which receive funds from such bodies should be able to communicate with and respond to such bodies when they are considering issues affecting the recipient's funding.



LEGAL SERVICES CORPORATION

750 1st St., NE, 11th Fl., Washington, D.C. 20002-4250

(202) 336-8800

Fax (202) 336-8959

FAX REQUEST

Alexander D. Forger
President

Writer's Direct Telephone
(202)

ROUTINE: _____
CONFIDENTIAL: _____

TO: Melanne Vereer

FAX NO.: 456-6244

DATE: 3/22/96

FROM: Gail W. Laster, Director - Government Relations

PHONE NO: 202-336-8815

Number of Pages Sent: _____ **(not including cover page)**
Hard Copy to Follow: Yes _____

REMARKS: FYI - Anti LSC "CRAFTS" Letter.

If there is a transmission problem, please contact me at the above number. Thank you.

BOARD OF DIRECTORS - Douglas S. Eakeley, Chairman, Roseland, NJ

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Congress of the United States

Washington, DC 20515

March 20, 1996

The Honorable Dick Arney
Majority Leader
U.S. House of Representatives
H-329, The Capitol
Washington, D.C. 20515

Dear Dick:

We are writing with regard to the Omnibus Fiscal Year 1996 Appropriations bill (H.R. 3019) and funding for the Legal Services Corporation.

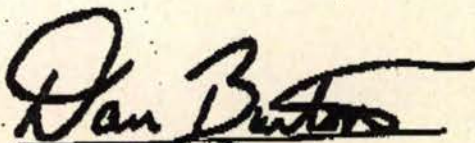
As you will recall, after lengthy negotiations last year, we reached an agreement to fund the LSC at no more than \$276 million for Fiscal Year 1996, \$141 million for Fiscal Year 1997, and \$0 for Fiscal Year 1998. You and the rest of our leadership have been diligent in ensuring adherence to this agreement.

It has come to our attention that the Senate version of the continuing resolution contains a funding level of \$300 million for Legal Services. In addition, the Cohen Amendment, approved by the Senate Thursday evening, creates a massive loophole allowing legal services grantees to engage in lobbying activities.

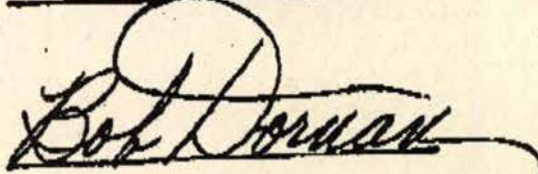
We are writing to ask that you, along with our conferees, resist all pressure from the Senate and the White House to go along with any funding level in excess of \$276 million. Every additional dollar that we appropriate is another dollar that the LSC has to continue engaging in politically motivated litigation, such as challenging the constitutionality of welfare reform and blocking public housing developments from evicting drug dealers. We also request that you ask our conferees to oppose inclusion of the Cohen Amendment in the conference report. Experience has shown that legal services lawyers will exploit the smallest of loopholes to flout the will of Congress and pursue their radical agenda.

Thank you for your continued assistance on this very important issue.

Sincerely,









PRINTED ON RECYCLED PAPER

U.S. DEPARTMENT OF JUSTICE

OFFICE OF LEGISLATIVE AFFAIRS

FACSIMILE COVER SHEET



TO: Melanne Verveer

FAX NO.: 456-6244

FROM: BOB BRINK

PHONE: 202/514-2138

DATE: 7-14-95

NO. OF PAGES: 18 (EXCLUDING COVER)

COMMENTS: L.S.C. -- HOUSE APPROPS

BILL AND REPORT LANGUAGE

1 amount of Japanese currency not to exceed the equivalent
2 of \$1,420,000 based on exchange rates at the time of pay-
3 ment of such amounts as authorized by Public Law 94-
4 118.

5 LEGAL SERVICES CORPORATION

6 PAYMENT TO THE LEGAL SERVICES CORPORATION

7 For payment to the Legal Services Corporation to
8 carry out the purposes of the Legal Services Corporation
9 Act of 1974, as amended, \$278,000,000 of which
10 \$265,000,000 is for basic field programs; \$8,000,000 is
11 for the Office of the Inspector General, of which
12 \$5,750,000 shall be used to contract with independent au-
13 diting agencies for annual financial and program audits
14 of all grantees in accordance with Office of Management
15 and Budget Circular A-133; and \$5,000,000 is for man-
16 agement and administration.

17 ADMINISTRATIVE PROVISIONS—LEGAL SERVICES

18 CORPORATION

19 SEC. 501. Funds appropriated under this Act to the
20 Legal Services Corporation shall be distributed as follows:

21 (1) The Corporation shall define geographic
22 areas and funds available for each geographic area
23 shall be on a per capita basis pursuant to the num-
24 ber of poor people determined by the Bureau of the
25 Census to be within that geographic area: *Provided*,
26 That funds for a geographic area may be distributed

1 by the Corporation to one or more persons or enti-
2 ties eligible for funding under section 1006(a)(1)(A)
3 of the Legal Services Corporation Act, subject to
4 sections 502 and 504 of this Act.

5 (2) The amount of the grants from the Cor-
6 poration and of the contracts entered into by the
7 Corporation in accordance with paragraph (1) shall
8 be an equal figure per poor person for all geographic
9 areas, based on the most recent decennial census of
10 population conducted pursuant to section 141 of title
11 13, United States Code.

12 SEC. 502. None of the funds appropriated in this Act
13 to the Legal Services Corporation shall be used by the
14 Corporation in making grants or entering into contracts
15 for the provision of legal assistance unless the Corporation
16 ensures that the person or entity receiving funding to pro-
17 vide such legal assistance is—

18 (1) a private attorney or attorneys admitted to
19 practice in one of the States or the District of Co-
20 lumbia;

21 (2) a qualified nonprofit organization chartered
22 under the laws of one of the States or the District
23 of Columbia, a purpose of which is furnishing legal
24 assistance to eligible clients, the majority of the
25 board of directors or other governing body of which

1 is comprised of attorneys who are admitted to prac-
2 tice in one of the States or the District of Columbia
3 and who are appointed to terms of office on such
4 board or body by the governing bodies of State,
5 county, or municipal bar associations the member-
6 ship of which represents a majority of the attorneys
7 practicing law in the locality in which the organiza-
8 tion is to provide legal assistance;

9 (3) a State or local government (without regard
10 to section 1006(a)(1)(A)(ii) of the Legal Services
11 Corporation Act); or

12 (4) a substate regional planning or coordination
13 agency which is composed of a substate area whose
14 governing board is controlled by locally elected offi-
15 cials.

16 SEC. 503. None of the funds appropriated in this Act
17 to the Legal Services Corporation for grants or contracts
18 to basic field programs may be obligated unless such
19 grants or contracts are awarded on a competitive basis:
20 *Provided*, That not later than sixty days after enactment
21 of this Act, the Legal Services Corporation shall promul-
22 gate regulations to implement a competitive selection proc-
23 ess: *Provided further*, That such regulations shall include,
24 but not be limited to, the following selection criteria:

1 (1) The demonstration of a full understanding
2 of the basic legal needs of the eligible clients to be
3 served and a demonstration of the capability of serv-
4 ing those needs.

5 (2) The quality, feasibility, and cost effective-
6 ness of plans submitted by the applicant for the de-
7 livery of legal assistance to the eligible clients to be
8 served.

9 (3) The experiences of the Corporation with the
10 applicant, if the applicant has previously received fi-
11 nancial assistance from the Corporation, including
12 the applicant's record of past compliance with Cor-
13 poration policies, practices, and restrictions:

14 *Provided further*, That, such regulations shall ensure that
15 timely notice for the submission of applications for awards
16 is published in periodicals of local and State bar associa-
17 tions and in at least one daily newspaper of general cir-
18 culation in the area to be served by the person or entity
19 receiving the award: *Provided further*, No person or entity
20 that was previously awarded a grant or contract by the
21 Legal Services Corporation for the provision of legal as-
22 sistance may be given any preference in the competitive
23 selection process: *Provided further*, That for the purposes
24 of the funding provided in this Act, rights under sections
25 1007(a)(9) and 1011 of the Legal Services Corporation

1 Act (42 U.S.C. 2996f(a)(9) and 42 U.S.C. 2996j) shall
2 not apply.

3 SEC. 504. None of the funds appropriated in this Act
4 to the Legal Services Corporation may be used to provide
5 financial assistance to any person or entity—

6 (1) that makes available any funds, personnel,
7 or equipment for use in advocating or opposing any
8 plan or proposal, or represents any party or partici-
9 pates in any other way in litigation, that is intended
10 to or has the effect of altering, revising, or reappor-
11 tioning a legislative, judicial, or elective district at
12 any level of government, including influencing the
13 timing or manner of the taking of a census;

14 (2) that attempts to influence the issuance,
15 amendment, or revocation of any executive order,
16 regulation, or similar promulgation by any Federal,
17 State, or local agency;

18 (3) that attempts to influence any decision by
19 a Federal, State, or local agency, except when legal
20 assistance is provided by an employee of a grantee
21 to an eligible client on a particular application,
22 claim, or case, which directly involves the client's
23 legal rights or responsibilities, and which does not
24 involve the issuance, amendment, or revocation of
25 any agency promulgation described in paragraph (2);

1 (4) that attempts to influence the passage or
2 defeat of any legislation, constitutional amendment,
3 referendum, initiative, or any similar procedure of
4 the Congress of the United States, or by any State
5 or local legislative body;

6 (5) that attempts to influence the conduct of
7 oversight proceedings of the Corporation or any per-
8 son or entity receiving financial assistance provided
9 by the Corporation;

10 (6) that pays for any personal service, adver-
11 tisement, telegram, telephone communication, letter,
12 printed or written matter, administrative expenses,
13 or related expenses, associated with an activity pro-
14 hibited in paragraph (1), (2), (3), (4), or (5);

15 (7) that brings a class action suit against the
16 Federal Government or any State or local govern-
17 ment;

18 (8) that files a complaint or otherwise pursues
19 litigation against a defendant, or engages in
20 precomplaint settlement negotiations with a prospec-
21 tive defendant, unless—

22 (A) all plaintiffs have been specifically
23 identified, by name, in any complaint filed for
24 purposes of litigation; and

1 (B) a statement or statements of facts
2 written in English and, if necessary, in a lan-
3 guage which the plaintiffs understand, which
4 enumerate the particular facts known to the
5 plaintiffs on which the complaint is based, have
6 been signed by the plaintiffs (including named
7 plaintiffs in a class action), are kept on file by
8 the person or entity provided financial assist-
9 ance by the Corporation, and are made avail-
10 able to any Federal department or agency that
11 is auditing the activities of the Corporation or
12 of any recipient, and to any auditor receiving
13 Federal funds to conduct such auditing, includ-
14 ing any auditor or monitor of the Corporation:
15 *Provided*, That upon establishment of reasonable
16 cause that an injunction is necessary to prevent
17 probable, serious harm to such potential plaintiff, a
18 court of competent jurisdiction may enjoin the dis-
19 closure of the identity of any potential plaintiff
20 pending the outcome of such litigation or negotia-
21 tions after notice and an opportunity for a hearing
22 is provided to potential parties to the litigation or
23 the negotiations: *Provided further*, That other parties
24 shall have access to the statement of facts referred

1 to in subparagraph (B) only through the discovery
2 process after litigation has begun;

3 (9) unless, after January 1, 1996, and prior to
4 the provision of financial assistance—

5 (A) the governing board of a person or en-
6 tity receiving financial assistance provided by
7 the Legal Services Corporation has set specific
8 priorities in writing, pursuant to section
9 1007(a)(2)(C)(i) of the Legal Services Corpora-
10 tion Act, of the types of matters and cases to
11 which the staff of the nonprofit organization
12 shall devote its time and resources; and

13 (B) the staff of such person or entity re-
14 ceiving financial assistance provided by the
15 Legal Services Corporation has signed a written
16 agreement not to undertake cases or matters
17 other than in accordance with the specific prior-
18 ities set by such governing board, except in
19 emergency situations defined by such board and
20 in accordance with such board's written proce-
21 dures for such situations:

22 *Provided*, That the staff of such person or entity re-
23 ceiving financial assistance provided by the Legal
24 Services Corporation shall provide to their respective
25 governing board on a quarterly basis, and to the

1 Corporation on an annual basis, all cases undertaken
2 other than those in accordance with such priorities:
3 *Provided further*, That not later than 30 days after
4 enactment of this Act, the Corporation shall promul-
5 gate a suggested list of priorities which boards of di-
6 rectors may use in setting priorities under this para-
7 graph;

8 (10) unless, prior to receiving financial assist-
9 ance provided by the Legal Services Corporation,
10 such person or entity agrees to maintain records of
11 time spent on each case or matter with respect to
12 which that person or entity is engaged in activities:
13 *Provided*, That any non-Federal funds received by
14 any person or entity provided financial assistance by
15 the Corporation shall be accounted for and reported
16 as receipts and disbursements separate and distinct
17 from Corporation funds: *Provided further*, That such
18 person or entity receiving financial assistance pro-
19 vided by the Corporation agrees (notwithstanding
20 section 1009(d) of the Legal Services Corporation
21 Act) to make such records described in this para-
22 graph available to any Federal department, or agen-
23 cy or independent auditor receiving Federal funds to
24 conduct an audit of the activities of the Corporation
25 or recipient receiving funding under this Act;

1 (11) that provides legal assistance for or on be-
2 half of any alien, unless the alien is present in the
3 United States and is—

4 (A) an alien lawfully admitted for perma-
5 nent residence as defined in section 101(a)(20)
6 of the Immigration and Nationality Act (8
7 U.S.C. 1101(a)(20));

8 (B) an alien who is either married to a
9 United States citizen or is a parent or an un-
10 married child under the age of twenty-one years
11 of such a citizen and who has filed an applica-
12 tion for adjustment of status to permanent resi-
13 dent under the Immigration and Nationality
14 Act, and such application has not been rejected;

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

21 (D) an alien who is lawfully present in the
22 United States as a result of the Attorney Gen-
23 eral's withholding of deportation pursuant to
24 section 243(h) of the Immigration and Nation-
25 ality Act (8 U.S.C. 1253(h)); or

1 (E) an alien to whom section 305 of the
2 Immigration Reform and Control Act of 1986
3 applies but only to the extent that the legal as-
4 sistance provided is that described in such sec-
5 tion:

6 *Provided*, That an alien who is lawfully present in
7 the United States as a result of being granted condi-
8 tional entry pursuant to section 203(a)(7) of the Im-
9 migration and Nationality Act (8 U.S.C. 1153(a)(7))
10 before April 1, 1980, because of persecution or fear
11 of persecution on account of race, religion, or politi-
12 cal calamity shall be deemed, for purposes of this
13 section, to be an alien described in subparagraph
14 (C);

15 (12) that supports or conducts training pro-
16 grams for the purpose of advocating particular pub-
17 lic policies or encouraging political activities, labor
18 or anti-labor activities, boycotts, picketing, strikes,
19 and demonstrations, including the dissemination of
20 information about such policies or activities, except
21 that this paragraph shall not be construed to pro-
22 hibit the training of attorneys or paralegal personnel
23 to prepare them to provide adequate legal assistance
24 to eligible clients or to advise any eligible client as
25 to the nature of the legislative process or inform any

1 eligible client of his or her rights under statute,
2 order, or regulation;

3 (13) that provides legal assistance with respect
4 to any fee-generating case: *Provided*, That for the
5 purposes of this paragraph the term "fee-generating
6 case" means any case which, if undertaken on behalf
7 of an eligible client by an attorney in private prac-
8 tice may reasonably be expected to result in a fee for
9 legal services from an award to a client from public
10 funds, from the opposing party, or from any other
11 source;

12 (14) that claims; or whose employees or clients
13 claim, or collect attorneys' fees from nongovern-
14 mental parties to litigation initiated by such client
15 with the assistance of such recipient or its employ-
16 ees;

17 (15) that participates in any litigation with re-
18 spect to abortion;

19 (16) that participates in any litigation on behalf
20 of a local, State, or Federal prisoner;

21 (17) that provides legal representation for any
22 person, or participates in any other way, in litiga-
23 tion, lobbying, or rulemaking involving efforts to re-
24 form a State or Federal welfare system, except that
25 this paragraph shall not preclude a recipient from

1 representing an individual client who is seeking spe-
2 cific relief from a welfare agency where such relief
3 does not involve an effort to amend or otherwise
4 challenge existing law;

5 (18) that defends a person in a proceeding to
6 evict that person from a public housing project if
7 that person has been charged with the illegal sale or
8 distribution of a controlled substance and if the evis-
9 tion proceeding is brought by a public housing agen-
10 cy because the illegal drug activity of that person
11 threatens the health or safety of other tenants resid-
12 ing in the public housing project or employees of the
13 public housing agency: *Provided*, That for the pur-
14 poses of this paragraph, the term "controlled sub-
15 stance" has the meaning given that term in section
16 102 of the Controlled Substances Act (21 U.S.C.
17 802): *Provided further*, That for the purposes of this
18 paragraph, the terms "public housing project" and
19 "public housing agency" have the meanings given
20 those terms in section 3 of the United States Hous-
21 ing Act of 1937 (42 U.S.C. 1437a);

22 (19) unless such person or entity agrees that it
23 and its employees will not accept employment result-
24 ing from in-person unsolicited advice to a
25 nonattorney that such nonattorney should obtain

1 counsel or take legal action: *Provided*, That such
2 person or entity or its employees receiving financial
3 assistance provided by the Corporation shall also
4 agree that such person or entity will not refer such
5 nonattorney to another person or entity or its em-
6 ployees that are receiving financial assistance pro-
7 vided by the Legal Services Corporation; or

8 (20) unless such person or entity enters into a
9 contractual agreement to be subject to all provisions
10 of Federal law relating to the proper use of Federal
11 funds, the violation of which shall render any grant
12 or contractual agreement to provide funding null
13 and void: *Provided*, That for such purposes the Cor-
14 poration shall be considered to be a Federal agency
15 and all funds provided by the Corporation shall be
16 considered to be Federal funds provided by grant or
17 contract.

18 SEC. 505. None of the funds appropriated in this Act
19 to the Legal Services Corporation or provided by the Cor-
20 poration to any entity or person may be used to pay mem-
21 bership dues to any private or non-profit organization.

22 SEC. 506. None of the funds appropriated in this Act
23 to the Legal Services Corporation may be used by any per-
24 son or entity receiving financial assistance from the Cor-

1 poration to file or pursue a lawsuit against the Corpora-
2 tion.

3 SEC. 507. None of the funds appropriated in this Act
4 to the Legal Services Corporation may be used for any
5 purpose prohibited or contrary to any of the provisions
6 of authorization legislation for fiscal year 1996 for the
7 Legal Services Corporation that is enacted into law: *Pro-*
8 *vided*, That, upon enactment of Legal Services Corpora-
9 tion reauthorization legislation, funding provided in this
10 Act shall from that date be subject to the provisions of
11 that legislation and any provisions in this Act that are
12 inconsistent with that legislation shall no longer have ef-
13 fect.

14 MARTIN LUTHER KING, JR. FEDERAL HOLIDAY
15 COMMISSION

16 SALARIES AND EXPENSES

17 For necessary expenses of the Martin Luther King,
18 Jr. Federal Holiday Commission, as authorized by Public
19 Law 98-399, as amended, \$250,000.

20 SECURITIES AND EXCHANGE COMMISSION

21 SALARIES AND EXPENSES

22 For necessary expenses for the Securities and Ex-
23 change Commission, including services as authorized by
24 5 U.S.C. 3109, the rental of space (to include multiple
25 year leases) in the District of Columbia and elsewhere, and

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE,
THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS
BILL, FISCAL YEAR 1996

JULY, 1995.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Mr. ROGERS, from the Committee on Appropriations,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R.]

INDEX TO BILL AND REPORT

	Page number	
	Bill	Report
Title I—Department of Justice	2	9
Title II—Department of Commerce and Related Agencies	32	44
Office of the United States Trade Representative	32	44
International Trade Commission	32	45
Department of Commerce	33	45
Title III—The Judiciary	47	74
Title IV—Department of State and Related Agencies	54	81
Department of State	54	81
Arms Control and Disarmament Agency	65	99
United States Information Agency	65	100
Title V—Related Agencies	70	106
Department of Transportation: Maritime Administration	70	107
Commission for the Preservation of America's Heritage Abroad	73	108
Commission on Civil Rights	73	108
Commission on Immigration Reform	73	109
Commission on Security and Cooperation in Europe	74	109
Competitiveness Policy Council	74	110

The Committee assumes the phase out of the FMC to begin during fiscal year 1996. The Committee has not gone further pending future action by the authorizing committee setting forth the deregulation of the maritime commerce industry. The Committee expects that the FMC will begin closing all field offices immediately, and that all field offices will be closed no later than March 31, 1996.

The FMC regulates the waterborne domestic and foreign offshore commerce of the United States.

FEDERAL TRADE COMMISSION
SALARIES AND EXPENSES

The Committee recommends total budget (obligational) authority of \$98,928,000 for the Salaries and Expenses of the Federal Trade Commission (FTC) for fiscal year 1996. Of this amount, \$16,000,000 is to be derived from prior year unobligated fee collections, and \$48,262,000 is to be derived from current year offsetting fee collections from pre-merger filing fees under the Hart-Scott-Rodino Act resulting in a net direct appropriation of \$34,666,000. The recommended budget authority freezes the FTC at the current appropriation, and is \$8,945,000 below the request.

The mission of the Federal Trade Commission is to enforce a variety of Federal antitrust and consumer protection laws. Under these laws, the Commission seeks to ensure that the nation's markets are competitive, function vigorously and efficiently, and are free from undue governmental and private restrictions. The Commission also seeks to improve the operation of the marketplace by eliminating deceptive and unfair practices.

The Committee recommends bill language, similar to that included in previous appropriations acts, which: (1) allows for purchase of uniforms and hire of motor vehicles; (2) allows up to \$2,000 for official reception and representation expenses; (3) allows for the collection of fees; (4) allows for the sum appropriated to be reduced as fees are collected; (5) allows fees in excess of the amount designated in the bill to be available in fiscal year 1997, and (6) prohibits the use of funds to implement section 151 of the Federal Deposit Insurance Corporation Improvements Act of 1991. The Committee has added new bill language making funds appropriated from the Treasury for the FTC available until expended. This language change is necessary to avoid setting up a separate accounting system to track appropriated funds versus fee revenue.

The Committee has been made aware of concerns about the FTC's involvement in areas more appropriately addressed by States and localities. As the Commission continues its ongoing review of antitrust and consumer protection policy and regulations, the Committee expects the FTC to identify those areas which are more appropriately enforced by the Commission and those which States and localities are better situated to enforce. The Committee encourages the FTC to conduct this review in consultation with the State attorneys general.

JAPAN-UNITED STATES FRIENDSHIP COMMISSION
SALARIES AND EXPENSES

The Committee recommends \$1,247,000 for the expenses of the Japan-United States Friendship Commission for fiscal year 1996. This amount reflects the same level of funding provided in fiscal year 1995. The bill also provides for an amount of Japanese currency not to exceed the equivalent of \$1,420,000. In accordance with Public Law 94-118, the interest earned on the principal in the trust fund is subject to the annual appropriations process.

The Committee intends that the funds provided be used for the promotion of scholarly, cultural, and business/economic relations between the United States and Japan.

LEGAL SERVICES CORPORATION
PAYMENT TO THE LEGAL SERVICES CORPORATION

The Committee recommendation provides a total of \$278,000,000 for the Legal Services Corporation, the same level as recommended in the House-passed Budget Resolution. This amount is a decrease of \$162,000,000 below the request, and \$122,000,000 below the fiscal year 1995 enacted level.

The Committee recommendation is distributed as follows:

	Fiscal year 1995	Recommendation
Basic field programs	\$345,898,000	\$265,000,000
Supplemental programs		
Native American	8,867,000	0
Migrant	12,759,000	0
National support	8,109,000	0
State support	9,373,000	0
Supplemental field	1,274,000	0
Regional training centers	711,000	0
Computer legal research	582,000	0
Clearinghouse	985,000	0
Law schools	726,000	0
Administration and oversight		
Management and administration	10,716,000	5,000,000
Inspector general	1,000,000	8,000,000

The Committee understands that the Corporation has been involved in a reimbursable agreement with the Court of Veterans Appeals to work with a consortium of veterans service organizations to recruit pro bono attorneys to represent veterans otherwise unable to obtain legal counsel in the appeals before the Court. The Committee supports this reimbursable agreement, and expects this agreement to continue in fiscal year 1996.

The Committee wants to ensure that a mechanism exists to provide poor individuals with access to the civil justice system. The Committee recommendation provides for the continuance of funding for direct legal services but at the same time eliminates areas of continuing controversy surrounding some of the activities of the Corporation and its grantees.

The Committee remains concerned that the Corporation has been unauthorized for a number of years. Consequently, each year, the Committee has been compelled to take action in the appropriations process to ensure Federal funds are spent consistent with the pro-

gram's mission of providing poor individuals access to the civil court system. The Committee believes a comprehensive review of the entire civil legal assistance system is long overdue, and hopes that such a review is conducted in the context of the authorization process, obviating the need for continued action in the appropriations process.

In the interim, the Committee believes it has a responsibility to ensure that such funding is spent in accordance with the program's mission. Therefore, in keeping with past practices, the Committee has included numerous administrative provisions on the allowable use of the funds provided, in many cases significantly strengthening current provisions, and in all cases applying the provisions to Federal and non-Federal funds used by a grantee. These provisions govern funds for the Corporation, pending final authorization action.

ADMINISTRATIVE PROVISIONS—LEGAL SERVICES CORPORATION

The Committee has included language in Section 507, providing that, upon enactment of authorization for the Corporation, such authorization will supersede all contradictory provisions in this act.

In Section 501, the Committee recommendation provides for funding for basic field programs to be distributed by geographic area, with such areas to be determined by the Corporation. Funding among the geographic areas will be distributed by a formula based on the number of poor people residing in each area.

The Committee recommendation includes numerous requirements which must be met by the Corporation and its grantees. These requirements fall into the following categories: (1) program quality and effectiveness; (2) program priorities; and (3) accountability.

Program Quality and Effectiveness.—The Committee includes several provisions designed to ensure that the highest quality of legal services is provided with funding under this Act. In Section 503 the Committee recommendation requires that all funds provided to the Corporation for the direct delivery of legal services will be awarded through a competitive selection system. Further, in Section 502 the Committee allows state and local governments, as well as substate and regional councils of government, an opportunity to compete to become service providers. The Committee believes that the competitive award of grantees, open to a wide array of potential service providers, will guarantee that the highest quality, most efficient programs are funded with limited federal dollars.

Further, in Section 504(9) the Committee includes requirements that all grantees receiving federal funds must establish and follow locally-decided priorities to meet the unique legal needs of their communities and has directed the Corporation to establish guidelines to assist local programs in establishing these priorities. The Committee notes that in a time of increasing budgetary constraints, it is important that all programs prioritize to ensure that they are able to meet the most pressing needs of the greatest number of their potential clients.

In Section 504(8), the Committee recommendation requires federally funded programs to name their clients and keep a record of the facts of the case on file. The Committee believes this is an impor-

tant tool to ensure that programs are meeting the priorities and goals of their programs in the most efficient and effective manner.

Program Priorities.—The Committee recommendation includes numerous terms and conditions which a potential grantee must meet in order to receive Federal funding. The Committee notes that Federal grants and contracts are voluntary agreements. It is both the right and the responsibility of the Congress to decide what programs and activities will be supported by Federal funds. Therefore, the Committee has included numerous terms and conditions which target scarce resources to programs whose mission is to provide basic legal assistance to the poor.

The Committee understands that advocacy on behalf of poor individuals for social and political change is an important function in a democratic society. However, the Committee does not believe such advocacy is an appropriate use of Federal funds. The Committee notes that there are hundreds of private organizations which can and do fulfill this advocacy role. The Committee notes that any funding devoted to advocacy is funding taken away from basic legal assistance.

The Committee recommendation requires that a grantee receiving Federal funding must agree not to engage or participate in: (1) redistricting activities or litigation (Section 504(1)); (2) actions in an attempt to lobby or influence any legislative or rulemaking activities, or interfere in oversight of the Corporation or its grantees (Section 504(2)–(6)); (3) class action litigation against a Federal, state, or local government (Section 504(7)); (4) political demonstrations, strikes, or union organizing activities (Section 504(12)); (5) abortion-related activities or litigation (Section 504(15)); (6) activities or litigation to influence welfare reform initiatives (Section 504(16)); (7) representation of illegal aliens (Section 504(11)); or (8) representation of Federal, state, or local prisoners in civil litigation (Section 504(16)).

In addition, Section 504(18) of the Committee recommendation prohibits funding to grantees who represent a public housing tenant facing an eviction proceeding brought by a public housing authority if that tenant has been formally charged by a prosecuting entity with the illegal sale or distribution of drugs. The Committee notes that the Corporation's Board of Directors adopted a similar resolution, governing Federal funds, recently. The Committee commends the Corporation's initiative and believes that it is inappropriate for Federal funding to support, either directly or indirectly, activities which impede the ability of public housing authorities to protect their residents from the continuing scourge of drug activity.

The Committee recommendation also requires that a grantee receiving Federal funding must refrain from: (1) accepting fee-generating cases (Section 504(13)); (2) collecting attorneys fees (Section 504(14)); or (3) soliciting clients (Section 504(19)). The Committee believes that Federally-funded legal aid programs should serve as a catalyst, not a replacement, for private bar activity. The Committee believes that cases which provide an opportunity for the collection of attorneys fees can be serviced by the private bar. Further, the Committee notes that Corporation grantees are supported by public resources in order to provide free legal aid to their clients. Therefore, the Committee believes it is inappropriate for attorneys

fees to be collected for free legal aid. Finally, the Committee finds it unacceptable for any Federally-funded legal aid program to solicit clients at a time when the Corporation and the legal aid community continue to testify that they must turn eligible clients away due to lack of resources.

The Committee notes that previous appropriations acts have imposed many similar restrictions on a grantee's Federal funds, as these are often highly political and controversial activities which do not serve the core function of providing basic legal representation to poor individuals. The Committee recommendation significantly strengthens current restrictions and expands them to encompass all funding received by a grantee by restricting a Federal grant from being made to an entity that engages in these restricted activities. The Committee believes that it is inappropriate for Federal resources to be used to support directly or indirectly these activities. Such activities only further drain much needed resources from the program's core mission—to provide basic legal aid to poor individuals. Further, the Committee must note that there are hundreds of private advocacy and special interest organizations which have the expertise, the resources, and the interest in pursuing these types of issues.

Accountability.—The Committee recommendation also includes several provisions to strengthen financial management and accountability over legal aid programs. Section 504(10) requires that all grantees institute timekeeping. Further, all legal aid programs funded will be subject to financial and compliance audits. Bill language requires that these audits will be conducted by an independent, private accounting firm, in accordance with audit guidelines established by Office of Management and Budget Circular A-133. Further, section 504(20) requires all programs receiving Federal funds to comply with Federal statutes and regulations governing waste, fraud, and abuse of Federal funds. The Committee believes that these actions will provide invaluable tools to evaluate and ensure program effectiveness and accountability.

The Committee recommendation also includes in section 505 a prohibition against the use of Federal funds to be used to pay membership dues or fees to advocacy or professional membership organizations. The Committee believes such use of Federal tax dollars is inappropriate and does nothing to serve the needs of indigent clients.

Finally, section 506 of the Committee recommendation prohibits an organization from using its Federal funds to sue the Corporation. Again, the Committee notes that Federal funding is provided to represent individual poor people in seeking redress through the civil court system. Any use of scarce federal dollars to the contrary does not further this goal.

MARINE MAMMAL COMMISSION

SALARIES AND EXPENSES

The Committee recommends no appropriation for the Marine Mammal Commission in fiscal year 1996. This is \$1,425,000 below its request, and \$1,384,000 below its current appropriation.

The Committee believes that the goals that the Marine Mammal Commission seeks to accomplish can be achieved without the expenditure of taxpayer dollars. The Commission's review of Federal efforts to protect marine mammals is duplicative of internal controls established by other agencies, as well as congressional oversight. Further, the Committee believes that non-governmental organizations are equally capable of providing objective analysis of proposed agency rulemaking regarding the protection of marine mammals. A separate federal agency devoted solely to marine mammals cannot be justified in this time of extreme budget constraint.

MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

SALARIES AND EXPENSES

The Committee recommends \$250,000 for the Martin Luther King, Jr. Federal Holiday Commission, which is \$100,000 below the request and \$50,000 below the current level of funding. The Commission's Operations Committee presented a motion which was passed by the Full Commission to sunset the Commission at the end of fiscal year 1996. The Committee recommendation will allow the Commission to proceed with the funding of activities through fiscal year 1996.

The Commission was established in order to encourage and promote appropriate ceremonies and activities throughout the United States related to the observance of the Federal legal holiday honoring Martin Luther King, Jr., and to provide assistance to Federal, State and local governments and to private organizations concerning the observance of the holiday.

The Committee intends that the funds provided be used toward programming and any shutdown costs for the Commission. The Committee understands that a transition team to carry out an orderly sunset of the Commission has been appointed, and expects to be kept fully informed of the progress of the transition team.

OUNCE OF PREVENTION COUNCIL

The Committee recommends no appropriation for the Ounce of Prevention Council in fiscal year 1996. This is \$14,700,000 below the request, and \$1,500,000 below the amount provided to the Council in fiscal year 1995. Close-out costs are to be funded from carry-over balances available to the Council.

The Ounce of Prevention Council is intended to have two purposes—program coordination and grant-making. The program coordination function includes such things as the development of a crime prevention program catalogue and the creation of strategies for program integration and grant simplification. The Committee believes the coordination of prevention programs can be accomplished without the creation of another level of bureaucracy to carry out these types of activities, which cannot be justified within the context of streamlining and reinventing government. The Office of Justice Programs currently funds the coordination of crime prevention efforts at the State and local levels through programs such as the National Crime Prevention Council.