U.S. COMMISSION ON CIVIL RIGHTS

BRIEFING ON LEGAL SERVICES CORPORATION

EXECUTIVE SUMMARY

On May 9, 1997, the Commission on Civil Rights held a briefing on civil rights implications in matters involving the Legal Services Corporation. The Commission frequently arranges such public briefings, with presentations from experts outside the agency and a representative range of advocates, in order to inform itself and the Nation of civil rights situations and issues.

The May 9, 1997 briefing was arranged after various public assertions and questions about how Federal funding reductions, restrictions on litigation by Legal Services Corporation grantees, and other issues were affecting, or would affect, access to the legal system by poor people. In proposing the briefing, Commission Vice Chairperson Cruz Reynoso expressed a special interest in exploring whatever civil rights implications there might be in such matters as the prohibition of class-action and other impact lawsuits by grantees.

The briefing had six panelists, divided into two panels. The panelists represented a variety of perspectives. Some panelists stated that civil rights had suffered significantly because of the restrictions on legal services and reductions in funding for Legal Services Corporation grantees, but another panelist challenged that contention.

The panelists were Robert D. Evans, Director of the Washington Office and Associate Executive Director for Governmental Affairs and the Public Services Group, American Bar Association; Gail W. Laster, Director of Governmental Relations and Counsel, Legal Services Corporation; Michael J. Horowitz, Senior Fellow, Hudson Institute, and Director of its Project on Civil Justice Reform; Jose R. Padilla, Executive Director, California Rural Legal Assistance; Phyllis J. Holmen,

Executive Director, Georgia Legal Services Program; and David Cole, Professor, Georgetown University Law Center, and columnist for Legal Times.

The opening speaker on the first panel, Robert Evans of the American Bar Association (ABA), stressed four arguments: 1) that poor people must have access to lawyers in order to gain justice, "that most basic of civil rights"; 2) that the private bar had not and would not be able to bear the preponderance of costs for providing justice to the poor, nor should it be expected to assume that burden; 3) that the key component for the delivery of justice to the poor was a staffed attorney office, funded under the existing system primarily by the Legal Services Corporation; 4) and that the system, decades after the founding of the Corporation, "sadly ... remains on life support."

Mr. Evans also sketched a history of legal aid in America, as beginning with a 1876 program that mainly assisted German Americans in New York City, growing to 33 organizations in the Nation by the early 1920s, and expanding to 248 by 1965. Despite the expansion, "only a very, very small fraction of the legal needs of the poor" were being met, and some areas such as in the South and West had no legal aid programs at all, Mr. Evans said. After the ABA unanimously passed a resolution calling for the establishment of a Federal program for legal aid in 1965, a program was established, and in an effort toward the program's political independence endorsed by President Nixon and Congress, the present private, nonprofit Legal Services Corporation was set up by 1974 legislation, Mr. Evans said.

Mr. Evans also related the Corporation's appropriations, which reached an inflation-adjusted high in Fiscal Year 1981 before a mixed pattern of dominant reductions but some increases began. The current funding of $283 million would have to be more than $600 million to provide the Fiscal Year 1981 level of service, Mr. Evans said. Besides Federal aid, the legal services programs receive about $200 million a year from various other sources, he added.

Studies over the years have shown that legal service programs in their "best years" have been able to meet only about 20 percent of the legal needs of the poor, Mr. Evans said.

Speaking next on the panel, Gail Laster of the Legal Services Corporation (LSC) presented for the record a statement by Chairman

Douglas S. Eakeley and other LSC officials before the U.S. House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies on Feb. 26, 1997.

Ms. Laster said that LSC is funding about 280 programs and that one or another of those programs provides legal aid in every county in America. She added that without a Federal program, legal aid could never be provided "throughout every county in the country." One of every five Americans is potentially eligible for legal services, Ms. Laster said.

She spoke of the restrictions imposed by Congress on legal services programs receiving Federal funds, including a ban on class actions, a bar to initiating communications with government officials about laws or regulations, a ban against representing prisoners and some categories of non-citizens, and a prohibition against challenging welfare reform measures. She also spoke of the lawsuits filed by various parties challenging the restrictions and how LSC was defending the restrictions.

During the question period, Vice Chairperson Reynoso asked about impacts the ban on class actions and restrictions on representation of non-citizens were having on civil rights of the poor. Mr. Evans replied that the ban on class actions was "a very unfortunate development, I think, in terms of the ability to get justice done for many, many people." Ms. Laster said that about 10 programs had not reapplied for funds under the current restrictions and noted that concerns expressed had included the class-action ban and the restrictions on representing non-citizens. Ms. Laster emphasized, however, that programs could still litigate individual civil rights cases.

The first speaker on the second panel, Michael Horowitz of the Hudson Institute, stated that he intended to contest what he said appeared to be the implicit assumption of the briefing. Mr. Horowitz said that whether LSC received more or less money was "marginal to the fate of the poor." He added that the LSC leadership "left to its own devices has for the most part hurt the poor, damaged the poor in extraordinary ways." He referred to cases in which legal services had imposed barriers to evictions from housing as triggering rent increases for other tenants and discouraging the construction of new housing for the poor. As harmful, he also referred to legal aid's opposing suspensions of obstreperous students and

seeking "income redistribution."

Mr. Horowitz said that he and other lawyers, "in exchange for the privilege of being licensed," had an ethical obligation to provide legal services to the poor and should not attempt to satisfy that obligation "by coming to Washington and hustling for appropriations paid by taxpayers who earn $10,000 a year."

As an example of an issue of far more importance to the poor than LSC funding would be, Mr. Horowitz proposed the Auto Choice Reform Act of 1997. He said that enactment of the bill would save poor people from having to pay for auto insurance with income required for basic needs. He said the ABA would oppose that legislation "because it's their pocketbooks at stake."

The next speaker, Jose Padilla of California Rural Legal Assistance, emphasized three arguments: 1) legal aid encompasses traditional civil rights cases and that involvement has resulted in the curtailment of remedies, including "the most effective and symbolic procedural means for effectuating civil rights remedies, the class action"; 2) civil rights work takes up only a very small part of legal aid resources; 3) access to legal aid "is itself a civil rights issue."

As other examples of civil rights remedies being curtailed, Mr. Padilla mentioned restrictions on legal aid involvement in school desegregation and electoral redistricting.

Although in urban locations there may be strong civil rights organizations to address civil rights issues adequately, in rural areas no such civil rights infrastructure exists, and even if urban-based organizations attempt to reach out to rural areas they lack the day-to-day presence required to stay in touch with changing conditions, Mr. Padilla said.

California Rural Legal Assistance "is the NAACP, the MALDEF, and the Lawyer's Committee in rural California," Mr. Padilla said. He added, "Rural California poverty is now majority ethnic, so that if a legal aid provider is in tune with the daily and real injustices these communities bear, you have to bring race-based or gender-based litigation."

In arguing that access to legal aid is a civil rights issue, Mr. Padilla said that "to the extent that legal aid is unavailable for the rural ethnic community, both civil rights and basic legal rights go unprotected."

The next speaker, Phyllis Holmen of Georgia Legal Services Program, said that

reductions in legal services funding and restrictions on legal services litigation had resulted in the poor being "unable to enforce their rights and gain the protection of the laws to which they're entitled."

Ms. Holmen said that her program serves all the counties in Georgia except the five constituting metropolitan Atlanta and that it receives 68 percent of its funding from LSC and another 10 percent from other Federal sources. In Georgia, 55 percent of the poor are African Americans, and poverty also disproportionately affects women, the elderly, and children, Ms. Holmen said. Without substantial Federal funding, her program could not provide services across Georgia, Ms. Holmen said.

She said that the funding reductions had "dramatically impacted" the program's ability to meet the legal needs of Georgia's poor and that it had begun to rely more on telephone conversations and on community appearances to provide limited assistance through advice.

She said that legal service restrictions had impaired the program's ability to assist victims of natural disasters such as flooding and to challenge laws and practices affecting people with disabilities and children.

The final speaker on the second panel, David Cole of Georgetown University Law Center, said that legal aid programs furnish the principal means of access to the courts for the poor.

"Our judicial system is legitimate only to the extent that the poor, as well as the rich, have access to courts," Professor Cole said. "And the real question is whether and how much we're going to pay for poor people to have that access, because it's obviously not free."

Professor Cole said that the legal aid restrictions were part of "a very disturbing trend" of Congressional actions cutting off access to the courts. He mentioned the Prison Litigation Reform Act, the Effective Death Penalty Act, the Anti-Terrorism Act, and the 1996 immigration bill.

The legal aid restrictions were "clearly, undoubtedly unconstitutional under current Supreme Court law," because they restrict what programs can do not only with Federal but with non-Federal funds, Professor Cole added. He referred to jurisprudence including the *Rust v. Sullivan* case.

The attached transcript provides the presentations of the panelists and the discussions between the Commissioners and the

panelists at the May 9, 1997 briefing.

Members of the Commission
Mary Frances Berry, Chairperson
Cruz Reynoso, Vice Chairperson
Carl A. Anderson
Robert P. George
A. Leon Higginbotham, Jr.
Constance Horner
Yvonne Y. Lee
Russell G. Redenbaugh

Ruby G. Moy, Staff Director