

**STATEMENT OF**

**DOUGLAS S. EAKELEY  
CHAIRMAN, BOARD OF DIRECTORS**

**JOHN N. ERLNBORN  
VICE CHAIRMAN, BOARD OF DIRECTORS**

**MARTHA BERGMARK  
PRESIDENT**

**LEGAL SERVICES CORPORATION**

**Presented to the**

**SUBCOMMITTEE ON COMMERCE, JUSTICE  
STATE, THE JUDICIARY, AND RELATED AGENCIES**

**of the**

**COMMITTEE ON APPROPRIATIONS**

**OF THE**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**February 26, 1997**

Mr. Chairman and Members of the Subcommittee, thank you very much for the opportunity to testify. The Legal Services Corporation welcomes this opportunity to make the case for its mission, its effectiveness and its efficiency, and to address any concerns that you may have about the program.

The Legal Services Corporation requests an appropriation of \$340,000,000 for FY 1998. The foundation of our request and our testimony today is our belief that the functions performed by the Corporation are essential to the well-being of our nation and that the present legal services delivery system is worthy of preservation.

The principle of "Equal Justice Under Law" is fundamental to our system of government, and all Americans have a stake in securing respect for the rule of law, which cannot be elicited unless the judicial system is both just and accessible to all citizens.

### **The Basic Structure of the Legal Services Delivery System Should be Preserved**

We believe that the present structure of the legal services delivery system -- based upon the principles of local control, public-private partnership, promotion of volunteerism, accountability to the taxpayers, elimination of layers of bureaucracy and unnecessary paperwork, and an emphasis on efficiency and effectiveness -- has demonstrated its strength and effectiveness.

- In our FY 1998 Budget Proposal, as in the past, approximately 97 percent of the Corporation's budget goes directly to local programs that provide legal services to the poor, with only three percent going to the Corporation's centralized oversight, management and

disbursement functions.

- For the size of its appropriation, the Corporation's staff is extraordinarily small: in our Budget Proposal we seek a staff of 93, including 18 in the Office of the Inspector General, to administer and oversee the entire legal services delivery system.

- Decisions about the allocation of legal services are made not by a bureaucracy in Washington but locally, by the governing bodies of independent, locally incorporated legal services programs, the majority of whose members are appointed by local bar associations.

- Services are provided not by government lawyers but by attorneys hired in their local communities, who are generally paid far less than their counterparts in either the public or the private sector.

- Local programs build upon their grants from the LSC with funding from additional sources. In 1995 grantees reported having received \$254 million from state and local governments, the private bar, other private contributors and other federal agencies.

- Local legal services programs further leverage federal funds through *pro bono* programs that involve private attorneys in the delivery of legal services for the poor. Basic field programs are required to devote an amount equal to one-eighth of their LSC grants to private attorney involvement. More than 130,000 lawyers are registered as volunteer attorneys in organized *pro bono* programs. In recent years they have been handling approximately a quarter of a million cases per year.

- At a time when Americans are concerned about the increasing litigiousness of our society, the legal services delivery system offers a model of efficient resolution of disputes and avoidance of unnecessary litigation. Most legal services cases are resolved through

advice, brief services, administrative proceedings, or negotiated settlements. Only eight percent of legal services cases are resolved through litigation, and the majority of these are family law cases that by law must be decided by a court. Instead, legal services lawyers find other, more efficient ways to solve problems for their clients. The tremendous pressure they are under because of the need for their services makes them very aware that they must use their resources wisely.

- The vast majority of cases handled by local programs are non-controversial, individual cases arising out of the everyday problems of the poor. Although they are sometimes referred to as "routine," such cases often represent matters of crisis for individual clients and their families. The possible consequences may be as serious as the loss of a family's home or its only source of income or the break-up of the family itself. Left unresolved, such problems can cost society far more than the cost of legal services to help address them.

### **The Corporation Has Made Major Changes in the Past Year**

In 1995 and 1996, Congress reached a new consensus concerning federally-funded legal services for the poor, supported by a majority of both the Senate and the House of Representatives. Congress reaffirmed the federal government's interest in providing representation for individuals facing legal problems who would otherwise be unable to afford assistance, but agreed that federal funds should go to programs that handle individual cases, while broader efforts to address the problems of the client community should be left to entities that do not receive federal funds. To implement the consensus, a

series of new restrictions were placed upon activities in which LSC-funded programs can engage on behalf of their clients, even with non-LSC funds. Congress also prohibited programs from representing certain categories of clients. Finally, Congress changed the system for awarding LSC grants to one based upon a system of competition, to ensure greater accountability and promote improvements in quality and efficiency among grantees. The Corporation has moved promptly to implement the congressional mandate.

**Regulations:** Even before its FY 1996 appropriation became final, the Corporation notified all grantees of the steps that would be necessary to comply with the pending restrictions. As soon as the appropriation was enacted, the Corporation provided formal notice of the new requirements to grantees through a Program Letter. At its July 20, 1996, meeting, the Corporation's Board adopted fourteen emergency interim regulations implementing the new restrictions. They were published in the Federal Register on August 13 and August 29, 1996, and were effective upon publication. Final regulations on the following restrictions were published in the Federal Register on December 2, 1996: use of non-LSC funds; class actions; redistricting; and representation in certain eviction proceedings. The Board has also adopted final regulations, which are currently being prepared for submission to the Federal Register, on the following issues: fee-generating cases; lobbying; priorities; aliens; subgrants and membership fees or dues; client identity and statement of facts; prisoners; solicitation; and application of federal law to LSC recipients. The only restrictions which have not yet been adopted by the Board as final regulations are the prohibitions on challenges to welfare reform and on seeking attorneys

fees; the interim regulations on these matters remain in effect. Guidance from the Corporation's House and Senate appropriating subcommittees has been solicited and received throughout the regulatory process.

The Corporation is vigorously defending its regulations and the underlying statutory provisions in two lawsuits brought by grantees challenging the restrictions. Fortunately, we have found able counsel to represent us on a *pro bono* basis. In one of those cases, *Legal Aid Society of Hawaii vs. LSC*, a Federal judge has just issued a preliminary injunction barring the Corporation from enforcing some of its regulations against the plaintiffs, insofar as they restrict the use of non-LSC funds, on the grounds that LSC's policies on transfer of funds and interrelated organizations go too far in limiting the exercise of First Amendment rights. From the perspective of the Corporation and the Congress, the decision confirms the basic principle that Congress may prohibit grantees from using both LSC and non-LSC funds for activities that it deems to be inappropriate. The Court found no constitutional issues implicated by LSC's restrictions on class action lawsuits, claims for attorneys fees, and representing restricted categories of aliens. With regard to the restrictions on the use of non-LSC funds for other activities which the Court deemed protected by the First Amendment (such as lobbying, representing certain categories of U.S. citizens, and bringing litigation), the Court held that because of the constitutional guarantees involved, LSC's regulations must leave grantees some adequate alternative for participating in the protected activities. Applying the Supreme Court's test in *Rust v. Sullivan*, 500 U.S. 173 (1990), the Court found that the Corporation's regulations on interrelated organizations and transfer of funds did not allow for adequate

alternatives for participating in such activities with non-LSC funds. The Corporation and its attorneys will consider whether it is possible to address the Court's concerns about these regulations (and thus avoid additional lawsuits on the same grounds) by allowing some avenue for the expression of constitutional rights, without undermining the intent of Congress to restrict LSC grantees from using non-LSC funds for certain activities. We remain firmly committed to implementing the will of Congress, and will decide upon the legal strategy we deem best suited to defend the funding framework Congress has enacted.

**Enforcement:** The Corporation's FY 1996 appropriation provided for a limited transition period, lasting until August 1, 1996, for LSC grantees to dispose of pending cases and matters in three categories: class actions, litigation on behalf of prisoners, and representation of certain classes of aliens. The Corporation was required to report to the House and Senate Appropriations Committees every sixty days on the status of such cases and matters.

Our first report, on June 23, 1996, indicated that as of that date there were 630 class actions, 428 cases involving litigation on behalf of prisoners, and 2993 cases involving representation of aliens in the proscribed categories.

By the date of the next report, all but 27 of these cases had been closed, transferred to other attorneys, or otherwise resolved. In each of the instances in which a case remained open, we formally notified the programs involved pursuant to our regulations governing suspensions and terminations of funding that their failure to take prompt corrective action to bring themselves into compliance by resolving or transferring the case

would result in sanctions and render the program ineligible for future funding from the Corporation. We monitored each program's compliance with its plan closely. By the end of 1996, all grantees had reported that they had no further pending cases in these three categories.

Pursuant to its increased responsibility for grantee compliance monitoring, LSC's Office of Inspector General has initiated special performance audits to determine through on-site review whether eight selected grantees have complied with requirements of P.L. 104-134, including an assessment of whether grantees have divested prohibited cases as reported to the Corporation. When the Corporation receives final reports from OIG on these audits, we will take any steps which may be necessary to enforce compliance with the regulations.

**Competition:** The Corporation's FY 1996 appropriation required for the first time that LSC grants be awarded pursuant to a competition-based system. This represented a major change in the legal services delivery system, eliminating the right to refunding in the absence of specified program deficiencies provided by the Legal Services Corporation Act. The competitive system has now been implemented by regulation, 45 C.F.R. Part 1634. Due to the late enactment of the Corporation's FY 1996 appropriation, a shortened competition process, as allowed under the regulation, was employed for FY 1996. The FY 1997 competition process strictly adhered to the requirements of 45 C.F.R. 1634.

For FY 1997 grants, notice of the availability of grant funds was sent in June 1996 to all persons and organizations who had requested the FY 1996 Request for Proposals (RFP), state bar associations, newspapers in each state, law schools, non-LSC funded legal services



providers, current LSC recipients, state and local governments, and substate regional planning and coordination agencies. Approximately 1050 RFPs were distributed. Additionally, LSC staff made visits to various service areas to expand the outreach efforts and actively encourage participation in the competitive grant application process. In July 1996, the Corporation held a telephonic technical assistance conference, in which approximately 140 potential applicants participated. On the submission date of August 21, 1996, LSC received 291 proposals.

The Corporation's competitive review process is designed to evaluate each applicant's proposed legal services delivery approach, as measured against widely recognized quality standards, such as the American Bar Association Standards for the Providers of Civil Legal Services to the Poor and the LSC Performance Criteria. Pursuant to the statute and regulation, the competition process prohibits any preference to current or previous recipients of LSC funds. To evaluate the applications, LSC uses a two-tiered review process for both single applicant and multiple applicant service areas. For single applicant service areas, each application is subjected to an internal review by LSC staff and an independent review by an outside evaluator. For multiple applicant service areas, each application is subjected to an internal review by LSC staff and an independent review by a three-person panel of outside evaluators. Additionally, if circumstances require, on-site evaluation visits are conducted by LSC staff. The final funding decision is made by LSC's President.

Out of 352 service areas, there were multiple applicants in 37 service areas. As a result of the competition, in 14 service areas grants were awarded to applicants which did not receive the grant for that area in FY 1996. These include:

- three service areas for which the previous recipient did not apply and the grant was awarded to two new entities;
- two service areas for which the grant was awarded to a new program created as the result of merger of the previous recipients;
- one service area for which the grant was awarded to an existing recipient as the result of a merger;
- one service area for which a recipient serving another service area was chosen over the previous recipient;
- one service area for which the previous recipient did not apply and a recipient serving another service area was selected;
- one service area for which a recipient serving another service area was selected, and the previous recipient will be a subrecipient; and
- five service areas for which three recipients applied and the decision was made to award all five service areas to one recipient as a statewide provider.

Additionally, one service area, for which the Corporation declined to award the grant to the previous recipient, is currently being recompeted. For two service areas, the Corporation selected a private law firm over the previous recipients, and is currently negotiating with the firm to resolve certain issues relating to its compliance with statutory requirements.

Competition provides LSC with additional tools for improving program quality where necessary to insure the most effective and efficient delivery of high quality legal services. During the proposal review process, LSC is able to review the individual delivery mechanisms used by applicants and evaluate these mechanisms against established quality

standards. This enables LSC to make qualitative judgments about each applicant's capacity to deliver quality legal services. Where it is determined that other program improvements could enhance the delivery of legal services, they are identified and the recipients are advised of the need to address them. Where it is determined that an applicant does not meet the necessary quality standards and/or another applicant is better able to deliver legal services, LSC is able to select the better-qualified applicant.

**Equalization and Simplification of the Delivery System:** Prior to FY 1996, LSC had been required to follow a specific funding formula in awarding grants for basic field services. For historical reasons, service areas were funded at a variety of different levels in relation to their populations of individuals eligible for legal services. Under our FY 1996 appropriation, for the first time, grants were made on a strict per capita basis, thus equalizing the funding level for all grantees, with a few exceptions. In FY 1996, LSC also ceased to fund a number of categories of service providers which had been funded in the past: national support, state support, law school clinics, supplemental field programs, regional training centers, computer assisted legal research, and the Clearinghouse.

LSC's Budget Request for FY 1997 included only three categories of service areas: general basic field areas and areas consisting of two populations with special needs, Native Americans and migrants. Our Budget Request for FY 1998 eliminates the latter two as separate categories. Native American and migrant service areas will be funded as basic field service areas, as permitted by the current appropriations legislation.

**Grantee Financial and Compliance Audits:** The Corporation's management is cooperating with the Office of Inspector General in its implementation of a system for oversight of program compliance that relies primarily upon local program auditors for routine on-site monitoring, as required by Section 509 of the Corporation's FY 1996 appropriation.

**Timekeeping:** On June 25, 1995, the LSC Board of Directors adopted a resolution directing management to develop a timekeeping regulation in response to congressional concerns that stricter accounting requirements were necessary to guarantee that LSC funds and private funds are not used, directly or indirectly, to support activities prohibited by the LSC Act or regulations. Since May 31, 1996, all grantees have been required to have implemented timekeeping systems to maintain records of the time spent on each case or matter, pursuant to our regulation published at 45 C.F.R. Part 1635.

**Suggested List of Priorities:** As required by our FY 1996 appropriation, at its meeting on May 20, 1996, the Corporation's Board of Directors adopted a Suggested List of Priorities, to be considered by grantees in setting their local priorities. The Suggested List of Priorities was published in the Federal Register on May 29, 1996. The suggested priorities focus on protecting the integrity, safety and well-being of the family.

### **Neither State and Local Governments Nor the Private Bar Can Replace Federally Funded Legal Services for the Poor**

It is our firm belief that the preservation of the legal services delivery system is

essential to ensure access to the law for low-income Americans.

It has been suggested that state or local governments and the private bar should be responsible for legal services for the poor or could pick up the case load of the program. However, the experience of our grantee programs indicates that there is little likelihood that the majority of states and municipalities, already hard pressed to meet current budgetary demands, will take on the additional obligation of providing legal services if federal funding is eliminated. As Congress shifts financial responsibility for many social programs to the states, the competing claims for limited resources may well result in further loss of support for legal services. In many regions of the country, especially in rural areas with a high concentration of poor people, it is likely that there would be little or no publicly funded legal services available to the poor.

Nor is it realistic to expect that *pro bono* services from private attorneys can replace federally funded legal services. *Pro bono* services are now at an all-time high, primarily because of the efforts of the organized bar, the Corporation and local programs to involve private attorneys in the delivery of legal services. It is estimated that one sixth of all legal services cases were handled by private attorneys in 1994. Every effort is being made at the national and local level to significantly increase both the number of attorneys participating and the level of voluntary services, as well as direct financial support from the private bar. Nevertheless, even if the present level of *pro bono* services were doubled or tripled, they would replace only a fraction of the services now being provided by legal services attorneys, which in the aggregate meet only a small percentage of the need of the increasing population of eligible clients.

Moreover, *pro bono* programs typically depend upon legal services attorneys for training and support and legal services funding for basic intake and referral. Elimination of the Corporation and its grantees would thus eliminate the essential structure through which most *pro bono* services are provided. *Pro bono* programs, no longer able to rely upon legal services for funding, training and support, and overwhelmed with ongoing cases, would find it impossible to take on new cases that in the past would have been handled by legal services programs. The courts would be faced with large numbers of individuals forced to proceed *pro se*. The result would be serious disruption in our judicial system, to say nothing of the personal and financial dislocation that would occur in an abrupt termination of Corporation activities.

Replacing the funding of local legal services programs through LSC with a block grant system, as proposed in a bill reported out by the House Judiciary Committee in the last Congress, would be more costly and would reduce the efficiency of the system by requiring the addition of a new layer of bureaucracy at the state level. At the same time, it would eliminate the centralized system of accountability now provided by LSC. The delivery system funded through LSC already has the advantages that would be presented by a block grant system.

### **The Corporation's FY 1998 Budget Request**

The Legal Services Corporation seeks an appropriation of \$340,000,000 for FY 1998. For FY 1997, the Corporation's appropriation was \$283,000,000, slightly higher than the FY 1996 figure of \$278,000,000, but well below the original appropriation for FY 1995 of

\$415,000,000, of which \$15,000,000 was rescinded.

The \$340,000,000 requested for FY 1998 will be allocated as follows:

- \$318,070,000 for basic field services;
- \$12,000,000 for new client service technology initiatives;
- \$7,911,000 for the Corporation's management and administration; and
- \$2,019,000 for the Office of Inspector General, which includes a transfer of

\$287,000 in occupancy costs to the OIG.

### **Basic Field Programs**

The Corporation understands that in a time of diminished resources all federal spending must be carefully scrutinized. Nevertheless, we believe that in light of the overwhelming need for legal services on the part of low-income Americans, an allocation of \$318,070,000 for grants to basic field programs is both necessary and appropriate.

Even in prior years when LSC funding was considerably higher than it has been in FY 1997, local legal services programs were able to meet only a small fraction of the demand for services. A survey of selected local legal services programs in the spring of 1993 revealed that nearly half of all people who actually applied for assistance from local programs had to be turned away due to lack of program resources. As former Representative Guy Molinari stated when he testified before the House Appropriations Subcommittee in support of an appropriation of \$525,000,000 requested for FY 1994 by the LSC Board of Directors appointed by President Bush: "We 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."

During 1995, Corporation grantees closed approximately 1,700,000 cases, benefitting nearly 5,000,000 people, most of them children living in poverty. Although we have not yet received final statistics for 1996, it is clear that the 30 percent reduction in funding from the level of the prior year required LSC-funded programs to lay off attorneys, close neighborhood offices, and turn away clients in desperate need of services. In addition, restrictions on the use of non-LSC funds resulted in the loss of other sources of funding, including state and local governments. For FY 1998, LSC seeks a funding level which, while still inadequate to meet the need, will increase the number of clients who can be served. An allocation of \$318,070,000 would begin to mitigate the consequences of the 1996 cutbacks.

#### **New Client Service Technology Initiatives**

In FY 1998, the Corporation proposes to include in the category of grants to local programs a new initiative designed to promote the use of technology in the management and delivery of legal services. As a result of the recent budget cuts and increasing client need, LSC grantees are being urged to do more with less. A key component of achieving this goal is the use of modern technology. More effective use of technology can result in improved delivery of services, in such areas as intake systems, case management, legal work production, legal research, exchange of information, and program management. The Corporation's Inspector General, in his April 1996 report on *Increasing Legal Services Delivery Capacity Through Information Technology*, has concluded that better use of available technology could significantly increase delivery capacity.



Of the \$12 million the Corporation seeks for technology initiatives, \$10 million will be designated for special, one-time grants to LSC grantees to improve their capacity to use existing technology to increase the number of clients served and improve efficiency. Assuming that our FY 1998 appropriation allocates the amount we have requested for basic field grants (\$318,070,000), we would make available to each grantee an amount equal to 3.14 percent of its basic field grant. In order to receive the grant, each recipient would submit a plan, with a budget, setting forth how it proposed to spend this allocation for technological needs, based upon criteria that LSC would develop and disseminate. The criteria would specify that the grant could be used for computer hardware, software, printers, networks, telephone equipment, and support of technology (by contract or in-house). The grant would require a specified cost-sharing level, as well as a specified commitment to budget in future years an amount sufficient to maintain the equipment and stay abreast of developments in technology. In order to maximize the buying power of the one-time grants, the Corporation would develop a bulk purchasing program which would be available to grantees on a voluntary basis.

In addition, \$1.5 million will be allocated to projects designed to test and evaluate new directions in the use of technology in a legal services context. These include centralized, telephone-based intake systems, or "hotlines"; computer-based *pro se* and community legal education projects; and use of the Internet for training and support for legal services and *pro bono* attorneys. The remaining \$500,000 will cover overall evaluation of the project, the bulk purchasing program, temporary staffing, and other costs of administration.

### **LSC Management and Administration**

The LSC Board has determined that an allocation of \$7,911,000 to the Corporation's management and administration for FY 1998 will be necessary to permit LSC to carry out its various administrative and oversight responsibilities. In particular, the competition process requires a substantial effort on the part of LSC staff. On the basis of the 1997 competition, we have determined that an additional four positions are necessary in our Office of Program Operations. Adequate funds for consulting and travel associated with the competition process are also essential. In addition, we are seeking funding for one additional position in the Office of Administration/ Human Resources and one additional attorney in the Office of General Counsel.

### **Office of Inspector General**

Provisions in the Corporation's FY 1996 appropriation, continued in the current appropriations act, gave the Corporation's Office of Inspector General increased responsibility for monitoring grantee compliance with applicable laws and regulations. The OIG is now responsible for the routine on-site monitoring of grantees accomplished through annual audits conducted by independent public accountants in accordance with guidance established by the OIG and may conduct on-site monitoring directly.

The LSC Board requests \$2,019,000 for OIG in FY 1998. Only \$232,000 of this amount, however, represents an increase over the OIG's FY 1996 and FY 1997 budgets, which remained static at \$1,500,000. The increase covers two new positions, increased personnel compensation and computer equipment modernization costs, resulting in part from

implementation of the OIG's new responsibilities. The remaining amount, \$287,000, is not an increase, but represents funds transferred to the OIG line from the Management and Administration line. This transfer will implement a decision that the OIG line should reflect the cost of its own rent expense. OIG occupancy costs of \$287,000 (including rent and one-time construction) now, therefore, appear in the OIG line rather than in the Management and Administration line.

In conclusion, we want to emphasize that the Corporation remains fully committed to implementing Congress's intention that the legal services delivery system be refocused on serving individual clients with particular legal needs, and to enforcing the restrictions and other safeguards that Congress has imposed to achieve that result.

Mr. Chairman and Members of the Subcommittee, we thank you for your long tradition of bipartisan support for the Legal Services Corporation. We believe that the Corporation merits your continued support for its mission of ensuring that the poor of our country retain at least a minimal level of access to the system of justice by which we resolve disputes and vindicate individual rights.