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LEGAL SERVICES CORPORATION ACT AMENDMENTS
OF 1977

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON EMPLOYMENT, POVERTY,
AND MIGRATORY LABOR

OF THE

COMMITTEE ON HUMAN RESOURCES

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

S. 1303

TO AMEND THE LEGAL SERVICES CORPORATION ACT TO
PROVIDE AUTHORIZATION OF APPROPRIATIONS FOR ADDI-
TIONAL FISCAL YEARS, AND FOR OTHER PURPOSES

APRIL 25 AND 26, 1977

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LEGAL SERVICES CORPORATION ACT AMENDMENTS OF 1977

MONDAY, APRIL 25, 1977

U.S. SENATE,
SUBCOMMITTEE ON EMPLOYMENT,
POVERTY, AND MIGRATORY LABOR,
COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:15 a.m. in room 4232, Dirksen Senate Office Building, Senator Gaylord Nelson (Chairman of the Subcommittee), presiding.

Present: Senators Nelson, Javits, and Hatch.

OPENING STATEMENT OF SENATOR NELSON

Senator NELSON. Today the Senate Subcommittee on Employment, Poverty, and Migratory Labor begins the first day of hearings on S. 1303, the Legal Services Corporation Act Amendments of 1977.

S. 1303 was introduced on April 17, 1977, by a bipartisan coalition of Senators including myself, Senators Kennedy, Cranston, Javits, Williams, Stafford, Riegle, and Hathaway. The bill establishes a \$225 million authorization of appropriations for fiscal year 1978 and a "such sums as may be necessary" authorization of appropriations for each of the succeeding four fiscal years. Amendments to modify, clarify, and improve the Legal Services Corporation Act of 1974 are also included in this bill.

The provision of federally funded, free legal services to the poor began in 1965. These efforts were originally administered by the Office of Economic Opportunity and later by the Community Services Administration. Then in 1974, after a long and arduous legislative battle, legislation was enacted and signed into law creating the Legal Services Corporation as an independent corporation, not controlled by the executive branch of Government and accountable directly to the Congress. This status was intended to insulate the Corporation from control by any political party or individual.

The Corporation, located in Washington, D.C., is responsible for the administration of some 300 legal services programs in nearly 700 offices in all 50 States and Puerto Rico, the Virgin Islands, and Micronesia. 3,000 staff attorneys and 1,300 paralegals staff these programs. Altogether, they currently handle 1.25 million civil problems per year. Most of these legal problems fall into one of four broad categories: family law, housing law, administrative benefits, or consumer law. Eighty-five percent of the cases are resolved through negotiation, consultation, and other out-of-court mechanisms. About 15 percent are actually litigated.

[A copy of the bill S. 1303 follows:]

95TH CONGRESS
1ST SESSION

S. 1303

IN THE SENATE OF THE UNITED STATES

APRIL 19 (legislative day, FEBRUARY 21), 1977

Mr. NELSON (for himself, Mr. KENNEDY, Mr. CRANSTON, Mr. WILLIAMS, Mr. JAVITS, Mr. RIEGLE, and Mr. STAFFORD) introduced the following bill; which was read twice and referred to the Committee on Human Resources

A BILL

To amend the Legal Services Corporation Act to provide authorization of appropriations for additional fiscal years, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3
4 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Legal Serv-
5 ices Corporation Act Amendments of 1977".

6 FINANCING

7 SEC. 2. (a) Section 1010(a) of the Legal Services
8 Corporation Act (42 U.S.C. 2996i(a)) is amended by
9 striking out "and" in the first sentence thereof and insert-

1 ing before the period at the end of such sentence a comma
2 and "\$225,000,000 for fiscal year 1978, and such sums as
3 may be necessary for each of the four succeeding years."

4 (b) Section 1010 (c) of the Legal Services Corpora-
5 tion Act (42 U.S.C. 2996i (c)) is amended by striking out
6 the semicolon and all that follows and inserting in lieu thereof
7 a period.

8 MEMBERSHIP OF GOVERNING BODIES

9 SEC. 3. (a) Section 1004 (a) of the Legal Services Cor-
10 poration Act (42 U.S.C. 2996c (a)) is amended by insert-
11 ing at the end thereof the following new sentence: "At least
12 three persons appointed to fill vacancies occurring after
13 January 1, 1977, and before July 30, 1978, shall be, when
14 selected for appointment, eligible clients who may be repre-
15 sentatives of associations or organizations of eligible clients
16 and at least one such person shall be appointed to fill a
17 vacancy occurring prior to January 1, 1978. The member-
18 ship of the Board shall be appointed so as to be generally
19 representative of the organized bar, significant segments of
20 the client community, attorneys providing legal assistance to
21 eligible clients, and the general public."

22 (b) Section 1007 (c) of the Legal Services Corpora-
23 tion Act (42 U.S.C. 2996f (c)) is amended by striking
24 out "and which includes at least one individual eligible to
25 receive legal assistance under this title." and inserting in lieu

1 thereof "and at least one-third of which consists of persons
2 who are, when selected, eligible clients who may be repre-
3 sentatives of associations or organizations of eligible clients."

4 SUNSHINE PROVISION

5 SEC. 4. Section 1004 (g) of the Legal Services Corpora-
6 tion (42 U.S.C. 2996c (g)) is amended by striking out
7 all that follows "open" and inserting in lieu thereof "and
8 shall be subject to the requirements and provisions of section
9 552B of title 5, United States Code (relating to open
10 meetings).".

11 SUPPORT ASSISTANCE

12 SEC. 5. Paragraph (3) of section 1006 (a) of the Legal
13 Services Corporation Act (42 U.S.C. 2996e (a) (3)) is
14 amended by striking out "and not" and inserting in lieu
15 thereof a comma and "or".

16 POWERS, DUTIES, AND LIMITATIONS OF THE CORPORATION

17 AND RECIPIENTS

18 SEC. 6. (a) Section 1006 (b) (1) of the Legal Services
19 Corporation Act (42 U.S.C. 2996e (b) (1)) is amended by
20 inserting "(A)" after "SEC. 1006 (b) (1)" and by adding
21 at the end thereof the following new paragraph:

22 "(B) No question of whether representation is au-
23 thorized under this title, or the rules, regulations, or guide-
24 lines promulgated pursuant to this title, shall be considered
25 in any proceeding in which a person is represented by a

1 recipient or an employee of a recipient. Such questions may
2 be referred to the Corporation for such disposition as the
3 Corporation deems necessary.”.

4 (b) Section 1006 (d) of the Legal Services Corporation
5 Act (42 U.S.C. 2996e (d)) is amended by adding at the end
6 thereof the following new paragraph:

7 “(6) Attorneys employed by a recipient shall be ap-
8 pointed to provide legal assistance without reasonable com-
9 pensation only when such appointment is made pursuant to a
10 statute, rule, or practice applied generally to attorneys
11 practicing in the court where the appointment is made.”.

12 ACTIVITIES OF STAFF ATTORNEYS

13 SEC. 7. (a) Paragraph (2) of section 1006 (e) of the
14 Legal Services Corporation Act (42 U.S.C. 2996e (e) (2))
15 is amended by inserting “and staff attorneys” immediately
16 after “Corporation”.

17 (b) Section 1007 (a) (6) of the Legal Services Cor-
18 poration Act (42 U.S.C. 2996f (a) (6)) is amended by
19 striking out the matter following clause (C).

20 ASSISTANCE CRITERIA

21 SEC. 8. (a) Paragraph (2) (B) (iv) of section 1007
22 (a) of the Legal Services Corporation Act (42 U.S.C.
23 2996f (a) (2) (B) (iv)) is amended to read as follows:

24 “(iv) such other factors as relate to financial in-
25 ability to afford legal assistance, which shall include

1 evidence of a prior determination that such individual's
2 lack of income results from refusal or unwillingness,
3 without good cause, to seek or accept an appropriate
4 employment situation; and”.

5 (b) (1) Paragraph (2) (C) of section 1007 (a) of the
6 Legal Services Corporation Act (42 U.S.C. 2996f (a) (2)
7 (C)) is amended to read as follows:

8 “(C) insure that (i) recipients, consistent with
9 goals established by the Corporation, adopt procedures
10 for determining and implementing priorities for the pro-
11 vision of such assistance, taking into account the rela-
12 tive needs of eligible clients for such assistance; (ii)
13 recipients, in determining and implementing such pri-
14 orities and in providing legal assistance (including such
15 outreach, training, and support services as may be neces-
16 sary) give special consideration to the needs for service
17 on the part of significant segments of the population
18 of eligible clients with special difficulties of access to
19 legal services or special legal problems (including elderly
20 persons, handicapped individuals, veterans, native
21 Americans, migrants or seasonal farmworkers and per-
22 sons with limited English-speaking abilities); and (iii)
23 appropriate training and support services are provided
24 in order to provide such assistance to such significant
25 segments of the population of eligible clients.”.

1 (2) Section 1008 (c) of the Legal Service Corporation
2 Act (42 U.S.C. 2996g (c)) is amended by adding at the
3 end thereof the following new sentence: "Such report shall
4 include a description of services provided pursuant to the
5 special consideration required in section 1007 (a) (2) (C)
6 (ii) and (iii).".

7 (c) Paragraph (5) (A) of section 1007 (a) of the
8 Legal Services Corporation Act (42 U.S.C. 2996f (a) (5)
9 (A)) is amended to read as follows:

10 “(A) representation by an attorney (or a recipient
11 employee supervised by such an attorney) for any
12 eligible client is necessary to the provision of legal
13 advice and representation with respect to such client’s
14 legal rights and responsibilities (which shall not be con-
15 strued to permit an attorney or a recipient employee
16 to solicit a client, in violation of professional responsi-
17 bilities, for the purpose of making such representation
18 possible) ; or”.

19 (d) Paragraph (8) of section 1007 (a) of the Legal
20 Services Corporation Act (42 U.S.C. 2996f (a) (8)) is
21 amended by striking out all after “title” and inserting in lieu
22 thereof a semicolon.

23 LIMITATION ON USE OF FUNDS

24 SEC. 9. (a) Section 1007 (b) (1) of the Legal Services
25 Corporation Act (42 U.S.C. 2996f (b) (1)) is amended to
26 read as follows:

1 “(1) to provide (A) legal assistance (except in
2 accordance with guidelines promulgated by the Cor-
3 poration) with respect to any fee-generating case
4 (which guidelines shall not preclude the provision of
5 legal assistance in cases in which a client seeks only
6 statutory benefits and appropriate private representa-
7 tion is not available) or in civil actions to persons who
8 have been convicted of a criminal charge where the civil
9 action arises out of alleged acts or failures to act and the
10 action is brought against an officer of the court or against
11 a law enforcement official for the purpose of challenging
12 the validity of the criminal conviction, or (B) legal as-
13 sistance in any criminal proceeding, except to provide
14 assistance to a person charged with an offense involving
15 hunting, fishing, trapping, or gathering fruits of the land,
16 when the principal defense asserted involves rights
17 arising from a treaty with native Americans, or from a
18 statute or Executive order establishing such rights, or to
19 a person charged with a misdemeanor (or its equivalent)
20 or lesser offense in an Indian tribal court.”.

21 (b) Section 1007 (b) of the Legal Services Corpora-
22 tion Act (42 U.S.C. 2996f (b) (4)) is amended by repeal-
23 ing paragraph (4) .

24 (c) Section 1007 (b) (6) of the Legal Services Corpo-
25 ration Act (42 U.S.C. 2996f (b) (6)) is amended to read
26 as follows:

1 ing opportunities for low-income persons consistent with the
2 purposes of this Act;”.

3 HEARING EXAMINERS

4 SEC. 13. Section 1011 (2) of the Legal Services Cor-
5 poration Act (42 U.S.C. 2996j) is amended by inserting
6 before the period at the end thereof a comma and the fol-
7 lowing: “and, when requested, such hearing shall be con-
8 ducted by an independent hearing examiner. Such hearing
9 shall be held prior to any final decision by the Corporation
10 to terminate financial assistance or suspend or deny funding.
11 Hearing examiners shall be appointed by the Corporation in
12 accordance with procedures established in regulations pro-
13 mulgated by the Corporation;”.

14 EFFECTIVE DATES

15 SEC. 14. (a) (1) The amendment made by section 2 (a)
16 of this Act shall be effective with respect to fiscal years
17 beginning after September 30, 1977.

18 (2) The amendment made by section 3 (b) of this Act
19 shall be effective three months after the first day of the
20 first calendar month following the date of enactment of this
21 Act.

22 (b) The amendments made by provisions of this Act
23 other than sections 2 (a) and 3 (b) shall be effective on the
24 date of enactment of this Act.

Senator NELSON. Today it is our pleasure to welcome Mr. Thomas Erlich, President of the Legal Services Corporation, Mr. E. Clinton Bamberger, Jr., Executive Vice President of the Corporation and Ms. Alice Daniel, General Counsel to the Corporation as our first panel of witnesses.

STATEMENT OF THOMAS EHRLICH, PRESIDENT, LEGAL SERVICES CORPORATION; ACCOMPANIED BY ALICE DANIEL, GENERAL COUNSEL; AND E. CLINTON BAMBURGER, EXECUTIVE VICE PRESIDENT

Mr. EHRLICH. Thank you very much, Mr. Chairman.

E. Clinton Bamberger, the Executive Vice President of the Corporation is also with me.

I have submitted a prepared statement and I am grateful that it will be accepted for the record.

At this point I would like briefly to consider with you the current state and the future needs for legal services to the poor and the provisions of S. 1303, which would extend and amend the Legal Services Corporation Act of 1974.

As you well know, Mr. Chairman, legal services for the poor are essential both to the persons eligible for them and to our society as a whole. They are essential to the provision of the basic necessities of life and survival for 29 million women and men who live below subsistence levels. They are the necessary means to insure that the laws this Congress and other lawmakers adopt are implemented as you intend.

They are needed to insure equal justice under law and they are required because access to our legal system is an inherent right of every single member of our society. We can hardly expect individuals to live under and to respect the law unless they also have an opportunity to use it.

Those are the principles that the Congress proclaimed in the Legal Services Corporation Act of 1974. An extension of the act will reflect a continued commitment to those principles in the years ahead.

We have been in operation just 19 months. We began in October 1975. After years of controversy, Legal Services is now on a sound footing. The period of experiment is over. Independence from partisan politics, a basic principle of Congress in establishing the Corporation, has been firmly established.

One of the most important signs of this new atmosphere is the fact that, for the first time in more than 5 years, we are extending legal services to areas of the country where the poor have never had them before. We are providing additional resources for existing programs that have in the past been so seriously underfunded that the coverage of their communities has been only theoretical.

The expansion we accomplished this year is the first step in our short-term plan to provide minimum access to legal assistance for all poor people, a goal we define as the equivalent of two lawyers for each 10,000 poor people. The bare minimum nature of that goal is underscored by the fact that for the population generally 14 lawyers are available in private practice.

Senator NELSON. What was that total number, two per 10,000?

Mr. EHRLICH. Two for 10,000 is the number that we seek for the 29 million women and men who are now below subsistence levels.

Senator NELSON. What does that total come to?

Mr. EHRLICH. In terms of the numbers of lawyers throughout the country, we now have—

Senator NELSON. What is the total at two for 10,000 in 29 million?

Mr. EHRLICH. 5,800.

Senator NELSON. 5,800?

Mr. EHRLICH. Yes. In other words, that is the number of lawyers that we are seeking throughout the country to serve the poor.

Senator NELSON. What is the current number of lawyers?

Mr. EHRLICH. The Corporation funds approximately 3,000 lawyers throughout the country.

Senator NELSON. So you are talking about 2,800 more?

Mr. EHRLICH. Yes. I am also talking about paralegals and support staff as well to help serve eligible clients in every way we can. We use paralegals as well as lawyers to provide the service we seek.

Senator NELSON. Does the 5,800 figure include paralegals or is that—

Mr. EHRLICH. No, that would just be for the lawyers, but they can do the task of trying to provide service at the rate of two lawyers for 10,000 only if they have the support staff that does include paralegals.

I cited the figure of the number of attorneys in private practice, both to indicate the bare minimum nature of the goal we seek and also to underscore how important it is for us to involve private lawyers in providing services pro bono as well as to use paralegals and other support staff in order to reach the goal.

The funds we seek, \$217.1 million in fiscal year 1978, will enable us to take major steps toward the goal of minimum access, a goal we will reach in fiscal year 1979, assuming adequate funding. We very much hope that the Human Resources Committee will urge the Appropriations Committee as you have the Budget Committee to support our request.

We have, over the past year, demonstrated the capability to achieve our minimum access plan if the funds are available. We have assembled a first rate staff and developed a structure to administer the Corporation to provide the necessary supervision and assistance for legal services programs, and we have strengthened the regional offices whose central role is to help programs improve services as well as to monitor their performance.

We have begun a series of projects to increase the effectiveness of legal services throughout the country, including a study of existing staff attorney programs and alternative and supplemental methods of delivering service. In accordance with the statutory mandate, we have established 19 demonstration projects around the country to experiment with judicare, prepaid plans, vouchers, and contracts with private lawyers. Those projects are actually serving clients and will also provide much needed information on delivery methods.

For the first time we will have a project reporting system to provide information on every single matter handled by each of the 315

legal services programs throughout the country. A good many other activities sponsored by the Corporation are now going on throughout the country. They are reviewed in some detail in our annual report so let me, if I may now, turn specifically to the authorization legislation and its provisions.

As you know, the Board of Directors of the Corporation unanimously supported five clarifying amendments to the statute. Over the past year we found that the act works well. It works far better than some might have expected. But there are improvements that, in our judgment, should be made. We are pleased that all five of the amendments we have recommended have been included in the proposed legislation that is before the subcommittee.

Mr. Chairman, you also asked for comments on the other provisions of the bill that is before the subcommittee. The Board of Directors considered specifically three of those provisions at its last meeting and a majority of the Board authorized Corporation support for three changes in the act. The first is the amendment to section 1006(a)(3) that is included in section 5 of the bill. That amendment would permit the Corporation to fund certain activities by grant or contract when that is more effective than adding staff to carry out activities within the Corporation.

A number of legal services programs, for example, now have the capability to carry on training activities in local law and local procedure. The Corporation can't duplicate those efforts within 50 different jurisdictions. We would like to be able to provide the necessary funds for the local programs to do it. Section 5 of the bill would authorize just that and the Corporation supports that provision.

The second is the amendment to section 1010(c) that would eliminate restrictions on the use of private grants to programs funded by the Corporation. Under the amendment, which is section 2(b) in the present bill, private donations will be treated exactly the same as those from public sources. Persons who can't afford a lawyer ought to be in exactly the same position to have full representation as fee-paying clients. In our judgment, there shouldn't be any more restrictions on the manner in which private funds, as opposed to public funds, are used to increase access to justice, and that is the intent of that provision.

The third change specifically endorsed by the board would delete sections 1007(b)(7) through (9) to eliminate three prohibitions against representation of eligible clients in proceedings or litigation. In our view and in the view of the majority of the board, there is no greater justification for imposing nationwide restrictions on representation in these areas than there is in other matters affecting low income people.

Senator NELSON. You are recommending the elimination of those three? Busing, abortion, and—

Mr. EHRLICH. And Selective Service. Yes, we are.

Senator NELSON. That is just about a moot question now, anyway.

Mr. EHRLICH. The Selective Service, you mean?

Senator NELSON. Yes.

Mr. EHRLICH. It has been in the past. Whether as a result of any of the amnesty efforts by this administration there will be changes

in that situation is still unclear, but certainly up to now it has not been a significant issue for legal services programs.

Senator NELSON. And the busing question?

Mr. EHRLICH. There are a number of places in the country where elementary and secondary school education desegregation cases cannot be brought because there are no lawyers to bring them. Legal services lawyers, of course, cannot—

Senator NELSON. They have been brought over the years by NAACP, or something else. What historical case, or what case currently exists in which there is nobody to bring the case? I asked the representatives in NAACP that question a couple of years ago. What is the problem in representing individual rights that is not taken care of either by the Justice Department, or some other group, or a private suit, or NAACP, or whatever?

Mr. EHRLICH. The problem, of course, is not busing. It is desegregation and the problem does exist in some areas of the country. In some areas of the country there is no counsel available to bring those cases.

Senator NELSON. What areas are those?

Mr. EHRLICH. The South is, by all odds, the area where we have found, most frequently, the claim made and it seems to us, with real justification. But the problem is not exclusively in the South. Throughout the country there are schools that are not desegregated that should be under the Constitution. There is no counsel available to bring the cases.

It is very hard to know exactly how many of those cases there are because, of course, now legal services lawyers can't bring the cases at all.

Senator NELSON. But even when they could, what were the cases which they brought that nobody else is now available to bring?

Mr. EHRLICH. In Dallas, Omaha, and Boston before the prohibition went into effect there were cases brought. In fact, in the Boston one the legal service office is still involved because, consistent with the canons of professional responsibility, it couldn't have withdrawn. There were no other counsel to take that case.

Senator NELSON. In each of these cases a legal services attorney was the only one involved as legal counsel?

Mr. EHRLICH. Either the only one involved or the principal counsel. I just checked that with our own General Counsel.

Again, we don't say that in some cases one can't find, by going far away, other counsel. For example, I do know that the Mexican American Legal Defense Fund was asked to bring a suit in Springfield, Ill., when the closest available lawyer was in Madison, Wis.

A lawyer from Memphis, Tenn., had to come in to help provide representation in Detroit. That isn't to say that, in other words—

Senator NELSON. In Detroit?

Mr. EHRLICH. In a Detroit case, not involving a legal services lawyer. This occurred simply because there wasn't any lawyer available closer than Memphis and the Legal Services office in Detroit was precluded from bringing those cases.

We should also emphasize one final point. Only part of the problem, as you know, is bringing the case in the first place. Equally sig-

nificant is the day-to-day enforcement to be sure that what the court orders in any area, not just in desegregation, is carried out. And if there isn't a lawyer on the scene who is there for the next year or 2 years, it may well be that the court's mandate isn't carried out as the court intended. Thus, bringing a lawyer from another part of the country to handle the case, who then leaves, may not do the job—certainly, not as well as a legal services lawyer on the scene would do it.

Senator NELSON. And there is no adequate representation through the Justice Department?

Mr. EHRLICH. The Justice Department certainly has brought a number of cases and I suspect this administration will bring a number more, but that isn't a counterpart, we think, for helping a group of poor people who want to be represented in this area, provided that the local community decides that's one of their priorities.

If they don't decide that, then they won't bring it.

Senator NELSON. What do you mean the local community?

Mr. EHRLICH. The local community of poor people is represented through the local programs board of directors, which must set priorities for case load management. Every single program must establish its own priorities. Every single program has more cases than it can handle. Our mandate to them is that they must establish their priorities in light of their local needs.

The only thing we would say about these areas, as in others, is that programs ought to have the opportunity to include these areas among those that they view as important.

We also include in our prepared statements comments on a number of the other provisions in S. 1303. We would be pleased, if you wish, to respond to questions on those comments. We are, however, particularly troubled by section 8 of the bill, which requires special consideration for at least eight specified groups of poor people in the setting of those local priorities to which I just referred. It may be helpful if I make just a few comments about our concerns with regard to section 8.

The Legal Services Corporation Act, as you well know as one of its drafters in Congress, stresses the need for all poor people to have access to the legal system. The resources available in the past, unfortunately, have been grossly inadequate to achieve that goal. That still remains true today.

The harsh reality is there is no group of poor people that receives an adequate level of service. That situation will continue in the foreseeable future. Given those facts, in our judgment, it could seriously fractionate the client community to require that the legal services program give special consideration to these eight discreet groups of poor people in the setting of priorities and allocations of resources.

At the very least, such a requirement would result in a substantial amount of time and money being consumed by adjusting the competing demands of these eight groups and the list of potential other groups is virtually endless. At worst, the requirement could result in discrimination against poor people who cannot muster powerful support, people for whom legal services represent the single best hope for equal justice.

We do recognize our responsibility to identify the unique problems of providing services to certain groups—the elderly, for example—and we are making major efforts to overcome those problems.

Under the act, as it is now written, the Corporation has the authority to do a number of things. First, we can implement model projects, and we are doing so in some instances. Thus, the authority in section 10 of the bill is not necessary and it could also, like that in section 8, be divisive of the client community.

We are focusing on the problems of several groups in our training and research efforts, in our delivery system study, in studying problems of migrants, in attempts to coordinate various activities of the Corporation with those of other Federal agencies, and in a variety of other ways.

We do insist that each program that we fund set its priorities and that the priorities it sets take account of the needs of all groups within the client community, not just some of them. We strongly believe that the goal of equal justice is one that all poor people share. It would detract from the common effort to achieve the goal to require special consideration for some segments of the poor community as opposed to others.

This program, in our view, ought to remain a program for all poor people, nothing more.

And now, Mr. Chairman, my colleagues on the Corporation staff and I will be pleased to answer any questions that you have.

Senator JAVITS. When you say seven and eight of the act do you mean the act of July 25, 1974?

Mr. EHRLICH. Excuse me, Senator Javits, I meant section eight of S. 1303.

Senator JAVITS. That is very different. We don't want to be confused. OK.

Senator NELSON. What is the average caseload for the legal services attorneys?

Mr. EHRLICH. The case load varies from lawyer to lawyer. Some handle 300 to 400 cases a year. While one can divide about 1,250,000 cases by the 3,000 lawyers and derive an average figure, we really don't think that it would be a representative one because some lawyers are engaged in very complex litigation and handle only 3 or 4 cases a month, in some cases only 1 case, while some do 500 or 600 matters in areas like family and welfare law.

Senator NELSON. Do you have a description of the nature of the cases?

Mr. EHRLICH. Yes. We can say, nationwide about 30 percent are in the family law area, about 14 percent are in the consumer area, about 17 percent in housing and about 20 percent in the area of administrative benefits—social security, SSI and so forth. The remaining 19 percent spread evenly throughout a great many other fields.

Those figures do vary from area to area. In Boston, for example, housing is the dominant concern. In some other parts of the country—

Senator NELSON. When you say family law and then when you move to 14 percent, did you say housing?

Mr. EHRLICH. In consumer law, 14 percent. Housing was 17 percent.

Senator NELSON. When you say housing, what do you mean by housing?

Mr. EHRLICH. In the main, landlord and tenant problems, eviction.

Senator NELSON. Isn't that family law?

Mr. EHRLICH. Landlord and tenant.

Senator NELSON. How do you define family law?

Mr. EHRLICH. Family law is mainly divorce, child custody, adoption, problems between family members.

Senator NELSON. And housing you describe as what?

Mr. EHRLICH. Mainly problems that tenants have in dealing with their landlords—eviction cases, questions about the upkeep of the apartment, questions of compliance with local and State code provisions, and mortgage foreclosures. Public housing itself raises a good many other problems as well.

Senator NELSON. How many regions are there?

Mr. EHRLICH. We now have nine regional offices.

Senator NELSON. How many local offices?

Mr. EHRLICH. 315 programs with about 700 offices.

Senator NELSON. 315 programs?

Mr. EHRLICH. Yes, Senator.

Senator NELSON. How do you define program?

Mr. EHRLICH. A program is a grantee from the Corporation with its own board of directors which may have established, as in Washington, D.C., for example, six local offices in various parts of the city.

Senator NELSON. And the board of directors delineates the program for that group? How do they do that?

Mr. EHRLICH. The local board which, under the statute and our regulations, has 60 percent attorneys and one-third clients or representatives of client groups, must establish the priorities for the program. The procedure it follows normally will be to work with the director of the program and the staff, seeking the judgment of the poor people in the community on what problems they see as most important and how they should go about handling those problems.

For example, most programs will not handle name change cases. Even though, under law, one cannot change one's name without using the legal system, most programs conclude that they simply can't handle those and do all the other things too.

That is one example of the kind of priority-setting the program would go through.

Senator NELSON. So you are saying that the board sits down annually and outlines what priorities—

Mr. EHRLICH. For most programs, the staff and director of the program would formulate a set of proposals saying, here is where we think we ought to be going, having had a meeting of the client community, or sent a set of questionnaires to clients, or established some other procedure to be sure they are fairly reflecting what it is the clients want.

Senator NELSON. Is that design of establishing program priority exclusively the responsibility of the board, or does it have to have regional approval, or any approval beyond that?

Mr. EHRlich. The regional office and staff in Washington want to be sure that priority-setting process is going ahead and that it is based on an articulated set of procedures. We do not say on the national level that housing or some other area ought to be the priority. We only say the program must set the priorities consistent, of course, with the statute, and with the regulations issued under the statute.

Senator NELSON. What is the administrative overhead for the program? What percentage of the appropriation—

Mr. EHRlich. Less than 3 percent.

Senator NELSON. How do you determine what administrative overhead is? What do you include?

Mr. EHRlich. We include the salaries and physical facilities needed for administration here in Washington and in the regional offices, excluding the training and support services that we also provide. About 7 percent of the funding goes for training, research, support services, and evaluation. Somewhat over 90 percent goes directly to the field programs.

Senator NELSON. Do you have a breakdown of what you include within each of those categories?

Mr. EHRlich. Yes, I have. I would be glad to go through it with you now or submit it for the record.

Senator NELSON. I would like to have the record show what your breakdown is without printing the whole document.

Mr. EHRlich. On page 30 of our budget submission for fiscal year 1978, there is a breakdown of expenses from all sources by activity and object class that I think will give you the details you would like.

Senator JAVITS. Mr. Ehrlich, would you wait a minute? I have a class from a high school here that is just about to go from Hewlett, Long Island. I just want to acknowledge their presence and their interest in the Legal Services Corporation and what we are doing about the poor. I apologize to them for not being able to speak with them directly. Good luck.

I ask unanimous consent that that be inserted at the proper place in the record.

Senator NELSON. I would ask that the chart on page 30 entitled, "Expenses from all sources by activity and object class, fiscal years 1977 and 1978," be printed at the appropriate place in the record.

[The information referred to follows:]

LEGAL SERVICES CORPORATION
EXPENSES FROM ALL SOURCES BY ACTIVITY AND OBJECT CLASS - FISCAL YEARS 1977 AND 1978*

(Dollars in Thousands)

OBJECT CLASS	MANAGEMENT AND ADMINISTRATION		PROGRAM ACTIVITIES		TOTALS	Change
	1977	1978	1977	1978		
Salaries and benefits	1,675	2,166	2,170	3,305	3,845	+ 1,626
Consulting	247	282	491	897	738	+ 441
Travel	399	458	2,013	4,291	2,412	+ 2,337
Rent and communications	422	482	57	162	479	+ 165
Material and supplies	92	103	25	73	117	+ 59
Printing and reproduction	135	156	83	174	218	+ 112
Other services	407	473	86	187	493	+ 157
Total	3,377	4,120	4,925	9,089	8,302	+ 4,907
Property and Equipment	313	39	14	27	327	- 261
Donated Services*	50	50			50	
Grants and contracts			120,679	208,292	120,679	+87,613
Total expenses	3,740	4,209	125,618	217,408	129,358	+92,259

*Sources of funds

	1977	1978
Appropriated funds carried forward from previous year	4,308	
Appropriations	125,000	217,053
Interest income allocations		4,514
Donated services	50	50
Totals	129,358	221,617

Senator NELSON. If the authorization of \$217 million were appropriated, how many lawyers would it be the intent of the Corporation to hire?

Mr. EHRLICH. Approximately 2,100.

Senator NELSON. So, if the \$217 million is appropriated, you would hire 2,100, which would leave you 700 short of your formula for two per 10,000?

Mr. EHRLICH. That's right.

Senator JAVITS. Which would be an aggregate of how many, Mr. Ehrlich?

Mr. EHRLICH. We now fund about 3,000.

Senator JAVITS. It would be 5,000. Thank you.

Mr. Chairman, I would greatly appreciate it if I could ask a few questions and if Senator Hatch may, too.

Mr. Ehrlich, can you tell us in your own way how well you feel the Corporation has done? What is its performance record? What does it mean to the poor? I have said this many times: I think this is the single most successful and exciting program which resulted from the "War on Poverty" because it contributes to the factor which is more than money—it is dignity.

The dignity of the poor is something which can truly redeem those who are physically and intellectually capable of being redeemed, educated, or otherwise brought to a better condition.

We, in the city of New York, of course—a big part of my State—are very understanding of the syndrome of poverty, generation to generation of poverty with its attendant problems of undue delinquency and crime, terribly tragic accompaniments to that syndrome.

So, to break it has always appealed to me as a fantastic function of the legal services which the poor are able to obtain in what is a real revolution in American handling of poverty. I am very interested in the forest as well as the trees. But tell us how you have done, how you appraise it.

Mr. EHRLICH. It appeals to me too, Senator, and our perspective, of course, is somewhat parochial. But from that perspective, we are very proud. This has been an exhilarating year in many ways.

The Board and the staff of the Corporation have seen legal services strengthened, expanded, and developed in a way that is enormously exciting. I had a chance over the past year to travel throughout most of the country visiting legal services programs. There is something enormously exciting about seeing for the first time a group of women and men have a chance to use the legal system, to know what their rights are and to exercise those rights with dignity.

It makes a tremendous difference. Legal services lawyers and staff are overworked, as you well know, in New York and elsewhere, and they are underpaid. They are often frustrated. But they have done a fantastic job in providing enormously important service to people throughout the country. There is no enterprise in which I have been engaged in which I have seen more hard work and more dedication and more success in every dimension—human dimension most of all—than in this one.

And so, it has been, in terms of that forest, a thick and fast growing one and I hope, with your help, it will continue to flourish.

Senator JAVITS. Do you have any representative analysis of the work load, the cases handled, the results achieved, as our Chairman so properly said, the cases per lawyer, et cetera?

Mr. EHRLICH. We can give you now the kind of analysis I was referring to before in terms of the number of cases overall, about 1,250,000, the breakdown in rough categories, in particular areas of the law. We do not yet have, but will have shortly, an analysis of each matter handled by each program throughout the country.

We are instituting a project reporting system that will, for the first time in legal services history, give that kind of information so we will be able to say here is the kind of case load in this program as opposed to that program, here are ways we think we can help improve the program.

Right now we don't have that detailed information but we do have the general figures nationwide.

Senator JAVITS. Will you give us the general figures then within a week?

Mr. EHRLICH. Yes, sir, we will.

Senator JAVITS. I ask unanimous consent they may be recorded?

Senator NELSON. They will be put in the record.

[The following was subsequently received for the record:]

FOUR MAJOR CATEGORIES OF CASES HANDLE BY LEGAL SERVICES ATTORNEYS

About 1,250,000 cases are handled by legal services attorneys in a year. They fall into four major categories: 30 percent are in the area of family law, 14 percent consumer issues, 17 percent housing-related, and 20 percent administrative benefits. The balance are in a variety of other areas.

Most of the cases handled by legal services attorneys and paralegals are resolved through counselling, negotiation, and other out-of-court mechanisms. Only about 15 percent of all cases are actually litigated.

Senator JAVITS. I would like a breakdown of what you want restored and I want restored and what the other party may restore in part, and that is, these three prohibited categories; desegregation, abortion and military selective service or desertion. That is, how many such cases and what is the general situation respecting those cases? How many were offered, and rejected and settled? What do you know about the need for legal services for those categories?

Mr. EHRLICH. We will be pleased to provide you also with information on what we do know. Of course, we are talking of an area of cases legal services lawyers are precluded from handling, so many of the situations in which there well may be need don't come to the program at all.

Therefore, we will have no firm figures on the numbers of cases that they might have brought had they the authority.

Senator JAVITS. But, Mr. Ehrlich, what you can do is find out from legal defenders and legal aid societies what they have handled and why Legal Services Corporation should handle. In other words, we have to be satisfied, notwithstanding that I thoroughly disagree with these exceptions on policy grounds, nonetheless, we still have to make a case because, as it stands now they were consciously excluded by the Congress in the law.

So, if they are going to be brought back in we have the burden of showing the reason in addition, of course, to the policy reason. I think the policy reason is very strong. If I were the supreme judge the policy reason to me would be sufficient in the absence of any other proof, but that is not the frame in which I operate, so I would like to have from you whatever you feel sustains the fact that there is a need not being satisfied reasonably—we can't satisfy every need—in these three categories.

By reasons of policy and knowing the poor as I do, these are very critical matters and highly discriminating against them. They really are unable to get legal services for these three areas. Let us see what you can give us on that.

Mr. EHRLICH. We will be pleased to provide that.

Senator JAVITS. Can you do that within a week?

Mr. EHRLICH. Yes, sir.

Senator NELSON. May I ask a question here?

Senator JAVITS. Please.

Senator NELSON. It would be helpful in looking at these statistics to know how many cases in fact were offered before the restrictions. Were you asking how many cases in fact were offered before the restrictions?

Senator JAVITS. No, during. People come in, they offer them a case and they can't handle it.

Senator NELSON. If you could furnish the statistics it would be helpful to know how many cases in fact were handled involving these three restricted areas prior to the adoption of those restrictions, for what period of time it had the authority after the Supreme Court decision, and how many cases were handled in each of these areas.

Mr. EHRLICH. We will provide what material we can find. In a statistical sense, it was never a major part of the case load of any program, as you well understand, in terms of numbers of cases. In terms of the individuals affected, of course, it could be extremely important.

[The following was subsequently supplied for the record:]

Section 1007(b)(7) School Desegregation Cases

Our best estimate is that in the period from 1966 to 1975, when the Legal Services Corporation Act of 1974 became effective, legal services programs participated in approximately 50 school desegregation cases nationwide. Because of the extended time and resource commitments required by such cases, programs generally refrained from taking them unless they had determined that no other form of legal assistance was available. In some cases they acted as local counsel assisting national civil rights organizations that assumed major responsibility for the work.

When the Corporation came into existence legal services programs were participating in approximately 17 school desegregation cases. The majority of those have now been closed or transferred to other lawyers. Representation has continued in a few cases whose lengthy history and extreme complexity made transfer impossible and withdrawal was prohibited by the Code of Professional Responsibility.

Information received by the Corporation from the NAACP Legal Defense Fund and from the Mexican American Defense Fund indicates that requests for representation in school desegregation cases far exceed the number of privately-funded civil rights lawyers available to provide it. These national organizations have been handicapped in their attempts to provide representation by the shortage of minority lawyers generally, and by the lack of local attorneys willing to participate as co-counsel in geographic areas where the demand for such suits is most urgent. The absence of local attorneys is particularly critical in the enforcement stage. Occasionally lawyers may be recruited from far distance to brief and litigate a case, but after an order is issued, a local lawyer is essential to monitor it and to bring problems to the attention of the court.

There is a particular need for counsel in areas with diverse populations. After a desegregation case has been initiated by one segment of the community, legal services programs frequently receive requests for assistance from other minority groups seeking to insure that their interests will be protected in the shaping of a remedial order by the court.

If the statutory prohibition against assistance in the cases were removed, Corporation Regulation 1609 would still prevent representation unless other counsel were unavailable, because passage of the Civil Rights Attorney's Fees Awards Act of 1976 has made them fee-generating cases.

Section 1007(b)(8) Abortion Cases

We believe that legal services programs participated in approximately 25 abortion related cases nationwide prior to passage of the Legal Services Corporation Act. When the Corporation came into existence only one legal services program was engaged in an abortion case. No legal services programs are now engaged in any abortion cases prohibited by the Act.

Information received from the private organizations that handle abortion cases indicates that they receive more requests for assistance than they can handle.

Section 1007(b)(9) Selective Service Cases

We know of only one selective service case in which a legal services program participated prior to enactment of the Act, and none were pending when the Legal Services Corporation came into existence.

The Department of Defense has advised the Corporation of its interest in having legal services attorneys provide representation to persons seeking upgrading of their less-than-honorable discharges pursuant to the recent announcement by President Carter. Military counsel will be available to such persons, but on the basis of past experience the Department of Defense believes many of them will prefer civilian counsel. The Defense Department believes that most applicants for assistance will be financially eligible under the Corporation's guidelines. Current law will permit legal services programs to provide representation unless the less-than-honorable discharge was based on desertion. The Defense Department believes that desertion is not an issue in the overwhelming majority of cases.

The volume may be quite large. Whether legal services programs will accept such cases will be decided locally, after consideration by the programs of client community priorities and available resources.

Senator JAVITS. I have just two other questions.

On the fact that you don't want a list of priorities such as is contained in section (8) of the bill, you don't think that is desirable for policy reasons, what would you think of the following proposition, that the Legal Services Corporation itself be directed to establish priorities on a regional basis, or whatever other basis you would suggest, if priorities are deserved according to their findings, and to report thereon promptly to us within 10 days after a decision?

That would give a certain check and balance because if we are unhappy we know how to jump up and down and make ourselves very unpleasant, and at the same time, would make it unnecessary to mandate national preferences in the law. Some such idea appeals to me and may appeal to the Corporation.

In other words, it permits preferences to be established in regions or by what other subdivision you wish, even offices, where it seems desirable with a required report to the House and Senate committees within a closely proximate time after they are adopted.

We might even also provide the way you decide you don't want preferences, that you give us notice of that with your reasons. That, it seems to me, might be something of a check and balance to satisfy us and not mandate preferences on you. What would you think of that?

Mr. EHRLICH. I think now the Corporation does have authority to establish goals. Now if we found a program excluded a significant portion of the population in setting its priorities—in New York City, for example, if it excluded the elderly, or excluded veterans, excluded Spanish speaking people—we would not allow that to continue without stopping it.

To turn the proposition around, however, and require that priority be given to one group would, I think, result in the very kind of fractionation of the poor population, of setting one group against the other, that we sought very hard to avoid. The problems are terribly difficult and one of the greatneses of legal services has been, as you well know, Senator, that it has been aimed at all poor people, not one group or the other. I would hate to see that broken apart.

Senator JAVITS. Mr. Ehrlich, I agree with you but, legislative reality may require some consideration of this question so I am suggesting a plan to you which could give you the needed freedom and give us the needed oversight, so think it over.

Mr. EHRLICH. Fine.

Senator JAVITS. Within 1 week let us know your opinion.

Ms. DANIEL. Our regulations now require each local program to establish priorities and we require that the process of establishing the priorities involve full participation by all elements in the community in the area served by the project.

We monitor those priorities and can very readily report to the Congress on what the procedures have been and what the results have been in each program. For the Corporation itself to embark on this priority-setting process would be a significant change in the kind of relationship between the local programs and the national Corporation in terms of the balance of autonomy and home rule.

Mr. EHRLICH. But we will be back in touch with you and your staff.

Senator JAVITS. Don't have your feet fixed in concrete. You have a legislative reality here, even though I don't agree, my colleagues feel that something is wanted and I don't feel so passionately about it that I am going to throw myself on the railroad tracks because of it, so do something about it. I have given you an idea. Let's see what you come up with.

The last question is this: Some years ago there was quite a good deal of agitation of a union character, trade union organization or association, a lot of dissent that came to me—and they came, I am sure, to our chairman, Senator Nelson and others. What is the morale situation in the Corporation now?

Mr. EHRLICH. I think it is very good. It is quite true that for 5 years those lawyers and staff fought a very hard battle to survive. They didn't know whether the next day there would be any support at all.

Senator JAVITS. I am talking now about the dissidence within the organization. There was a minority group or a group that felt they were being badly treated and the rights of free speech were being invaded, and so on. Do you remember that? Give us your view. You don't remember?

Mr. EHRLICH. In terms of legal services nationally, I don't see that.

Senator JAVITS. You don't have any local problems either?

Mr. EHRLICH. No question about it, we do have problems. I wouldn't be here in this job if there weren't some problems. What I meant was—nationally—I think the morale is very good. In any group that cares as much as those in legal services care—and they do care—there are strong views and sharply different views. That will continue and it ought to continue. But I think that is different from morale generally, which I think is very high.

Senator JAVITS. Is there any trade union movement, or trade association, minority movement, or what?

Mr. EHRLICH. There is in New York City. There are two unions of lawyers; one in the Legal Aid Society and one in the CALS group. That is the only part of the country, insofar as I know, in which there are unions of lawyers. There is an organization of legal services lawyers and staff and clients throughout the country.

Senator JAVITS. Called what?

Mr. EHRLICH. The project advisory group. It represents the legal services community as does NLADA and the National Clients Council. We do meet with them regularly to try to be sure that, insofar as we can, we are all working together. Sometimes we disagree but, on the whole, I think we work very well together.

Senator JAVITS. So you don't feel you really have any labor problems in that sense?

Mr. EHRLICH. There are problems. Salaries, for example, are too low, as you well know. They ought to be higher. That kind of problem exists, but not the endemic sort of concern that I think you were referring to before.

Senator JAVITS. Thank you, Mr. Chairman.

Mr. Chairman, may Senator Hatch ask some questions?

Senator NELSON. Senator Hatch?

Senator HATCH. Thank you.

Mr. Ehrlich, I note on page 20 of your statement that you say that: "We believe it is important to ensure that Corporation funds are not used to support political activities of any kind." Do you agree with that?

Mr. EHRLICH. I certainly do.

Senator HATCH. And you agree with that, it should be depoliticized. There should not be political activity as a result of the efforts of your Corporation?

Mr. EHRLICH. Correct.

Senator HATCH. You do add, though, that: "Blanket restrictions on the personal activities of staff attorneys that be beyond those on State and local employees, however, are unnecessary." And then you say, up above in the first part of that paragraph, you try to put it in its perspective that although you would like the Hatch Act to be extended to apply you think the Hatch Act should be amended so that only those proscriptions that are on State and local employees should be applied.

Do I interpret that right?

Ms. DANIEL. We are not requesting or suggesting an amendment of the Hatch Act.

Senator HATCH. You are suggesting the Hatch Act be extended but that it not be applied so stringently on your attorneys in the Legal Services Corporation?

Mr. EHRLICH. It should be applied in just the same ways that State and local employees are covered.

Senator HATCH. So you would have that as basically an exception to the Hatch Act?

Mr. EHRLICH. No; we have currently what has been described as a super-Hatch Act that goes beyond the Hatch Act.

Senator HATCH. So all you want is the regular Hatch Act application to your Corporation?

Mr. EHRLICH. Correct.

Senator HATCH. You would like it extended to your Corporation in this bill?

Mr. EHRLICH. To staff attorneys and programs as well as Corporation employees. It currently applies to Corporation employees. We want to extend it as well to staff attorneys.

Senator HATCH. Two of the areas prohibited by the Senate bill are the involvement of legal services lawyers in both desegregation and abortion. You indicated that should be continued on abortion. How do you feel about that?

Mr. EHRLICH. We believe, and a majority of the board agrees, that those restrictions on the representation of poor people by legal services lawyers ought to be eliminated. The local programs ought to be the ones to make the judgment on what areas the program ought to view as priorities.

Senator HATCH. You would have the right to overrule the local programs if you disagree, or do you want them to have the final say on which programs should be covered?

Mr. EHRLICH. Our regulations now require them to set their priorities. We want them to do that in light of their local needs. If it happens that one of these three areas is viewed as a priority area

then, in our view that ought to be done. If it isn't, it ought not to be done.

Senator HATCH. But you retain the right to overrule the local area priority if you felt it was appropriate here?

Mr. EHRLICH. At least in theory, that could be done. I could not quite imagine the circumstances in which we could say a substantive area ought not to be done.

Senator HATCH. I agree. I would like to see more local input. But I have seen in some areas there becomes an emphasis on one particular field of law to the exclusion of others.

Mr. EHRLICH. Very definitely that would concern us.

Senator HATCH. And you would retain authority to maybe create more of a diffusion or more of a practical application for all poor people in that particular area?

Mr. EHRLICH. Precisely right.

Senator Hatch. But you are saying you think you ought to be able if the local areas says so, to handle both desegregation and abortion cases?

Mr. EHRLICH. Yes.

Senator HATCH. What about busing?

Mr. EHRLICH. The same in desegregation cases.

Senator HATCH. You are asking for a fiscal year appropriation of \$225 million, which is up—actually \$217 million—from \$125 million last year.

Mr. EHRLICH. Yes, sir.

Senator HATCH. Is this increase justified because you want to add more lawyers to your staff, or do you want to increase salaries and other benefits too?

Mr. EHRLICH. Almost all of that increase will go to provide services to poor women and men throughout the country who have no service. Sadly, as you know, in much of the country, particularly the South and Southwest, but in the Midwest as well, there are vast areas where there are no programs at all. In some areas there is only theoretic coverage.

Virtually all—about \$40 million of the increase goes to provide expansion in areas where there is no service and \$38 million into areas—

Senator HATCH. In other words, to hire new personnel, new attorneys, to get them in those areas where you feel you are deficiently working now?

Mr. EHRLICH. To reach out to those areas. Yes, sir.

Senator HATCH. As I understand it, the Congressional Budget Office reported some fresh analysis of the Federal definition of poverty. Using the same standard as the Census Bureau CBO concluded that only nine million people rather than 29 million people were actually below the poverty line when all of the income transfer programs available to the poor are taken into consideration.

I say that with particularity of page 9 of the poverty status of families under the alternative definitions of income, background paper number 17, dated January 13, 1977, so that that will be in the record for your review. On page 9, in the last paragraph of the main body it says: "The inclusion of other cast assistance which produces the

Census concept of income results in further reduction to a level of 9.1 million, or 11.4 percent of all families."

Let me ask you this: I take it you disagree with this Congressional Budget Office background paper?

Mr. EHRLICH. I disagree in terms of legal services programs. The general analysis on the levels of poverty that was done by the Congressional Budget Office I have seen wasn't done specifically on legal services programs. There is a very recent draft report by that office on legal services.

But I gather the one you are referring to is the general one on the levels of poverty. Our job as mandated by the Congress, is to see to it that equal justice is available to all, that access to justice is available. We do not now include in-kind payments in establishing eligibility, it is quite true. We do say that those who are below the poverty levels, which are at a maximum, \$3,500 for an individual or \$6,800 for a family of four—

Senator HATCH. Without including the transfer of funds from other payments?

Mr. EHRLICH. Yes; actual income is all we look at. The Legal Services Corporation Act defines an eligible client as a person financially unable to afford legal assistance. There is no question in our minds that in-kind payments do not provide resources available to get legal counsel.

So, the reality is for those of the 29 million people with in-kind payments, they don't come close to having the resources available to pay for legal assistance. OMB, the executive branch and, as far as I know in general, the Congress has not suggested the contrary. Certainly OMB does not count in-kind payments in its definitions of poverty for just this reason.

Our job is to provide legal services when legal services can't be afforded.

Senator HATCH. So you are saying if you have \$217 million you can provide basic minimum legal services for the 29 million versus the nine million people?

Mr. EHRLICH. We can provide minimum access we ought to under the mandate of Congress.

Senator HATCH. I think you understand our obligation as a Congress is to try to save the taxpayers moneys that will give us as much help to people as we can, so we have to take into consideration perhaps the disparity between the 9.1 million determined by this very extensive report and analysis by the Congressional Budget Office and your interpretation of 29 million people, which hasn't taken into account the extra payments they receive.

You would have to admit that is a real dilemma.

Mr. EHRLICH. Of course, there is no question about it. I simply would stress that the report you are referring to was not done with regard to legal services.

Senator HATCH. I agree, but on the other hand, we still have to take that into consideration, don't we?

Mr. EHRLICH. Yes.

Senator HATCH. Has the corporation, would you say, been too generous or too liberal in its definition of "poor" and "poverty" in

establishing program eligibility? This is, I think, the big question we have to answer before we decide to give you \$217 million which you have requested.

Mr. EHRLICH. There is no question in my mind, Senator, that the answer is, no. The notion that one who is living with a family of four at the maximum level of \$6,800, the notion that that is too generous—

Senator HATCH. What bothers me, Mr. Ehrlich, is as a practicing attorney, I wonder if 29 million people in the country other than the 29 million you are talking about really avail themselves of the legal services anyway. It seems like an awfully hard figure to me. That is the only thing bothering me.

Mr. EHRLICH. We are using the census figure for the last available—

Senator HATCH. Sure. You are assuming all of these people need legal services.

Mr. EHRLICH. They don't all need them all the time. What we are saying is that when a poor person faces a legal problem she or he should have some access to legal assistance. The survey of the American Bar Foundation indicates that about 23 percent of those people each year face a problem on which they need legal counsel, not always a lawyer, but legal counsel.

For poor people, those problems assume crisis proportions that simply aren't true for most others. When a poor person has a car that breaks down, that means unemployment. When the landlord hands him an eviction notice, that means no housing in a way that simply isn't true for other people. Other people do have a variety of mechanisms to deal with their problems that the poor simply don't have. Poor people face problems in crisis proportions, and that is why they need the help.

Senator HATCH. Public Law 93-355 directed the new corporation to take an in-depth study to determine whether there might be better ways of providing legal services to the poor than to create a new bureaucracy in the form of the Corporation. What is the status of this study?

Mr. EHRLICH. We have that study well under way with 19 demonstration projects throughout the country including, Senator, one in your own State. The study will provide, we are quite confident, a great deal of important information on judicare, prepaid plans, vouchers, contracts with private lawyers. It is not going to show the best way to provide legal services for all people in all parts of the country. I don't think anyone would suggest that. But we will get, on a continuing basis, I think, insights on how to improve our program and how to make it stronger, more efficient and more effective, and incidentally, how to insure that the laws that the Congress passes are implemented the way they are supposed to be.

Senator HATCH. More research would give us more adequate data to determine really what we should be doing for the poor from the legal services standpoint and how to do it, would you say?

Mr. EHRLICH. We will provide that on a continuing basis.

Senator HATCH. How long will it take basically to have the basic report done?

Mr. EHRlich. We will have a preliminary report to the Congress this July as we are mandated to do in the statute. We will keep on, though, being in close touch with the Congress throughout the years to be sure that we keep on improving.

Senator HATCH. It seems to me until we have that report it is a very difficult decision for us to make as to how much money we should fund you with for this next fiscal year. It might be very helpful for us to have this report before the funding is granted and perhaps defer this.

Mr. EHRlich. The report isn't going to show, I don't think, the kinds of insights that the Congress needs to make the judgment of whether or not it wants to provide legal services for poor people in areas of the country where they are not now provided.

We will make our grants in the future, just as we have in the past, on a year-by-year basis so that at any time we can shift to different modes of delivery, if those are more effective. But, in the meantime, the need is very much there for poor people who don't have service and the report isn't going to show anything different about that. That seems clear. The need is there. We know how to meet the need. We will continue to improve in meeting it over the years ahead.

What we are asking now is the funds to begin that effort to provide at least the minimum—only the minimum—the equivalent of two lawyers for 10,000 poor people. That will provide some chance to use the legal system, some chance for people who are required to live under the law to participate.

Senator HATCH. I really don't mean to question your figures, but I would really be surprised if 29 million other people outside the definition of poverty which you have given really avail themselves of legal services in the country.

Mr. EHRlich. There is no question that a great many middle class people in this country need legal assistance too. We do need more by way of group legal services and prepaid plans. My own view is that that is going to be the major vehicle by which the middle class will receive more service. That will provide service for those people because today, if one is earning \$10,000, you are quite right, to afford a lawyer is very difficult.

Senator HATCH. My point is I think the great middle class bears a burden in this society. Most of them really don't avail themselves of legal services even though they probably need some too. One of the big points that worries me about our society is we are becoming much too much of a litigation-minded society. We are always using and overusing the courts it seems to me, and I am concerned about 29 million people who have even better services than the people who are paying for them, the great middle class of the society. This is what bothers me.

If we keep expanding every budget here in the U.S. Congress because we have altruistically great aims, and I admit yours are—at least I think they are—we are going to reach a point where the great middle class is going to be the most deprived class in our society, and we are almost there now.

Take, for instance, medical health care services. Many of them don't avail themselves of doctors that many of the poor have because,

frankly, they have got to pay for it out of their own pockets. I am concerned about this. I want to have some balance, not just have optimum altruism here that benefits the poverty people and, again, is a rip off to the middle class. These are things that concern me.

Mr. EHRLICH. I understand your concerns and share a good many of them. We don't want to overlegalize the society. Every effort that we can make to delayer problems so that they don't have to be handled by a lawyer, to take them out of the realm of the judiciary, is a step forward in our view and we press very hard in that direction.

Senator HATCH. I have heard, for instance, some accusations the Corporation has done and is using ways of getting around some of the restraints written into Public Law 93-355 in such proscribed activities, in class action suits involving nonpoor persons, consumer representation before regulatory agencies and against government agencies. I would just like to say, how would you respond to some of those allegations?

Mr. EHRLICH. I would be glad to deal with them. As to class actions, of course the statute and our regulations specify that the board of the local program must establish procedures for handling them and that before class action is brought the local program director must approve.

If those steps are taken, a class action can be brought and very often it is preferable—in terms of just the kind of concern you are raising—to bringing several hundred individual actions. It must, of course, involve eligible clients.

We do make sure that the restrictions in the statute are carried out. Those are the restrictions. The statute does not preclude all class actions. It specifies the steps that must be followed.

Senator HATCH. You have to admit that if you have a local leader who is, say, much more liberal than you or I might be, he could almost do anything he wants to do and there is no real check or balance situation to stop him.

Mr. EHRLICH. There is a board of directors with local attorneys, a majority of local attorneys.

Senator HATCH. Who chooses those?

Mr. EHRLICH. Those are chosen locally in terms of procedures established by the program. Sometimes they are chosen from two or three bar groups, maybe a local bar group and a State bar group, two or three local and State bar groups, as is true in your own State, to get a variety of organized bar involvement.

The board sees to it that the program runs in terms of meeting the interests of the community, not in meeting the interests of any particular lawyer.

Senator HATCH. What safeguards are in the statute or in the extension legislation to insure that the so-called back up centers do not abuse their authority and become involved in the functions prohibited by the act?

Mr. EHRLICH. The Board of Directors of the Corporation, required that we have contracts with each of those support centers. We require reports from each center quarterly, and there are quarterly visits from the regional staff of the Corporation to insure that we know exactly what they are doing and how they are doing it.

They too have their own boards, which serve as still an additional check. We do have reports on what is going on in each of those support centers, both from the centers and from our own regional staffs.

Senator HATCH. I have a copy of an article that has been given to me from Barron's that I am sure you are aware of January 31, 1977, written by Shirley Scheibla, which is entitled "Bar Sinister—Part II, How the Legal Services Corp. Thwarts the Will of Congress," and she accuses the Legal Services Corporation of continuing to fund 13 of the 17 backup law centers which President Nixon demanded be removed from the bill in order for him to sign the bill. Could you comment on that? Do you have a copy of this?

Mr. EHRLICH. Yes, I do and I also have a copy of our response to her.

Senator HATCH. I would ask unanimous consent at this time that we put a copy of this article into the record and a copy of your response.

Mr. EHRLICH. Thank you, sir.

Senator NELSON. It will be placed in the record.

[The documents referred to follow:]

Bar Sinister

January 24, 1977

The Legal Services Corporation Stretches Its Mandate

By Shirley Scheibla

WASHINGTON—Originally funded by the Office of Economic Opportunity as part of the War on Poverty, the Legal Services Program started out with what seemed like a good idea—equal access to the courts for the poor. But it fell into disrepute as poverty lawyers (among other things) encouraged boycotts, rent strikes and picketing, sued U.S. agencies with federal money and handled cases on behalf of those who could afford to retain their own counsel. Poor people with ordinary legal problems often were ignored in the push for landmark cases and other issues to bring about social change.

Mounting controversy over such activities led Congress in 1974 to create an independent body, the Legal Services Corp. (LSC), to replace the program. With widespread support, the lawmakers also wrote into the law a number of restraints, notably a ban on encouragement of picketing, boycotts or strikes.

After slightly more than a year of operation, however, the new agency plainly is bound on pursuing many of the activities which discredited the old one. For example, the Legal Services Corp. argues that despite the ban cited above, poverty lawyers are obligated "to advise a client about lawful alternatives to litigation." Such advice is illegal, according to LSC, only if it intentionally—and provably—leads to the proscribed activities.

By the same token, poverty lawyers are still bringing class action suits, even when all the members of the class aren't poor, and are testifying at regulatory agencies on behalf of "consumers." Moreover, LSC argues that its own liberal determination of eligibility for its services is immune to challenge in court. Poverty lawyers are still suing federal agencies with federal money. And the Corporation's interpretation of the ban on lobbying makes it virtually meaningless.



In view of such developments, it's not surprising to learn that E. Clinton Bamberger Jr. is executive vice president of LSC, the No. 2 post. He was the first head of the Legal Services Program at OEO under Sargent Shriver (a large picture of the latter is prominently displayed in Bamberger's office). While Bamberger held that post, Robert Kirk Walker, president of the Tennessee Bar Association, charged that encouraging rent strikes was tantamount to inciting social revolution. Bamberger replied: "There's going to be a change in this country. If the lawyers want to watch it and not participate in it, that's your decision."

Jean Camper Cahn heads one of the law centers funded by LSC. The OEO Legal Services Program was her brainchild and that of her husband, Edgar Cahn. Mrs. Cahn was a member of OEO's National Advisory Committee on Legal Services, and Mr. Cahn was assistant to Shriver.

While the old legal services program managed with an appropriation of \$70 million, the "new" one operates on a much grander scale. It boasts 3,300 federally subsidized lawyers and over 1,000 para-legal aides. All together, they handle around one million cases a year in 300 programs with 700 offices. LSC's budget this fiscal year is \$125 million. Although the federal budget released last week calls for \$90 million for the next fiscal year, LSC officials plan to request \$216.8 million when they testify before Congressional committees.



Within a few years, LSC is aiming at half a billion dollars. But according to its arithmetic, even that sum won't suffice to take care of all those who need its help. Thomas Ehrlich, LSC president, says that out of 29 million eligible, seven million need legal aid each year. To help those who can't be reached by the LSC program, Ehrlich wants the American Bar Association to require all licensed lawyers to devote 5% of their time to the "public interest." (The LSC Act bars financing public interest law.)

The Corporation has successfully argued that the President of the United States cannot control how much money it requests from Congress and that the Office of Management & Budget has no say over how the money is parceled out. LSC also has found a loophole in the ban on handling fee-generating cases, which is likely to mean still more money for the legal activists.

With two exceptions, Congress specifically banned LSC-funded legislative activities. One is when it is necessary to the provision of legal advice and representation with respect to an eligible client's rights. The other is in the event that "a governmental agency, a legislative body, a committee or a member thereof requests personnel of any recipient (of LSC money) to make representations there-to."

Nevertheless, the LSC-funded Massachusetts Law Reform Institute openly lobbies. According to John J. McGlynn, supervisor of Public Records for the Commonwealth of Massachusetts, seven people are "registered as legislative agents for the Voluntary Defenders Committee Inc. d/b/a (doing business as) Massachusetts Law Reform Institute during the calendar year 1976."

According to the Boston Herald American, the Institute spear-headed a lobbying campaign for the graduated income tax in Massachusetts, a measure which voters rejected in a referendum. The newspaper added that such activity on behalf of poor people was questionable, since most of them pay no state taxes. It reported that the Institute also prepared the legal work on a case which barred corporations from contributing funds to oppose the referendum.

The Institute's application for its LSC grant states flatly that one of the funded activities would include "legislative advocacy." It said that Legislative Advocate Susan Hamilton, would "coordinate and manage legal services legislative program, draft, follow and give advice on state legislation materially affecting low-income people."

On Dec. 23, 1975, the Institute asked LSC for a grant of \$317,141 for one year. This compared with \$288,310 received from the Community Services Administration, successor to OEO. The following February, LSC President Ehrlich signed a document authorizing a grant of \$337,557, for the year ending March 31, 1977.

Nor is the Institute alone in its activities. On the contrary, the November issue of the Clearinghouse Review, published by LSC, discloses that the LSC-funded Legal Aid Society of Albuquerque Inc., which is seeking an executive director, will give prime consideration to applicants with, among other things, a commitment to legislative advocacy. Advocates for Basic Legal Equality Inc., of Toledo, also subsidized by LSC, says in the Review that it wants a director of litigation whose duties will include "supervising the law reform litigation and legislative advocacy activities of seven staff attorneys."

Beyond the field of legislation, centers subsidized by LSC are particularly active in criticizing public utilities and promoting low rates for all low-volume users. Lawyers from the LSC-funded Legal Aid Bureau of Baltimore argued along these lines in September before the Commission of Electric Utility Rate Structures in Maryland. Similarly, attorneys from several LSC-funded Centers represented "consumers" at a proceeding of the Public Service Commission of Indiana concerning new rules for gas utilities.



Yet there is nothing in the LSC Act authorizing such attorneys to represent "consumers." The mandate is to provide legal services for the poor. Moreover, the LSC Act specifically prohibits use of LSC funds "directly or indirectly to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any federal state, or local agency."

We asked LSC President Ehrlich how he could justify action in areas like utility rates, which affect not only the poor, but also the population at large. He replied: "If a group of poor people says, 'We don't think the increase in utility rates is proper,' the program brings an action to restrain the public utility commission in the

particular jurisdiction from approving a rate increase. The fact that other people may benefit from that doesn't preclude them from bringing it."



LSC, plainly, is generous in deciding who is eligible for its help. The statute requires the Corporation to consult with the director of the Office of Management & Budget and state governors and set maximum income levels, accounting for family size, urban and rural differences and substantial cost-of-living variations. Instead, LSC has decided to let its grantees set the levels. The act specifically says that the maximum levels for eligibility shall not exceed 125% of those established by OMB. LSC's regulation on the subject says that a grantee shall not exceed the 125% limitation "unless specifically authorized by the Corporation."

Its regulations also stipulate that over-income persons are eligible if they are seeking legal assistance to obtain or prevent the loss of benefits provided by a government program for the poor. They don't explain how a person with income over the maximum would be eligible.

In a speech before the annual meeting of the National Legal Aid & Defender Association last October, Ehrlich declared: "We are working to establish judicial precedents that the financial eligibility of legal services clients is non-litigable, and, therefore, not open to inquiry by a court, bar association or opposing party."

In the same address, Ehrlich said LSC is working hard to insulate itself from control by the Executive branch of government. He pointed out that the Corporation successfully fought President Ford's rescission of \$45 million of its appropriation for the coming year. Instead, it won an extra \$35 million.

In its budget request for fiscal 1977, LSC maintained that OMB may look at the LSC request but lacks authority to limit the amount. According to Ehrlich, "The Corporation also mounted a major legal effort in opposition to the apparent intention of the Office of Management & Budget to apportion the Corporation's appropriation in instalments. Apportionment would have given the executive branch a powerful tool for management and control. OMB was persuaded by our argument, and the entire appropriation was made available on Oct. 1."

LSC views its current level of federal funding as just a downpayment on grandiose future plans. The task force which furnished a position paper analyzing and justifying appropriations for LSC declared: "to carry out its responsibility, the Corporation will require at least \$241 million and perhaps in excess of \$525 million to provide minimal coverage of attorneys to service the legal needs of the nation's poor. The Corporation, therefore, must begin what may be a five-to-10-year set of goals toward an effective national legal services program."

Higher and Higher

LSC seems to have gotten the word. Ehrlich has been publicly pointing to a recent study done by the Bureau of Social Science Research Inc., an LSC grantee. The document estimates that 23% of the nation's poor, about seven million, face legal difficulties every year. LSC-funded projects can handle only about one million. This suggests that Ehrlich may be shooting at a budget seven times the present size, or \$875 million. But LSC apparently is aiming even higher. When it issued its eligibility regulations last November, it said it may seek adoption of a more realistic income standard. This, of course, would make more people eligible for its services.

While stating that its purpose is to serve only the poor, the LSC Act permits class actions at the discretion of local LSC boards. Here's what Ehrlich told Barron's: "I can conceive of some class actions where you couldn't identify all the people in the class. . . . Then it is possible that it includes some people, therefore, who aren't eligible. The key thing is to determine there is a group of people who are poor and need help. . . . The fact that it includes people who are not eligible should not bar those who are (poor) from getting assistance."

Even under that reasoning, some of the classes seem unusually broad for a poverty program. For example, California Rural Legal Assistance brought a case in which it argued that the California Secretary of State is impeding the

registration of 1,300,000 potential voters by failing to provide bilingual oral registration assistance. LSC-funded attorneys even bring cases on behalf of entire Indian tribes.

One notable multi-faceted endeavor involves giving part of the country back to the Indians. Attorneys from Pine Tree Legal Assistance Inc. of Portland, Maine, and the Native American Rights Fund of Boulder, Colo., both subsidized by LSC, have argued that two-thirds of the state of Maine belongs to the Passamaquoddy and Penobscot Indian tribes.

Tribal Justice

On Jan. 14, the Interior Department issued a report in which it supported ownership of between eight and 10.5 million acres by the two tribes, out of 12.5 million acres claimed. Both Interior and the Justice Department said Congress should settle the dispute. Earlier, Maine Governor James B. Longley wired Tom Tureen to accept a settlement that would not disturb the homes or jobs of those living in the disputed areas. Tureen is an attorney in the case of Pine Tree and Native American. They contend that the federal Nonintercourse Act of 1790 makes it illegal to acquire Indian land without the consent of the U.S. A year ago, they won a decision by the U.S. First Circuit Court of Appeals that the Act applies to the Passamaquoddy Tribe and establishes a trust relationship between the tribe and the U.S.

While the case is far from over, on Oct. 23 The New York Times reported that the decision has stopped the sale of \$27 million of bonds by the Maine Bond Bank and left the Maine towns of Ellsworth and Millinocket unable to raise money. The Times pointed out that the case casts doubts on the Maine's ability to increase taxes, the ultimate guarantee of municipal bonds, because Indian land cannot be taxed.

Tureen is involved in other cases arguing for return of land to Indians. They concern 2,100 acres in Connecticut, 16,000 acres on Cape Cod, 3,200 acres in Rhode Island and 300,000 acres in Utica, N.Y.

Does turning the country back to the Indians constitute a proper activity for federally funded poverty lawyers? To this question, LSC President Ehrlich replied: "Litigating poor people's claims is proper. . . . What we've got to be sure of is that there are human beings who are eligible for help and need help. If that's the case, as I've every reason to believe it is, then it's perfectly proper."

Although legal centers are funded by the federal government, they often bring suits against it, a practice which results in Uncle Sam subsidizing legal challenges to his own actions. Last April, for example, lawyers for the Western Center on Law and Poverty of Los Angeles and the San Fernando Valley Neighborhood Legal Services of Pacoima, Calif., sued the Secretary of Health, Education & Welfare to force payment of supplemental Social Security benefits to indigent patients at an alcoholic rehabilitation center. They lost.

In a suit against the Secretary of Housing & Urban Development, Southern Tier Legal Services of Corning, N.Y., and Legal Services for the Elderly Poor of New York City seek to enjoin the payment of HUD grants to the city of Corning until it properly identifies the housing needs of low- and moderate-income citizens.

Protecting Criminals

The law limits the Corporation to "providing financial support for legal assistance in non-criminal proceedings." But Ehrlich told Barron's that this proviso does not keep it from looking out for the civil rights of criminals. As a result, LSC is funding much activity in that connection. For example, the Youth Law Center of San Francisco, argued that a youth convicted of vandalism had received too heavy a sentence. The Spokane Legal Services Center even provided counsel for the defense in a case of criminal slander before an Indian tribal court.

During a long interview, LSC Executive Vice President Bamberger emphasized several times that LSC-funded attorneys must not take fee-generating cases. But then Barron's came across a case in which Community Legal Services Inc., of Philadelphia, was awarded \$2,820 in legal fees when it successfully challenged age discrimination by the city of Philadelphia in hiring security officers. Again, in two voting rights class actions brought by an LSC grantee, the Puerto Rican Legal Defense & Education Fund, a lower court held that attorney's fees awarded should be less than the going rate for similar services received by privately employed counsel. But the Fund convinced an appeals court to award \$23,252 in fees.

Asked about those cases, Bamberger explained that he had said that LSC grantees must not take fee-generating cases for purposes of simplification; actually they may do so if private attorneys are not available. The statute says that no LSC funds may be used in any fee-generating case. But it created a loophole large enough for Bamberger and his colleagues to walk through arm-in-arm when it added, "except in accordance with guidelines promulgated by the Corporation."

These guidelines say that LSC-funded lawyers need not attempt referral to a private lawyer if the case is "of a type that private lawyers ordinarily do not accept." The regulation adds that referral may be postponed if emergency circumstances require immediate action. Such determination, by the way, is left up to the grantee.

In a case now pending in a Massachusetts superior court, Brandywine Village Co. (owned by First Realty Management Corp. of Boston) contends that the LSC-funded Greater Boston Legal Services Inc. held a press conference to raise money for defendants not poor enough to qualify for Greater Boston's services.

(To be continued.)

Bar Sinister—Part II

How the Legal Services Corp. Thwarts the Will of Congress

BY SHIRLEY SCHEIBLA
WASHINGTON — When Congress created the Legal Services Corp. (LSC) in 1974, it "abolished" so-called back-up law centers because they led the push for class action suits and social change. Specializing in areas like welfare and housing, such bodies not only act on their own but also assist other local poverty law centers throughout the country. Yet today 13 of the original 17 are getting more LSC money than ever and still doing business at the same old doctrinaire stand.

Of the remaining four, the corporation has taken over the functions and some of the activist personnel. Indeed, it's spending more than twice as much on them as for the other 13. At least one of the four is getting more federal money than ever before, but now it comes from the Department of Health, Education & Welfare.

LSC is vigorously promoting legal services by other government agencies, notably VISTA and the Community Services Administration. (The latter succeeded the Office of Economic Opportunity.) One reason is that they can engage in activities for which the LSC Act prohibits corporation funding.

Launched Costly Study

As noted last week, Congress has been lavish in appropriating money for LSC, but to date has failed to scrutinize its activities. Ultimately, however, the lawmakers will have to take a hard look. As required by the LSC Act, the Corporation has launched a \$1.9 million study to explore various ways and means of providing legal services for the poor. They include judicare, prepaid legal insurance, contracts with private law firms and vouchers. By July, it is slated to make recommendations to the President and Congress. The ultimate choice will be a major one.

After passage of the LSC Act in July 1974, President Ford took a year to nominate the members of the board. Then five of his initial choices ran into such virulent opposition that they bowed out. (They included former Representative Edith Green, once head of the Education Subcommittee of the House Education and Labor Committee, a Democrat and no conservative, but a critic of the Legal Services Program.) As a result, the 11-member board has no outspoken critics of the program. It has only two members, who by any stretch of the imagination, could be viewed as tolerably conservative: J. Melville Broughton Jr., a former prosecuting attorney for the city of Raleigh, N.C., and Marlow W. Cook, former Republican Senator from Kentucky.

As part of the act creating the Corporation, Congress approved the Green Amendment. When Representative Green introduced it, she said it outlawed the back-up centers. Right after a Senate-House conference agreed on the bill, Rep. Carl Perkins, manager of the Conference Report in the House, announced that the conference had accepted the Green Amendment "lock, stock and barrel." Congressman Albert Quie, manager of the bill on the Republican side, declared: "This bill cannot be interpreted to permit the Corporation to make any grant or contract for the purposes and programs carried out under the so-called back-up centers."

The language of the bill itself will not permit that interpretation.

Congressional Interest
 Whenever controversy arises involving interpretation of a statute, the custom is to rely on the record prior to passage to determine Congressional intent. The remarks of Green, Perkins and Quie seem to establish that intent without question.

Nevertheless, LSC paid a Chicago attorney, Alexander Polikoff, \$134,513 to do a study on back-up centers. Polikoff heads a public interest law firm called Business and Professional Men for the Public Interest. He argued that the LSC Act means that training and technical assistance, research and clearinghouse information must be handled by LSC itself and not by back-up centers. He then concluded that the back-up centers could engage in other activities. In a shorter study, done without charge, the Washington law firm of Hogan and Hartsen reached a similar conclusion.

Thomas Ehrlich, who heads the Corporation, asked Mrs. Green for comment. In February 1976, she wrote that the Hogan and Hartsen interpretation was wrong. She added: "It ignores the entire controversy over back-up centers; it ignores the legislative history; it ignores the Congressional intent."

Mrs. Green subsequently came to Washington to address LSC's board. She emphasized that the Congressional statements which LSC

Mrs. Green, their remarks were inserted after passage, but appeared as though they had been made on the floor prior to the vote.

Mrs. Green also told the directors about a remarkable occurrence a couple of days earlier, when the Senate voted on the same law. It convened at 1:50 p.m. and balloted at 2 p.m., leaving precisely 10 minutes for debate. But, according to the Congressional Record, the debate covered 30 pages of fine print and included remarks by 10 Senators. Evidently the lawmakers inserted their remarks after passage of the law to make it look as if they had been made beforehand.

The deceptive "debaters" included Senators James Abourezk (D., S.D.), Alan Cranston (D., Calif.), the late Philip A. Hart (D., Mich.), Harold E. Hughes (D., Iowa), Edward M. Kennedy (D., Mass.), Charles McC. Mathias (R., Md.), (now Vice President) Walter Mondale (D.,

Congress has been lavish in appropriating money for the Legal Services Corp., but it has failed to scrutinize its activities. Ultimately, the lawmakers will have to take a hard look.

had cited to indicate intent were made after passage of the law. She specifically challenged reliance on statements by Representatives Shirley Chisholm (D., N.Y.) and William A. Steiger (R., Wis.), who, she said, were not even on the floor on July 16, 1974, during the debate on the LSC Act. Instead, according to

Minn.), John C. Stennis (D., Miss.), John V. Tunney (D., Calif.) and Harrison A. Williams (D., N.J.). Nevertheless, Mrs. Green failed to persuade the majority of the directors.

Contracts Outstanding

The board also defeated a motion by members Rodolfo Montejano and Marshall J. Breger which would have allowed LSC to disapprove any receipt of funds from any source by back-up centers for activities inconsistent with the LSC Act. LSC now has contracts outstanding in the amount of \$4,281,963 with 13 back-up centers. On or before July 1, it is expected to renew these for \$4,315,326 more.

That accounts for all but four of the original 17 back-up centers. One of these, the National Clearinghouse for Legal Services, still publishes the Clearinghouse Review in Chicago with the same staff, but now it officially comes under LSC supervision.

LSC created the Office of Program Support, budgeted at \$7.1 million to take over the activities of the other three. One is the Legal Services Training Program of Catholic University. According to the Polikoff study, the LSC grant for the Program was administered as part of the Law School budget. LSC's official biography of Executive Vice President E. Clinton Bamberger Jr. indicates that his last job before joining LSC was dean of the Law School at Catholic University.

Another is the Management Assistance Project of the National Legal Aid and Defender Association. Bamberger formerly headed the NLADA. So did Revis O. Ortique Jr., a member of LSC's board of directors.

Doing Very Well

The last of the quartet of back-up centers is doing very well indeed. William Fry, director of the National Paralegal Institute, told Barron's that it has obtained \$388,000 in grants from the Department of Health, Education & Welfare. That's more than the \$332,000 it enjoyed from LSC. Moreover, the Institute continues to work with LSC-funded law centers which have access to state money.

Now, according to Fry, the Institute is working with LSC in "a major presentation to the American Bar Association on paralegals." He says that a written report has been sub-

mitted to the ABA Committee on Legal Aid and Indigent Defendants and that in February the Institute and LSC will make a verbal presentation. Fry adds that the Institute is working closely with Catherine Day-Jermainy, currently director of paralegal affairs at LSC and former director of training for the Institute.

Ehrlich already has established within LSC the Research Institute on Legal Assistance, with a budget of \$250,000 for fiscal 1977. As its head, he named Alan Houseman, former director of the Michigan Legal Services Assistance Program, funded by OEO. In an article in Human Events, published on Dec. 8, 1973, Howard Phillips, former OEO director, called Houseman "a leader of the leftist National Lawyers Guild."

Soliciting Proposals

LSC is soliciting proposals from prospective fellows for LSC-funded studies in several areas which Houseman wants to explore. They include the effects on the poor of administrative and hearing processes, housing tribunals and small claims courts. What are the other 13 back-up centers doing? Schedule A of the contract for the Legal Action Support Project of the Bureau of Social Science Research Inc., which became effective last July 16, says that, among other things: "The Project will, on behalf of eligible clients, assist Legal Services Program personnel in their participation in administrative proceedings, including rule making, and in legislative proceedings."

In other words it plans to engage in lobbying. But it said it would do so only upon request of a government agency, legislative body, committee or a member thereof. Still, devoting approximately 20% of its total professional effort to "administrative and legislative representation," seems a far cry from the Congressional aim of obtaining legal services for poor people. The contract stipulated that only 5% of total professional effort would be devoted to "general client counseling and representation."

In its report to LSC for the quarter ended Oct. 15, the Project said it "prepared a report which demonstrated why many able-bodied persons remain unemployed for prolonged periods of time despite diligent efforts to find work." Despite a ban on LSC-funded research, the document was used to assist the Legal Aid Service Multnomah Bar Association of Portland, Ore., an LSC grantee, in a class action seeking welfare for the able-bodied.

The Project also apparently did research to aid an LSC-funded law center, the Appalachian Research and Defense Fund of Kentucky. The Fund went before the Kentucky Public Services Commission to oppose a pending electric utility rate increase. The Project said it "reviewed the Kentucky Power Company's testimony and suggested to the (Fund) attorney specific lines of inquiry appropriate for future interrogatories. With reference to selected counties in the eastern portion of the state, we obtained data on social and economic characteristics of residents, prepared tabulations on mobile home families below the poverty line and furnished reference articles and bibliographies on electric utility rate structures."

In addition, two spokesmen for the Project participated last summer in the Consumer Advocate's Workshop on Electric Utility Rate Proceedings, sponsored by the National Consumer Information Center in Washington. The Center was founded by Howard University law students and is funded by Community Services Administration.

Food Stamp Program

As further evidence of social advocacy, rather than service to individual indigent clients, the Project said it is trying to document inadequate coverage for the food stamp program in order to help Alaska Legal Services (an LSC-funded law center), which "is contemplating a challenge to the Food Stamp Program's allegedly inadequate outreach effort in the state."

The Project argues that such activities are legal, provided they are "directly connected to requests from LSC-funded attorneys who seek our assistance in regard to their representations of specific eligible clients."

This stance squares with what Bamberger told Baron's: "Now back-up centers can only do work for clients; they have to have a client. . . . We can't provide high quality legal service without having specialists."

School Desegregation Suits

The law says that no Corporation funds may be used for school desegregation suits. Yet in a recent report to LSC, the (back-up) Center for Law and Education made clear that it is participating in such cases. For instance, it said that Eric E. Van Loon and Robert Pressman of the Center, along with other attorneys, filed an appeal on Oct. 18, 1976, in a Boston school desegregation case which earlier led to a District Court placing South Boston High School in receivership.

Observing that the unit dated back to 1972, we asked Ehrlich what happens to cases which were pending at the time of passage of the LSC Act. He replied that he has written all law centers that if an LSC-funded attorney is in the midst of a case involving an activity prohibited by the Act, he is obliged to try to transfer it to competent counsel. "If he is not able to do so, then, under the standards of professional responsibility, he has to continue the case but not take any more like it," Ehrlich declared. What about appealing prohibited cases? "Responsibility to the client is

the most important consideration of all, and that includes responsibility to appeal."

In a report to LSC dated Oct. 31, 1976, the National Housing Law Project (a back-up center) said it has spent a significant amount of time coordinating more than 40 suits involving operating subsidies by the Department of Housing and Urban Development (HUD). It said it was co-counsel with the (LSC-funded) Western Center on Law and Poverty in the Underwood case, in which the U.S. Supreme Court stayed a District Court order for HUD to pay operating subsidies. (It lost.)

After noting its participation in several other lawsuits involving HUD, the Project reported that its director is vice president of the board of directors of the Housing Assistance Council, funded by HUD. It also said the Project prepared a background paper on redlining and disinvestment under contract to HUD's Office of Fair Housing and Equal Opportunity. We asked Robert Elliott, former HUD general counsel, if this constituted a conflict of interest. He said it might be poor judgment, but was not illegal.

The Native American Rights Fund/Indian Law Support Center is involved in the cases aimed at giving part of the country back to the Indians, discussed last week. In its latest quarterly report to LSC, it said it is helping South Dakota Legal Services (funded by LSC) to prosecute a case involving the rights of prisoners.

The Center also reported that it has helped four attorneys from the (LSC funded) Seattle Legal Services, which keeps them on two Indian reservations to serve as general counsel to the tribe. It didn't explain how a whole tribe qualified for such help.

Legal Services for whom?

By C.M. Wilson

A few years ago the legal services of the Office of Economic Opportunity drew so much fire from the public that Congress was obliged to do something about it.

What the Congress did was to suffocate the OEO with an avalanche of amendments and to give birth to the Legal Services Corporation for the stated purpose "of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance."

The corporation was funded by Congress last year to the tune of \$92 million. President Ford recommended that the appropriations be reduced by \$45 million for the current fiscal year, but the Congress increased it \$35 million, bringing the total up to \$125 million.

A report which was issued last April revealed that 776 attorneys are employed by the Legal Services Corporation in the 11 states covered by Northeast Agriculture, plus 90 in Puerto Rico. Here is the breakdown by states. Connecticut, 74; Maine, 21; Massachusetts, 138; New Hampshire, 19; Rhode Island, 16; Vermont, 22; New Jersey, 137; New York 267; Delaware, 14; Maryland, 45; West Virginia, 23; and Puerto Rico, 90.

One of the problems that is being referred to repeatedly in the various reports made by employees of the corporation is the "distribution of services". That seems to imply they're having trouble finding enough poverty level people with noncriminal legal needs to keep the 776 attorneys busy.

Perhaps, at least to some extent, this accounts for the fact that lawsuits have been filed against 88 farmers in New Jersey along with the Garden State Service Cooperative Association, the Glassboro Service Company, and Farmers and Gardeners Cooperative, all of which are, or have recently been involved with the employment of seasonal farm workers from Puerto Rico.

The complaints, as registered by the Legal Services Corporation, have ranged from so-called violations of housing standards to minimum wage rates, to errors in record keeping to general health facilities, and various other regulations established and policed by the Department of Labor and Industry of New Jersey or by

regulatory agencies of the federal government, such as OSHA.

As of October 6, 52 of the cases had come to trial and 51 of them had been dismissed due to lack of evidence. In one case, it was found that a worker had \$21 coming to him because of an error in the employer's calculation of wages due the worker.

Normal administrative procedures are not followed by the Legal Services Corporation, in notifying the employer that he was to be charged for a violation. The farmers were simply "hauled into court" to defend themselves as best they could or to hire a lawyer to do it for them. In every case, the farmer through his organization paid for his defense, while the worker is represented without charge by attorneys paid by the government.

Of the 88 cases, 76 have been filed in Puerto Rico where the Legal Services Corporation maintains another battery of attorneys. So the New Jersey farmers have found it necessary to hire a Puerto Rican law firm to defend them and to take their chances.

This has been going on four years and the results are beginning to show up. Jobs for migrant farm workers are drying up. The Glassboro Service Company, ten years ago, was placing close to 10,000 Puerto Rican workers on farms in New Jersey. This past season the figure was down to about 3,300.

Tomato acreage in New Jersey has dropped dramatically, the asparagus growing business in the Garden State is no longer significant. Farmers in New Jersey are switching to soybeans, wheat, and corn. An important factor in the decline of vegetable acreage has been problems with labor and with agencies of government.

On the one hand, the U.S. Congress concerns itself with providing jobs for everybody. On the other hand, it has created a situation through which thousands of jobs are being eliminated. Thus far the 137 attorneys hired by the Legal Services Corporation in New Jersey and the 90 in Puerto Rico are the ones who seem to have gained most from the project.

South Jersey farmer says

Weight of government too heavy

By C.M. Wilson

Like a lot of other Southern New Jersey farmers, J.V. Sparacio liked vegetable farming; he had a knack for it and he was good at it. On his 600 acre farm near Bridgeton he grew tomatoes, asparagus, snap beans, and a half dozen other vegetable crops that are compatible with the soil and climate of the Garden State.

Sparacio and his wife were having a good time of it; they enjoyed what they were doing. It was their habit to employ about 65 seasonal workers from Puerto Rico each year. Sparacio learned to speak Spanish and he could communicate with the workers. Year after year the Puerto Rican workers would make application through the Glassboro Service Corporation for a job on the Sparacio farm.

In 1972, Sparacio built new housing facilities for the workers. Everything was new, up-to-date. In accordance with every housing standard established by the Department of Labor in New Jersey and well above the minimum standards established by OSHA.

Sparacio was proud of a letter he received from the New Jersey Department of Labor commending him for "such modern, up-to-date facilities for your workers."

Adjacent to the sleeping quarters, the Puerto Ricans were provided with a modern kitchen and dining room. They were free to cook meals of their own choosing. Facilities were provided for doing their own washing and a shower room with toilet facilities was available.

Sparacio made it a habit to pay his workers well and promptly; his wife kept the books which included the number of hours worked each week. Each Saturday, the men were paid in accordance with the contract they had signed before leaving Puerto Rico. It was a standard contract worked out in advance by the Department of Labor in Puerto Rico and the Garden State Service Corporation.

Farmers call it harassment

J.V. Sparacio is but one of more than 90 fruit and vegetable growers in New Jersey who have been hounded by the Legal Services Corporation. Vegetable production in the Garden State has shown a dramatic decline and there has been a substantial increase in the acreage of wheat, corn and soybeans.

In the last 10 years employment of seasonal workers through the Glassboro Service Corporation has dropped from more than 10,000 workers to slightly more than 3,000 this past season.

Local growers are saying they can't take the risk of harassment by the Legal Services Corporation, an agency of the federal government.

So life on the Sparacio farm was good for everybody... or so everybody thought until September 25, 1972. That day Sparacio got a letter from the Bridgeton office of the Camden Regional Legal Services Corporation, advising him that he was to appear in court to defend himself against charges that he had not provided clean living quarters, that the bedding was not clean, that there was no closet where the workers could hang their clothes, and that there were no opaque window shades. There were shades at each window, but they were not opaque.

Even though the workers were doing their own cooking, Sparacio was charged with not having furnished a suitable standard of nourishment. Further, it was charged that he owed the workers extra benefits because they had bought their own soap and toilet articles.

Sparacio was puzzled. On the one hand he was being commended by his State government for excellent housing facilities; his operation was being held up as an example for others to follow. On the other hand, the federal government was charging him with a number of violations.

Why hadn't someone from the Legal Services Corporation, or from OSHA or from some other bureau of the government contacted him ... he had tried to do everything right and would have been glad to make any changes necessary to correct any mistakes he had made ... why was he being summoned into court without warning? Sparacio wondered why.

His was one of the first cases to be brought before the court by the newly established Legal Services Corporation. His was one of the first to be thrown out of court due to lack of evidence. Although it had cost him time and money, he was satisfied that he was in the clear.

But not so. The following year, 1973, he was summoned to court again by the same Legal Services Corporation, in the same manner and was again charged for the same alleged violations.

This time, though, he was summoned to the court in Puerto Rico. That meant he had to defend himself there, instead of in New Jersey.

His case hit the papers and one day a picture appeared in the Philadelphia Inquirer.

The picture was one of a ramshackle, run down housing facility which the paper reported was located on Sparacio's farm and where, it was said, he housed his migrant workers.

Sparacio hit the ceiling .. the building was not on his place ... never had been. He appealed to the paper for a correction, but didn't get one. Again he answered the summons to court and again the case was dismissed for lack of evidence. Again the vegetable grower went back to his business.

Came 1974 and two more summonses were caused to be sworn out by the Legal Services Corporation. Again the summons called for the case to be tried in Puerto Rico. This time the charges were different, though. Now he was being charged for a violation of the wage rates. It was charged that he had not paid his workers for time worked over 48 hours per week.

Although he had not been found guilty of anything during any of the four trials Sparacio felt whipped. Other vegetable growers were being hauled to the courts in Puerto Rico and there appeared to be no end to it.

So Sparacio quit growing vegetables. The Legal Services Corporation had dried up 85 jobs. The South Jersey vegetable farmer could raise other crops. He turned his 400 acres into soybeans, wheat, and corn.

Today he employs no farm workers at all. With a little part time help from relatives at planting time in the spring and at harvest time in the fall, he can get along nicely ... not as much fun, says Sparacio, but a lot easier ... Most important, though, the harassment ended ... incidentally, his housing facilities are being converted into apartments for local residents who want to live on a farm.

STATEMENT OF THE LEGAL SERVICES CORPORATION
IN RESPONSE TO "BAR SINISTER"*

The two-part article concerning legal services for the poor in the January 24 and January 31, 1977 issues of Barron's is scarred by error and innuendo, by the apparent judgment of its author that poor people are not entitled to the same recourse to the law that is the right of every citizen, and by a sharply negative tone that begins with the title, "Bar Sinister." This statement deals with each of those points in turn.

First, the error and innuendo.

- The article states that the Legal Services Corporation has not been faithful to its mandate because legal services lawyers may "advise a client about lawful alternatives to litigation." Litigation is a cumbersome and expensive process that drains the resources of the parties and the courts; whenever litigation can be avoided, it should be. This approach is wholly consistent with the Legal Services Corporation Act.

- The suggestion that legal services programs improperly use class actions to benefit the non-poor is incorrect. The Act specifically sanctions class actions in accordance with policies established by the governing bodies of legal services programs. Under federal and state rules of civil procedure, a class is defined by the common interests of its members, and many of the interests of the poor are shared by others. In every case, whether brought by legal services attorneys or not, it is the court that decides whether a class action is proper and who the class members should be.

* Portions of this statement were submitted to Barron's in a letter dated January 26, 1977. An abbreviated version of that letter was then submitted and was published in the February 21, 1977 issue of Barron's.

- The article is wrong in suggesting that legal services programs should not bring suits against federal agencies. The Act does not prohibit such suits. Legal actions by private persons, no matter what their economic status and including persons represented by legal services lawyers, are one way to ensure that federal agencies implement and enforce laws as the Congress intended.

- The statement that "the LSC Act bars financing public interest law" is wrong. The Act prohibits making grants to or entering into contracts with any private law firm that expends fifty percent or more of its resources and time litigating issues in the broad interests of a majority of the public. The Corporation has uniformly complied.

- The article implies that Corporation-funded programs that represent consumers are acting inconsistently with the Legal Services Corporation Act. It states: "there is nothing in the Act authorizing [legal services] lawyers to represent consumers." The mandate of the Legal Services Corporation is to provide all poor persons in America with legal assistance. The Act specifically sets forth the Corporation's statutory responsibility to support "high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel." The 29,000,000 poor in this country eligible for legal services are, like the rest of the population, consumers.

- The article's discussion about financial eligibility for legal services misstates and misleads, particularly the statement that: "LSC, plainly, is generous in deciding who is eligible for its help." The Act requires the Corporation to set maximum income levels and establish

guidelines to ensure that eligibility of clients will be determined properly by recipients. The Corporation regulation provides that a grantee shall not exceed 125 percent of the Office of Management and Budget Official Poverty Line Threshold. That is hardly generous: under the regulation, income for one person cannot exceed \$3,500; income for a family of four must be less than \$6,874. There are few instances when "over-income" persons are eligible. The exceptions are for persons who are elderly or disabled; persons who are entirely dependent on government benefits; and mothers who supplement Aid to Families with Dependent Children (AFDC) payments by working. In granting eligibility for the latter, the Corporation is consistent with federal policy.

- The article's reference to the Spokane Legal Services Center providing counsel for the defense in a case of criminal slander before an Indian tribal court suggests improper conduct. In fact, the legislative history of the Act shows that Congress was aware that legal services programs had been representing Indians charged with misdemeanors in tribal courts, and expected such representation to continue.

- Another misleading discussion in the article concerns the provisions of the Act and regulations on fee-generating cases. The article states that the section of the Act allowing legal services lawyers to take fee-generating cases pursuant to Corporation guidelines "created a loophole," and suggests impropriety. Yet most courts, including the United States Supreme Court, have recognized that legal services lawyers may accept fees under the circumstances specified by the Corporation's regulations. (In the discussion of this topic, the article refers to the Puerto Rican Legal Defense & Education Fund as a Corporation grantee. It is not.)

• The article's statement that the Corporation is "shooting at a budget seven times the present size, or \$875 million" is false speculation. The Corporation's budget request for Fiscal Year 1978 seeks an appropriation of \$217.1 million. Even that level of funding, however, will leave more than seven million poor persons without minimum access to legal services.

• The article is incorrect in suggesting that the Act abolished the so-called back-up centers. Section 1006(a)(3) of the Act provides that the Corporation shall undertake directly, and not by grant or contract, training and technical assistance, research, and clearinghouse activities. The Corporation's Board of Directors commissioned an extensive factual analysis of the activities of the support centers as a first step in considering the effect of this provision. On the basis of that study, the Corporation staff and outside counsel thoroughly analyzed the Act and its legislative history -- including the statements of members of Congress -- and made recommendations to the Board. We concluded that Section 1006(a)(3) restricts the enumerated activities only if they are a part of general assistance given to field programs and unrelated to identifiable clients; it does not limit those activities insofar as they are part of the assistance rendered to actual clients. The Board of Directors concurred in this analysis. As a result, funding was continued for thirteen of the support centers pursuant to carefully-negotiated contracts that require them to act only on behalf of eligible clients. The centers are monitored regularly to ensure that they continue to comply with the Act.

• The article misleads in stating that the Corporation has "taken over the functions and some of the activist personnel" of four of the support centers. The Act requires the Corporation to ensure "the maintenance of the highest quality of service and professional standards..." To this end, the Corporation has established an Office of Program Support to provide training, recruiting, and technical support to legal services programs, and a Research Institute on Legal Assistance to conduct substantive research regarding recent developments and areas of poverty law not currently developed. Although some of these services were previously available from support centers on a limited basis, the activities of the Office of Program Support and Research Institute go far beyond those of the old back-up centers. The activities of the present support centers are entirely different than those of the Office of Program Support and Research Institute in that the centers are permitted to act only on behalf of eligible clients.

• The article incorrectly implies that the Clearinghouse Review operates independently of the Corporation. The Legal Services Clearinghouse is a unit of the Office of Program Support that publishes the Clearinghouse Review and supplies case materials to legal services programs on request. Its staff and budget are administered by the Corporation. For logistical reasons, including existing lease arrangements and proximity to low cost printing sources, the Clearinghouse is headquartered in Chicago. Its board of directors and autonomous corporate status, however, are being dissolved.

• The article is wrong in stating that the Corporation promotes legal services by other governmental agencies, particularly VISTA and the Community Services Administration, because "they can engage in activities for which the Legal Services Corporation Act prohibits Corporation funding." The resources for legal services are so scarce that the Corporation encourages support for those services from a variety of sources, including governmental agencies and the private bar. We are encouraging VISTA to continue to provide funds for paralegals and attorneys that work in legal services programs. Those persons are bound by the provisions of the Act. We have also encouraged CSA to continue to provide funds for legal services programs for special purposes. The Act provides that such public funds may be used for whatever purposes are specified by CSA.

• The article suggests impropriety in the provisions of the Corporation's contract with the Legal Action Support Project of the Bureau of Social Science Research dealing with legislative and administrative representation. Administrative and legislative representation is often a more effective way of resolving widely-shared problems than is repetitive and expensive litigation. The Act permits such representation on behalf of eligible clients and in response to specific requests by governmental bodies. Those are the situations in which the Legal Action Support Project is authorized to appear before administrative and legislative bodies. Since July 15, 1976, however, less than 1 percent of the project's time has been devoted to such activity.

• The article alleges poor judgment, if not illegal activity, on the part of the National Housing Law Project in its relationship with the Department of Housing and Urban Development. The allegation is unfounded. None of the litigation conducted by the Housing Law Project related to Housing Assistance Councils -- community organizations designed to provide HUD with citizen input -- or the background paper on redlining that the Housing Law Project prepared at HUD's request. None of the activities engaged in by the Housing Law Project were compromised because of its involvement with several issues at one time.

Second, the article reflects an apparent judgment that poor people should not be afforded particular kinds of legal representation, and incorrectly implies that those kinds of representation are prohibited by the Legal Services Corporation Act. The article criticizes legal services lawyers for representing their clients in actions against the federal government. Fortunately, such actions are entirely consistent with the Act. Our form of government requires everyone to live under the legal system. That requirement must carry with it the means to ensure that poor people are not excluded from the legal system. Individuals can hardly be asked to live under and respect the law unless they have an opportunity to use it.

The article dwells at some length on a suit by a number of Indians in Maine who claim title to substantial lands in that state. On several occasions the author complained to Corporation staff that the suit had hurt the sale of bonds in Maine. For that reason, she suggested that the suit was plainly wrong. The Corporation's response

was that the judges in the case should decide the issues. Indians, like all other Americans, are entitled to use the legal system to protect their rights through lawful means -- and that is precisely what is involved in the Maine suit.

Third, the article has a negative -- almost sarcastic -- tone that is unfair to millions of poor people who desperately need legal help, and to the legal services lawyers and staff who are trying to provide that help. The Legal Services Corporation was created by Congress as an independent organization -- not, as the article contends, because of "mounting controversy" over alleged activities of poverty lawyers under the Office of Economic Opportunity Legal Services Program -- but rather as a result of a strong campaign led by such groups as the American Bar Association, the National Bar Association, the National Legal Aid and Defender Association, and many state and local bar groups to ensure that the program would be independent from partisan politics.

The article reflects a basic misunderstanding of what the Corporation is and what it is not. It suggests that we are misbehaving by requesting an appropriation greater than the amount recommended in President Ford's budget, and disloyal by arguing that the Office of Management and Budget may not control the payment of the appropriation. But the Legal Services Corporation is not an agency or bureau of the government. It is a private, not-for-profit corporation created by Congress and insulated from partisan political considerations by being

separated from the Executive Branch and freed from control by the President and the Office of Management and Budget. The Corporation is governed by Directors who were appointed by President Ford, approved by the Senate, and directly responsible to the Congress. They are all respected members of the bar who would not tolerate evasion of the law or countenance mischievous conduct.

The subheading of the article illustrates all the points made in this letter. It states that the Corporation "stretches its mandate. Heedless of intent of Congress, persists in pushing social activism over needs of the poor. Finances class action suits, lobbying, defends criminals." In fact, Corporation funds are not used to support criminal proceedings. They are used in civil matters only. All the examples of "lobbying" cited in the article are authorized by the Legal Services Corporation Act, which permits legislative advocacy on behalf of eligible clients and in response to legislative requests. The Act specifically sanctions class actions brought according to locally-established procedures.

The Corporation does not "persist in pushing social activism over needs of the poor." Every legal services program is governed by a local board of directors composed of attorneys, eligible clients, and other interested persons in the community to ensure that the needs of the poor in the community are being met. Finally, no evidence was provided in the article that the Corporation is either "stretching its mandate" or "is heedless of the intent of Congress." On the contrary, we have made every effort to comply with the Act and have kept our oversight committees fully informed of our activities.

Those of us in legal services are trying to do a job that was mandated by Congress -- to ensure that poor people have the same chance to use the legal system that people have in the business and financial community. The entire tone of the article suggests that poor people should not be afforded those rights. Fortunately, the business and financial community has supported legal services for poor people, just as has the organized bar.

Senator HATCH. Your response would contain your answer to this?

Mr. EHRLICH. Yes.

Senator HATCH. I won't burden the committee with that. Let me just ask one other question. I am sorry I have had so many for you but I have had so many questions about this and this is informative and helpful to me.

How do you feel about liberalizing the amendments to the act, including, say, one, exceptions to prohibitions on entering criminal proceedings; two, elimination of the restrictions on juvenile representation; and, three, elimination of the restrictions on the use of private funds?

Mr. EHRLICH. I will take those, if I may, one at a time. We do not seek any expansion into the area of criminal representation other than the sole and very narrow exception of the native American cases referred to in S. 1303. They weren't covered in the 1974 act but would be covered by the proposed amendment. We do not seek any general foray into the realm of criminal representation.

The second area you referred to was juvenile representation. The restrictions that are currently in the statute would be eliminated in the proposed House bill as you no doubt know. We did not seek that change but we certainly don't oppose it. We didn't think the restrictions were really necessary in terms of—

Senator HATCH. You wouldn't feel badly if they were stricken by our committee?

Mr. EHRLICH. No. I think the argument on the part of some is that those restrictions may have a chilling effect on representation that goes beyond the actual provisions of the act. In other words, there are matters not covered by the restriction that some legal services lawyers don't take for fear they might conceivably be accused of violating the provision in the act, which they don't want to be accused of. We didn't seek that provision.

The third was—

Senator HATCH. Elimination of the restrictions on private funds.

Mr. EHRLICH [continuing]. Which we do support on the ground that we think that the resources available for legal representation are so scarce that there ought not be restrictions on them that go beyond the restrictions on the use of public funds. The most obvious case, is in the criminal area. There are programs that receive non-Corporation funds from public sources to use for criminal representation in a legal defender service. That is permitted under the act, but as it is now written, they couldn't receive private funds because of that prohibition.

The removal of the prohibition, which would treat private funds the same way as public funds, would eliminate what seems to us an anomaly. The proposed change makes sense.

Senator HATCH. Thank you very much.

Senator JAVITS. Mr. Chairman, can I have just one question because I have to go to another hearing and I will come back. That is on this report. I assume the report refers to what is found in section 1007(g).

Mr. EHRLICH. Yes, Senator, that is the report on delivery system studies.

Senator JAVITS. That is due in October 1977, isn't that correct?

Mr. EHRLICH. July.

Senator JAVITS. You say your first meeting of the Corporation—

Mr. EHRLICH. I didn't make that clear. The first meeting of the Board was in July of 1975. The operations formally began in October.

Senator JAVITS. So this is due in July?

Mr. EHRLICH. Yes, sir.

Senator JAVITS. Why is it not practical to wait until that report is in order to deal with the corporate request for funds? What is the calendar that makes it practical? After all, we get a report and we have to read it and study it too, so let's take 60 days for that. That means July, August, September. Why can't you wait until September?

Mr. EHRLICH. I certainly would hope that the authorization and appropriation was settled long before then, in order to efficiently plan for next year and into the future. We can say now that the preliminary report on the delivery system study will have a good deal of information about a variety of issues, in terms of starting up different kinds of programs in different kinds of areas as well as about the basic structure of our staff attorney system.

I do not believe, however, it will address the central question for the Congress in terms of our funding, which is whether or not we should make good on the promise to provide at least minimum access to legal services throughout the country. That promise, which will require \$217 million this year, will not be addressed in this report because the statute itself, in our view, mandates that we meet that goal.

Senator JAVITS. Aside from what is addressed in your report, don't you have a practical question about running an agency? You can't operate it without the necessary money. The year starts October 1, isn't that true?

Mr. EHRLICH. That's right, we certainly could not wait.

Senator JAVITS. That is a more vital reason than the other.

Mr. EHRLICH. As I said, we need to know now for planning purposes next October.

Senator JAVITS. So you can't, unless you want to dismantle—You have got to have some action.

Mr. EHRLICH. That's correct.

Senator JAVITS. I certainly don't want to dismantle.

Thank you.

Senator NELSON. What is the salary schedule for Legal Services?

Mr. EHRLICH. I can give you some data that we collected in 1975. Do you mean for legal services programs throughout the country?

Senator NELSON. Or for attorneys.

Mr. EHRLICH. Sadly, it is much too low. The average starting salary in 1975 was about \$10,500. The average staff attorney salary was about \$12,000 and the average supervisor salary was about \$14,000. Salaries in the last 2 years, I think, on the average have gone up about 15 percent. One can fairly add 15 percent, on the average, to those figures. But it is also true, when you compare them to the salaries in public defender offices, let alone in other government public service fields, that they are too low. That is a problem.

Each local board, I should emphasize, sets the salaries. We do not set salaries on a national level, but rather, each board sets the salaries of its employees.

Senator NELSON. Is the \$14,000 for a local program director an average?

Mr. EHRLICH. For a director of an office. For example, here in Washington there are six offices in one program. The average for the program directors is \$19,000.

Senator NELSON. The program director?

Mr. EHRLICH. That's right.

Senator NELSON. Otherwise, they range from \$10,000 to \$14,000 average, is that what you are saying?

Mr. EHRLICH. On the average, that's right.

Senator NELSON. But that is determined locally?

Mr. EHRLICH. Yes. Each program allocates its resources among salaries and other costs.

Senator NELSON. What is the average length of time a Legal Services attorney serves with the local program?

Mr. EHRLICH. We did a survey last year of that and found that about 25 percent had been with the programs less than 1 year, another 25 percent between 1 year and 2 years, another 17 percent between 2 and 3 years, which means that a total of 70 percent had been there less than 3 years. The rest—30 percent—had been there longer.

Senator NELSON. That 30 percent, what did they average?

Mr. EHRLICH. About 10 percent had been there more than 6 years, 10 percent had been there between 3 and 4 years, and another 10 between 4 and 6 years.

Senator NELSON. Do you have any statistics for those areas where you have a lawyer density of two per 10,000? Do you have any statistics on caseloads and cases they have had to turn down because of inadequate staffing? Or hasn't there been a problem where you have had a density of 2 per 10,000?

Mr. EHRLICH. Even with that minimum, and we keep emphasizing, it is a minimum, a great many cases have to be turned down. We can give you some representative indications from the Boston area—from region 1 as we call it, which is the area closest to that mark—to indicate even there the caseload burden is too high and many cases have to be turned away.

I should say the burden of caseloads, like salaries and a number of other factors, is involved in the overall retention problem you were indicating earlier. We are making an overall effort to try to meet that problem, not only by increased salaries but through a variety of other mechanisms as well.

Senator NELSON. Do you have any statistics on the number of people who apply for jobs in the legal services field who are not able—

Mr. EHRLICH. We can give you also for the record some indications from various programs in the country of the numbers who are applying for jobs and who don't receive them. Of course that varies a good deal from area to area throughout the country. We are instituting, for next year, a national recruiting effort to supplement efforts of the local programs to be sure that if and when there is any difficulty in hiring the national effort is there to supplement.

[The following was subsequently supplied for the record:]

STATISTICAL BREAKDOWN ON THE NUMBERS OF PEOPLE APPLYING FOR JOBS
IN THE LEGAL SERVICES FIELD AND WHO DON'T RECIEVE THEM

The Corporation requires that each legal services program establish priorities, in full consultation with the client community, to assure that the procedures established to deal with the problem of limited resources take into consideration the total relative needs in the community, rather than simply resort to a "first come, first serve" approach that may leave the most serious problems of clients unresolved.

The Corporation's short-term goal of the equivalent of two lawyers for 10,000 poor people throughout the country is designed to provide a level of minimum access that offers some realistic hope that a poor person with an urgent legal problem will have an opportunity to use the legal system.

Legal services programs do not keep records on the number of eligible clients whose requests for legal assistance are turned down because there are not adequate resources to help them. Even if a program is funded at the level of two attorneys for 10,000 poor persons, however, it can handle only a fraction of the legal needs of its client population.

Analysis of information collected by the American Bar Foundation in its study of legal needs of the public indicates that approximately 23 percent of all poor people (or 2300 of 10,000) actually need legal assistance during a given year. Assuming that the average legal services attorney handles a caseload of between 350 and 400 matters a year -- a caseload far above the norm for private practitioners -- then two attorneys would handle between 700 and 800 of the 2300 legal problems of the poor they are trying to serve. As many as 1500 to 1600 would go unattended, except to the extent that private attorneys could be persuaded to provide pro bono assistance.

Legal services programs handle this problem of limited resources in a variety of ways. Many programs set eligibility far below the maximum of 125 percent of the poverty level, because they know they cannot begin to provide services to everyone. Even with that limitation, however, most are forced to resort to other measures as well, including the total exclusion of certain types of noncrisis cases (such as name changes or uncontested divorces). Many programs maintain waiting lists, with the hope that they can get to eligible clients when they have time or available staff. Some programs close down intake on certain days of the week or for extended periods of time, because they simply do not have staff to take on additional cases.

A random check of legal services programs throughout the country demonstrates that programs are receiving large numbers of applications for attorney positions, many of them unsolicited. During the past twelve months, five programs in New England reported 361 applications; five in New York State, including the program in New York City, reported 1494 applications; seven programs in the Philadelphia region reported 2029 applications; three in Ohio and Kentucky reported 587; five in the Southeast reported 2397; five in the Midwest reported 970; five in the Denver region reported 990; five in California reported 867; and three in the Northwest reported 356.

The number of applications is high, not only for programs in major urban areas as might be expected, but for programs in rural areas as well. The Appalachian Research and Defense Fund in Kentucky reported 150 applications; Texas Rural Legal Assistance, 180; DNA-People's Legal Services, which operates on the Navajo Indian Reservation in Arizona, 190; and California Rural Legal Assistance, 120.

Senator NELSON. Have you had difficulty in recruiting lawyers at these salaries?

Mr. EHRLICH. No; not generally. The problem has not been a recruiting problem, although there are isolated incidents throughout the country where it is difficult to hire in a particular program. But generally, the answer is no. Retention has been a more difficult problem.

Senator NELSON. I take it that at those salary levels a good many of them are recently admitted to the bar?

Mr. EHRLICH. Yes.

Senator NELSON. Is that a good or bad principle?

Mr. EHRLICH. On the whole, I think it is good. We do believe, however, that there ought to be some of the best and most able who stay in legal services and make it a career. In some areas there has been such turnover there hasn't been the degree of experience and background that a program needs. It is inefficient and ineffective and short changes clients not to have some of that experience. That is why we are engaged in an effort now that Mr. Bambrugger is heading to try to find ways to insure that some of those experienced people stay on.

But, on the whole, I think it is just fine that legal services attracts lawyers who have recently left law school.

Senator NELSON. The expectation is that they would then generally serve a year or two or three?

Mr. EHRLICH. We would hope more than a year. We would hope 3 years, 4 years, and many would then move on. That is exactly right.

Senator NELSON. Thank you very much.

Senator HATCH. Could I ask a question?

Senator NELSON. Yes.

Senator HATCH. One thing that has bothered me; I sit on the Judiciary Committee as well. In the U.S. Senate, as I recall, this bill was passed through the Labor Committee, the Labor and Public Welfare Committee before but I am wondering why, since this involves so many considerations involving the judiciary that this bill is not presently at least in concurrent jurisdiction with the Judiciary Committee. Would you have any objection to the Judiciary Committee at least looking into it on a concurrent jurisdiction basis, not that your conclusion one way or the other would make any difference but I would just like to know?

Mr. EHRLICH. With all deference, Senator, I think that should be the judgment of the Senate, not of the Legal Services Corporation.

Senator HATCH. But you would have no objection?

Mr. EHRLICH. We certainly have talked to many committees of the Congress about the role of legal services. It is primarily, and I emphasize primarily, a program for poor people.

Senator HATCH. But it is legal and legal services is the jurisdictional program.

Mr. EHRLICH. It primarily serves the poor and provides them with the kind of help in the area they need. It is not—

Senator HATCH. Assuming the Senate wanted you to have concurrent jurisdiction with the Judiciary Committee you would have no basic objection to that?

Mr. EHRLICH. Again, I don't think it is, in frankness, for us to make a judgment. But I do say very strongly, we view this not as a

lawyers program, not as a judges program, but as a poor people's program.

Senator HATCH. But you would have to admit that it involves almost all aspects of the law as they are applicable to the poor people. It involves many lawyers and involves the courts and litigation. It involves procedure, all of these.

Mr. EHRLICH. Yes. It involves a great many substantive areas and I would assume one of the concerns would be—

Senator HATCH. But almost all are related to the legal area.

Mr. EHRLICH. And a great many other substantive areas.

Senator HATCH. Name any that aren't involved with law.

Mr. EHRLICH. In one way or another, of course, they are all involved with law and substantive kinds of problems.

Senator HATCH. The bill that came out of the House was marked up by the Judiciary Committee in the House. I was just wondering. Of course, it is an unfair question to you, but I will withdraw it at this point. I just want to make the point it may be the Judiciary Committee should have concurrent jurisdiction over it.

Senator NELSON. First, let me say for the record, Judiciary never asserted jurisdiction in the past. Second, under the Reorganization Act adopted along with the Stevenson Act the committee report specifically delineated the Human Resources Committee as the committee with the jurisdiction.

Senator HATCH. You wouldn't have any objection?

Senator NELSON. That slows up the process.

Senator HATCH. It may slow up the process but, on the other hand, if we are going to have a purely legal process, we ought to have the purely legal committee look at it.

Mr. EHRLICH. My only other point is that we have testified before a number of committees. For example, quite recently the Committee on Aging. We try to work closely with all committees. A number dealing with administrative benefits are particularly concerned with the work of legal services, as well as those concerned with the elderly and with Native Americans.

I hope that we are working with all of those committees. Certainly, Judiciary is one of them. It happens that most of the inquiries, questions and concerns relate more to those other areas than to that one.

Senator HATCH. The biggest concern I have is this great services for the poor paid for by the middle class who don't avail themselves of the same services because they have to pay for it. I think we have to have some balance. We have to help the poor. I certainly agree with that and I want to do that. But we also need to help the great middle class too.

I think every aspect of your program involves law, and involves the judiciary, and involves interpretations of law and procedure, both substance and procedure. It is important. There are two things I find problem with today, actually three; that, the difference between the 9.1 million listed poverty people by the Congressional Budget Office and the 29 million figure, and the fact that we have a thorough study, having been ordered, which won't be completed until July.

You have to continue to operate, but I have a real question as to whether it should be at the \$217 million authorization which we then would have to go in and revoke if it is too high, or diminish, or we

we should wait until, as Senator Javits indicated, perhaps September of this year, continue the present authorization and wait until then until we find out what that report has to say. I presume that report is going to back up many of the things you said because there is a definite need in this area.

But I am concerned about doing things without knowledge and without the background and without having the report that has been ordered.

Mr. EHRLICH. The report will not deal with the numbers of poor people.

Senator HATCH. It should deal with what the total needs are and the total applicable approaches should be, and from there we can at least have a little better method of deducing how much the cost should be.

Mr. EHRLICH. In fairness though, I don't think you will get that kind of information from the report, quite apart from the fact that you will have—

Senator HATCH. It won't be a very extensive report if it doesn't cover that information.

Mr. EHRLICH. In terms of the alternative approaches, since the program just began in January, it will lay out some of the areas and issues. I hope it will be very helpful. My point is we will continue to provide that information on into the future.

Senator HATCH. There is one other area that bothers me and that is this request for the extension of an additional 5 years. That may or may not be justified by that report. It may need to be extended. I don't know. But, the fact is I think it would be helpful to us if we had that information. I appreciate you are an advocate for a system and a corporation that you definitely believe in. You are an extremely good advocate. You have great experience and you have a great expertise in this area and I think we have to give heavy weight to what you say. But, when we order a report it seems to me it is pretty important that we have it.

Mr. EHRLICH. One thing of which I can be confident, the report will not indicate a lower need that I have articulated today. I am sure of that. Yes; I am an advocate and my view is a parochial one—on behalf of poor people who are shortchanged by the system. I think you will hear those views also reflected by the American Bar Association and by others as well.

I would hope at some time we will have a chance to talk about the ways in which middle class are now receiving representation and can receive even more in the future because I do think that is an important area. It is not the mandate of the Corporation but it is one that is important on the national scene and will be much more important in the future.

Senator HATCH. I think that is all I have.

Senator NELSON. Would you make the responses which you agreed to supply for the record available within 3 days?

Mr. EHRLICH. We can certainly provide some of the statistical information.

Senator NELSON. Can you do it within a week?

Mr. EHRLICH. Yes, sir.

Senator NELSON. Thank you very much.

[The prepared statement of Mr. Ehrlich follows:]

Testimony of

Thomas Ehrlich

President, Legal Services Corporation

Before the

Subcommittee on Employment, Poverty, and Migratory Labor

Senate Human Resources Committee

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to discuss legal services for the poor. My comments will naturally focus on the activities of the Legal Services Corporation during the past eighteen months and its plans for the future. The issue is not, however, the needs of the Corporation or any other organization; the issue is the right of 29 million poor Americans for access to the legal system and equal justice under the law. I appear as an advocate for those rights.

I.

Equal access to justice and equal justice under law are fundamental promises by our society to all its citizens. The obligation to live according to the law must carry with it the right of access to the institutions that make and enforce laws, and to fair treatment by those institutions. Those principles are at the heart of our concept of liberty.

For approximately 29 million Americans, the promise of equal justice has been an empty one. Those persons have incomes below subsistence levels. For most of them, the dominant issue in their lives is survival. For all but a very few, the legal system is beyond reach.

Many still believe that poor people have less need for lawyers than persons of means. Precisely the contrary is true. Poor people are too often forced to rely upon law and the legal system to obtain basic necessities -- food; shelter; clothing; medical care; a job; an education. Many of the laws regulating those matters have been made without regard for the distinctive needs of poor people; many officials administering those laws do so knowing they will not be held accountable to the intended beneficiaries. The result is that the legal system places heavier and unfair burdens upon the poor. Poor people generally have more encounters with that system than do others, and the stakes involved in those encounters are usually higher.

Legal services lawyers have been leaders in ensuring that statutory schemes operate as legislators intend, and that the beneficiaries of government programs receive all to which they are entitled. In literally millions of matters over the past decade, those lawyers have demonstrated that society's legal arrangements work properly only if everyone can enforce the rules.

The best efforts of legal services attorneys, however, fall short of making equal justice a reality. Recent studies estimate that, for every person served by a legal services program each year, six other poor people experience

legal problems that go unattended. Even the current level of service is possible only because legal services programs have been leaders in training and using paralegals and in developing mass delivery techniques, and because dedicated legal services attorneys have been willing to carry case-loads that other members of their profession would consider intolerable.

Despite these efforts, nearly 16 million poor people are without access to legal services programs. Simply put, those people are effectively denied equal justice because they cannot pay for it.

II.

As the members of this Subcommittee are well aware, the recent history of publicly-financed legal services in this country was of a struggle for survival. It became clear by 1970 or 1971, if not before, that the legal services program could not continue as part of the Executive Branch. The partisan political pressures were too intense.

As a result, a strong coalition was formed of legal services lawyers, clients, bar associations, and other interested groups around the country. The coalition pressed for the establishment of a new, independent corporation -- not an agency of the Federal Government -- to fund legal services programs. A long hard battle was fought. The Legal Services Corporation Act of 1974 finally emerged.

That so many diverse groups joined forces on behalf of legal services -- and that legal services attorneys continued to serve their clients with great dedication and competence despite intense financial and political pressures -- demonstrates the staying power of the legal services movement. That movement has prevailed. After a year and a half of the Corporation's operations, I say with great confidence that legal services for the poor are a permanent part of our system.

My confidence is based primarily on the fact that legal services for poor people are now widely accepted as essential by the organized bar and the public generally. Persons and groups who previously had no interest in or knowledge about legal services are now aware of the program and recognize its importance. They see in the Corporation an organization that takes nothing for granted except the fundamental nature of legal assistance for poor people, and they support that concept.

The legal services program is no longer embroiled in controversy. Our adversary system of justice makes it inevitable that some will disagree with particular actions of particular legal services attorneys, but the program itself is not under concerted attack from any source. For the first time in far too many years, the energies of legal services lawyers, clients, and bar groups can be devoted full-time to the goal of obtaining equal justice for all members of society.

A basic aim of the Legal Services Corporation Act, to ensure that the legal services program will remain free of partisan politics, has been realized. The Corporation is accountable directly to the Congress. Policy is set by the Board of Directors, which consists of persons who are committed to the program. A director of one of the Corporation's regional offices who has considerable legal services experience reports that, for the first time in his memory, he is able to make decisions regarding the use of resources based solely on the merits. This independence from politics is essential for the Corporation's stability and success.

As a result of these developments, the legal services program is far healthier than it has been for many years. Much remains to be done, however, to make equal justice a reality for this nation's poor people. I will describe first the Corporation's efforts to achieve that goal, and then our judgment of what must be done in the future.

III.

When the Corporation began operations in October, 1975, the first task facing the Board was to assemble the staff necessary to conduct the Corporation's affairs and attend to the 258 legal services programs for which it had assumed responsibility. That was a large job. The Board decided to begin with the minimum possible staff and to hire slowly so that needs could be fully assessed and persons found with the necessary skills.

That approach has proven to be sound. Eighteen months after beginning operations, the Corporation has established a structure and assembled a staff that enables it effectively to administer and monitor the use of funds appropriated by the Congress. We have reorganized and strengthened the staffs of the regional offices. Those offices now visit legal services programs on a regular basis, and for the first time, can offer management and technical assistance when problems are discovered. The regional offices have completed field evaluations of all legal services programs and found that, with few exceptions, they are operating efficiently and on a sound professional basis.

The Corporation has established an Office of Program Support that enables it to offer substantially increased training, recruiting, and technical assistance to each program that it funds. We have developed manuals to assist programs with problems of personnel and financial management, and our expanded training program concentrates on those areas as well as legal skills. We have created a Research Institute on Legal Assistance that conducts substantive research in undeveloped areas of poverty law, such as the legal problems of the rural poor. This type of support has never before been available on a large and coordinated basis, and will help to ensure that the effectiveness of legal services programs continues to improve.

A second priority issue facing the Board at the outset was ensuring compliance with the Legal Services Corporation Act. In February, 1976, the Corporation advised all of its programs of the Act's prohibitions, and took the necessary steps to make certain that those prohibitions were being honored. Since then, we have conducted a regular monitoring program to ensure compliance with the statutory requirements.

The Corporation has issued regulations to implement the Act. The regulations were developed by a Committee of the Board with the advice of the Corporation's General Counsel. Public hearings were held on each regulation, and there has been extensive participation by groups such as the National Clients' Council, the American Bar Association, the Project Advisory Group (the national organization of legal services programs) and the National Legal Aid and Defender Association. A regulation is approved by the full Board only after it has been published in the Federal Register and all interested groups have had the opportunity to comment.

The most important issue facing the Corporation over the past year was the need for a plan to meet the Congressional mandate of ensuring "equal access to the system of justice in our Nation" for all poor people. As a first step toward fulfilling that mandate, the Corporation has undertaken a short-term effort to provide the equivalent of at least two lawyers for each 10,000 poor persons nationwide. Based upon the accumulated experience of the legal services program, that effort is necessary to provide minimum access to legal assistance for all poor people.

The bare-minimum nature of the plan to provide two lawyers for each 10,000 poor persons is underscored by the fact that there are at least 14 attorneys in private practice for each 10,000 persons in the population generally. Unless substantially supplemented with funds from other sources and increased pro bono activity by members of the private bar, the plan will not result in an adequate level of service. It will, however, provide some access to legal services for nearly 20 million poor persons who, when the Corporation began operations, were completely without that access -- either because they lived in areas where no legal services programs existed, or because the programs in their areas were so severely underfunded that their access to those programs was only theoretical. An example of the latter type of area is the state of Georgia, where only 29 percent of the eligible poor population has even minimum access to the "statewide" legal services program.

The Corporation received an appropriation of \$125 million for Fiscal Year 1977, a one-third increase over the previous year. That increase in funds enabled us to undertake the first significant expansion of legal services programs in this decade. We have been able, by expanding into areas where no legal services programs existed and by strengthening existing programs that are underfunded, to provide minimum access to legal services for an additional 3.8 million poor persons. There remain, however, nearly 16 million poor persons who are without access to legal services -- who are effectively denied access to the system of justice in our nation. For persons faced with the threat of eviction, the loss of a job, the lack of medical care, or an inadequate diet, that denial is catastrophic.

The Corporation will require an appropriation of \$217.1 million in Fiscal Year 1978, and approximately \$274.5 million in Fiscal Year 1979 to complete its minimum-access plan. These funds are not being sought for an unproven benefits program. Legal services are widely acknowledged as cost effective. The Corporation has completed field evaluations of all its programs and has found that, with few exceptions, they are operating on a sound professional basis.

The Corporation is not, moreover, requesting substantially increased appropriations based upon vague projections of need and with only a general idea of how the funds are to be used. We have surveyed all of the legal services programs that receive funds from the Corporation, and determined that they received approximately \$30.2 million from other sources. The plan to provide minimum access to legal services was based on the premise that those funds will continue -- even though many are temporary grants that vary from year to year, and are subject to the discretion of local officials.

The Corporation also has a firm plan for placement of the increased appropriations. We know the programs that are currently underfunded, and have calculated the amount that each is to receive in 1978 and 1979. Criteria for distributing expansion funds were established last year and, as a result of planning based on those criteria, most areas of the country have well-conceived plans for achieving minimum access.

In short, the Corporation's immediate goal of providing minimum access to legal services for all poor people is based on a realistic assessment of the critical need for such services, our ability to manage the funds required to meet that need, and the resources available from other public and private sources. Our request for an appropriation of \$217.1 million in Fiscal Year 1978 is the minimum amount

necessary for the Corporation to move toward fulfillment of its Congressional mandate. We hope the Committee will recommend that figure to the Appropriations Committee and the Budget Committee.

Simultaneously with the effort to provide minimum access to legal services for all poor people, the Corporation is continuing to develop the most effective ways to serve the largest number of clients. Innovations in delivery methods have been a hallmark of the legal services movement. Faced with a huge demand from clients for whom denial of legal assistance can be ruinous, and too few resources to meet that demand, legal services lawyers have been forced to move their practice out of the realm of a 19th-century cottage industry. Those lawyers have pioneered in mass delivery techniques for handling routine and repetitive aspects of their practice, in training and using paraprofessionals, in evaluating the work of individual attorneys, in coordinating efforts on recurring and complex problems, and in involving clients in determining the direction of legal services programs. These developments have benefited both the legal profession and the public at large.

The Corporation is continuing this tradition. The Legal Services Corporation Act calls for a study of staff attorney programs and, through demonstration projects, of alternative and supplemental methods of delivering legal services to the poor. The legislation specifies that judi- care, prepaid legal insurance, contracts with private law

firms, and vouchers are among the models to be tested, and requires the Corporation to report recommendations based on the study to the President and the Congress by July 1977.

In September, 1976, the Corporation selected 19 demonstration projects from among the more than 100 grant proposals received for this study. The projects will test a variety of methods of delivering legal services to the poor -- actually serving eligible clients while gathering data for the study. The models to be tested and the demonstration projects themselves were developed with extensive participation by the legal services community and private bar, and were selected with the assistance of an advisory panel that includes persons from legal services programs, client groups, private practice, and the academic and research communities.

The demonstration projects will operate in 14 states. Judicare -- utilizing individual members of the private bar -- will be tested in eight of the projects; prepaid legal insurance will be tested in four; five of the projects will include contracts with private law firms; and one project is a voucher experiment to determine the effect of client choice on legal services delivery. Going beyond the models specified in the Act, the Corporation also funded a pro bono legal clinic using a panel of 1,000 volunteer lawyers in Boston. The demonstration grants became effective on January 1, 1977, and each of the projects is now in operation.

The Corporation expects to fund a second round of demonstration projects during 1977 in order to ensure the validity of data obtained from the first round of projects, and test other delivery methods that have been suggested. We will also collect data from a number of existing staff attorney programs to compare with the demonstration projects. Each of the projects included in the study will be evaluated to determine its feasibility -- its ability to be implemented at a reasonable cost -- and its performance in terms of four primary criteria: cost of service; quality of service; client satisfaction; and impact upon the poor community as a whole. The July report to Congress and the President will contain our observations regarding the implementation of different types of delivery systems, and some preliminary performance data. In the future we will continue to report to Congress regarding our study efforts.

A primary goal of the delivery system study is to determine ways of involving private lawyers in the delivery of legal services to poor people. We do not, however, view our study efforts as a competition between staff attorney programs and the private bar, nor do we expect to identify a single best way to deliver legal services to poor people. Our goal, rather, is to identify delivery approaches that are appropriate to individual community settings and groups, and to expand our knowledge regarding ways to providing the quality legal services demanded by the principle of equal justice.

The Corporation is also designing and implementing a project reporting system to obtain data for our study efforts and provide necessary information about our programs and the clients that they serve. There has never been such a detailed analysis of legal services programs and caseloads, and it has not been possible to conduct one for the last several years due to the crisis atmosphere surrounding the program.

The project reporting system is being designed carefully to ensure that the information it generates will be meaningful and that its implementation will not disrupt the operations of our programs. The system is currently being installed in the demonstration projects for the delivery system study, and a sample of twelve staff attorney programs. The results of this first phase of data collection will be analyzed, and the system will be streamlined and expanded to include a larger sample of programs in the fall. By early 1978, we will have determined what information is needed on a regular basis for management purposes. The project reporting system will then be simplified to collect only that essential data, and installed in each Corporation-funded program.

These are some of the highlights of the Corporation's first year and one-half of operations. It has been a productive time. We have established plans and an organization for fulfilling the mandate of the Legal Services Corporation Act of 1974. Those accomplishments, however, are only the very beginning. Extension of the Act will recognize the progress that has been made, but also stress the critical need for legal services that still exists among the poor people of this nation.

IV.

We do not approach the Subcommittee with sweeping proposals to amend the Legal Services Corporation Act of 1974. Eighteen months of operating under that statute have demonstrated that it works -- far better than many had ever believed possible. We do, however, have several recommendations.

Our first recommendation is that the Congress reaffirm the fundamental concepts expressed in the Legal Services Corporation Act of 1974. In particular, it is important that Congress continue to recognize the fundamental right of poor people to equal justice, the need for high quality, professional legal services to vindicate that right, and the requirement that the program for providing those services be independent of partisan politics. A few words about each of these concepts may be helpful.

Equal access to the system of justice and equal justice under law are what the legal services program is all about. The Corporation is not just another social program. It exists because every citizen has a right to use the system of law under which he or she must live, and because that system must be fair to all.

Equally important is the principle that poor people are entitled to receive the highest quality legal assistance. Legal services lawyers, carrying heavy caseloads and receiving low pay, have represented their clients aggressively and in a professional manner. They are a source of pride to their profession. In order to maintain this standard of excellence, however, we must have the resources to attract and retain able lawyers and staff and to continue activities -- such as the delivery system study -- that will enable us to improve the quality of service. The concept of equal justice cannot tolerate different professional standards for poor people and those able to pay.

Finally, the lessons of the past ten years make clear that the goals of equal justice and high quality legal assistance can be achieved only if the legal services program is insulated from partisan politics. The Corporation has continually stressed its independence in dealing with federal agencies and other branches of government. We believe that

our status as an independent organization -- combined with a strict accountability to the Congress -- has been a key to our success and stability; it is important that that status remain unchanged.

Second, we support the five-year extension of the Legal Services Corporation Act in the Bill that is before you. The Corporation and its Board of Directors recognize the necessity for regular review by and accountability to the Congress. It is essential, however, that the legal services program be assured of stability. Otherwise, the vital energy of the program will be sapped and sound planning will be impossible. Our plan to provide minimum access to legal services for all poor people is an example. Based on that plan, we have already developed a tentative budget for Fiscal Year 1979 and are beginning to look at the issues to be addressed in 1980. Existing programs have developed plans to increase their levels of service, and the groundwork for expansion into new areas has been laid. These efforts would have been impossible if re-authorization were required on an annual basis. Such a requirement would return legal services to the crippling uncertainty that it has just escaped.

Last April, the Corporation submitted a request pursuant to the Budget Act that the Act authorize "such sums as may be necessary to carry out the purposes of the Legal Services Act." We continue to support that approach, and are pleased that it is reflected in the Bill before you for all but the next fiscal year.

Our budget request for Fiscal Year 1978 has been submitted to the Congress, and seeks an appropriation of \$217.1 million. That amount is the absolute minimum necessary to enable us to proceed with the effort to provide minimum access for all poor people, and many have argued that we should request substantially more. Our tentative estimate is that an appropriation of at least \$274.5 million will be required to complete the plan in Fiscal Year 1979. Again, that is a minimum figure.

At this time we cannot say with certainty what our budget request for Fiscal Year 1980 will be. Assuming that the goal of minimum access is achieved in 1979, we will be better able to deal with questions such as variations in the cost of legal services delivery and the need to intensify our present efforts to reach groups of poor people who have been particularly hard to serve. We recommend, therefore, that the Act specify "such sums as may be necessary" for Fiscal Year 1978 and beyond.

We next recommend that the Legal Services Corporation Act be amended in five specific respects. The Corporation's Board of Directors has unanimously endorsed these amendments, which do not involve major substantive changes. They are, rather, amendments in areas where experience indicates the Act should be clarified, and we are pleased that they are contained in the proposed legislation that is before you.

We first recommend that Section 1006(b) of the Act be amended to make explicit what we believe is now implied: that the Corporation has primary authority to ensure that its programs and their employees comply with the Act and regulations. The purpose of this provision is to prevent courts and opposing parties from inquiring into a legal services client's eligibility or making other challenges based on the Act or the Corporation's regulations that are irrelevant to the legal issues in a lawsuit. Although programs have regularly prevailed when such challenges have been made, the amendment is necessary because parties continue to make them in litigation rather than use the procedures contemplated by the Act.

Second, we recommend that Section 1006(e) be amended to expand coverage of the Hatch Act to staff attorneys of programs as well as to Corporation employees. That provision should be accompanied by an amendment to Section 1007(a)(6) that would limit the prohibitions against political activities of staff attorneys on their own time to those in the Hatch Act. These changes are reflected in Section 7(a) and (b) of the current Bill. We believe it is important to ensure that Corporation funds are not used to support political activities of any kind. Blanket restrictions on the personal activities of staff attorneys that go beyond those on state and local employees, however, are unnecessary.

Third, we recommend that Section 1007(b) be revised to permit legal assistance to a defendant in a criminal proceeding when the defendant is charged with an offense involving hunting, fishing, trapping, or gathering fruits of the land and the primary defense asserted involves rights secured by a treaty with Native Americans. The effect of Indian treaties is an extremely complex area of the law with which few attorneys are familiar. Legal services attorneys who represent Native Americans in civil matters have developed expertise in that area, and it is often impossible for persons charged with such offenses to be properly represented if they are without recourse to a legal services program.

This amendment, which is contained in Section 9(a) of the Bill, would also permit legal services lawyers to represent defendants charged with misdemeanors in Indian tribal courts. The Conference Report on the Legal Services Corporation Act of 1974 demonstrates that Congress intended to permit representation in the latter type of cases, and the Corporation's regulations so provide. We believe it would be wise, however, to make that authorization explicit.

Fourth, we recommend the addition of a new subsection, Section 1006(d)(6), to provide that a court may appoint an attorney employed by a Corporation-funded legal services program to represent an indigent client without compensation only if the appointment is made pursuant to a policy applied generally to all lawyers practicing in the jurisdiction. The amendment, Section 6(b) of the present Bill, will prevent courts from depleting program resources and disregarding priorities set according to the Corporation's regulations by routinely appointing legal services attorneys without compensation. We believe that the Congress intended funds appropriated to the Corporation to supplement -- and not to substitute for -- funds previously allocated by state or local governments for legal representation for the poor. Again, we believe this provision is declaratory of existing law, but it will be helpful because of an increasing number of instances in which judges have appointed legal services attorneys without compensation when local law provides for attorneys' fees.

Finally, we recommend that the portions of Section 1009 dealing with audit reports and financial records be amended to specify the length of time that such reports and records must be maintained by the Corporation. We propose an amendment substantially reflected in Section 11 of the Bill, that would set that time at three years. The General Accounting Office has advised us that it has no objection to this provision.

The Chairman has asked for the Corporation's comments regarding other sections of the Bill that is presently before the Subcommittee. The Board of Directors has not considered each of the proposed changes in the Legal Services Corporation Act that is reflected in that Bill. At its January meeting however, the Board did discuss several amendments that might be raised, and, by a divided vote, authorized Corporation support for three changes in the Act.

The first is the amendment of Section 1006(a)(3) that is accomplished by Section 5 of the Bill. We do not anticipate that this amendment would result in altering the basic structure of our Office of Program Support and Research Institute on Legal Assistance. The amendment would, however, provide greater flexibility and would enable

the Corporation to ensure that every activity it perform is carried out in the most economical and effective way possible.

Prior to the enactment of Section 1006(a)(3), for example, specialized legal services programs in many states provided training and clearinghouse services in local law for other programs in the state. Such efforts are desirable, and would again be possible if the proposed amendment were adopted. The substantial expansion of legal services programs envisioned by the minimum-access plan, moreover, will result an increased demand for technical and management assistance. That demand may decrease in future years as the new programs become established. It may be more economical, therefore, for the Corporation to provide some technical assistance by grant or contract rather than to maintain a staff large enough to provide all of the required technical assistance directly.

The second revision supported by the Board would repeal the restrictions in Sections 1007(b)(7), (8), and (9) on the types of cases that legal services programs may take. Those restrictions are inconsistent with the principle of equal access to justice. Poor people should not be prevented from vindicating their rights through lawful means simply because a given issue may be politically unpopular. Priorities have to be set, of course, in allocating the scarce resources available to legal services programs. But those

priorities should be set by the boards of local programs based upon an assessment of the actual needs of their clients. That is the position of the American Bar Association's Committee on Ethics and Professional Responsibility, and it is endorsed by the Corporation.

Finally, the Board endorses repeal of the restriction on the use of private funds contained in Section 1010(c) of the Act, a change accomplished by Section 2(b) of the Bill. There is little logic in the distinction between funds obtained from other public sources, which may be used for purposes prohibited by the Act, and those obtained from private sources, which may not. The prohibition means, for example, that legal services programs may engage in certain types of criminal representation under a grant from the Law Enforcement Assistance Administration, but may not obtain a grant for precisely the same purpose from private sources. We believe that the resources available for legal services are so scarce that programs should not be discouraged from seeking funding from any source.

There are several other sections of the Bill before the Subcommittee that have not been specifically considered by the Board, but as to which I will present the judgment of the Corporation's staff. We are seriously concerned about Sections 8(b) and 10 of the Bill,

The Corporation's current mandate is to provide legal assistance to all poor people, regardless of race, age, background, or physical condition. We are required, in other words, to consider the needs of all poor persons, not just those who currently have access to legal services. On the local level, this means that a program's priorities -- which the Corporation requires it to set -- must consider the needs of the entire eligible population, not merely those persons who are currently receiving service. The Corporation will not permit programs to set priorities that disregard the needs of substantial segments of their communities.

On a national level, the Corporation recognizes a responsibility to identify the problems of providing service to all groups of poor people and attempt to overcome them. A number of such efforts are currently underway. We fund, for example, programs devoted exclusively to the problems of Native Americans, migrants, the elderly, and the handicapped. We have established a Native American desk in our Denver Regional Office with responsibility for all programs serving Indian reservations. We are conducting a study of the problems of delivering service to migrant farmworkers, and several of our delivery system study projects concentrate upon the problems of delivering service to traditionally hard-to-reach groups. We are attempting to coordinate our efforts with those of agencies

whose activities affect groups of poor people, such as the Administration on Aging and the Department of Defense. Many of our training and research efforts are focused on the substantive legal problems of particular groups.

We are opposed, however, to a requirement in the Act that programs and the Corporation give "special consideration" and allocate resources to discrete groups within the poor population. The resources currently available to legal services are so grossly inadequate that no group receives an adequate level of service. A requirement of "special consideration" could fractionate the client community, and create destructive competition among various groups for legal services funds. At the very least, considerable resources would be consumed through constant review and adjustment of demands for "special consideration." At worst, less influential or politically popular poor people -- people for whom the legal services program represents the only hope for equal justice -- would be discriminated against in the distribution of legal services resources. The Corporation urges strongly that the Act continue to require legal services for all poor people, and nothing more.

We are also concerned by Section 3(b) of the present Bill. The Corporation's regulations now require that one-third of a program's governing body be representatives of

client groups, and that at least one be an eligible client when selected. This provision ensures not only that the client community will have a voice in the direction of legal services programs, but also that clients will select the persons who represent them. The language of the Bill makes accountability no longer mandatory, and could cause a substantial disruption of existing programs whose client communities have selected non-poor persons to represent them. If Section 3(b) is retained, however, we believe that considerably more than 90 days should be allowed for existing programs to restructure their governing bodies.

We endorse Section 8(c) of the Bill. In our view, that provision simply clarifies existing law. However, because the amendment emphasizes that legal services attorneys, like all attorneys, are subject to the requirements of the Code of Professional Responsibility -- and not to any greater limitations on their activities -- we support it.

Finally, assuming the Committee concludes that a revision is needed in Section 1011(2) of the Act, concerning hearing procedures, we support the approach in Section 13 of the Bill, which specifies that the hearing examiner must be "independent," rather than a requirement that an administrative law judge be used, as stated in H.R. 55228, now before the House Judiciary Committee. We do not,

however, believe that any change in Section 1011(2) is needed.

The proceedings contemplated by that Section are generally not adjudicatory in the usual sense of the term, but, rather, are deliberative proceedings in which an intimate knowledge of Corporation policy is essential. A United States District Court has ruled that the current Corporation regulations regarding hearing examiners satisfy the Constitutional requirement of independence, despite the fact that the hearing examiners used have been Corporation employees.

V.

It is appropriate to end this presentation as it began, by stressing that the issue before this Subcommittee is the right of 29 million poor people to equal access to the system of justice and equal justice under the law. The Legal Services Corporation Act of 1974 reflects a commitment by the federal government to ensure vindication of those rights. The Congress has supported the first essential steps toward fulfilling the Act's mandate. Legal services for the poor require the continued support of Congress, and reaffirmation of the commitment, in order to build upon the progress that has been made.

Senator NELSON. Our next witness is Llewelyn Pritchard, chairman of the Standing Committee on Legal Aid and Indigent Defendants of the American Bar Association.

STATEMENT OF LLEWELYN G. PRITCHARD, CHAIRMAN, STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, AMERICAN BAR ASSOCIATION: ACCOMPANIED BY ROBERT EVANS, GOVERNMENTAL RELATIONS OFFICE

Mr. PRITCHARD. Thank you very much.

Mr. Chairman, my associate with me today is Mr. Robert Evans of the governmental relations office of the American Bar Association here in Washington.

I am Llewelyn Pritchard; I am a private lawyer, I practice in Seattle, Wash., and I have the honor to serve the American Bar Association as the chairman of its Standing Committee on Legal Aid and Indigent Defendants. Mr. Justin Stanley, who is the president of the Association, has asked that I appear before you today to express the views of the Association with respect to the reauthorization of Legal Services Corporation; and I am pleased to do so.

We have previously delivered to you our written position on the subject of the act, and particularly the amendments thereto; and we would now like to make a few brief comments amplifying the views of the American Bar Association.

Since 1965, the Association has frequently voiced through resolutions, testimony, and other means, its vital concern not only that the federal legal services effort be sustained and improved, but also that it be insulated from political pressures affecting attorneys in delivering legal services to the poor. Attorneys working for the poor must be free to represent their clients as fully and zealously as can a private attorney with respect to his paying clients.

Appended to our written testimony today, Senator, is a memorandum incorporating the resolutions adopted by the Association over the last 12 years, the most recent of which is our support for the Corporation's budget for fiscal year 1978; and we would ask that these resolutions be made a part of your record.

Senator NELSON. That will be entered in the record at the conclusion of your testimony.

Mr. PRITCHARD. Thank you.

The resolutions, Senator, demonstrate not only our historical commitment to the federal legal services program, but also the philosophic underpinnings of our view of the role of the legal services attorney: to provide competent, professional and zealous representation consistent with the ethical mandates of the profession for the clients whom he represents.

Your subcommittee is undertaking a review of the act by which the Legal Services Corporation was created. I wish to point out for the record that our house of delegates and board of governors has not conducted a section by section analysis of the act, or adopted recommendations on specific provisions. However, the record of past ABA actions and policy positions together with the ethical standards pro-

vided by our code of professional responsibility gives a clear framework in which we may analyze the current legislation.

We recognize that the long-awaited Legal Services Corporation Act of 1974 was passed in a highly charged and volatile political atmosphere after a great deal of debate on the floor of Congress.

Today we are here to examine the impact of that act on the legal services programs and the clients they serve.

The American Bar Association, Senators, feels there is a need for some change.

Subsection 6 of the Statement of Findings and Declaration of Purpose of the Legal Services Corporation Act, contained in section 1001 as amplified in your Senate Report, provides, and I quote:

Attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the canons of ethics and the highest standards of the legal profession.

Let us take a look at that preamble to the code of professional responsibility where it is recognized that, and I quote:

The continued existence of a free and democratic society depends upon the recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. Law so grounded makes justice possible. Lawyers, as guardians of the law, play a vital role in the preservation of society.

We would submit, Senator Nelson, that this eloquent articulation of the role of lawyers in our American justice system is equally applicable to lawyers who serve the poor. Lawyers, whether we practice on Wall Street or in county seats, whether we are trial lawyers, office lawyers, military lawyers, or poverty lawyers, have one common, overriding concern: the need to independently represent the interests of our clients without restriction except those provided in the code of professional responsibility.

It is the view of the association that several provisions of the current act violate the independence of the legal services attorney and his ability to exercise sound professional judgment on behalf of his clients.

Our concerns are threefold. First, we object to restrictions on full service; second, limitations upon access and, third, barriers to efficient delivery.

First, restrictions on full service.

We believe the following provisions of the current legislation seriously restrict the attorney's ability to provide full and complete legal representation to his clients and that they should be modified or removed.

First, section 1007(a)(5)(B) concerning legislative advocacy.

We believe the present language may prevent the legal services attorney from providing relevant information to governmental agencies or legislative bodies unless he receives a personal request to do so.

Second, section 1007(b)(4) with respect to the representation of juveniles.

We are gratified that S. 1303 in section 9(b) would remove this provision; and we support that.

Section 1007(b) (6). This language is vague and overly broad and we believe may inhibit legal services attorneys from providing legal services involving the formation of organizations and associations.

Section 9(c) of Senate Bill 1303 seeks to address this problem by limiting the scope of this language. We are concerned, however, that the language of section 9(c) prescribing the initiation of the formation of organizations, we may prevent an attorney from suggesting the formation of an organization to a client unless the client has first affirmatively raised the issue of organizing.

The legitimate concern in this area, it seems to us, is an attorney engaging in direct organizing of a nonlegal nature; and we would suggest the statute limit itself to this type of situation.

Sections 1007(b) (7) pertaining to desegregation, (8), nontherapeutic abortions and (9), military and selective service, we feel should be removed. The prescription on the handling of cases arising out of a specific and narrow area of law is a clear example, we would submit, of the imposition of political considerations on the practice of law by legal services attorneys.

The issue here is not whether abortion, school busing or desertion from the Army are desirable activities, but whether citizens who are deeply affected by these controversial issues will have the opportunity to seek resolution or vindication of them through our court system; and whether legal services attorneys will be permitted to meet their ethical obligations to represent their clients fully and zealously.

Second, there are other provisions in the present charter which we believe unduly limit access of the poor to legal services.

Section 1007(a) (2) (B) (iv) with regard to prohibiting people from receiving legal assistance if a prior determination has been made that the individual is within the income guidelines solely because of a refusal or unwillingness, without good cause, to seek or accept employment.

We would support section 8(a) of S. 1303 as we interpret it, which would not make a prior determination an absolute bar.

Section 1007(a) (2) (C), what we would characterize as the "poorest of the poor" provision, concerns us because of the establishment of priorities giving those persons least able to afford legal assistance preference in the furnishing of such assistance.

It is our understanding that those eligible for federal legal services are uniformly unable to afford legal assistance, and that the decisions about which matter should be given priority treatment should not be made solely on the basis of income criteria but on numerous other factors within the professional judgment of the attorney and of the staff of the organization.

We note that section 8(b) of Senate Bill 1303 removes the "least able to afford legal assistance" language, and we support that removal.

However, the section would add language to the statute which, while desirable in its objective, may create significant problems for local legal services programs.

We refer here, Senator, to the language giving special consideration to the needs for service on the part of significant segments of the population and eligible clients with special difficulties.

Other segments of the client population may well be given less consideration as a consequence, even though local conditions might make such an allocation inappropriate.

In short, the proposed new language would tend to skew the local program's resource allocation process toward providing services to those clients parenthetically described in section 8(b)(1) at the possible expense of other clients whose needs may be greater in that particular geographic area.

Third, there are a group of provisions in the current legislation which we conceive of as barriers to efficient delivery.

First among these is the so-called Green amendment. There have been conflicting interpretations as to its meaning. We favor its deletion and support section 5 of Senate Bill 1303.

We would also call your attention to section 1010(c) of the act, which proposes limitations on the use of funds received from non-Federal sources. We note that section 2(b) of S. 1303 would achieve the result of removing this section, and we endorse it.

There are other provisions in the act for administrative and policy reasons which further limit the jurisdiction and authority of the legal services attorney—for example, in criminal proceedings.

We have no objection to those restrictions as they pertain to the allocation of resources. It is the view of our association, however, that we object to those restrictions which totally preclude the most needy citizens of our country from receiving legal representation, which we don't believe should be regarded as a welfare benefit. Rather we believe that the Congress should take full note of the fact that the establishment of justice is the second purpose of our Government enumerated in the Preamble to the Constitution. Any restriction should be subjected to the strictest scrutiny.

We have addressed various restrictive provisions in the present act. There are one or two other matters that I would like to mention briefly.

In August of 1975, the ABA adopted a resolution in support of the Government in the Sunshine Act. We endorse it and believe that section 4 of Senate Bill 1303, which properly clarifies the Corporation's status on this issue, should be supported.

We are also pleased that the present charter requires the Corporation to undertake a current, comprehensive study of alternative and supplemental methods of delivery of legal service to eligible clients. We have been following the study with great interest and plan to continue to monitor it closely; and we hope that such experimentation will not be on a one-time basis but will be continued.

We would note that the present act, in section 1007(b)(1), imposes restrictions on the handling of fee-generating cases. This restriction is in keeping with the general philosophy of the act that legal services should be provided for those who cannot afford them. The Corporation's limited budget can thereby be spent on other cases where no legal assistance is available.

We would point out to the committee, however, that in certain circumstances, a matter is technically fee-generating but in practice will not be handled by the private bar. If the statute provides for

attorneys' fees but limits the fee to a specific dollar figure, or to a percentage of the recovery, the fee in such cases may be too small to attract private legal representation in some communities. It would be undesirable to deny a poor person access to legal services because the matter is technically, but not in practice, fee-generating.

We are concerned, however, that the revision of this section provided for in section 9(a) of S. 1303 would relax this restriction too greatly. In essence, a local program could choose to handle a fee-generating case if, in its judgment, "appropriate private representation" was not available. We do not believe this standard is adequate to define the circumstances in which fee-generating cases appropriately may be handled by legal services programs; and we would urge that further consideration be given to any change of this kind.

In conclusion, the record of the federal legal services program is an impressive one. Through it, millions of citizens have seen the justice system work.

The program has demonstrated that it deserves our support and our trust. The American Bar Association hopes that Congress will now remove the shackles it placed on the program attorneys in 1974 and permit them to exercise fully their independent professional judgment. Integrity and competence, not artificial restrictions, should be the standards by which these attorneys are judged.

Senator NELSON. As you are probably aware, the limitations written into the statute were written in there for purposes of getting the bill passed.

Mr. PRITCHARD. I'm very aware of that.

Senator NELSON. And the position was the same with the bar and many other groups at that time, but I said to a number of them who did insist: "You can insist on no limitations and end up with no bill; is that what you want?"

That may still be the case.

Mr. PRITCHARD. We would submit, Senator, that now perhaps your colleagues in the Congress have had an opportunity to see the Corporation in operation, to observe the fine professional manner in which President Ehrlich and the staff and the Board of Directors have worked with regard to the Corporation, that perhaps some of those political considerations will be ameliorated, and now legal services attorneys will be able to operate under the canons as fully and completely as private lawyers can.

Senator NELSON. Well, maybe so. I don't have the rollcalls in front of me, but on each occasion the bills passed with very substantial majorities. However, as to the three limitations, I don't think we'd have had a legal services bill if they hadn't been in there.

Mr. PRITCHARD. I understand, Senator.

Senator NELSON. And, as I say, that may still be the case. I don't know.

Thank you very much for your very fine presentation. We appreciate your taking the time to come and represent the American Bar Association, which has been strongly supportive of the concept from the very beginning and has been a very valuable contributor to the understanding of the need for such representation for the poor.

[The prepared statement of Mr. Pritchard and the resolution referred to follows:]



AMERICAN BAR ASSOCIATION

GOVERNMENTAL RELATIONS OFFICE • 1800 M. STREET, N.W. • WASHINGTON, D.C. 20036 • (202) 331-2200

STATEMENT OF

LLEWELYN G. PRITCHARD

on behalf of the

AMERICAN BAR ASSOCIATION

before the

SUBCOMMITTEE ON EMPLOYMENT,
POVERTY AND MIGRATORY LABOR

of the

COMMITTEE ON HUMAN RESOURCES

of the

UNITED STATES SENATE

pertaining to the

LEGAL SERVICES CORPORATION
AMENDMENTS ACT OF 1974

April 25, 1977

Mr. Chairman and Members of the Subcommittee:

I am Llewelyn G. Pritchard, Chairman of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. Justin A. Stanley, the President of the Association, has asked that I appear before you today to express the Association's views with respect to the reauthorization of the Legal Services Corporation, and I am pleased to be able to do so.

Our Association's formal involvement with the movement to assure legal services for the poor dates back at least to 1920, when the Association established a Committee on Legal Aid chaired by Charles Evans Hughes. In the 57 years since, the Association has moved steadily forward toward the goal of equal justice for all, regardless of economic status.

In 1965, under the leadership of our then-President and now Supreme Court Justice Lewis F. Powell, Jr., our House of Delegates adopted a resolution reaffirming the Association's deep concern with providing legal services to all who need them, particularly indigents and persons of low income, and pledging the Association's cooperation with the Office of Economic Opportunity

"... in the development and implementation of programs for expanding availability of legal services to indigents and persons of low income, ... such legal services to be performed in accordance with ethical standards of the legal profession...."

The Association worked closely with OEO officials in the months following the adoption of that resolution, to bring about the establishment of the legal services program and to ensure

that the professional independence of the lawyer would be preserved under this program.

Since 1965, the American Bar Association has frequently voiced, through resolutions, testimony and other means, its vital concern not only that the federal legal services effort be sustained and improved, but also that it be insulated from political pressures affecting attorneys in delivering legal services. Attorneys working for the poor must be free to represent their clients as fully and zealously as can a private attorney with respect to his paying clients. Appended to my testimony is a memorandum incorporating the resolutions adopted by our Association over the last twelve years supporting the federal legal services effort. The most recent of these, supporting the Corporation's budget request for Fiscal Year 1978, was adopted as recently as February 11 of this year.

In reviewing these resolutions, you will note that in 1969, we opposed the so-called "Murphy amendment." The American Bar Association stated that "... the legal services program should operate with full assurance of independence of lawyers within the program not only to render services to individual clients but also in cases which might involve action against governmental agencies seeking significant institutional change...." That same year we adopted another resolution deploring criticisms of legal aid attorneys by government officials where such an attorney, "... acting in good faith and within the confines of ethical conduct, zealously represents clients in matters involving claims

against a governmental entity or individuals employed thereby."

In 1971, 1973, and 1974, the Association adopted resolutions urging the establishment of a national legal services corporation. The 1971 resolution called for the charter of the corporation to "... contain assurances that the independence of lawyers involved in the Legal Services Program to represent clients in a manner consistent with the professional mandates shall be maintained..."

I cite these resolutions because they demonstrate not only our historic commitment to the federal legal services program but the philosophic underpinnings of our view of the role of the legal services attorney: to provide competent, professional, and zealous representation, consistent with the ethical mandates of the profession, for the clients whom he represents.

Your Subcommittee is undertaking a review of the Act by which the Legal Services Corporation was created. Our House of Delegates and Board of Governors have not conducted a section-by-section analysis of the Act or adopted recommendations on specific provisions. The record of past ABA actions and policy positions, however, together with the ethical standards provided by our Code of Professional Responsibility, give us a clear framework in which we may analyze the Act. It is our view that several provisions of the Act violate the independence of the legal services attorney and his ability to exercise sound professional judgment on behalf of his client.

The following provisions, which seriously restrict the attorney's ability to provide full legal representation to his

clients, should be modified or removed:

Section 1007(a)(5)(B): This section deals with circumstances in which a program attorney may participate in the governmental policy-making process. We believe that the present language may prevent a legal services attorney from providing relevant information to a governmental agency or legislative body unless he receives a personal request to do so. Certainly in those cases in which the general public is permitted to comment on an issue, which would directly effect eligible clients, a legal services attorney should not be prevented from giving his comments to the governmental entity.

Section 1007(b)(4): With respect to the representation of juveniles, an attorney should be free to represent such persons where he deems it appropriate in his professional judgment. The restrictions in this section of the Act arbitrarily intrude upon that exercise of professional judgment. We are gratified that S.1303 in Section 9(b) would remove this provision.

Section 1007(b)(6): The language of this section is vague and overly broad and may inhibit legal services attorneys from providing legal services involving the formation of organizations and associations. Legal services attorneys should not be providing such legal assistance where appropriate, any more than should private counsel.

Section 9(c) of S.1303 seeks to address this problem by limiting the scope of this restriction. We are concerned, however, that the language of Section 9(c), proscribing the initiation of the formation of organizations, may prevent an attorney from suggesting the formation of an organization to a client unless the client has first raised the issue of organizing. The legitimate concern in this area, it seems to us, is an attorney engaging in direct organizing of a non-legal nature and would suggest the statute limit itself to this type of situation.

Section 1007(b) (7), (8) and (9): The proscription on the handling of cases arising out of specific and narrow areas of the law is a clear example of the imposition of political considerations on the practice of law by legal services attorneys. The issue here is not whether abortion, school busing and desertion from the army are desirable activities, but whether citizens who are deeply affected by these controversial issues will have the opportunity to seek resolution of them through our court system, and whether the legal services attorneys will be permitted to meet their ethical obligations to represent their clients fully and zealously. Section 9(d) of S.1303 removes most of the restrictions on the handling of military cases. The section does, however, require that certain services be provided in the first instance by Department of Defense counsel. In allocating resources, Congress may find this

to be the most sound arrangement. We would note, however, that there is merit to having an eligible client receive all legal services through one office, and further that a deserter may find it difficult to have full confidence in legal counsel supplied to him by the Department of Defense. In any event, we strongly support the removal of the restrictions on the independent judgment of the legal services attorney, contained in these three subsections.

There are other provisions in the present charter which unduly limit access of the poor to legal services. Among these are the following:

Section 1007 (a) (2) (B) (iv): This provision prevents a person from receiving legal assistance if a prior determination has been made that the individual is within the income guidelines solely because of a refusal or unwillingness, without good cause, to seek or accept an employment situation. While we would not quarrel with the motive which apparently underlies this provision, we are bothered by it for two reasons: first, it is unclear what constitutes a "prior determination" and what due process guarantees may be provided in the determination process; and second, if the "prior determination" was incorrect, the potential client is denied assistance of counsel to seek a reversal of the determination. For these reasons, we would favor the elimination of this

provision or its modification to provide that a "prior determination" not be an absolute bar to legal assistance. Section 8(a) of S.1303, as we interpret it, would not make a "prior determination" an absolute bar, but would permit the local program to review the merits of the determination.

Section 1007 (a) (2) (C): This provision requires that in the establishment of priorities those persons least able to afford legal assistance be given preference in the furnishing of such assistance. It is our understanding that those eligible for federal legal services are uniformly unable to afford legal assistance, and that the decisions about which matters should be given priority treatment should not be made solely on the basis of income criteria but on numerous other factors within the professional judgment of the attorney. Section 8(b) of S.1303 properly removes the "least able to afford legal assistance" language, and we support this portion of Section 8(b). At the same time, however, this section would add language to the statute which, while desirable in its objective, may create significant problems for a local legal services program. This is the language regarding the giving of "special consideration to the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems," and the ensuing

language singling out certain segments of the population for such treatment. While the listing of these segments is apparently not intended to totally exclude other segments from "special consideration," the provision's clear intention and effect would be for a local program to feel compelled to provide special attention to the specified areas. Other segments of the client population, for instance, those institutionalized in mental hospitals, may well be given less consideration as a consequence, even though local conditions might make such an allocation inappropriate. In short, the proposed language would tend to skew the local program's resource allocation process toward providing services to those clients parenthetically described in Section 8(b)(1), at the possible expense of other clients whose needs may be greater in a particular geographic area. Each local program is governed by a board which is broadly representative of the community it serves and includes representation from the client community. We believe these local program boards are in the best position to determine how the program's resources can best be utilized.

It would seem to us that a more appropriate method of addressing the needs of these identified segments of the client population is the establishment of model projects as provided in Section 10 of S.1303. Similar projects have already been initiated by the Corporation, and such projects can provide special expertise to any local project

which may need assistance in representing such clients.

A third group of provisions establish restrictions on what I would term "efficient delivery" of legal services. Foremost among these is the so-called "Green amendment," Section 1006(a)(3). The amendment has produced considerable confusion and conflicting interpretations as to its meaning. We favor the deletion of the "Green amendment" as an unnecessary restriction on the efficient delivery of legal services, and we support Section 5 of S.1303.

I would also call attention to Section 1010(c), which imposes limitations on the use of funds received from non-federal sources. We favor the removal of many of the restrictions and limitations contained in the present Act; but whether or not those restrictions are retained in the Act, we would urge that funds received from private sources not be encumbered by these limitations. Section 2(b) of S.1303 would achieve this result, and we endorse it.

There are in the present Act, for administrative and policy reasons, provisions which further limit the jurisdiction and authority of the legal services attorney. Section 1007(b)(1), for example, provides that legal services attorneys shall not provide legal assistance with respect to any criminal proceeding. While we are concerned about the level of federal support for criminal defense work, we acknowledge that the federal government has developed programs other than the Legal Services Corporation to meet these needs. We do not object, therefore, to this type of restriction. We do object, however, to those restrictions which totally preclude the most needy citizens of our country from receiving legal representation. Legal representation must not be viewed as a welfare

benefit which Congress has chosen to provide to certain citizens. The establishment of justice is the second purpose of our government enumerated in the Preamble of the Constitution. The denial of access to justice and to legal representation will effectively bar many citizens from enforcing their legal and constitutional rights. Under such circumstances, any restrictions on the provision of legal services to the poor should be subjected to the strictest scrutiny.

Having addressed various restrictive provisions in the present Act, I would like to briefly mention some other factors which I hope your Subcommittee will consider in reviewing this Act.

In August, 1975, our Association adopted a resolution in support of the Government in the Sunshine Act. The Association was in accord with the view expressed by Justice Brandeis that "Sunlight is said to be the best disinfectant and electric light the most efficient policeman."

The Legal Services Corporation Act contains a limited open meetings provision in Section 1004(g), and the legislative history of the Government in the Sunshine Act indicates that the Corporation's Board was intended to be included within the definition of "agency" and therefore subject to the Act's provision. We believe that the Board, its subcommittees, and the advisory councils should all be subject to the Sunshine Act. Section 4 of S.1303 properly clarifies this issue, and we support it.

We are pleased that the present charter required the Corporation, in Section 1007(g), to undertake a comprehensive, independent

study of alternative and supplemental methods of delivering legal services to eligible clients. Our Association in May, 1974, adopted a resolution urging that such a scientifically planned study of alternative means of providing legal services to those unable to afford an attorney, including the use of members of the private bar to provide these services, be conducted. We have been following the Corporation's study with great interest thus far and intend to continue to monitor it closely. We hope that such experimentation will not be a one-time affair but will be continued on an on-going basis.

The present Act, in Section 1007(b) (1), imposes restrictions on the handling of fee-generating cases. This restriction is in keeping with the general philosophy of the Act, i.e., that legal services should be provided for those who cannot afford them. If a case is fee-generating, an otherwise-eligible client has a means of obtaining legal assistance from the private bar. The Corporation's limited budget can thereby be spent on other cases where no legal assistance is available.

It may be that in certain circumstances a matter is technically fee-generating but in practice will not be handled by the private bar. If a statute provides for attorneys' fees but limits the fee to a specific dollar figure or to a percentage of the recovery, the fee in such cases may be too small to attract private legal representation in some communities. It would be undesirable to deny a poor person access to legal services because the matter is technically, but not in practice, fee-generating.

We are concerned, however, that the revision of this section provided for in Section 9(a) of S.1303 would relax this restriction too greatly. In essence, a local program could choose to handle a fee-generating case if, in its judgment, "appropriate private representation" was not available. We do not believe this standard is adequate to define the circumstances in which fee-generating cases appropriately may be handled by a legal services program, and we would urge that further consideration be given to any change of this kind.

The record of the federal legal services program over the last twelve years is an impressive one. Funding has been limited, and the program has had to weather numerous political storms. Yet, through it all, millions of citizens have seen the justice system work. Not only have the legal rights of these citizens been enforced, but their belief in our society has been buttressed. The Legal Services Corporation has provided competent, inexpensive, responsible representation for the poor of this country. Its leadership, both at the Board of Directors and staff levels, has been of very high quality. The program has demonstrated that it deserves our support and our trust. We hope that Congress will now remove the shackles it placed on program attorneys in 1974 and permit them to exercise fully their independent professional judgment. Integrity and competence, not artificial restrictions, should be the standards by which these attorneys are judged.

AMERICAN BAR ASSOCIATION
POLICY POSITIONS
FEDERAL LEGAL SERVICES PROGRAMS
FEBRUARY 23, 1977

The modern history of ABA support for providing comprehensive legal services to the poor began with the adoption of a resolution sponsored jointly by the Committee on Legal Aid and Indigent Defendants and the Committee on Lawyer Referral at the 1965 Midyear Meeting in Miami, Florida. The 1965 Resolution provides:

Whereas, The organized bar has long acknowledged its responsibility to make legal services available to all who need them, and this Association has been a leader in discharging this responsibility; and

Whereas, The organized bar, under the leadership of the National Legal Aid and Defender Association and of this Association, has extended legal services to indigents for more than three quarters of a century, and there are now some 247 legal aid offices and 136 volunteer legal aid committees rendering these services; and

Whereas, The organized bar, under the leadership of this Association, has also extended legal services to persons of modest or low incomes for many years through Lawyer Referral programs, and there are now some 203 Lawyer Referral agencies in operation; and

Whereas, Individual lawyers traditionally have rendered service without charge to those who cannot pay; and

Whereas, Despite this considerable effort of individual lawyers and the organized bar over many decades, it is recognized that the growing complexities of modern life, shifts of large portions of our population, and enlarged demands for legal services in many new fields of activity warrant increased concern for the unfilled need for legal services, particularly as to persons of low income, and that the organized bar has an urgent duty to extend and improve existing services and also to develop more effective means of assuring that legal services are in fact available at reasonable cost for all who need them; and

Whereas, The Economic Opportunity Act of 1964 provides for cooperative programs with state and local agencies through which various services, including legal services, may be rendered to persons of low incomes who need advice and assistance; and

Whereas, Freedom and justice have flourished only where the practice of law is a profession and where legal services are performed by trained and independent lawyers;

Now, Therefore, Be It Resolved, That the American Bar Association reaffirms its deep concern with the problem of providing legal services to all who need them and particularly to indigents and to persons of low income who, without guidance or assistance, have difficulty in obtaining access to competent legal services at reasonable cost; and authorizes the officers and

appropriate Sections and Committees of the Association, including such additional special committee (if any) as the Board of Governors may establish, in cooperation with state and local bar associations and the National Legal Aid and Defender Association, to improve existing methods and to develop more effective methods for meeting the public need for adequate legal services; and

Further Resolved, That the Association, through its officers and appropriate committees, shall cooperate with the Office of Economic Opportunity and other appropriate groups in the development and implementation of programs for expanding availability of legal services to indigents and persons of low income, such programs to utilize to the maximum extent deemed feasible the experience and facilities of the organized bar, such as legal aid, legal defender, and lawyer referral, and such legal services to be performed by lawyers in accordance with ethical standards of the legal profession; and

Further Resolved, That the Association's Committees on Legal Aid and Indigent Defendants and on Lawyer Referral Service shall, in the absence of the creation of a special committee for the purpose, have primary responsibility for (i) implementing these resolutions, (ii) coordinating with the appropriate Committees and Sections, and (iii) reporting back to this House at the annual meeting in August, 1965.

(Reports of the ABA, 1965, pp. 110-111)

The above resolution states the basic Association policy on extending legal services to indigents and persons of low income.

The Board of Governors adopted a resolution specifically opposing the so-called Murphy Amendment in October, 1969. That Board resolution provides:

Whereas, the adoption by the United States Senate of an amendment to S. 3016 seeks to place in the hands of the governors of the various states a power of veto over the activities of legal services programs funded by the Office of Economic Opportunity; and

Whereas, such power contravenes the American Bar Association's commitment to secure full and effective legal services to the poor by providing every person in our society with access to the independent professional services of a lawyer of integrity and competence; and

Whereas, enlarging the scope and effectiveness of the power to veto legal services programs is highly undesirable because experience has shown that the power to veto may be used to circumscribe the freedom of legal service attorneys in representing their clients to address issues of governmental action or omission affecting the rights of their clients, and to discourage actions which are politically unpopular or adverse to the views of the majority; and

Whereas, such limitations impair the ability of legal services programs to respond properly to the needs of the poor and constitute oppressive interference with the freedom of the lawyer and the citizen;

Now, Therefore, Be It Resolved, That the American Bar Associ-

ation reaffirms its position that the legal services program should operate with full assurance of independence of lawyers within the program not only to render services to individual clients but also in cases which might involve action against governmental agencies seeking significant institutional change; and

Further Resolved, That representatives of the American Bar Association be authorized to express the concern of the Association as to the effect of the aforesaid amendment.

(Reports of the ABA, 1970, pp. 161-162)

The above resolution was widely circulated to state and local bar associations and to the Congress. Fifty bar associations responded with similar resolutions or statements of opposition.

The Board of Governors adopted a resolution following the Annual Meeting in Dallas in August, 1969 directed at public criticism of legal services lawyers by public officials. The August, 1969 resolution provides:

Whereas, attacks against legal aid and legal service lawyers and other lawyers threaten the rights of clients to have independent advocates;

Now, Therefore, Be It Resolved, That the American Bar Association supports and continues to encourage every lawyer in the exercise of his professional responsibility to represent any client or group of clients in regard to any cause no matter how unpopular; and

Further Resolved, That the American Bar Association deplors any action or statement by any government official who attempts to discourage or interfere with the operation or activities of any properly constituted organization which provides legal services to the community because the lawyers associated therewith, or any lawyer acting in good faith and within the confines of ethical conduct, zealously represents clients in matters involving claims against a government entity or individuals employed thereby.

(Reports of the ABA, 1970, p.162)

A resolution supporting the enactment of legislation authorizing a federally-funded, non-profit corporation to provide funding for legal services programs was adopted by the Board of Governors in April, 1971. This resolution provides:

Whereas, The American Bar Association in furtherance of policy positions adopted by the House of Delegates in February, 1965, and the Board of Governors in August and October, 1969, has vigorously supported the expansion of legal services to those unable to afford the services of an attorney through the Legal Services Program of the Office of Economic Opportunity; and

Whereas, The American Bar Association has insisted that the independence and professional integrity of the lawyers involved in rendering such service be maintained, with particular emphasis on protection of the attorney-client relationship and compliance with the Code of Professional Responsibility and Canons of Ethics of the Legal Profession; and

Whereas, Pronouncements of this Administration and legislation currently pending in both Houses of Congress propose the establishment of a federally-funded, non-profit corporation to assume the responsibility of funding programs which will make a broad range of legal services available to persons unable to afford the services of an attorney which corporation will not be an agency or establishment of the United States Government; and

Whereas, The establishment with adequate safeguards of such non-profit corporation will tend to further the insistence of the American Bar Association on the independence and professional integrity of the Legal Services Program;

Now, Therefore, Be It Resolved, That the American Bar Association supports, in principle, the creation of a federally-funded non-profit corporation to administer monies which will be used to fund programs which will provide a broad range of legal services to persons unable to afford the services of an attorney, the charter of which shall contain assurances that the independence of lawyers involved in the Legal Services Program to represent clients in a manner consistent with the professional mandates shall be maintained; and

Be It Further Resolved, That representatives of the American Bar Association designated by the President be authorized to present testimony on behalf of the Association before the appropriate committees of the Congress consistent with this resolution.

(Reports of the ABA, 1971, pp. 558-559)

At the Midyear Meeting in Cleveland in February, 1973, the House of Delegates of the American Bar Association reaffirmed its support of the expansion of legal services efforts and establishment of a national legal services corporation. The resolution adopted by voice vote provides:

WHEREAS, There is a continuing need for legal services to the poor; and

WHEREAS, There are federally funded legal service programs to meet this need in each of the states; and

WHEREAS, The funding for these programs has not increased since 1970 in spite of the increase in demand and operating expenses; and

WHEREAS, This Association continues to support the need for adequate legal services to the poor and the need for vital and independent programs to provide this representation;

NOW, THEREFORE, BE IT RESOLVED:

1. The United States government should increase the level of funding of legal services programs to enable them to provide adequate legal services to eligible clients and to prevent a serious deterioration of the quality and quantity of service because of increased expense and mounting caseloads.
2. Government at all levels and lawyers from both the public and private sectors should take every step necessary to insure that legal services remain independent from political pressures in the cause of representing clients.
3. The Congress of the United States should enact a legal service corporation of a design consistent with the foregoing principles and the need to maintain full and adequate legal services for the poor.

(Summary of Action, 1973 Midyear Meeting, p. 13)

In May, 1974, the Board of Governors adopted two resolutions with respect to federal legal services. The first resulted in part from the completion in early 1974 of a study by the American Bar Foundation on the subject of Judicare. The Board approved the following recommendation:

Whereas, In order that there may be equal justice under law it is important that quality legal services be available to all segments of our society, rich, middle income and poor, and the American Bar Association has for years sought to further this end;

Whereas, In order that such legal services may be more adequately available to the poor, this Association has supported the legal services programs of the Office of Economic Opportunity, has supported legislation to provide a national Legal Services Corporation, and has considered a recent limited study conducted under the auspices of the American Bar Foundation of alternative methods of providing such legal services through "Judicare", i.e. by partially subsidizing the services rendered by the private bar;

Whereas, It is the opinion of this Association that the primary goal to be kept always in mind is ready access of the poor to quality legal services, and that such goal can best be attained by the proper selective utilization of judicare and the staffed office approach, combinations of both and possibly by other methods as well;

Now, Therefore, Be It Resolved That

1. The American Bar Association supports and encourages the establishment of scientifically planned experimental legal services programs which would further test both *judicare* and staffed office systems, combinations of the two, and other programs, *provided* that all such experimental programs be designed to provide quality legal services for those unable to afford an attorney; and

2. The American Bar Association urges that the Congress provide adequate funding to maintain and expand such programs.

(Summary of Action, 1974 Annual Meeting, p.19)

Also at that May, 1974 Board meeting, the Board supported enactment of HR 7824, the Legal Services Corporation Act of 1974, as reported by the Committee of Conference of the House and Senate:

Whereas, The American Bar Association since 1970 has vigorously supported the enactment of legislation authorizing a federally-funded, non-profit corporation to succeed the Legal Services Program of the Office of Economic Opportunity; and

Whereas, The U.S. House of Representatives on May 16, 1974, passed H.R. 7824, The Legal Services Corporation Act of 1974, as reported by a Committee of Conference of the House and Senate; and

Whereas, H.R. 7824 reflects a compromise of differing versions of legislation passed by both Houses of Congress after four years of Congressional consideration of the concept of a legal services corporation during which period the interests and concerns of all interested constituencies, including the organized bar, have been fully considered, debated and resolved; and

Whereas, H.R. 7824, in its current form provides a framework which will allow the continuation of a professional program of legal services to the poor;

Now, Therefore, Be It Resolved, That the American Bar Association reaffirms its support for a National Legal Services Corporation; and

Further Resolved, That the American Bar Association urges the United States Senate expeditiously to act favorably on H.R. 7824; and

Further Resolved, That the President of the United States is urged to approve and enact H.R. 7824 if and when it is approved by the Senate; and

Further Resolved, That the President of the American Bar Association is authorized to communicate the position of the Association to the Senate, the President and to State and local associations.

(Summary of Action, 1974 Annual Meeting, p.19)

In August, 1975, the House of Delegates expressed its concern that civil legal services be made available to institutionalized poor people no less than to other poor people:

Resolved, That the American Bar Association calls on the Legal Services Corporation to assure that civil legal services are made available no less to the poor in institutions than to other poor people. To meet this objective, the civil legal needs of confined juveniles, prisoners, and the mentally disabled should be ascertained and appropriate funds allocated, and further

Resolved, That the President, through such agencies of the Association as may be appropriate, is authorized to present these views to the Legal Services Corporation, to counsel or assist the Corporation in identifying the civil legal needs of the poor in institutions, and to aid the Corporation in obtaining funds necessary to identify and provide such legal services.

(Summary of Action, 1975 Annual Meeting, p.16)

The Board of Governors on February 11, 1977, voted to support the Legal Services Corporation's budget request of \$217.1 million for Fiscal Year 1978. A telegram containing the following text was sent to President Carter:

The American Bar Association's Board of Governors voted unanimously to support the budget request of the Legal Services Corporation for \$217.1 million for Fiscal Year 1978. An estimated 10 million poor people in this country, 12 years after the establishment of the federal legal services program, still have no access to a legal services office. As a result, millions of our most needy citizens have been denied the means to enforce their legal rights, obtain justice and have an equal voice in our society. The proposed Fiscal Year 1978 budget will enable the Corporation to expand access to justice to approximately half of those not now served, as well as improving access for those in areas where there are underfunded programs. We urge you to recommend to the Congress that the requested funding be appropriated for the Corporation.

RDE:pes

Senator NELSON. Our next witness is Mr. David Marlin, director of Legal Research and Services for the Elderly, sponsored by the National Council of Senior Citizens.

Mr. Marlin.

STATEMENT OF DAVID H. MARLIN, DIRECTOR, LEGAL RESEARCH AND SERVICES FOR THE ELDERLY, NATIONAL COUNCIL OF SENIOR CITIZENS, ACCOMPANIED BY CANDY FOWLER, STAFF MEMBER

Mr. MARLIN. Thank you, Senator.

May I introduce Candy Fowler, who's on the staff of Legal Research and Services and is accompanying me today.

Legal Research and Services for the Elderly is the legal program of the National Council of Senior Citizens, a nonprofit membership organization of over 3 million older Americans belonging to 3,000 affiliated senior citizen clubs throughout the country.

I am pleased to have the opportunity to testify today concerning the extension of the Legal Services Corporation Act of 1974. We believe some amendments to that act are necessary if all groups of poor people are to receive their equitable share of services from federally-funded legal services projects.

Amendments to the act proposed in the bill presently before this subcommittee reflect the awareness of the sponsors that certain segments of the poor population, including the elderly poor, have suffered historic and continuing underrepresentation by legal services programs.

Our purpose in appearing before the subcommittee is to amplify that awareness and express our strong support for legislative efforts to correct the imbalances in service, while suggesting certain minor amendments to the bill.

While we can speak with authority and provide documentation only with regard to the elderly poor, we believe that other groups of poor people, such as the retarded, handicapped, crippled, blind, native Americans, migrant workers and the rural poor, have also received a disproportionately low level of legal services. Our hope is that all of these groups, not just the elderly, gain access to their fair share of legal representation.

From the beginning, legal services programs have experienced great difficulty in reaching and serving the elderly poor. The legal services system presently governed by the Corporation was first established through the Office of OEO. That system reflected the general policy of OEO to devote the major portion of its resources to young, active segments of the poor, such as AFDC recipients, rather than to groups like the elderly.

The under-service caused by this failure to focus on the needs of older persons has been exacerbated by the special physical and psychological circumstances of older persons. Elderly persons are often physically weak or incapacitated and isolated. They frequently are unaware of the legal rights they have and the services that are available to them, and their poor health often makes it difficult for them to take advantage of services they are aware of. Additionally, many elderly poor are financially self-sufficient before retirement, and are

reluctant to accept services they identify as "welfare" or "charity," despite their need.

The conventional methods of service delivery traditionally employed by legal services programs are ill-equipped to overcome these barriers to adequate representation.

OEO recognized this problem, and made some efforts to resolve it, beginning in 1968, when they provided funds for the establishment of Legal Research and Services for the Elderly. Under its mandate from OEO, LRSE identified and researched substantive areas of the law which particularly affected the elderly poor and demonstrated legal services delivery systems which might alleviate the conditions preventing elderly persons from receiving adequate representation.

Since that time, LRSE and other elderly law programs, financed both through the Administration on Aging of HEW and the Legal Services Corporation, have actively researched substantive areas of the law, drafted model legislation, developed litigation strategies, et cetera. These programs have also demonstrated that the access problems which bar older persons from security legal representation they need can be overcome through vigorous outreach and the use of properly trained and sympathetic lawyer-paraprofessional teams focused on legal needs of the elderly.

While many of these efforts have been highly successful on their own terms, they have had little effect on the patterns of delivery of legal services by Legal Services Corporation-funded programs. Underrepresentation of the elderly poor by those programs continues to exist.

In the late 1960's, OEO's Office of Legal Services estimated that, although the elderly represented nearly 20 percent of the poor, they received only 6 percent of the services rendered by the local legal services projects. Estimates of caseload percentages of several legal services Corp. projects in HEW regions I, III, and IV, which is the entire East of the country, obtained by LRSE during the last several months, reflect similar service levels, as demonstrated in the table we have attached on page 4 of our testimony.

While the table includes estimates from only some of the projects, the astonishing frequency with which the elderly poor are underrepresented indicates that misrepresentation nationwide is very common and probably epidemic. And the other information we have from other programs which serve older persons throughout the country simply verify these statistics.

Now, the two programs included in the table, which report high percentages of representation of older persons, have established special units to conduct outreach activities and focus on the legal needs of the elderly poor. Thus a modicum of specialized effort to reach underserved groups can be expected to produce vast improvement in the extent of services which they receive.

In seeking equal representation, or more equal representation, for older persons and other underserved elements of the poor, we have no intention of setting particular groups of needy persons against each other in the fight for the severely limited legal services which exist. We recognize that the needs of the poor for legal services vastly exceed the resources available to the Corporation, and we

support fully the Corporation's request for additional appropriations.

But the purpose of the Legal Services Corporation is to provide funds for legal services to all groups of poor persons; we seek only to require the Corporation to insure that that in fact happens. So we submit the following recommendations.

First—and let me say parenthetically that when we get into some of the language, I won't presume on you to read it; I know you and the staff would like an opportunity to read it, and I'll just refer to it.

First, the bill proposes to amend the Act to require that the Legal Services Corporation insure that in determining priorities for assistance and in providing services, the recipients of Corporation funds give—and here is your language, Senator, give “special consideration” to certain groups.

Additionally, the Corporation must insure that training and support services are provided to facilitate services to these groups.

Now, we strongly support the adoption of an amendment which would mandate that some outreach efforts be made to improve services to groups who have access problems. Such an amendment is necessary, since the Corporation's posture is that the present Act does not require specialized service for the elderly or any other segment of the eligible client population.

The requirement would not entitle particular groups to receive more than their fair share; it would not interfere unnecessarily with legitimate local decisions that particular classes, or priorities, of cases are most pressing, but it would require that legal services programs make an attempt to alleviate the access difficulties that are resulting in chronic under-service for some groups instead of accepting clients only on a walk-in basis.

Now, while some may argue that the availability of funds for elderly legal projects under title III of the Older Americans Act of 1965—and let me state that that probably amounts to about \$4 to \$5 million a year now—justifies allotting the elderly poor a disproportionately low share of services funded by the Legal Services Corporation, we have to remember that title III funds and grants are developmental, and in addition, an assertion like that would ignore the intent of Congress in establishing both the Legal Services Corporation Act and the Older Americans Act. As a rule, title III money is available only for the development of model social service projects, not for their continuing support. And generally, the money is available only for projects to go 3 years.

Now, even if such money were available, its extensive devotion to legal services projects would go counter to the basic purpose of the Older Americans Act. The Older Americans Act embodies a congressional judgment that all elderly persons, and not just the poor, are in need of a wide range of social services.

The Administration on Aging has made a concerted and continued effort to assist in realization of this congressional goal of increased legal representation for the poor. In 1973, Congress added legal services as a social service to the act. In 1975, Congress gave legal services a priority status.

In addition, the Administration on Aging has funded through its local projects approximately 100 programs, and it has also recently provided funds so that there is a lawyer attached to the State Office of Aging staff in every State in the country.

These contributions are significant and very praiseworthy and they should be continued, but it now must not be forgotten that the Aging money spent on legal services is money then not spent on nutrition, transportation, home health care or other vital services needed by other persons.

The Legal Services Corporation Act, designed to provide legal representation for all groups of poor persons, contains the primary responsibility. The proposed amendment simply facilitates realization of the act's overriding purpose and prevents development of a situation in which legal services projects can willfully refuse to make efforts to reach and serve elderly persons unless they receive scarce title III funding to do so.

As currently drafted, the amendment presents difficulties, and here, Senator Nelson, we have provided some language for consideration of the committee, which strengthens the language that talks about special consideration to certain groups.

It was our feeling—and I don't want to read the language because I think that would unduly burden the record, but what we have done is to strengthen—to spell it out more clearly, and to focus on the outreach requirements in order to provide services to groups such as older persons, crippled persons, blind persons, and retarded persons eligible for services, but who will never be able to obtain them unless special efforts are made to reach them.

Second, we support the representation of the eligible client population on the governing bodies of local recipient legal services programs. The inclusion of eligible clients in the policymaking process helps to make sure that services provided reflect true needs of clients. What holds true for the client population in general also holds true for other under-represented segments of that population.

We would go further, however, and provide for representation of underserved groups on both the National Board and the local governing bodies. In this way the entire legal services delivery system will be continually reminded of the special needs of underserved populations.

So we would suggest that the last sentence of proposed section 1004(a) be amended to read:

The membership of the Board shall be appointed so as to be generally representative of the organized bar, significant segments of the client community, including under-represented client populations, attorneys providing legal assistance to eligible clients, and the general public.

We then add some alternative language in addition, in this area.

Third, and finally, Senator, we wholeheartedly support the proposed amendment which would permit the Corporation to fund model projects to improve delivery of legal services to various groups with access difficulties. Projects of this type funded under title III of the Older Americans Act have been successful in many cases in developing more effective methods of reaching and serving elderly clients.

A major difficulty with model legal services projects funded under title III, however, is that AOA funding is developmental and cannot

be obtained on a permanent basis. In authorizing Legal Services Corporation-funded projects, and in acting to increase the development of legal services resources for groups with special access problems, Congress should take steps to alleviate this problem by providing for funding on a priority basis for successful model legal services projects originally funded on a developmental basis either by AOA, the Corporation itself or by other Federal agencies, and we have provided language which we think would achieve that purpose.

Let me say, finally, Senator, that I listened with great respect and interest to Mr. Ehrlich this morning. I noted particularly, on page 26 of his testimony, that he said the requirements of special consideration in your bill would result in fractionalization of the community—the client community, and create destructive competition among various groups for legal services funds.

That's one part of his presentation that I do not agree with. It seems to me that that takes a sort of—well, basically it seems to me that we should not be taking a "father knows best" view about how clients and eligible people should respond to demands for services to which they're entitled to under the law.

We should be encouraging people to be advocates for themselves. That was the original purpose of the poverty program, and I think it's still the purpose of the poverty program.

I think that's what it's all about. So I don't agree with those sentiments of Mr. Ehrlich and it seems to me the Congress could really do a great service to the Corporation, even though they're not willing to admit it, by providing a standard for their own performance in this area of the underserved and under-represented groups in the United States.

Thank you.

Senator NELSON. May I respectfully suggest, with reference to outreach, that there is some way to handle that without creating an additional layer of employees to perform that function? There is an outreach program on food stamps, and that sort of thing, and I am wondering if there are not enough people in those areas with whom some coordination of efforts might be worked out.

You may say it is not the responsibility of social service agencies to do that kind of thing. It does seem to me that it could just as well be their function, the function of a Council of Senior Citizens, the function of the community, agencies or various other groups. It seems to me there ought to be a way to design some cooperative effort which would provide an outreach program without creating another group of employees to do what people already in the field might do.

Don't you think that might be done?

Mr. MARLIN. I would totally agree with that. Our proposal would not, of course, require any additional people. It would only require the performance of that function. Organizations such as ours, organized into clubs throughout the United States, are willing, able and in some cases actually involved in assisting local programs in outreach; the entire network of aging offices is available for that.

Area agency on aging staffs, funded through Congress through the Administration on Aging, are not only available for that, but are anxious to perform that function.

In fact, there has been recently negotiated an agreement between the Legal Services Corporation and the Administration on Aging in which they talk about implementing the out-reach effort, but I think that if the Congress had some oversight, through some language that you could insert in the bill—not only some oversight, but supply some direction, to see that it does occur, then it will happen and will not require additional staff.

Senator NELSON. Thank you very much for your statement. We appreciate your taking the time to come here and present it today.

Your statement will be printed in full in the record as if fully delivered.

[The prepared statement of Mr. Marlin follows:]

TESTIMONY OF DAVID H. MARLIN, DIRECTOR
LEGAL RESEARCH AND SERVICES FOR THE ELDERLY

Sponsored by the

NATIONAL COUNCIL OF SENIOR CITIZENS

Before the

SUBCOMMITTEE ON EMPLOYMENT, POVERTY, AND MIGRATORY LABOR

of the

SENATE COMMITTEE ON HUMAN RESOURCES

Regarding

EXTENSION OF THE LEGAL SERVICES CORPORATION ACT OF 1974

April 25, 1977

Legal Research and Services for the Elderly is the legal program of the National Council of Senior Citizens, a nonprofit membership organization of over three million older Americans and three thousand affiliated senior citizens' clubs throughout the country. I am pleased to have been invited to testify today concerning the extension of the Legal Services Corporation Act of 1974 and the amendments to that Act which we feel are necessary if all groups of poor people are to receive their equitable share of services from federally funded legal services projects.

Amendments to the Act proposed in the bill presently before this Subcommittee reflect the awareness of its sponsors that certain segments of the poor population, including the elderly poor, have suffered historic and continuing under-representation by legal services programs. Our purpose in appearing before the Subcommittee is to amplify that awareness and express our strong support for legislative efforts to correct the imbalance in service while suggesting certain minor amendments to the bill as drafted which would clarify and strengthen those efforts. While we can speak with authority and provide documentation only with regard to the elderly poor, we believe that other groups of poor people, such as the retarded, the handicapped, the blind,

native Americans, migrant workers and the rural poor, have also received a disproportionately low level of legal service. Our hope is that all of these groups, not just the elderly, will gain access to their fair share of legal representation.

From the beginning, legal services programs have experienced great difficulty in reaching and serving the elderly poor. The legal services system presently governed by the Legal Services Corporation was first established through the Office of Economic Opportunity. Thus that system reflected the general policy of OEO to devote the major portion of its resources to young, active segments of the poor, such as AFDC recipients, rather than to groups like the elderly. The underservice caused by this failure to focus on the needs of older persons has been exacerbated by the special physical and psychological circumstances of the elderly. Elderly persons are often physically weak or incapacitated and isolated from the community. They frequently are unaware of the legal rights they have and the services which are available to them. Their poor health often makes it difficult for elderly persons to take advantage of those services they are aware of. Additionally, many elderly poor were financially self-sufficient before retirement and are reluctant to accept services they identify as "welfare" or "charity" despite their need for those services. The conventional methods of service delivery traditionally employed by legal services programs are ill-equipped to overcome these barriers to adequate representation for the elderly.

OEO recognized this problem and made some efforts to resolve it. In 1968, the agency provided funds for the establishment of Legal Research and Services for the Elderly. Under its mandate from OEO, LRSE identified and researched substantive areas of the law which particularly affect the elderly poor and demonstrated legal services delivery systems which might alleviate the conditions preventing elderly persons from receiving adequate representation. Since that time, LRSE and other elderly law programs, financed both through the Administration on Aging and OEO/Legal Services Corporation funds, have actively researched substantive laws, drafted model legislation, and developed litigation

strategies on behalf of the elderly. These programs have also demonstrated that the access problems which bar older persons from securing the legal representation they need can be overcome through vigorous outreach and the use of properly trained and sympathetic lawyer/paraprofessional teams focused on legal needs of the elderly.

While many of these efforts have been highly successful on their own terms, they have had little effect on the patterns of delivery of legal services by Legal Services Corporation funded programs. Underrepresentation of the elderly poor by these programs persists. In the late 1960's, OEO's Office of Legal Services estimated that although the elderly represented nearly 20% of the poor population, they received only 6% of the services rendered by the local legal services projects. Estimates of caseload percentages of several Legal Services Corporation projects in HEW Regions I, III, and IV obtained by LRSE during the last several months reflect similar service levels, as demonstrated in the table on page 4.

While the table includes estimates¹ from only some of the Legal Services Corporation funded projects in HEW Regions I, III, and IV,² the astonishing frequency with which the elderly poor are underrepresented in these programs indicates that, nationwide, such underrepresentation is at least very common and probably epidemic. Tellingly, the two programs included in the table which report high percentages of elderly persons represented in their caseloads, unlike the majority of Legal Services Corporation funded projects, have established special units to conduct outreach activities and focus on the legal needs of the elderly poor. Thus, a modicum of specialized effort to reach underserved groups can be expected to produce vast improvement in the extent of service which they receive.

In seeking equal representation for the elderly and other underserved groups of the poor, we do not intend to set particular groups

¹ The estimates in all cases were arrived at by the projects themselves, not by LRSE or other outside sources.

² The projects represented in the table include all those for which LRSE had caseload estimates available, and were not selected in order to produce data skewed to support LRSE's thesis.

STATE	LSC PROGRAM	% OF STATE'S POOR WHO ARE 65 + *	% OF LSC CASELOAD WHO ARE ELDERLY **	SOURCE OF INFORMATION
VERMONT	Vermont Legal Aid, Inc.	22.3	6.5	LSC office estimate reported to LRSB (1976)
NEW HAMPSHIRE	New Hampshire Legal Assistance	22.8	6 ***	LSC office estimate reported to LRSB (1976)
CONNECTICUT	All legal service corporation programs	21.7	5	Estimate reported to Connecticut Commission on Aging. All LSC offices (1976)
MASSACHUSETTS	Greater Boston Legal Assistance	23.5		LSC office estimate reported to LRSB (1977)
	Western Mass. Legal Services		10	
	Central Mass. Legal Services		4	
	Legal Services of Cape Cod & Islands		5-10	
	Newtown Valley Legal Services, Inc.		10	
	Orford Legal Services		7-35	
MAINE	Pine Tree Legal Assistance	22.7	6	LSC office estimate reported to Bureau of Maine's Elderly (1976)
DELAWARE	Del. Legal Aid Soc. at Kent, New Castle and Sussex	17.0	3	LSC office estimate reported to LRSB (1976)
DISTRICT OF COLUMBIA	Neighborhood Legal Aid Program	11.3	10	LSC office estimate reported to LRSB (1976)
MARYLAND	Legal Aid, Inc.	16.2	5	LSC office estimate reported to Maryland Office on Aging (1977)
PENNSYLVANIA	Central PA. Legal Services	24.1	4	LSC office estimate reported to LRSB (1977)
VIRGINIA	Legal Aid Society of Roanoke Valley North-Side Legal Aid Society Charlottesville-Albemarle Legal Aid Society Richmond Legal Aid Society	15.9		1976 Survey of LSC office program by the Virginia Office on Aging
			10	" "
			15-20	" "
			5-11	" "
			15	" "
WEST VIRGINIA	West Virginia Legal Services Plan, Inc.	19.5	18	LSC office estimate reported to LRSB (1977)
ALABAMA	Legal Aid Society of Birmingham Madison County Legal Aid	16.0		LSC office estimate reported to LRSB (1976)
			7-10	
			7-10	
GEORGIA	Georgia Legal Services Program	15.7	4	LSC office estimate reported to LRSB (1977)
FLORIDA		21.6	No accurate estimates available	Florida Legal Services, Inc. response to both LRSB & the Florida Aging and Adult Services Office (1976)
MISSISSIPPI	Mississippi Bar**** Legal Services	15.4	3	Actual Caseload figures for 1975
TENNESSEE	Legal Aid Society of Chattanooga Knoxville Legal Aid Society Legal Services of Nashville Memphis and Shelby County Legal Services	18.8		Actual Caseload figures for 1975-76.
			6	LSC office estimate reported to the Tennessee Commission on Aging.
			6	
			6	
			21.4	Actual Caseload figures for 1975-76.
NORTH CAROLINA	Legal Aid Society of Mecklenburg County Durham Legal Aid Society	15.7	1.9	LSC office response to state legal services corp. survey (1976) LSC office response reported to LRSB (1976) No estimate available because age maintenance not maintained

* 1970 Bureau of the Census, Supplementary Report Issued December 1978
 ** LSC office definition of elderly vary from 65 to 80.
 *** Does not include those handled by at-large bar units under by Title III Older American Act
 **** Now merged into Central Mississippi Legal Services

of needy people against each other in a fight for the severely limited legal services which exist. We recognize that the needs of the poor for legal services vastly exceed the resources available to the Legal Services Corporation, and we fully support the Corporation's request for additional appropriations. But the purpose of the Legal Services Corporation is to provide funds for legal services to all eligible groups of poor persons. We seek only to require the Corporation to ensure that all segments of the poor have reasonably equal access to these services, however limited they may be. To that end, we submit the following recommendations with respect to the proposed amendments to the Legal Services Corporation Act of 1974.

(1) Proposed Amendment of Section 1007(a)(2)(c), Pertaining to Assistance Criteria

The bill proposes to amend the Act to require that the Legal Services Corporation ensure that, in determining priorities for assistance and in providing services, recipients of Legal Services Corporation funds "give special consideration to the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems (including elderly persons, handicapped individuals, veterans, native Americans, migrant or seasonal farmworkers and persons with limited English-speaking abilities)." Additionally, the Corporation must ensure that training and support services are provided to facilitate service to these groups. We strongly support the adoption of an amendment which would Congressionally mandate that some outreach efforts be made to improve service to groups with access problems. Such an amendment is necessary since the Corporation's posture is that the present Act does not require specialized service for the elderly or any other segment of the eligible client population. The requirement would not entitle particular groups to receive more than their fair share of services. And it would not interfere unnecessarily with legitimate local decisions that particular classes of cases are most pressing or that particular groups of poor people presently receive

more legal services than others from other sources available in a particular local area. Rather, the amendment simply requires that legal services programs make an attempt to alleviate the access difficulties which have resulted in chronic underservice for some groups instead of accepting clients only on a walk-in basis.

While some may argue that the availability of funds for elderly legal projects under Title III of the Older Americans Act of 1965 justifies allotting the elderly poor a disproportionately low share of services funded by the Legal Services Corporation, this contention overlooks the developmental nature of Title III grants and ignores the intent of both the Legal Services Corporation Act and the Older Americans Act. As a rule, Title III money is available only for the development of model social service projects, not for their continuing support. And even if such money were available, its extensive devotion to legal services projects would go counter to the basic purpose of the Act. The Older Americans Act embodies a Congressional judgment that all elderly people, not just the poor, are particularly in need of a wide range of social services. The Administration on Aging has made a concerted and continuing effort to assist in realization of the Congressional goal of increased legal representation for the poor. In 1973, AoA worked to add legal services programs to those which may be funded under the Older Americans Act. In 1975, funding of legal services projects was given a priority status. And AoA has funded over 100 model legal projects and provided funds for the hiring of a legal services developmental specialist in each state. These considerable contributions are praiseworthy and should be continued. But it must not be forgotten that each AoA dollar which is spent on legal services is one which is not spent on nutrition, transportation, home health care, and other vital services for elderly persons. AoA's willingness to assist in the area of legal services should not obscure the fact that provision of legal services to everyone in the society is the primary responsibility of the public and private bar, not of social service agencies representing particular groups.

The Legal Services Corporation Act, designed to provide legal

representation for all groups of poor persons, reflects that primary responsibility. The proposed amendment simply facilitates realization of the Act's overriding purpose and prevents development of a situation in which legal services projects can willfully refuse to make efforts to reach and serve elderly persons unless they receive scarce Title III funding to do so.

As currently drafted, however, the amendment presents difficulties. Both so that the provision will be effective and so that the Legal Services Corporation will know what is expected of it, the provision must be clarified. It requires legal services programs to "give special consideration" without specifying what that consideration might consist of. While the provision as a whole makes reference to "outreach, training and support services", the operative clause fails to make clear whether conduct of such activities is necessarily included in "special consideration" or whether programs might properly only "consider" such efforts and choose not to proceed with them. As a result of this lack of clarification, the provision will be difficult for the Corporation to follow and enforce.

We propose a more readily enforceable provision which would require the Corporation to establish specific guidelines and to make progress reports to Congress, such as the following:

Sec. 1007(a). With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this Title, the Corporation shall--

...(2)(C)(i) insure that recipients, consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account the relative needs of eligible clients for such assistance; (ii) establish guidelines to insure that recipients, in determining and implementing such priorities, serve the significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems (including, but not limited to, elderly persons, handicapped individuals, veterans, native Americans, migrants or seasonal farmworkers and persons with limited English-speaking abilities) in proportion to their representation in the population of eligible clients and undertake whatever outreach activities may be necessary to accomplish this proportional service; (iii) insure that appropriate training and support services are provided in order

to facilitate the provision of service to such significant segments of the population of eligible clients; and (iv) report annually to the Congress regarding progress made or obstacles encountered in implementing guidelines established under subparagraph (C)(ii) of this paragraph and providing equitable services to all segments of the poor population.

It is our feeling that this provision is stronger and more readily enforceable than the one proposed in the bill. Alternatively, if it is felt that the "special consideration" language of the bill should be retained, the provision still can and should be clarified and strengthened. A specific statement of the goal to be achieved and the addition of guideline-establishing and reporting duties for the Corporation accomplishes this purpose. Thus, proposed Section 1007(a)(2)(C)(ii) would be amended to read:

(C) establish guidelines to insure that ... (ii) recipients, in determining and implementing such priorities and in providing legal assistance (including such outreach, training, and support services as may be necessary) give special consideration to the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems (including, but not limited to, elderly persons, handicapped individuals, veterans, native Americans, migrants or seasonal farmworkers and persons with limited English-speaking abilities) such that these significant segments receive service relatively proportional to their representation in the eligible client population...

Additionally, a clause should be added to the end of Section 1007(a)(2)(C) providing that the Corporation shall "report annually to the Congress regarding progress made or obstacles encountered in implementing the guidelines established pursuant to subparagraph (C)(ii) of this paragraph and providing equitable services to all segments of the poor population."

A second feature of the proposed amendment which should be changed in any case is the listing of the particular groups felt to have access difficulties. At present the list appears to be exclusive. Yet groups such as the blind, the mentally retarded, and the rural poor have not been included. We recommend that the bill be amended to read "including,

but not limited to" the listed groups. If exclusivity is intended, however, the list should be expanded to include at least the above named groups.

(2) Proposed Amendment of Provisions Concerning Membership of Governing Bodies

We fully support the representation of the eligible client population on both the national Board and the governing bodies of recipient legal services programs. Inclusion of eligible clients in the policy-making process will help to assure that the services provided reflect clients' true needs. What holds true for the client population in general also holds true for under-represented segments of that population. Thus, we would go farther and provide for representation of underserved groups on both the national Board and the local governing bodies. In this way, the entire legal services delivery system will be continually reminded of the special needs of underserved populations. To this end, we would suggest that the last sentence of proposed Section 1004(a) be amended to read "The membership of the Board shall be appointed so as to be generally representative of the organized bar, significant segments of the client community (including under-represented client populations), attorneys providing legal assistance to eligible clients, and the general public." Further, proposed Section 1007(c) should be amended to read "and at least one-third of which consists of persons who are, when selected, eligible clients who may be representatives of associations or organizations of eligible clients and who, to the extent possible, reflect the different significant segments of the local population of eligible clients (including under-represented client populations)."

Additionally or alternatively, significant policy-making representation of diverse client groups could be achieved by establishing a national advisory council similar to the one proposed in the Senate version of the Legal Services Corporation Bill in 1974:

There shall be a National Advisory Council to consult with the Board and the president of

the Corporation regarding the activities of the Corporation, especially on all rules, regulations, and guidelines proposed to be promulgated pursuant to this title. The Council shall consist of fifteen members who shall be appointed by the Board to serve for terms of three years and who shall be representative of the organized bar, legal education, legal services project attorneys, the general population of eligible clients, organizations of the elderly, handicapped and other underserved eligible client populations, and the general public. The provisions of Section 7(d) of the Public Law 92-463 shall be applied to such Council. (underscored sections added)

(3) Proposed Amendment of Section 1007 to Permit Funding of Model Projects

We wholeheartedly support the proposed amendment which . . . d permit the Corporation to fund model projects to improve delivery of legal services to various groups with access difficulties. Projects of this type funded under Title III of the Older Americans Act have been successful in many cases in developing more effective methods of reaching and serving elderly clients.

A major difficulty with model legal services projects funded under Title III, however, is that AoA funding is developmental and cannot be obtained on a permanent basis. In authorizing Legal Services Corporation funded model projects, and in acting to increase the development of legal service resources for groups with special access problems, Congress should take steps to alleviate this problem by providing for permanent funding on a priority basis for successful model legal services projects originally funded on a developmental basis by the Corporation itself, by AoA, or by other federal agencies. A provision accomplishing this could be added to proposed Section 1007(n), and might read:

Model projects designed to expand or improve the delivery of legal services to such significant segments of the population of eligible clients which have been funded on a developmental basis by the Corporation, the Administration on Aging, or any other federal agency and which have made substantial progress toward the achievement of their objectives shall be eligible for permanent funding by the Corporation and shall be entitled to a priority in consideration for such funding.

Such a provision would encourage the development of model projects and would permit effective projects to provide valuable community service on a continuing basis in addition to serving experimental functions.

As in Section 1007(a)(2)(C), the list of client groups in proposed Section 1007(h) should be amended to be clearly non-exclusive.

We are gratified that the drafters of this bill have chosen to focus on the needs of client populations traditionally underserved by Legal Services Corporation projects. To adopt such a focus is not to be divisive or unduly quota-minded, but only to reaffirm that legal services should be available to as many persons as possible and to recognize that some groups need extra assistance in order to receive their equitable share of the services which are available. While ideally we would like to see the adoption of all of the suggestions made in this testimony, we urge most strongly that this subcommittee, and the supporters of this bill, commit themselves at a minimum to passage of the proposed amendment to Section 1007(a)(2)(C) and the proposed addition of Section 1007(h). These two provisions, by providing for the development of outreach activities, will go far to provide reasonably equal access to legal services for all segments of the poor population.

Senator NELSON. Thank you. The hearing will now recess until tomorrow.

[Whereupon the hearing was recessed at 11:20 a.m., to 9 a.m. on April 26, 1977, in room 424 of the Russell Senate Office Building.]

LEGAL SERVICES CORPORATION ACT AMENDMENTS OF 1977

TUESDAY, APRIL 26, 1977

U.S. SENATE,
SUBCOMMITTEE ON EMPLOYMENT, POVERTY,
AND MIGRATORY LABOR,
COMMITTEE ON HUMAN RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:12 a.m., in room 424 Russell Senate Office Building, Senator Gaylord Nelson (chairman of the subcommittee) presiding.

Present: Senator Nelson.

OPENING STATEMENT OF SENATOR GAYLORD NELSON

Senator NELSON. Today the Senate Subcommittee on Employment, Poverty, and Migratory Labor begins the second day of hearings on S. 1303, the Legal Services Corporation Act Amendments of 1977.

Today it is our pleasure to welcome representatives of the National Legal Aid & Defender Association, the National Clients Council, and the Project Advisory Group before the subcommittee.

Our first witness this morning is Mr. Frank Jones, executive director, National Legal Aid & Defender Association, accompanied by Bari Schwartz, deputy director, Civil Division, National Legal Aid & Defender Association.

It is nice to have you here this morning. Your statement will be printed in full in the record. If you could summarize the key points, it would be helpful in order to accommodate the whole list of witnesses.

STATEMENT OF FRANK N. JONES, EXECUTIVE DIRECTOR, NATIONAL LEGAL AID & DEFENDER ASSOCIATION; ACCOMPANIED BY BARI SCHWARTZ, DEPUTY DIRECTOR, CIVIL DIVISION, NATIONAL LEGAL AID & DEFENDER ASSOCIATION

Mr. JONES. Thank you very much, Mr. Chairman.

My name is Frank Jones. I am executive director for the National Legal Aid & Defender Association. I am pleased to express the strong support of the National Legal Aid and Defender Association for the reauthorization of the Legal Services Corporation for 5 years at funding levels sufficient to extend legal assistance for the first time to millions of unserved poor Americans.

The National Legal Aid & Defender Association, whose membership includes legal services programs, public defender offices, and members of the private bar, is a private national organization that devotes all its resources to the support and development of legal assistance in both civil and criminal matters in the United States.

In that role, NLADA was vitally involved in the effort to create an independent legal services corporation. A brief summary of that effort is a useful backdrop to an appraisal of the vitality of the program today.

Born out of a concern for achieving equal justice by providing legal representation for poor Americans whose rights had long remained unvindicated, the Federally funded legal services program was established in 1965. In order to maximize the independence of the attorneys' legal judgment, the integrity of their legal representation, and the confidence of their clients, local legal services projects were funded as independent Federal guarantees directed by independent boards of directors composed of local private attorneys and client representatives.

Despite the great success of the program in the early years, during which time it proved to be the most unbureaucratic of Federal programs, providing the optimal direct service to its intended beneficiaries, it soon became clear that the independence of the local projects did not suffice.

It developed that the Federal agency administering the program itself needed to be shielded from political interference.

President Nixon and Vice President Agnew were responsive to the outcry of those who had benefitted from the quiescence of the poor, signified by their previous inability to secure legal representation. The national Office of Legal Services came to be administered by persons with a Presidential mandate to destroy the legal services program.

In response to this threat to the continued provision of effective legal assistance to poor people, NLADA members forged a coalition which joined with members of the Senate Labor and Public Welfare Committee to press from 1971 through 1974 for the enactment of legislation establishing a politically independent corporation.

But despite the concern of NLADA, members of the bar, Governors, mayors, law school deans, and the very dedicated members of this subcommittee who were then in Congress that the bill provide for the delivery of legal services in accordance with the Code of Professional Responsibility and Canons of Ethics of the legal profession, the bill as signed into law contained restrictions seriously interfering with the scope of the legal assistance that can be provided to eligible clients and, further, lacked provisions designed to insure that the national program would be accountable to the poor people.

Notwithstanding the successes of the program over the years, it became clear that if it was going to carry out this mandate, it would be necessary for the program to be established in a Legal Services Corporation.

We are here to talk about some of the issues that arose as a result of the legislation that was passed creating the program and many of the restrictions that legislation placed on the work of the Legal Services Corporation and that of legal services to the poor.

Following my testimony this morning, you will be hearing from legal services lawyers and clients. I commend their testimony to you because it is these people who are on a day-to-day operational basis, feeling the effects of the restrictions that were included in the legislation as it was passed in 1974.

On the whole, we are gratified by the concerns of the members of the subcommittee for the effective delivery of legal services to the poor evidenced by the introduction of S. 1303. We strongly support most of the provisions of the bill. However, there are several provisions in the bill and several omissions to which we take strong exception. We address these first.

Sections 8(b) (1) and (2) pose serious difficulties with respect to their conceptualization of the needs of the client communities served by legal services programs and the most appropriate means of addressing those needs.

The requirement in section 1007(a) (2) (C) (i) that the Corporation insure that "recipients, consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account the relative needs of eligible clients for such assistance" acknowledges that it is the responsibility of each local legal services program, in consultation with the client community it serves, to determine priorities for the allocation of persistently insufficient resources for the provision of legal assistance.

We join the Corporation in questioning why the underline phrase is used instead of "consistent with any goals that may be established by the Corporation."

Our most serious objections, however, are reserved for (ii) and (iii) of the proposed section 1007(a) (2) (C).

Persistent reference is made to "special consideration," "special difficulties," "special legal problems," "significant segments." We acknowledge the validity of the concept that certain segments of the population of eligible clients have particular difficulties of access; in fact, discussions within the legal services community during the past year have seriously considered the problem of the accessibility of legal services programs to the poor, both physically and psychologically.

Parenthetically, we would add that it is not at all clear that each of the enumerated groups has been underserved by legal services; the statistics commonly cited in the elderly case are about eight years old, and thus antedate both the infusion of Administration on Aging moneys into legal services programs and the focus of the Corporation-funded Center for Social Welfare Policy and Law—and thereby the local programs to whose clients it provides specialized legal assistance—on Federal benefit programs for the elderly.

Nor is the existence of the National Senior Citizens Law Center, the Migrant Legal Action Program, or the Indian Law Back-Up Center, acknowledged.

In that sense, the notion that recipients, in determining and implementing such priorities and in providing legal assistance should take into consideration the need for service on the part of those segments of the population of eligible clients who have special difficulties of access to legal services, is a valid one.

But it strikes us that the proposed language goes beyond this requirement of inclusion of all segments of the poor in the processes of the local programs. We reach the inescapable conclusion that an implicit judgment is made in this subsection that certain subsets of the poor—welfare recipients, public housing tenants, and others—are already being adequately served by legal services programs.

Having witnessed existing legal services programs turn away thousands of poor people each year, which is not even to speak of the 10 million poor people who live in areas where, 12 years after the inception of the national program, legal services has never existed, we cannot accept that judgment.

It is our hope that with increased funding over the coming years, the Legal Services Corporation will be able to establish a truly national program in which actual rather than theoretical coverage is a reality, and each local program will be able to engage in vigorous outreach and community education efforts.

Such urgently needed efforts would be undertaken without pitting one segment of the poor against another, conferring greater significance on the legal problems—"special legal problems"—of some subsets of the poor over those of others, as we fear the proposed language would do.

Many persons in the legal services community are of the view that the needs of the poor are best addressed by encouraging different segments of the poor to link up with each other to forge common strategies for addressing shared problems.

For example, the problem of inadequate health care confronts poor persons of all ages for whom the intended benefits of EPSDT, Hill-Burton, medicaid, medicare and other Federal health programs have not been forthcoming. Insofar as this view has any validity, and we think it does, we hope that the subcommittee will reject an approach that would tend to fragment the poor.

Consistent with the requirement that "special consideration" be given, the language to be added to the annual report provision of the act, section 1008(c), would seem to compel the provision of legal assistance to members of the enumerated groups regardless of the pressing needs of other poor persons in the community—an outcome inconsistent with the requirement in proposed section 1007(a)(2)(C)(i) of "taking into account the relative needs of eligible clients."

We have asked members of the subcommittee to delete the reference to those "least able to afford legal assistance" in the priorities section currently in the act, section 1007(a)(2)(C), because it has been interpreted by many to compel persistently underfunded programs to make meaningless and unfair distinctions among persons all of whom are poor, and to prevent them from choosing to address as priorities categories of cases the resolution of which will have a substantial impact on the local client community. Unfortunately, the consequence of the proposed amendment may well be the same.

Our other difficulties with S. 1303 are much more easily understood. We applaud the proposed amendment to the section of the act concerning the Corporation Board of Directors, section 1004(a).

The requirement that vacancies over the next 2 years be filled with three clients is in keeping with past expressions of concern by the

Labor and Public Welfare Committee that the Board's deliberations be informed by the perspective of the aspirations and legal needs of low-income people.

However, we would prefer the following revision:

1. That the amendment require the appointment of "eligible clients who are representatives of associations or organizations of eligible clients" to insure that such persons reflect not only their own experience in poverty but the broader experience of other poor people to whom they would be accountable by virtue of their group affiliation;

2. That the last sentence in section 3(b) of the bill make reference to "attorneys experienced in providing legal assistance to eligible clients" to make clear, in light of section 1005(c) of the act concerning Board members conflict of interest, that such attorneys are not necessarily intended to be current employees of the legal services programs. Section 1005(c) could virtually prohibit current program attorneys from participating in any Board decisions; and most importantly; and

3. That the amendment make reference to vacancies occurring after 1978 to make clear that the subcommittee's concern is not a transitory one.

We are disturbed by the failure of S. 1303 to remove the prohibitions against the provision of legal assistance in desegregation and abortion cases.

The only apparent purpose of these restrictions is to discriminate against poor persons seeking to exercise their constitutional rights; the constitutional infirmities of these restrictions have long been apparent to all of us.

The credibility of the local legal services programs in the poverty communities they ostensibly exist to serve is damaged by their inability to provide representation in particular unpopular areas. The removal of these restrictions would not result in increased caseloads for sorely taxed legal service programs.

Programs set caseload limits and local program boards set priorities for the allocation of program resources within those limits based on the needs of the local client community.

In many communities, school desegregation or abortion matters would not be a top priority; in others, where poor people come to the programs and express a need to have school desegregation or abortion problems addressed, the programs should be able to do so.

However, amendments not to remove the restrictions altogether, but to permit the programs to seek the Corporation's approval to provide legal assistance in either of these areas upon a showing that no alternative counsel is available, would fundamentally alter the nature of the relationship between the Corporation and its independent grantees.

Even more seriously, such a proposed approach would inevitably destroy the political independence of the Corporation which the Congress so carefully sought to foster in the Legal Services Corporation Act of 1974. Desegregation and abortion matters may be particularly controversial, but it is not as though all other instances of legal representation provided to the poor by legal services programs are popular.

Persons who have long benefitted from the quiescence of the poor by virtue of poor people's inability, until the advent of legal services programs in their communities, to secure legal representation, can be expected to complain about program activities. Many Members of Congress will be responsive to those complaints.

Until now, the Corporation has been able, when necessary, to conduct inquiries to satisfy itself and others that legal assistance has been properly rendered, finding support in the act for the principle that matters in which legal representation is provided to poor people are properly decided at the local program level, in conformity with the act and Corporation regulations.

We have no doubt that the involvement of the Corporation in a case-by-case review requiring the Corporation to give a go-ahead to controversial litigation would shatter the insulation of the Corporation from political interference, and would be a highly unfortunate precedent.

We have come to be concerned about the remaining restrictions on military-related cases; namely, that programs cannot use Corporation funds "to provide legal assistance with respect to any proceeding or litigation arising out of desertion from the Armed Forces of the United States where counsel is available from the Department of Defense."

Especially on the criminal side, we have seen too many instances in which counsel is theoretically available, but in fact effective counsel is not available, and we are fearful that this will prove to be the case with respect to any intention on DOD's part to provide counsel for persons seeking to upgrade discharges.

In the area of legislative and administrative representation, we are pleased by the acknowledgment in S. 1303 of the effective role of paralegals, and the modification of the solicitation reference in proposed section 1007(a)(5)(A) to make clear that the prohibition is not intended to place a restriction on legal services attorneys that exceeds the structures of the Code of Professional Responsibility or to raise questions about the representation of group clients.

It would be exceedingly helpful, however, if section 1007(a)(5) were to be amended further to make clear that (1) testifying, drafting, or reviewing legislation is encompassed within the phrase "make representations thereto" in section 1007(a)(5)(B)—

Senator NELSON. How would your phrase that?

Mr. JONES. We think it would be helpful if section 1007(a)(5) would be amended further to make it clear that testifying, drafting or reviewing legislation is encompassed within the phrase "make representations thereto" in section 1007(a)(5)(B). We feel the program should be able to respond to legislative or agency requests for public comment when the matter under consideration falls within the priorities established by the program, in consultation with the client community. And we feel it will be helpful in the program to undertake effective legislative or administrative advocacy when a legislature or agency is considering a measure directly affecting the activities or the program or the Corporation, such as service-delivery issues including enabling legislation, title XX, appropriations, use of lay advocates in administrative proceedings, state special practice rules, et cetera.

With respect to the organizing restriction, section 1007(b)(6), if the subcommittee is not inclined to remove it altogether, it would be preferable to prohibit the use of Corporation funds to directly organize instead of to initiate the formation of, which can be interpreted to encompass all of the activities the phrase would replace—"to assist to organize, or to encourage to organize, or to plan for the creation or formation of, or the structuring of."

It is our view that a distinction should be made between proper activities such as (1) assisting groups of poor people to organize by providing advice on matters of incorporation, by-laws, tax problems and other matters essential to the planning and development of an organization; (2) counseling poor people regarding appropriate behavior for group members and (3) encouraging poor people aggrieved by particular problems to consider organizing to foster joint solutions to common problems on the one hand, and those activities that are improper on the part of legal services programs in that they usurp the rightful role of poor people as potential members of such organizations; namely, directly organizing.

We enthusiastically support the remaining provisions of S. 1303 with the exception of the model projects language which poses the same difficulties noted above with respect to fragmenting the poor, although with less serious consequences.

Section 3(b) of the bill appropriately codifies the requirement in the Corporation's regulations of one-third client membership on the boards of local programs, although it may be preferable to replicate the language of the regulation:

At least one member . . . shall be, when selected, an eligible client, and at least one-third of the members shall be either eligible clients, or representatives of associations, groups, or organizations of eligible clients.

Explicit application of the Sunshine Act to the Corporation in section 4 accomplishes what was intended by many members of Congress when the Sunshine Act was passed by Congress.

Repeal of the Green amendment, section 5 of S. 1303, affords the Corporation the flexibility to determine the most effective means of funding support activities.

Senator NELSON. May I ask a question on section 1007(b)(6), that section providing that no funds may be used to initiate the formation of any association, federation or similar entity, except that this provision shall not be excluded to prohibit provision of legal assistance to eligible clients.

What is the language that you prefer? What would you authorize them to do?

Ms. SCHWARTZ. I think we would prefer generally language that would say funds will not be used to "directly" organize; because "to initiate the formation of" could be interpreted to encompass all the other activities that the co-sponsors of the bill presumably did not want to proscribe that are listed in section 1007(b)(6). The ability of programs to encourage their clients, when that would be in the client's interest, and where that would be a more effective means of addressing some of these people's problems, to link up with each other and try to work out solutions to common problems is unclear, and there is a fear that the phrase "initiate the formation of" would

simply encompass some of the activities in the current provision in the act that the cosponsors presumably might have wished not to prohibit.

Senator NELSON. What provisions are you referring to?

Ms. SCHWARTZ. The language in the current act that refers to assist, to plan, or to encourage.

Senator NELSON. The current law reads that "no funds shall be used to organize, to assist to organize, or to encourage to organize or to plan for the creation of, formation of, or the structuring of any organization, association, coalition, alliance, federation, confederation, or any similar entity except for the provision of legal assistance to eligible clients in accordance with the guidelines promulgated by the Corporation. S. 1303 substitutes the language "to initiate the formation of any association, federation, or similar entity, except that this provision shall not be construed to prohibit the provision of legal assistance to eligible clients."

That language substituted for the language in the current law is not nearly so broad as current—

Ms. SCHWARTZ. That is right, Senator. In this sense, we concur with the view of the witness from the American Bar Association yesterday. It is our view that it is perhaps helpful to set up a kind of counterpoint. I think there is a general feeling that the legal services attorneys should not be usurping the rightful role of poor people to make decisions about organizing, to determine their course of behavior, et cetera.

That is the rightful role of the potential members of any kind of poor people's group. We do not think it is appropriate for legal services attorneys to be usurping that rightful role. But as the witness from the ABA stated yesterday "initiate the formation of" could be interpreted to mean that a legal services attorney could not even suggest to a client, to an existing client, who is sitting in the office, that it would be in the client's best interest to link up, to form an organization, possibly could not make that suggestion unless the client at first raised it as a possibility; because that might be perceived as initiating the formation of.

That is the sense in which, if the subcommittee wanted the basic 1007(b)(6) to remain, that we would prefer saying "directly organize" because we feel that that is the activity that the subcommittee is trying to get at.

Senator NELSON. I'm afraid I'm not exactly sure what you are saying. Are you saying, for example, that if the city council decides the property taxes should be raised, legal services attorneys should be able to seek out groups of poor people, incorporate them, organize them in order to fight the increase in property taxes or some other action by the city council? Is that what we are talking about?

Ms. SCHWARTZ. I do not think we are talking about that, Senator; because legal services attorneys do not have any mandate to be addressing the problems of poor people, except in the guise of providing legal assistance. To the extent the people who would be affected by such a measure are not already existing clients of the program, there would not be the authority to do so. Programs are not funded to undertake that kind of activity. But where an attorney is already

representing clients and perceives that their interest would be affected in a particular way, I think it is a rightful role of an attorney to provide legal counsel about how interests are likely to be affected and to possibly make the suggestion about the most appropriate way of addressing problems.

Mr. JONES. Or, Senator, using the analogy that you made, if a group of clients or community organization of poor people came to the office under a legal services program and suggested that the taxes and the impact these taxes were going to have on the organization or work they are doing to improve their community is going to be an inimical one, it would seem to me that the legal services lawyer should be in a position to advise them as to the kinds of options they have as an organization, to oppose that or take whatever action is necessary.

Senator NELSON. I interpret the language to do that.

What in the language would prohibit that, The language reads, ". . . (S)hall not be construed to prohibit provision of legal assistance to eligible clients"—if they come for legal advice, he can give it.

Mr. JONES. Senator, there will be following us, of course, actual legal services lawyers who are practicing in the field, who will be addressing the direct impact of this kind of provision. However, I would like to say that, while I think your interpretation is correct, the chilling fact of the restrictions on the bill on the whole over the last several years have brought a different kind of interpretation to legal services programs in that they are interpreting this act in a very restrictive way.

Our suggestion is that it be clarified so that it is clear to all of us, particularly those people in the field programs who are dealing with clients, that they do have the authority and right under the act to do it.

Our experience over the years has been that there are legal services programs around the country who are fearful that the act really does inhibit them in that way.

We are simply asking that your interpretation be made absolutely clear.

One final note, Senator. It has to do with the appropriations level.

The level of funding required to hold out this promise of access to a legal services program for all poor Americans is \$264.6 million, the figure we support for the fiscal year 1978 authorization level.

An appropriation of \$264.6 million would permit the LSC to create new programs at the minimally acceptable level of \$7 per poor person, and would also permit the LSC to bring the funding of existing programs up to a level which begins to reflect the numbers of poor persons such programs nominally serve.

We remain committed to \$264.6 million as the appropriate figure for fiscal year 1978; the need and the capacity to meet it have been demonstrated. But to the extent that Congress is not receptive to the higher figure, we of course endorse the Corporation's budget request of \$217.1 million.

We are somewhat fearful that the \$225 million authorization may not be adequate to address any contingencies that may develop in fiscal year 1978 that cannot be satisfied by the \$217.1 million.

We support the opened-ended authorization for the succeeding 4 years, and hope that members of this subcommittee and the full committee will continue to voice within the halls of Congress their strong support for a vital legal services program.

The National Legal Aid and Defender Association finds great encouragement for its work in this subcommittee's tradition of forthright commitment to the needs of the poor. We look forward to continuing to work with you.

We appreciate your patience and certainly appreciate this opportunity to share our views with you on this important issue.

We thank you.

Senator NELSON. Did you agree with the American Bar Association testimony that there are now about 3,000 legal services attorneys and that this authorization for appropriations would permit the hiring of another 2,100, bringing the total to 5,100, with their goal being 5,800?

Did you agree with those statistics?

Ms. SCHWARTZ. Yes. I think it is fair to say we certainly do.

Senator NELSON. That you could hire 2,100 under a \$217 million authorization?

Ms. SCHWARTZ. Yes.

I believe later this morning when witnesses from the field, who have had some experience in expansion appear before you, they will be able to say that there is this capacity to do that hiring to provide expanded services to the poor.

Senator NELSON. Thank you very much. We appreciate your taking the time to come. Your statement will be printed in full in the record.

[The prepared statement of Mr. Jones follows:]

STATEMENT OF FRANK N. JONES
EXECUTIVE DIRECTOR OF THE
NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

BEFORE THE SUBCOMMITTEE ON EMPLOYMENT,
POVERTY, AND MIGRATORY LABOR
OF THE COMMITTEE ON HUMAN RESOURCES
UNITED STATES SENATE

I am pleased to express the strong support of the National Legal Aid and Defender Association for the reauthorization of the Legal Services Corporation for five years at funding levels sufficient to extend legal assistance for the first time to millions of unserved poor Americans.

The National Legal Aid and Defender Association, whose membership includes legal services programs, public defender offices, and members of the private bar, is a private national organization that devotes all its resources to the support and development of legal assistance in both civil and criminal matters in the United States. In that role, NLADA was vitally involved in the effort to create an independent legal services corporation. A brief summary of that effort is a useful backdrop to an appraisal of the vitality of the program today.

Borne out of a concern for achieving equal justice by providing legal representation for poor Americans whose rights had long remained unvindicated, the federally-funded legal services program was established in 1965. In order to maximize the independence of the attorneys' legal judgment, the integrity of their legal representation, and the confidence of their clients, local legal services projects were funded as independent federal grantees directed by independent boards of directors composed of local private attorneys and client representatives.

Despite the great success of the program in the early years, during which time it proved to be the most unbureaucratic of federal programs, providing the optimal direct service to its intended beneficiaries, it soon became clear that the independence of the local projects did not suffice. It developed that the federal agency administering the program itself needed to be shielded from political

interference. President Nixon and Vice-President Agnew were responsive to the outcry of those who had benefitted from the quiescence of the poor, signified by their previous inability to secure legal representation. The national Office of Legal Services came to be administered by persons with a presidential mandate to destroy the legal services program.

In response to this threat to the continued provision of effective legal assistance to poor people NLADA members forged a coalition which joined with members of the Senate Labor and Public Welfare Committee to press from 1971 through 1974 for the enactment of legislation establishing a politically independent corporation. But despite the concern of NLADA, members of the bar, governors, mayors, law school deans, and the very dedicated members of this Subcommittee who were then in Congress that the bill provide for the delivery of legal services in accordance with the Code of Professional Responsibility and Canons of Ethics of the legal profession, the bill as signed into law contained restrictions seriously interfering with the scope of legal assistance that can be provided to eligible clients and, further, lacked provisions designed to ensure that the national program would be accountable to poor people.

The process of extending the Corporation's authorization beyond its expiration date at the end of fiscal year 1977 provides the most timely opportunity since the July, 1974 passage of the Legal Services Corporation Act for Congress to reconsider the restrictions to which the legal services community and its supporters in Congress were compelled to accede in the 1971-1974 struggle in insure the survival of legal services for the poor. With that in mind, in November and December of 1976, all legal services programs funded by the Legal

Services Corporation, as well as representatives of the client community, were canvassed for their views as to which provisions of the Act most severely impaired the delivery of legal assistance to the poor. The results of that survey formed the agenda for Action for Legal Rights, and the basis for the testimony presented to this Subcommittee today.

The support of the private bar and the clients themselves for the national legal services program, and the commitment of the attorneys in the programs to the effective provision of legal services to the poor is evidenced by the other witnesses at these hearings. The concept of an independent corporation has proved to be a viable one, resulting in policies on the national level, and legal representation on the local level in which political interference is minimized. We wholeheartedly support the five-year extension of the authorization for the Legal Services Corporation.

But problems stemming from the language of the Legal Services Corporation Act of 1974, and serious underfunding continue to beset the program. We ask this Subcommittee, which has played a proud role in the history of the legal services program, to consider these matters in fulfilling its oversight responsibilities.

I. The Amendment of the Act

We are gratified by the concern of members of the Subcommittee for the effective delivery of legal services to the poor evidenced by the introduction of S. 1303. We strongly support most of the provisions of the bill. However, there are several provisions in the bill and several omissions to which we take strong exception. We address these first.

Sections 8(b)(1) and (2) pose serious difficulties with respect to their conceptualization of the needs of the client communities served by legal services programs and the most appropriate means of addressing those needs. The requirement in §1007(a)(2)(C)(i) that the Corporation insure that "recipients, consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account the relative needs of eligible clients for such assistance" acknowledges that it is the responsibility of each local legal services program, in consultation with the client community it serves, to determine priorities for the allocation of persistently insufficient resources for the provision of legal assistance. We join the Corporation in questioning why the underlined phrase is used instead of "consistent with any goals that may be established by the Corporation."

Our most serious objections, however, are reserved for (ii) and (iii) of the proposed §1007(a)(2)(C). Persistent reference is made to "special consideration", "special difficulties", "special legal problems", "significant segments." We acknowledge the validity of the concept that certain segments of the population of eligible clients have particular difficulties of access; in fact discussions within the legal services community during the past year have seriously considered the problem of the accessibility of legal services programs to the poor, both physically and psychologically. (Parenthetically, we would add that it is not at all clear that each of the enumerated groups has been underserved by legal services; the statistics commonly cited in the elderly case are about eight years old, and thus antedate both the infusion of Administration on Aging monies into legal services programs and the focus of the Corporation-funded Center for Social Welfare

Policy and Law--and thereby the local programs to whose clients it provides specialized legal assistance--on federal benefit programs for the elderly. Nor is the existence of the National Senior Citizens Law Center, the Migrant Legal Action Program, or the Indian Law Back-Up Center acknowledged). In that sense, the notion that recipients, in determining and implementing such priorities and in providing legal assistance should take into consideration the need for service on the part of those segments of the population of eligible clients who have special difficulties of access to legal services, is a valid one.

But it strikes us that the proposed language goes beyond this requirement of inclusion of all segments of the poor in the processes of the local programs. We reach the inescapable conclusion that an implicit judgment is made in this subsection that certain subsets of the poor--welfare recipients, public housing tenants, and others--are already being adequately served by legal services programs. Having witnessed existing legal services programs turn away thousands of poor people each year, which is not even to speak of the 10 million poor people who live in areas where, 12 years after the inception of the national program, legal services has never existed, we cannot accept that judgment. It is our hope that with increased funding over the coming years, the Legal Services Corporation will be able to establish a truly national program in which actual rather than theoretical coverage is a reality, and each local program will be able to engage in vigorous outreach and community education efforts.

Such urgently needed efforts would be undertaken without pitting one segment of the poor against another, conferring greater significance on the legal problems ("special legal problems") of some subsets of the poor over those of others, as we fear the proposed language would do. Many persons in the legal services community are of the view that the needs of the poor are best addressed by encouraging

different segments of the poor to link up with each other to forge common strategies for addressing shared problems. For example, the problem of inadequate health care confronts poor persons of all ages for whom the intended benefits of EPSDT, Hill-Burton, Medicaid, Medicare and other federal health programs have not been forthcoming. Insofar as this view has any validity, and we think it does, we hope that the Subcommittee will reject an approach that would tend to fragment the poor.

Consistent with the requirement that "special consideration" be given, the language to be added to the annual report provision of the Act, §1008(c) would seem to compel the provision of legal assistance to members of the enumerated groups regardless of the pressing needs of other poor persons in the community--an outcome inconsistent with the requirement in proposed §1007(a)(2)(C)(i) of "taking into account the relative needs of eligible clients." We have asked members of the Subcommittee to delete the reference to those "least able to afford legal assistance" in the priorities section currently in the Act, §1007(a)(2)(C) because it has been interpreted by many to compel persistently underfunded programs to make meaningless and unfair distinctions among persons all of whom are poor, and to prevent them from choosing to address as priorities categories of cases the resolution of which will have a substantial impact on the local client community. Unfortunately, the consequence of the proposed amendment may well be the same.

Our other difficulties with S. 1303 are much more easily understood. We applaud the proposed amendment of the section of the Act concerning the Corporation Board of Directors, §1004(a). The requirement that vacancies over the next two years be filled with three clients

is in keeping with past expressions of concern by the Labor and Public Welfare Committee that the Board's deliberations be informed by the perspective of the aspirations and legal needs of low-income people.

However, we would prefer the following revision: (1) That the amendment require the appointment of "eligible clients who are representatives of associations or organizations of eligible clients" to insure that such persons reflect not only their own experience in poverty but the broader experience of other poor people to whom they would be accountable by virtue of their group affiliation; (2) That the last sentence in Sec. 3(b) of the bill make reference to "attorneys experienced in providing legal assistance to eligible clients" to make clear, in light of Sec. 1005(c) of the Act concerning Board members conflicts of interest, that such attorneys are not necessarily intended to be current employees of legal services programs. (Sec. 1005(c) could virtually prohibit current program attorneys from participating in any Board decisions); and most importantly, (3) That the amendment make reference to vacancies occurring after 1978 to make clear that the Subcommittee's concern is not a transitory one.

We are disturbed by the failure of S. 1303 to remove the prohibitions against the provision of legal assistance in desegregation and abortion cases. The only apparent purpose of these restrictions is to discriminate against poor persons seeking to exercise their Constitutional rights; the Constitutional infirmities of these restrictions have long been apparent to all of us.

The credibility of the local legal services programs in the poverty communities they ostensibly exist to serve is damaged by their inability to provide representation in particular unpopular areas. The removal of these restrictions would not result in increased caseloads

for sorely taxed legal services programs. Programs set caseload limits and local program boards set priorities for the allocation of program resources within those limits based on the needs of the local client community. In many communities, school desegregation or abortion matters would not be a top priority; in others, where poor people come to the programs and express a need to have school desegregation or abortion problems addressed, the programs should be able to do so.

However, amendments not to remove the restrictions altogether, but to permit the programs to seek the Corporation's approval to provide legal assistance in either of these areas upon a showing that no alternative counsel is available, would fundamentally alter the nature of the relationship between the Corporation and its independent grantees. Even more seriously, such a proposed approach would inevitably destroy the political independence of the Corporation which the Congress so carefully sought to foster in the Legal Services Corporation Act of 1974. Desegregation and abortion matters may be particularly controversial, but it is not as though all other instances of legal representation provided to the poor by legal services programs are popular. Persons who have long benefitted from the quiescence of the poor by virtue of poor people's inability, until the advent of legal services programs in their communities, to secure legal representation can be expected to complain about program activities. Many members of Congress will be responsive to those complaints.

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the Act and Corporation regulations. We have no doubt that the involvement of the Corporation in a case-by-case review requiring the Corporation to give a go-ahead to controversial litigation would shatter the insulation of the Corporation from political interference, and would be a highly unfortunate precedent.

We have come to be concerned about the remaining restriction on military-related cases: namely, that programs cannot use Corporation funds "to provide legal assistance with respect to any proceeding or litigation arising out of desertion from the Armed Forces of the United States where counsel is available from the Department of Defense." Especially on the criminal side, we have seen too many instances in which counsel is theoretically available, but in fact effective counsel is not available, and we are fearful that this will prove to be the case with respect to any intention on DOD's part to provide counsel for persons seeking to upgrade discharges.

In the area of legislative and administrative representation, we are pleased by the acknowledgment in S. 1303 of the effective role of paralegals, and the modification of the solicitation reference in proposed §1007(a)(5)(A) to make clear that the prohibition is not intended to place a restriction on legal services attorneys that exceeds the structures of the Code of Professional Responsibility or to raise questions about the representation of group clients. It would be exceedingly helpful, however, if §1007(a)(5) were to be amended further to make clear that (1) testifying, drafting, or reviewing legislation is encompassed within the phrase "make representations thereto" in §1007(a)(5)(B) with reference to activities which a legal services program can undertake in response to legislative or agency requests; (2) programs can respond to legislative or agency requests for public

comment when the matter under consideration falls within the priorities established by the program in consultation with the client community; and (3) a program can undertake legislative or administrative advocacy when a legislature or agency is considering a measure directly affecting the activities of the program or the Corporation, i.e. service delivery issues including enabling legislation, Title XX, appropriations, use of lay advocates in administrative proceedings, state special practice rules, etc.

With respect to the organizing restriction, §1007(b)(6), if the Subcommittee is not inclined to remove it altogether, it would be preferable to prohibit the use of Corporation funds to directly organize instead of to initiate the formation of, which can be interpreted to encompass all of the activities the phrase would replace - "to assist to organize, or to encourage to organize, or to plan for the creation or formation of, or the structuring of..." It is our view that a distinction should be made between proper activities such as (1) assisting groups of poor people to organize by providing advice on matters of incorporation, by-laws, tax problems and other matters essential to the planning and development of an organization; (2) counseling poor people regarding appropriate behavior for group members and (3) encouraging poor people aggrieved by particular problems to consider organizing to foster joint solutions to common problems on the one hand, and those activities that are improper on the part of legal services programs in that they usurp the rightful role of poor people as potential members of such organizations, namely, directly organizing.

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although with less serious consequences.

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Explicit application of the Sunshine Act to the Corporation in Sec. 4 accomplishes what was intended by many members of Congress when the Sunshine Act as passed by Congress.

Repeal of the Green Amendment (Sec. 5 of S. 1303) affords the Corporation the flexibility to determine the most effective means of funding support activities.

The new provisions of Sec. 6(a) and (b) will help immeasurably to resolve problems that have long beset legal services programs: efforts by opposing parties to influence the merits of cases in which legal services programs are providing legal assistance to poor people by questioning the eligibility of such clients for legal services; and the routine appointment by courts of legal services attorneys without compensation.

We endorse the removal in Sec. 7 of the prohibition on non-partisan political activities of staff attorneys on their own time, a prohibition that exceeds the provisions of the Hatch Act.

The removal of the disqualification for eligibility for legal services in circumstances in which a poor person has been subject to a prior determination that his or her lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation is appropriate, although we would prefer that the amended

provision state that programs may consider such a determination, rather than that programs shall take such a determination into consideration.

The deletion (see Sec. 8(d)) from Sec. 1007(a)(8) of the Act of the requirement that preference in filling program staff attorney positions be given to qualified local applicants appropriately eliminates difficulties posed by that section for affirmative action efforts, while retaining the requirement that programs seek recommendations from the organized bar.

The amendment in Sec. 9(a) of S. 1303 concerning fee-generating cases is an excellent improvement. In cases involving statutory benefits, for example, Supplemental Security Income, there is potentially a conflict of interest between a private attorney and a client since delay increases the amount of back benefits due and thus the amount of the attorney's contingent fee.

Moreover, it would be contrary to the purposes of the recovery to require a poor person to expend on attorney's fees money recovered that is intended by Congress only to provide for subsistence needs. The amendment satisfactorily addresses this problem.

The amendment in Sec. 9(a) concerning representation of native Americans codifies the intent of Congress in the 1974 Conference Report that representation in misdemeanor offenses in tribal courts not be prohibited by the general ban on criminal representation and acknowledges the special expertise not widely shared by the private bar or public defenders required to effectively represent native Americans in certain types of proceedings that could otherwise be considered criminal in nature.

We applaud the removal in Sec. 9(b) of the juvenile restriction.

Section 1007(b)(4) denies legal assistance to children in situations in which parental consent to the provision of legal assistance is unobtainable because the child has been separated from the parents or because the parents refuse consent despite the wishes of the child. It is further not clear that the exceptions in (C) and (D) cover all possible situations in which the interests of parent and child may diverge and legal assistance to the child is appropriate.

Perhaps the most critical point is that the rights of children is an important new area of the law, and vindication of those recently recognized rights is urgently needed. But if programs and program attorneys, uncertain as to how to interpret the complex language of §1007(b)(4), perceive a risk that they will get into trouble if they engage in legal assistance in this area, they certainly will refrain from doing so. That is, if anything in the Act appears to deter representation of indigent children, there will only be further delay in the full and effective representation of the rights of children.

Of particular importance to the legal services community is the amendment in Sec. 13 of S. 1303 to require that, when requested, an independent hearing examiner shall preside at the "timely, full, and fair" hearing guaranteed by §1011(2) of the Act to any program whose funding the Corporation seeks to terminate or suspend, or whose application for refunding the Corporation seeks to deny.

Once a Corporation official has determined that a program's application for refunding should be denied or that its funding should be terminated or suspended, for whatever reason including an intended merger, a full adversarial hearing is the only setting in which the articulation and protection of the interests of all concerned, including the client community which has come to rely on the program, can

be assured. By the time a notice of defunding has been sent, feelings on the part of all parties most likely preclude the possibility that the dispute can be worked out in an informal manner. Congress acknowledged this in §1011(2) of the Act, requiring, in light of previous efforts by OEO administrators to defund programs, a "timely, full, and fair hearing."

Unfortunately in the regulation interpreting §1011(2) and the practice established thereunder, the LSC has eviscerated the concept of "timely, full and fair hearing". The five hearings that have been held have been presided over by LSC employees who are peers, direct subordinates, or superiors of the LSC employees who had made the original defunding recommendation.

The integrity of the persons involved in these proceedings is not in question. Rather, especially given the small size of the Corporation, the role pressures on the persons involved in the preliminary determination, hearing, and final decision stages must be recognized. Peers will naturally be inclined toward being supportive of each other; one is not likely to reverse determinations made by superiors. Superiors are likely to have been aware of critical decisions made by their subordinates; if a superior were in disagreement with such a decision, such disagreement would likely have been expressed earlier so that the preliminary determination would have come out differently. By the time of a hearing, the superior is likely in accord with the preliminary determination of the subordinate.

The requirement of the appointment of a hearing examiner from outside the Corporation would not hinder the effective implementation of Corporation policy. Policy should be developed by the LSC in a manner conducive to input on the national level in advance of the

necessarily ad hoc setting of a defunding hearing, in which previously announced policy should be applied and not made.

II. Authorization Levels for the Corporation

With the inception of the national program to provide legal assistance to the poor in 1965, legal services programs began to be established in areas throughout the country. But from 1971 through 1975, in a period of spiraling inflation, the appropriation for the national legal services program was frozen, resulting in the closing of dozens of neighborhood legal services offices, and the deferment of the creation of new legal services programs. At the beginning of fiscal year 1976, the first full year of the LSC's operations, roughly 11.7 million poor persons out of the 29 million poor people counted in the 1970 census had no access to a Corporation-funded legal services program. Many of the remaining 17.2 million poor people living in areas theoretically covered by legal services programs actually had no meaningful access to legal representation because the programs in those areas were so underfunded.

The increase in the fiscal year 1976 appropriation necessarily was directed largely to cost of living catch-ups for existing programs. But with the fiscal year 1977 appropriation of \$125 million, the LSC finally was able to plan for expansion of legal services into previously unserved areas. The LSC set an interim goal, for allocation purposes, of funding legal services at the level of \$7.00 per poor person in the United States. The \$7.00 figure is derived first by projecting the cost of funding a legal services attorney at \$35,000 (this is undoubtedly low in that it encompasses support assistance, library costs, etc., and pegs attorney salary at \$12,000. The \$35,000 figure is then multiplied by 2 and divided by 10,000 to reflect the

LSC's short-term, minimal goal of providing two attorneys for every 10,000 poor people, as compared to the 11.2 attorneys for every 10,000 persons in the population at large.

The level of funding required to hold out this promise of access to a legal services program for all poor Americans is \$264.6 million, the figure we support for the fiscal year 1978 authorization level. An appropriation of \$264.6 million would permit the LSC to create new programs at the minimally acceptable level of \$7.00 per poor person, and would also permit the LSC to bring the funding of existing programs up to a level which begins to reflect the numbers of poor persons such programs nominally serve.

We remain committed to \$264.6 million as the appropriate figure for FY 1978; the need and the capacity to meet it have been demonstrated. But to the extent that Congress is not receptive to the higher figure, we of course endorse the Corporation's budget request of \$217.1 million. We are somewhat fearful that the \$225 million authorization may not be adequate to address any contingencies that may develop in FY 1978 that cannot be satisfied by the \$217.1 million.

We support the open-ended authorization for the succeeding four years, and hope that members of this subcommittee and the full Committee will continue to voice within the halls of Congress their strong support for a vital legal services program.

The National Legal Aid and Defender Association finds great encouragement for its work in this Subcommittee's tradition of forthright commitment to the needs of the poor. We look forward to continuing to work with you.

Senator NELSON. The next panel will be Melville Miller, Chairperson, Project Advisory Group, Legal Services of New Jersey; accompanied by representatives of various recipient programs: Willie Cook, Director, Neighborhood Legal Services Program, Washington, D.C.; Denison Ray, Director, Durham Legal Aid, Durham, N.C.; and Robert Reed, Director, Michigan Legal Services, Detroit, Mich.

STATEMENT OF MELVILLE D. MILLER, JR., CHAIRPERSON, PROJECT ADVISORY GROUP, LEGAL SERVICES OF NEW JERSEY; ACCOMPANIED BY WILLIE COOK, DIRECTOR, NEIGHBORHOOD LEGAL SERVICES PROGRAM, WASHINGTON, D.C.; DENISON RAY, DIRECTOR, DURHAM LEGAL AID, DURHAM, N. C.; AND ROBERT REED, DIRECTOR, MICHIGAN LEGAL SERVICES, DETROIT, MICH.

Mr. MILLER. My name is Melville Miller and I am chairperson of the Project Advisory Group, Legal Services of New Jersey.

On my left is Willie Cook, Director of Neighborhood Legal Services Program, Washington, D.C.

On my immediate right is Denison Ray, Director of the Durham Legal Aid, Durham, N.C.

On my far right is Robert Reed, Director, Michigan Legal Services, Detroit, Mich.

Senator NELSON. Your statement will be included in full in the record.

If you would summarize your major points, we would appreciate it.

Mr. MILLER. We will be quite brief and will be delighted to entertain questions.

I will make a few introductory remarks, and then my colleagues will try to relate some of the experiences they have had the last couple years, some of the problems they face in local programs.

As we tried to stress in our written statement, the Legal Services grant is not a program for lawyers. It is not a welfare program for them to work in the Legal Services projects. It is a program to meet the needs of people.

One basic theme that ran through our testimony that we see highlighted in S. 1303 is the notion that on the national as well as the local level poor people should play a role in determining what the needs are, what needs are met. Specifically in regard to the provision relating to eligible clients on a national board, we would simply like to highlight the fact that as the draft now reads, it does not mandate or provide for the appointment of eligible clients after July 1978. There is a transition staging provision between now and July which will assure appointment of clients during the next year and a half.

We would encourage an amendment to the section which provides for one out of every three appointments occurring after July 1978, indefinitely into the future, to be an eligible client or a representative of a group of clients.

Senator NELSON. I read this language to mandate that, between January 1, 1977, and July 30, 1978, three people shall be appointed from eligible clients. Do you think there is some ambiguity in that language?

Mr. MILLER. There is no ambiguity in what happens in our judgment before July 1978. Our point concerns July 1978: The same principle which supports having language providing for appointment should be carried out after July as well.

Senator NELSON. Your concern is that after July 1978, should an eligible client leave the Board, he or she may be replaced by somebody who is not an eligible client.

Mr. MILLER. Precisely.

Senator NELSON. That is not the intent. We can clarify that. The intent is to permanently provide for three such positions.

Mr. MILLER. There is a related point in terms of increasing and enhancing client accountability of Legal Services programs—and this relates to a section highlighted in earlier testimony by Mr. Jones. This is section 8(b) in the proposed legislation which focuses on considerations such as special legal problems, groups of clients, special difficulties of access. We would stress that the cornerstone of the Legal Services program, the success of the program over the past decade, has been the involvement of clients and local communities in the determination of local programs as to what avenues were followed, how the resources were used, and consequently what problems were focused on.

We point out two or three things in the language of section 8(b). There is some question raised as to whether local accountability would continue to be the principle of the program. I think much of this can be handled by appropriate report language. We would also urge deletion of a couple of words. The first point I would make is in regard to the use of the words "national goals." It is a bit confusing as to precisely what national goals would mean.

We would urge, and I think those who are familiar with the program would agree, that it not be taken to mean, for instance, decisions by the national corporation that in all communities in every part of this country a particular type of case was presumed more important than another kind of case. If there is one sentiment that I have heard frequently in my role as chair of this group over the years, it has been the feeling expressed by clients in local communities that the people in Washington—bureaucrats in Washington—do not have a feel for housing problems that plague them or insensitivity of the family courts or the travails that they face dealing with local welfare agencies.

But the issue is simply maintaining local accountability. It is still important for corporations to set broad goals that relate to quality and efficiency, et cetera.

We would urge that clarifying language be included in the report which stresses, consonant with the role of clients on local boards of directors of programs, that local boards still have the primary responsibility for setting priorities and determining how these scarce legal services resources will be used.

The same point really relates to language later in the section which presumes there are special legal problems for special groups of people.

It is important that no group be arbitrarily excluded. It is important that the problem of access and legal problems of every group

be considered by local boards. But it is also important to not create a national presumption, without any very sound data, that we do have one, two or three groups which have particular problems or are particularly excluded—that sort of thing—and in the latter part of the language indicated in our statement we would simply suggest the deletion of the words “special and significant,” which seem to us to create a disproportionate sort of presumption that certain groups are much worse off or have been excluded by Legal Services.

Senator NELSON. You assume that those words usurp the authority to local boards to determine local priorities?

Mr. MILLER. It appears they may. If there is any ambiguity, we would hope that would be clarified. This is exactly our concern.

Senator NELSON. I do not think that is the intent of the language, but I can see how one might interpret it so.

Mr. MILLER. At this point, Senator, let me introduce Willie Cook, Director of the Washington, D.C. program, who will give you some glimpse of life in a large urban program today.

Mr. COOK. For the record my name is Willie Cook. I am Executive Director of the Neighborhood Legal Services Program here in the District of Columbia.

I would like to address myself to a number of issues that we, who provide legal services to the poor on a local level, feel are important to bring to this committee's attention.

First, I think it is absolutely essential that the Legal Services Act be amended to require that one-third of the members of the Legal Services Corporation Board be composed of eligible clients who are representatives of associations, groups, or organizations of eligible clients. A similar requirement already exists for local boards of Legal Services programs.

This requirement is sound because it gives our clients meaningful participation in policy matters governing the actions of local legal services boards.

No less should be required of the national board of directors. Eligible clients add a special dimension, in that they are better able to express how particular actions affect them. I know, on my own board, we do not have to guess how clients feel about particular policies because they are vocal and knowledgeable about their needs.

I strongly oppose the notion that the matter of client representation on the Legal Services Corporation Board should be left to the wisdom of those doing the nominating and confirming. It is my view that Congress should say in an affirmative way to our clients that it recognizes the valuable contribution that they can make in participating in decisions that affect their lives. That can best be said by giving clients the representation that I mentioned above.

Next, I feel that our experience with the Legal Services Corporation Board over the past 18 months makes it essential that a sunshine amendment be enacted. I have attended every Legal Services Corporation Board meeting except one. At each of those meetings, the Board has gone into extensive executive session. It has been apparent to me that very important decisions affecting legal services have been made in those executive sessions. The extensive use of executive sessions by the present board has created suspicion among

those of us in legal services who are concerned about how the board arrives at some critical conclusions that affect all of us. We think the best way to deal with this suspicion is to insist on the kind of openness that would be required by an effective sunshine amendment. Executive sessions that are closed to the public should be rare, and should only be permitted in extraordinary, and very limited circumstances.

I would next like to deal with two issues that have a chilling effect on representation of our clients and expose us to the real possibility of harassment.

First, the provision of section 1006(f) of the present act which allows a court to award costs and fees to a defendant sued by the Legal Services Corporation or a grantee of the Corporation should be repealed. Those of us in legal services who represent poor people are very often in hostile territory when we press for recognition of rights for our clients in judicial and administrative forums. Sometimes those rights are not recognized on the first or second try because change does not always come easily. The provisions of section 1006(f) opens us up to the type of harassment that opponents of legal services can use to limit effective and aggressive representation of people who deserve our best efforts. I think section 1006(f) is an unnecessary hammer over our heads which causes hesitation where there should be none, and has the potential for financial ruin on programs that are already woefully underfunded.

Next, the question of client eligibility should not be a proper subject for judicial or administrative inquiry; that should be left with the Legal Services Corporation. I have been in legal services for approximately 8 years and my experience has been that the use of this issue is invariably related to a desire on the part of our adversaries to halt vigorous representation of our clients.

There are adequate avenues for this kind of complaint to be dealt with. As an initial matter, local programs are required to see to it that only eligible clients are represented.

Second, State Advisory Councils can deal with those complaints, as well as the Legal Services Corporation. This is not the kind of issue that should be dealt with judicially, and its determination should be expressly removed from the judicial arena.

I would like to focus for a second on some comments made about organizing restriction.

The Senator was talking with Mr. Jones about what problems those of us in Legal Services view or anticipate as a result of that kind of section or as a result of the language in the section. I would first say that my first priority would be for the Congress to eliminate the organizing section altogether. The words of both the present bill and the section in this committee's bill poses a problem for us on a local level.

Let me just give you some concrete examples of the kind of hesitation that we in the field are presently undergoing because of that particular language. For instance, here in Washington, D.C. we have a Rent Control Commission. Many of the issues involving clients in that particular Rent Control Commission necessitate that there be group action on the part of tenants dealing with landlords. Now, if

we in the District of Columbia are unsure about what we can do in terms of our activity involving groups of tenants, we will lose a very important opportunity that tenants ought to have in this city to organize against landlord associations who are very well organized.

For instance, rent strikes in the District of Columbia have been legal for some time now as a result of actions taken by attorneys in neighborhood legal services in the District of Columbia. We are really unsure, in fact we spent an awful lot of time in our program, that is of lawyers, discussing just what we can do under the act in the way of organizing tenant groups to deal with very well organized landlord associations.

As I say, I think that one of the ways to deal with that entire problem really is to eliminate altogether section 1007(b) (6). But in the alternative if you do not want to eliminate that section altogether, I think it should be made very, very clear, at least the section ought to be written very, very narrowly so that it is very clear that we should have the right to assist and give information to those client groups who feel that they should organize for group action, whether it be housing, consumer, whatever it is, but any issue that is important to our clients, I think the clients should have the right to organize for those reasons.

Senator NELSON. We are back to that same question. What is objectionable about the language in the bill? What is it you want the lawyers to do that you think they may not do under the language of the bill?

Mr. COOK. In the present amendment, proposed amendment rather, I am troubled by the language "to initiate the formation of any association," et cetera. I know there is an exception there, but to initiate the formation of any association, that could be almost any kind of advice a lawyer would give to a client concerning the possibility of formation of any kind of a group.

"To initiate the formation of" is really very wide and overly encompassing language. I am not sure that the exception portion of that particular section adequately deals with the problem that we are facing.

What I am concerned about is the chilling effect that that kind of language has on our ability to give advice to clients and client groups in terms of organizations that they want to form.

Senator NELSON. The exception in the language is just as compelling under the law as the prohibition. The language is aimed at prohibiting legal service attorneys from spending their time as organizers in other than a legal capacity—simply as organizers, going out initiating meetings, getting organizations started for a certain purpose—but that it does not prohibit them from advising any client as to how one may organize under the law or what would be required to comply with the law.

Are you saying you think the lawyers ought to be able to do more than give legal advice; are you saying you think the lawyers ought to be able to expend their time organizing clients as "organizers"?

Mr. COOK. No, indeed. That is not my intention at all. I am not saying legal service lawyers ought to be given license to spend their time just organizing. What I am saying though is that there are

certain circumstances in which clients really in their best interest should get together in an organized fashion to deal with a particular problem, and lawyers who represent those clients should not have the kind of language that is encompassed in this particular amendment which would serve as a chilling effect in terms of our giving advice to those clients in terms of what they can do in regard.

Senator NELSON. If you agree on the prohibition, what is the exact language that you would provide as a substitute in order to prohibit legal service lawyers from spending their time as organizers, and yet permit them to provide appropriate legal advice? How would you phrase it?

Mr. COOK. I would suggest language that was suggested by Ms. Schwartz who preceded us. I think her point was that it should be made clear that legal services lawyers should not be usurping the role of clients in our community. That is, we should not be the members—the members of the organization—we should not be playing the role that the members of the organization should play. That is one thing.

I do not think attorneys should be doing this kind of thing. That should be left with the individual clients. However, I think if there is to be a restriction at all, it should go to that very narrow kind of prohibition, not the kind of broad prohibition that you have here.

Senator NELSON. Well, I take it that everybody agrees that legal services lawyers should not be organizers, and everybody agrees that they ought to give legal advice to clients; but the 4½ lines here say just that.

What is the exact language you would provide to prohibit them from being organizers, which you agree they should not be, while authorizing them to give legal advice?

Mr. MILLER. Senator, our specific proposal was words "to directly organize" substituted for "to initiate." Let me highlight one point that Ms. Schwartz made earlier in the morning. We probably would agree with you that most of what we are saying, I think perhaps nearly all, would fairly be classified as legal advice in the broad sense that that term has been construed over time. But let me give you one concrete example of where it is hazy and where it may cause problems for some programs and why we feel a change is important. In Legal Services we do deal, as Mr. Cook has indicated, with large housing projects from time to time or with public housing, and often we have recurrent problems, very similar patterns. In my own town of New Brunswick, N.J., we had a recurrent theme when people came in because the toilets were overflowing in their apartments, perhaps 55 or 60 tenants in a public housing building. Individually there was a sort of long, plodding remedy, a damage remedy that we could seek, but collectively those people had some leverage.

All we ask in that situation is for it to be very clear, whether it is called legal advice or something else, that we are not chilled in any way from saying to them that "you should know that 59 of your neighbors have come in with your same problem. Are you talking to each other? Have you thought about the possibility of getting together and doing something?" We do not for a moment ask that legal services attorneys or anybody else that works in the program, be an organizer, be a leader, be a member or even make the decisions

on whether to organize. That is not what we are talking about. We do ask the ability to give information about others with the same kind of problem, to offer the suggestion that they think about it, and not be chilled in any way by the possibility that it may or may not be construed as legal advice.

Senator NELSON. That is the intent of this provision in any event.

Mr. COOK. The question is often raised concerning how programs deal with making their services accessible to the client community. I would like to relate to the committee how we deal with that problem in the District of Columbia. The bulk of our personnel are placed in six neighborhood offices which are located in the sections of the city where our clients live.

For the 13 years that our program has been in existence in the District of Columbia, we have always had a very strong neighborhood concept because that is what our clients want. The idea is to try to make it as convenient as possible for our clients to bring their problems to us. The aim is also to have legal services people in those neighborhoods so that they can get firsthand knowledge about client needs and a better understanding of the problems that face people on a day-to-day basis.

Finally, I would like to give you some sense of the serious problems that I have to deal with as the director of a legal services program that is seriously underfunded. I do not want to deal with the technical aspects of an appropriate budget for legal services for fiscal 1978 or 1979 or 1980. That has been done by other colleagues of mine and by the Legal Services Corporation staff presentation.

Rather, my focus is on real day-to-day problems that I have in coping with a local budget that does not begin to deal with our needs here in the District of Columbia. I am proud to say that I have a very dedicated staff that is trying to cope with an overwhelming demand for service by the poor in this city. We cannot begin to meet that demand because of insufficient personnel.

The average attorney stays with us between 2 and 3 years. But many leave because of mental and physical exhaustion occasioned by trying to deal with so many clients. I am also faced with a salary structure that does not begin to compare with agencies like the Public Defender Service, Corporation Counsel, U.S. Attorneys' Office and the Federal Government.

Moreover, the District of Columbia has one of the highest cost of living in the United States. It becomes very difficult to keep good people under these circumstances. A lot of administrative time is spent screening and interviewing people because of the high turnover rate.

Our primary aim is to insure that all poor people have access to legal representation, but that goal cannot be reached unless Congress gives us adequate financial resources to deal with that problem.

Thank you for your time.

Mr. MILLER. Continuing along that very same theme, I would like to introduce Denison Ray, Durham, North Carolina, who chairs the Funding Criteria Committee, Project Advisory Group.

Mr. RAY. Thank you, Senator, for allowing us to come before you today.

The needs that Mr. Cook has just described with respect to his own program I think provided a very fine frame of reference to focus in on the question of money. His is regarded as one of the better funded programs in legal services.

It is obviously a relative term. Simply put, the money sought by the Corporation of \$217 million and \$225 million, which is in the authorization figure in your bill, is simply not enough. It is not enough on several different levels.

The most primitive level has to do with what we are calling access to the legal system.

Now, as information provided to you already I think by the Corporation and certainly in our own written testimony indicates there are virtually 16 million poor people today who do not even have access to the legal system to resolve civil problems, civil legal problems that they have. Surely as a threshold proposition, each of those people deserve at least to be able to beat out other low-income people in getting down to legal services office to make a claim that they be represented when they have a legal problem. That cannot be done at the figures that are being talked about by this committee. It could be done at \$264 million which is the figure that the field services program support.

Senator NELSON. I am not quarreling about your conclusion. But President Ford's recommendation was \$90 million. President Carter's recommendation was \$175 million. Our recommendation is \$217 million.

Mr. RAY. I understand that, sir.

Senator NELSON. And the Budget Committee has got the President's figure. The \$175 million is within a function within the budget, and, while it may be possible to move money from one aspect of the budget to another, that is what the Budget Committee is using for that function in the budget—they use the figure \$175 million.

So whatever the merits of the program, I do not think it is very realistic to try to get beyond \$217 million, when that is already \$40 million over what the President is asking.

Mr. RAY. I appreciate that fact.

Senator NELSON. I am not suggesting you should not make the case on what is needed to do the job, I am not quarreling with you about that.

Mr. RAY. I understand your point, Senator. You are at the beginning of a yardstick and you move 6 inches down that yardstick and it looks like you have come a hell of a long way until you look to see where you have got to go. I think that is where we are coming from.

In your own State of Wisconsin under the Corporation's \$278 million figure there would be 42 percent of those presently who cannot get service who would continue after fiscal 1978 to be unable to get service, assuming that the Corporation applied even-handedly the increased money.

Presently in your State there are about 241,000 poor people who do not even have access to the legal system through legal service program. Obviously 42 percent leaves about 101,000 who even after an increase to \$217 million cannot get in the door.

Senator NELSON. The \$217 million, if appropriated, would increase the number of lawyers from 3,000 to 5,100. Such an appropriation

would almost double the current number of legal service attorneys available to the poor. While this is not yet the ideal ratio of attorneys to the poor, which has been mentioned by the American Bar Association and others, it is certainly an improvement and additional services will be available. What does that mean for the program?

Mr. RAY. It will obviously be better off.

Let me refer you to table No. 2 in the testimony which I have submitted. If you do not have it before you, at your convenience take a look at it. It breaks down how many people will be served at \$217 million and how many will remain without access. When we are talking about access, of course, this two-attorney units per 10,000 poor people, it should be evident on its face, that although that will mean everywhere that a low-income person lives, there will be a legal services program with responsibility for serving that jurisdiction, it should also be perfectly apparent that it does not provide a meaningful opportunity for so many of those people be represented because with two lawyers or their equivalent and 10,000 poor people, no matter how you carve it up, there are just a lot who are not even going to have their case accepted. We have to put this proposition of minimum access into perspective.

Therefore, when we realize that 58 percent of those presently without any access at \$217 million will not have access, we are talking about a concept. But in reality, many of those people are still not going to be able to be served.

That creates this tremendous tension which Mr. Cook described between the demand to be represented and the inherent adequacy of the staff to do the job. That raises expectations without providing the capability to follow through.

Now, we submit to you, sir, that at \$264 million you at least reach the threshold where you provide the access and then thereafter you add the real meat to the bones to provide the capability of follow through in a qualitative way.

I would like to address one other point which you raised to someone else who previously testified. That is the capacity to expand. My home State of New York is in the throes of expansion now. We have created a statewide legal services program, and in addition three of the smaller previously funded programs, including my own, are expanding to contiguous counties. There is an interesting phenomenon. First of all there is clearly a glut of lawyers on the market. There are just more lawyers coming out of law schools, for example, than can be absorbed in private bar.

In addition to those people who apply, we find that more and more law school graduates have been turned on in a genuine way to the desire to commit their talents in this socially needed manner. And without any soliciting are literally flooded with applications from recent law school graduates.

In addition, one kind of perverse positive effect of the situation which legal services has undergone over the last several years, to last year, getting any significant increase in funds, is that there has built up a cadre within existing programs of people who are on the verge of leaving.

We now provide an opportunity for them to move into management attorney positions, executive director positions of new programs, and the like; so that the opportunities for advancement finally provide a place for people to go.

We are also finding consequently that we are going to be able to attract some people back into legal services who have become alumni. I think though it is necessary at this point to return to the need for money.

We will be able to expand with this excitement of finally being able to reach out again and with the attractiveness that it provides in new positions only for a very limited time unless additional funds are provided for existing programs to significantly raise their level of pay.

The Legal Services Corporation in its budget request for 1978 at page 10 estimated that in its per attorney unit proposition, the average salary was \$12,333. Now, actually that is a little low. It should be closer to \$13,000. But when you consider that of the approximately 3,300 lawyers now in legal services, including some not funded by the Corporation, the average salary is between \$12,500 and \$13,000, and that is a built-in stagnation itself. And in order to remain competitive there has got to be an injection of significant funds simply to hold the ground that we have got.

On that note, I would like to close, except let me at the risk of belaboring the point parenthetically add something out of my own many years in private practice with regard to the dead horse we have been beating over organizational language.

I had the opportunity, the privilege, really, to practice law with two of the leading private firms in this country for many years in New York. It was common when clients would come to us with certain kinds of problems to of course look not only at purely legal, but at the political solutions.

One example that sticks in my mind is a group of people on Long Island who wanted to block the building of a bridge from Connecticut, across the sound. One of the first things we did was to counsel them to get other people together and create some political pressures. That was partly a conventional lawyer response, taking a look at whole pictures of remedies available. A query whether that may not come in language to initiate the formation of any association—in any event, I do not want to distract too much from my discussion from funding, so I will stop there.

Senator NELSON. Thank you very much.

Mr. MILLER. The last witness, Senator, is Robert Reed, director of the Michigan Services Program, who among other things may be able to give you an overview of a lot of different kinds of programs in a State which in a sense is a microcosm of the contrary: rural country, big city, and small city programs, and a statewide coordinating unit.

Mr. REED. Thank you.

I would like to speak briefly to indicate programs in Michigan and also specifically the question of legislative representation.

Michigan Legal Services, which is a program where I work, is one of the 13 legal services funded programs in Michigan, and they

range from specialized programs, migrant programs, and our program, which does major complex cases, to a whole series of local programs which may serve one rural county, may serve an entire city, and surrounding county of Detroit.

One program serves 25 counties in the northern part of the State.

There is a tremendous difference within individual programs in the State and the areas they serve and the kinds of clients and problems that they have. They are very different within the State of Michigan.

The existence of 13 programs in a State might indicate a State which is fairly well covered, but I would like to echo the fact that Mr. Ray made a minute ago; that is, until this year there were substantially less than half the counties covered in the State of Michigan, and with money available from expansion this year, we added 16 new counties which were covered, and yet of the 88 counties in the State, 33 still have no legal services funding at all.

Those 33 counties, part of those, have small local programs; and the rest have simply nothing.

Although we have come a long way, there is a long way still to go.

Let me also speak specifically to the question of legislative representation.

The act now provides, as I am sure you are aware, for representation of a client in legislative affairs or representation before a legislative or administrative body at the request of that body or Government agency, committee or member. But since the act became effective, there are several points of uncertainty that have come up with regard to the specifics of the language that is involved. We think some clarification is important; and I would like to speak specifically to four questions that come up and provide you with some examples from our practice which illuminate those.

The first provision is that it requires representation by an attorney—one who is an attorney. It is a point which is addressed in the Senate bill, satisfactorily, we think addressed in the Senate bill.

The problem is, although legal work is done under the supervision of an attorney, there are certain cases where actual legislative contacts or speaking with legislators is done by someone who is not an attorney.

For example, when the food stamp cutbacks were proposed last year, we were requested to intercede on behalf of the client organization in Detroit. We discussed at length with the senior paralegal in our program the impact that would have and what arguments we might make on behalf of our clients. We decided she would be the best person to speak to the legislator because she did this work and she could cite individual cases on what the impact would be. We felt that would be the concern of the legislators. So although we worked together on it, and I considered myself her supervisor, she personally made contact with the Michigan delegation.

We think it would be important to assure in the act that that action is permissible. I believe the present Senate bill does that.

The second area of concern, which is also addressed in the Senate bill, deals with extensive language on solicitation of clients, client groups.

Clearly, solicitation is already prohibited by the Canons of Professional Responsibility. But the language in the act as it now stands is disturbingly general. We support the change which is now proposed in the Senate bill.

Let me provide you with an example of that particular situation which occurred last week.

We represented a client organization in Detroit on the question of vendor payments, mandatory vendor payments, and we won the case.

We heard on Wednesday morning that there would be a hearing on Wednesday afternoon concerning the vendor question, and it was simply to cut the case out from underneath us.

The question arose that any good lawyer would naturally call your client and say, you better know that there is legislation being proposed.

Would it be termed solicitation for you to call your client and to say you should know there is a bill; would you like us to assist you in this?

We think the change proposed would eliminate the vague language in the present bill and substitute instead the language of the Canons of Professional Responsibility which would govern this area.

Senator NELSON. Do you have any objection to the language in the bill?

Mr. REED. No, Senator. We will support that language.

There are two other points I would mention briefly.

One is simply cases that come up where public comment is requested on particular legislation or regulation, particularly in the administrative field.

They are matters we believe to be in the best interest of client community responding.

For example, should HUD propose changes at least in the grievance procedure in public housing or subsidized housing in general, it would clearly have an effect on our clients.

Housing is a matter of substantial priority, certainly in Detroit, anyway. In those cases, we feel it important that we could at least make public comment when public comments are solicited by an administrative agency to simply indicate the effect of what it might have on the clients.

Finally, there are some questions on where legislative or administrative action would have on legal services corporations or recipient corporations such as ours.

The Michigan Legal Services, for example, is a Michigan nonprofit corporation regulated and governed by the State of Michigan. If a regulation or administrative change were proposed to regulate our corporation, certainly we would want to be able to go to the State and intercede in explaining what the effects might be on our personal corporation so that we think it would be helpful to have some language which would indicate that in matters directly affecting the corporation, directly affecting the recipient that they could approach—

Senator NELSON. Are you talking about matters directly affecting a client, or are you talking about general legislation that may affect all kinds of people?

Mr. REED. I am talking about, for example, if the attorney general in Michigan proposed regulations on nonprofit corporations reporting forms which would affect the Michigan Legal Service simply as a corporation, because we have to submit our forms to the State, we should be able to say to the attorney general, well, this form would not affect us or this form should not be applied to legal services. It is simply to act on one's behalf.

Senator NELSON. You're saying you are presently prohibited from doing that?

Mr. REED. I am saying I think it would be helpful to have language to make it clear. I would think we could do that. But rather than get into a question about that, it seems to me that the language proposed in the House bill simply indicates if it directly affects you, you could speak about it.

I think with those proposed changes, we would support the legislative section of the bill.

Mr. MILLER. Senator, just one last point before we close.

As we pointed out in our written statement, there are several sections of the current act which contain express prohibitions against representation in certain kinds of matters, specifically, desegregation, abortion, selective service. Mr. Jones already addressed those this morning.

There is one additional point we would make, and we have made it in the written testimony.

Our concern in singling these out, putting aside the merits of these particular situations, and the constitutionality of this, is that as Roger Crampton and a lot of other people associated with the corporation have pointed out, legal services programs are likely not to be effective at all as advocates on behalf of the poor if they do not tread on someone's toes somewhere.

If the national act, this act, or any other amendments or statutes to succeed it set the precedent of putting aside certain categories of legal problems, it becomes a target for any group, whose toes have been tread on through normal use of the legal system, to seek further amendment. We simply suggest there is no rationale of any sort that we can see which ties together those prohibitions as a justification. We simply ask, as we have urged in the written testimony, that, mindful of the precedent of making the program even more subject to political pressure, those kinds of rather arbitrary exclusions be cut out.

Thank you very much.

Senator NELSON. As a member of the committee from the time the Poverty Act was enacted and from the time the legal services program was created, I can tell you that the rationale for the prohibitions was that without them there would be no legal services for the poor. That was the rationale. As a lawyer, I recognize the argument of the bar about limitations on representing a client's interests and would prefer that there be no limitations at all.

And there were no limitations in the beginning. But the fact is that limitations were imposed because we could not get the votes without them. It is as simple as that.

Whether or not the climate has now changed, I do not know. But last year, the House of Representatives voted prohibitions on appropriation of any money by HEW for abortions. Do you think you are going to the floor and knock out that prohibition? I doubt it. That was the political reality we were dealing with at the time. Maybe it has changed, but I doubt it.

You do have another kind of argument, I suppose.

I recognize that for any individual the legal problem he has is a big problem, whether or not that particular problem is one which is pervasive in the community. It's like the fellow who said to a Spanish American War veteran, "That wasn't a very big war." And the veteran said, "No, it wasn't. Except it was an awful big war for those who got killed."

Now, in terms of a program, how do you allocate your resources when there is a limitation on the funds which is short of what any of us might consider to be ideal? Given all the other facilities available to take such cases, what need is there for legal services programs to deal with such concerns as busing or immigration? I would think that personal legal problems of the poor are much more important.

After years of listening to debate and conference arguments on this topic, I perceive that there has been fairly general agreement that what we are attempting to deal with here are the legal problems of poor people that affect them on a personal level.

I am sorry, but I have to recess for 1 minute.

(Brief recess.)

Senator NELSON. Do you have anything further?

Mr. MILLER. In response to the comments you made just before the recess, the people who face, for instance, severe poor education for their children in say a city like Newark are deeply affected by the quality of education issue personally. Desegregation, busing may or may not be one of the remedies that is desirable in a particular city, but I would urge that that and the question of abortion not be singled out. Nothing could be more personal, it seems to me, than the issue of the effect of abortion or possible abortion on the life of a woman. It is not so much the question of distinction between the kinds of problems that affect people's lives; it is more a question of the point I made earlier, that those kinds of decisions and how those program resources are to be used should be made by local clients in local communities under whatever standards. This is all we say. They should not be made a matter of national legislation if it can be avoided.

Senator NELSON. I think the point was made that the prohibition could not be avoided.

Mr. MILLER. Thank you very much.

[The prepared statements of Mr. Miller and Mr. Ray along with additional material subsequently supplied follow:]

PREPARED STATEMENT OF MELVILLE D. MILLER, JR.,
CHAIRPERSON OF THE PROJECT ADVISORY GROUP
TO THE UNITED STATES SENATE
SUBCOMMITTEE ON EMPLOYMENT, POVERTY AND MIGRATORY LABOR

April 26, 1977

PREPARED STATEMENT OF MELVILLE D. MILLER, JR.,
CHAIRPERSON OF THE PROJECT ADVISORY GROUP
TO THE UNITED STATES SENATE
SUBCOMMITTEE ON EMPLOYMENT, POVERTY AND MIGRATORY LABOR

April 26, 1977

The Project Advisory Group, on whose behalf all of my colleagues on this panel appear, is the national organization of Legal Services programs. It is constituted in a representative fashion to insure that its expressions accurately reflect the views of the majority of the nations programs. We deeply appreciate the Subcommittee's invitation to testify. We further recognize and are grateful for the profound, long-standing commitment to the Legal Services program on the part of many on this Subcommittee and in the full Senate.

Our only regret is that unavoidably scarce time and resources prevent clients dwelling in all parts of this country from sharing with you their thoughts about the significant ways the Legal Services program has touched their lives. Before lapsing into the talk of lawyers and focusing on statutory changes, it might be helpful to try to hear the diverse voices of those not present today. Asked how Legal Services programs affect him personally, we can imagine the testimony of the Puerto Rican migrant worker who during a perpetual journey from the island to Florida, the Atlantic seaboard and all the way to New England tries to secure for his family of seven minimally decent working and living conditions. This struggle is mirrored by the Chicano laborer who moves from California's Imperial Valley all the way to the Yakima Valley's apple orchards. There might be the pleas of a New York City mother whose three children must sleep in one bed in a rodent-infested room without hot water and only the heat of a stove, or a New Bedford tenant living among the collapsing beams and leaking roof of a wooden frame two-story, and wondering how an unemployment check can cover continually soaring energy bills. We could hear the black-lung-disabled West Virginia miner, erroneously cut off disability payments by bureaucratic error, tell of his son going to work in the same mine and the same dust. There could be the struggle of a black family in the rural deep South to secure a good education and adequate municipal services. Perhaps there would be the senior citizen in Milwaukee who worries about rent charges that increased by fifty per cent last month, contrary to a rent control ordinance. Legal Services programs can help every one of these people. It is their situations that we are really talking about today.

The national Legal Services program is at a crossroads. Recent, bitter struggles for mere survival are behind us. We have begun a journey toward insulation of the programs from outside interference, but much more is still to be done. At the same time, the independence that has been achieved must be utilized to develop the most effective approaches and strategies for the successful legal representation of the poor. The extremities of the choices at the crossroads are clear: ponderous, stagnant bureaucracy with caution

as a keynote or innovative, aggressive force targeted on securing substantive and procedural justice for poor people. It will not be enough to merely insure access to the current legal system; we must also keep our eyes and actions fixed on the measure of justice afforded to poor people by that system. Over the years it will be the responsibility of this Subcommittee and those associated with Legal Services to see that the program does not settle into a neutral, passive state. As Roger Cramton has observed: "If a legal service program does not arouse some controversy it probably isn't doing its job, which is to provide the poor full, zealous and effective representation." Cramton, "The Task Ahead in Legal Services," 61 A.B.A.J. 1339, 1343 (1975).

The following observations are intended to offer glimpses of (a) how Legal Services programs view the Act, (b) why the substantive changes sought by the Legal Services community are important, (c) what problems programs and communities now face, and (d) what hopes we have for the future of Legal Services.

A. The Act, in context.

Clients, community leaders, workers in programs, private bar proponents and Congressional supporters all fought for the creation of the Corporation. As the friends of Legal Services on this Subcommittee and the full Committee well know, the Corporation was viewed as the salvation of the Legal Services program in at least two related ways: institutionalizing it in the positive sense, so that stability could permit planning and consistency, and insulating it from improper outside interference with its mission of legal representation, at local or national levels. During the nearly two years of the Corporation's life, the first objective has been approached - though it is still endangered. An important start has been made toward the second, but the Act still bears within it the seeds of defeat, planted by impeachment politics. Several unacceptable restrictions were added to or remained with the bill during the dog days of mid-1974, as harsh, unyielding White House stands were bartered for promises of Congressional support during the impeachment summer. Ultimately the bill became hostage to the threat of still another Presidential veto.¹ Restrictions breed opportunities for interference, and eventually instability; to this extent the two objectives are closely related.

1. See for example "Saving Legal Services," New York Times editorial, July 12, 1974; "Deal Made on Legal Services," Washington Post, July 11, 1974; "Legal Aid for Poor Faces a Veto by Nixon As Senators Play Impeachment Politics," Wall Street Journal, July 11, 1974; and "A Legal-Aid Bill Encounters Snag - Impeachment Politics May Bar Poverty Program," New York Times, June 13, 1974.

B. The proposed Senate bill.

In late 1976, all Legal Services programs were canvassed to determine the most critical legislative modifications. An overriding theme of urgency emerged. The 1974 Act was viewed as an enormous step forward, but there was conviction that much more had to be done to insure the integrity of the program. Suggested changes tended to fall under two broad principles: minimizing outside interference, political or otherwise, while insuring maximum accountability to the ultimate constituency - the client community. These principles are helpful as we approach the proposed legislation.

1. Heightened accountability to the client community.

Sections 3(a) and (b) ("Membership of Governing Bodies") of the proposed bill promote increased accountability to the client community, and we strongly support them. We would urge, however, that Section 3(a) be amended to provide for appointment of clients to the Board of the national Corporation after July 30, 1978 as well as the three client nominations required before that date. Specifically, to insure accountability to clients we would urge that at least one of every three future appointments be an eligible client.

We also strongly support Section 4 ("Sunshine Provision") of the proposed bill. The Legal Services Corporation Board by-law on this subject sets a tone of limited public participation and liberal use of executive sessions. Extensive recourse to executive sessions can effectively exclude poor people from the formulation of policy, inhibiting accountability. Application of the Sunshine Act is an important step.

Section 8(b)(1) of the proposed bill raises some difficulties relating to accountability. The cornerstone of the Legal Services program has been responsiveness to the needs of each recipient's local community. Accountability to the local community is accomplished chiefly through client participation on local boards of directors. Given the extreme underfunding of Legal Services (current levels address at most 15 per cent of the need nationally), priorities must be set and hard choices made by local communities. These priority decisions must address real needs of the local community: housing may be critical in one area, commercial practices in a second, and domestic law issues in a third. An historical strength of the program has been the fact that such decisions have not been imposed on communities by remote bureaucrats in Washington. The national Corporation may from time to time express broad national goals implicit in the Act and program, such as the delivery of high quality legal services or the encouragement of communities to fashion priorities which assure services having the most impact on pressing local needs. The legislative history should make clear, however, that any such national goals are not intended to hinder or interfere with each recipient community's ability to decide for itself the most pressing categories of client problems and the most seriously afflicted client groups.

In a similar vein, we see some difficulty in singling out certain categories of clients on a national basis and suggesting that they be given "special consideration" or that they have "special legal problems." Such an approach tends to highlight the needs of one group over another, with the potentially disastrous consequence of pitting poor people against one another. It ignores the possibility that a particular group's needs may be met by other resources in many communities, or that they may be less pressing than needs of other client groups.

We emphasize again that at current funding at least 85 per cent of the legal needs of this country's poor are unmet. Programs must continually make hard choices, perhaps deciding to fight evictions at the cost of turning away bankruptcies. In the face of terribly scarce resources, a community's choices are difficult enough. The strain should not be compounded by placing one group or set of problems on a pedestal, thereby inevitably excluding others.

From a national perspective, there should certainly be emphasis on each community considering the needs of all clients and groups. There should not, however, be a national presumption that some needs or client groups are more deserving than others. Such heavy-handed dictates would sharply limit local responsibility and freedom to independently assess community needs.

We would therefore urge that Section 8(b)(1)(ii) be modified by deleting the word "special" before "consideration," adding "all" before the phrase "significant segments," and striking the phrase "or special legal problems." For similar reasons, Section 8(b)(2) should be eliminated entirely. It goes even further than the preceding paragraph in implying that certain services must be provided before any others. Again, this tends to divide the client community and lead to the fragmentation of program activities into "target projects." It is preferable to view the delivery of legal services to a geographical area as an integrated whole, encouraging unity of approach, coordination and pooling of resources.

2. Elimination of arbitrary restrictions and outside interference.

Most of the remaining sections of the proposed bill attack such restrictions. Two brief introductory points must be made. First, clients should not be saddled with arbitrary national restrictions on the types of cases where they can receive help. Poor people must be accorded the same measure of access to the justice system accorded the rich.

Second, arbitrary restrictions on clients and workers cast a pall over the program. Here it is important to remember that along with the "grinding" poverty of clients there is the grinding frustration of committed people working in programs. They are faced with an incessant march of clients plagued with terrible compound problems. Moreover, inadequate funding will force them to turn away many of these cases. Restrictions and other outside interference simply break the camel's back. Imagine greeting a 60-year old disabled widow who

might be facing eviction because of a Social Security error, and who also might be in horrible health, dwelling in a sub-standard building, and perhaps victimized by a fraudulent health insurance scheme. These are our clients, every day. It is very hard to face them with hope when you feel that national restrictions tie one hand behind your back.

With reference to the proposed bill, we strongly support Section 2(b) [elimination of restrictions on non-Corporation funds], Section 5 ["Support Assistance"], Section 6(a) [challenges to a recipient's representation], Section 7(a) and (b) ["Activities of Staff Attorneys"], Sections 8(c) [legislative representation] and (d) [hiring of staff attorneys], Sections 9(a) [fee-generating matters], (b) [bar-ring limits on juvenile representation], and the technical amendments in (e), and Section 13.2.

2. A footnote regarding Section 13 is in order; in some respects it is the most important of all. A hearing procedure of absolute integrity is the lynchpin of insulation from political pressure. During Legal Services' first ten years, attempts to terminate or limit Legal Services programs have been for both the best and the worst of reasons. There have been laudable efforts to drop programs which, often because of board members hostile to the assertion of rights by the poor, truculently resisted allowing their programs develop into aggressive advocates for their clients. On the other hand, there have been waves of gubernatorial vetoes occasioned by pressures from groups opposed to Legal Services. Similar pressures can be directed toward the Corporation and its employees. Even more unfortunate have been defundings occasioned by petty squabbles or personality conflicts between OEO bureaucrats and local program personnel. One cannot think of a more vacuous reason for obliteration of the enormous financial investment (measured in hundreds of thousands of dollars) required to develop a program's trained personnel and good will in the community.

At bottom, assessing program performance is far from a science, and in its subjectivity rife with opportunity for mistake. To resist such pressures, abuses or mistakes, it is essential the due process hearing requirement of Section 1011 be clarified to express directly what Congress originally intended: a completely independent hearing examiner.

Further, it is undesirable to conceive defunding procedures as forums developing policy. Defunding a program is a very serious action, involving important interests. Because of the opportunity for abuse, it must be conducted with the utmost integrity. Policy must be fashioned independent of and before any specific defunding; it should be carried out in an open forum.

Finally, it is of little help to try to model Legal Services defunding procedures on those of other agencies. Other agencies do not share with Legal Services this clear heritage of an intent to insulate it from political pressure. Because of the need to insure that representation of people is not subjected to outside pressures, direct or indirect, there is a much greater need for totally independent review of significant Corporation sanctions against programs.

We strongly support the essence of several other sections, but would urge language changes to fully effectuate the underlying intent. Section 6(b), relating to court appointments of Legal Services attorneys, would be far stronger with the substitution of "equally" for the far more vague "generally" and the insertion of "all" between the words "to" and "attorneys" in the same line.

Section 8(a) would be excellent if the word "shall" were changed to "may." There are simply too many inequities and inaccuracies in the current system of workers' compensation to accord such determinations any sort of preemptory status.

Perhaps most important, we strongly support the intent but not the choice of words in Section 9(d). The present "organizing" prohibition, contained in Section 1007(b)(6) of the Act, chills completely legitimate activity and speech which is not legal representation. For instance, a Legal Services program might be deluged by dozens of tenants from the same building, complaining about the conditions. Program staff would be unsure whether they could even suggest to the tenants that banding together might persuade the landlord to listen to them. In the proposed 9(d), much of the current overbroad chilling language is stripped away. The substitute "to initiate," however, raises serious ambiguities of its own. We would prefer a phrase such as "to directly organize," which clearly conveys the underlying intention to keep Legal Services workers from assuming any sort of directive role in what should essentially be client organizations.

There are, unfortunately, four restrictions in the current Act not addressed by the proposed bill. We strongly urge elimination of them all.

1007(b)(7) [desegregation], (8) [abortion] and (9) [Selective Service] all directly offend the fundamental tenet of American society that all should enjoy unfettered access to the legal system. The restrictions are completely arbitrary; the classifications bear no relationship to each other or to any sound social policy. They are in all likelihood unconstitutional. None of these cases should be barred, unless there is to be a mockery of the term "equal justice."

Nor does it help to permit such representation conditionally pursuant to case-by-case Corporation approval. The Corporation, no less than any other outside party, has no proper role in the attorney-client relationship established once an individual seeks help through a local program. It would be a terrible precedent to commence Washington review of individual pieces of litigation. There would be no surer way to embroil the Legal Services program in a terminal national controversy.

It would not be desirable to ban representation in these areas except as authorized by Corporation regulation. Creating any such classifications, even those that are arbitrary and offensive, is a legislative task. It cannot be delegated to an administrative agency.

Finally, whether the categories are defined by Congress or the Corporation, they still amount to national judgments on what are and are not acceptable cases. This in turn subverts local accountability: the responsibility of local boards to fix priorities and exclusions. It may well be that most local boards would set such cases far down the priority list. Even assuming such an outcome, there is no justification for imposing it as a national view. Where would the pressure for national judgments end? Every locally unpopular case could become a subject of attack nationally.

The last restriction is found in the current 1006(f), relating to costs and fees against programs. If, as many argue, this section is not intended to make any change in existing law, it is unnecessary and should be eliminated. If it is intended to create new rights for Legal Services opponents, it is but another example of putting poor people at a disadvantage in their encounters with the law. Every state provides ample remedies for malicious or frivolous litigation. The number of harassing attacks on programs under this section has been increasing, and it should be stricken.

This completes the changes recommended for reducing interference and furthering the program's independence. It is important, however, to be very clear what independence from political pressure means: it contemplates an untrammelled attorney-client relationship and zealous advocacy, not a program so bound up in restrictions as to avoid any activity offensive to a particular interest group.³ Any program created and continued by the will of Congress is inevitably subject to some pressures. The importance of the present task is to minimize those pressures by eliminating burdens and restrictions plainly political in motivation and effect. The future obligation of this Subcommittee and the Legal Services community is to guard against encroachments on that independence.

3. See, for instance, Note, "Depoliticizing Legal Aid: A Constitutional Analysis of the Legal Services Corporation Act," 61 Cornell L. Rev. 734 (1976), where it is observed: "Under the broad cloak of 'depoliticization,' Congress sought to do more than merely establish political neutrality and professional independence for the new program; restrictions on classes of litigation and attorney activities reflect attempts to protect the societal status quo and avoid any controversy." ... "Ironically, although Congress attempted the impracticable task of disengaging the Corporation from political controversy, it actually exposed the program to powerful new political pressures. Congressional desire to guarantee that the LSC not facilitate politically unpopular developments in abortion and desegregation law legitimizes future attacks on the Corporation on the basis of the results it obtains for its clients. Similarly, because the Act focuses attention on the activities of the Corporation personnel, LSC attorneys are vulnerable to criticism motivated by the hostility toward the objectives of the program but expressed in the sanctimonious tones of nonpartisanship." *Id.* at 775, 776.

C. Resources - the other main problem now facing programs and communities.

As presented in considerable detail in the accompanying statement of Denison Ray, chairperson of the Project Advisory Group committee which focuses on funding issues, the unmet need for legal services is enormous. Nationally the program can address only about ten to fifteen per cent of the call for legal representation. This gross underfunding spawns predictable difficulties. To control caseload to a point where competent representation can be offered, programs are continually faced with absurdly cruel choices, such as prioritizing one emergency over another, perhaps an eviction over a consumer summons. Such choices are forced every day, in every program in this country. This is not equal justice.

The unmet need is also reflected in other ways: the "city-wide" program which can place offices in only a quarter of its major neighborhoods; the "county" program which is inaccessible to parts of its jurisdiction where there is no public transportation, the "statewide" program with only a few offices for a 40,000 square mile area. Notions of "bare minimum access," such as \$7.00 per poor person, are a start - but only a start. The \$7.00 per poor person figure, which would translate to \$264.7 million for FY 1978, cannot begin to allow for significant cost differences between states and areas. It provides no answer to unique and costly problems of delivering services, such as in Hawaii, where either plane flights or more offices are required to reach all the islands, or Alaska, where plane travel between points is a way of life. It does not meet the special recruitment, training, interpretive and related costs unique to the delivery of legal services to populations whose principal language is other than English. Nor does it permit recognition of the possibly higher incidence of serious legal problems in those or other populations. There is no help for the vast majority of projects which face loss of experienced staff because of the inability to pay salaries competitive with other public agencies. Minimum access funding simply cannot address these needs, a fact which must be kept clearly in mind in setting authorization levels for the coming years. We strongly urge an authorization of at least \$265 million for FY 1978.

Projects have other pressing needs: far more training, better support at both state and national levels, assistance in recruitment. But each of these depend in turn on adequate resources, and ultimately return us to the same point - there must be far greater national support for Legal Services.

D. The promise of a future.

Funding needs aside, there is much to be done. Foremost is the need to recapture the sense of mission in the national program. We need to remember that it is the existence of a community of eligible clients, and the program's ultimate accountability to this community, which distinguishes Legal Services from conventional legal practice. It is this community which must define the directions of the program, redirecting it toward securing substantive justice. The first step

toward this direction is inclusion of clients on the national Corporation board.

There is the hope of more adequate funding, and a client role on the national level. What then is next? The national program must make certain that it does the best possible for poor people. This mandate has several parts. One is developing processes to insure responsiveness to real needs of the local community. A second is using the best known techniques, both managerial and legal. A third is keeping the program free from political influence. Fourth and in some ways most important is keeping the program focused on securing real, substantive justice for people. This last is the difference between a cautious program which to avoid political attacks withdraws from anything which smacks of controversy, and a program which can effectively define and vindicate the rights of poor people. This will be a continuing tension over the coming years. Where the program is at any particular time will depend on the stewardship of the Corporation and on the strength and cohesiveness of the leadership exercised by the Legal Services community.

The Corporation's delivery study is a case in point. In July of this year the Legal Services Corporation (LSC) will make recommendations to the President and the Congress on "improvements, changes, or alternative methods for the economic and effective delivery of (legal) services" divulged by the study it has conducted pursuant to Section 1007(g) of its governing Act. This study could in time produce important perspectives on the delivery of legal services nationally. The July report almost certainly will not be able to contain such perspectives; there has not been enough time.

Section 1007(g) was in major part a reaction to political pressures to steer Legal Services nationally away from staff attorney programs. Such motivation does not detract from the desirability of a study at this point in the history of the Legal Services program. There have been no comprehensive looks at the program, only individual program evaluations and a few random samplings such as a 1973 study by the General Accounting Office. The notion of a broad study thus is a highly encouraging prospect. Most connected with the program recognize, however, that it is a task to be approached with awareness, both because of its political genesis and because of likely attempts by various groups to turn the study to their own advantage.

There is nothing resembling broad agreement on how to assess the performance of lawyers and law offices. An independent study bears the hope of piercing some of the mystery that lawyers have drawn around their work and the law. While it is unlikely that there will be consensus on how to define a good performance, at least the choices can be cast more sharply. And while debates over approaches to evaluation will continue, at least there is the possibility that the study can thus be considered rather modest: given the dearth of knowledge, there will be success if it (1) indicates measurement or evaluation approaches which are useful, and (2) defines the points at which evaluation or measurement approaches cease to be helpful (i.e., when the conclusions become so subjective and value-laden that they disclose little beyond the perspective of the proponent).

Nonetheless, the political background, with the potential for various groups trying to take advantage of the study, will lead some to attempt to make more out of the study conclusions, however tentatively expressed, than is merited. The Corporation has already been served notice that members of Congress will be looking to the study to provide the "final answer" on delivery models. Thomas Ehrlich has consistently disclaimed the final-answer approach as a goal of the study or a realistic product, pointing out that the likely overall conclusion is that different systems work best in different places, and that no broad sweeping generalizations are possible.⁴

Where is the study now? It is to focus on four main areas of program performance: "impact," "quality," "client satisfaction" and "cost." Cost is, of course, the most neutral, uncontroversial factor (and also the only one which can be measured in hard statistical terms). But, keeping in mind the underlying tension between caution and zealous advocacy, those associated with the study must bear the responsibility of insuring that the areas of impact, quality and client satisfaction are all kept equally in the forefront. They are no less important simply because they are less reducible to statistics.

The study is an extremely important opportunity to learn much about delivering legal services, even if it cannot provide final answers. How much of this potential will be realized remains to be seen, largely because the study's principal directions remain unclear. But all concerned with Legal Services have a responsibility to keep the study in perspective, to follow its progress and offer constructive comment wherever appropriate, and to resist the temptation to use it to their own particular ends.

For its part, the Legal Services community, clients, supporters and program staff, is mounting its own effort, called the Study of the Legal Assistance Movement (SLAM). It is an ambitious enterprise, a nationwide colloquium by means of regional and national meetings to

4. "The Corporation does not expect this study to demonstrate the best way to deliver legal services nationally; nor does it expect that one delivery model will always be less costly and perform better than another model. We hope, however, that the study will identify the circumstances under which particular model variations are practical, feasible, and appropriate." Legal Services Corporation, Demonstration Projects for Legal Services Delivery Systems Study, August 1976, at 1.

"The goal of the Study was not to select the best method of delivering legal services, nor was it to find a substitute for the staff attorney programs that are the presently prevailing vehicles for delivering legal services to the poor. Rather, the Study goals were to determine whether the use of the private bar was a viable approach to the delivery of legal services to the poor and to identify alternative or supplemental methods of delivering legal services that are feasible and practical for particular community settings or under specific circumstances." Legal Services Corporation Staff Report, Status of the Delivery Systems Study Demonstration Projects, January 1977, at 1-2.

take stock of what the legal assistance movement goals are and how they should be achieved in the coming years. We expect the product of this dialogue to be of considerable help in keeping the national Legal Services program on course through the coming years.

January 4, 1977

Appendix "A"
Testimony of Project Advisory Group
Re: Legal Services Corporation Appropriation--FY '78

MEMORANDUM

TO: Board of Directors
FROM: T. Ehrlich
SUBJECT: Proposals to Adjust the Budget Request for Fiscal Year 1978

One year ago the Corporation announced a four-year plan to provide the equivalent of at least two lawyers for each ten thousand poor persons nationwide by the end of 1980. That minimum level of service still seems to the staff and, I believe, the Board a sound short-term goal. This memorandum addresses whether the initial schedule for achieving that goal should be accelerated in view of the experience of the past year.

The other staff members and I approached this issue with considerable skepticism. The Corporation had designed the four-year plan with care. The Board and staff have worked hard to develop a Budget Request for Fiscal Year 1978 on the basis of that plan. In no event do any of us want to appear subject to partisan politics or pressures.

But we are now persuaded that a revision is in order -- not of the basic short-term goal, but of the time-table for achieving that goal. This judgment is based on our current assessment of administrative capabilities, both in the field and at the Corporation. The need for expanding minimum access at all possible speed has never been questioned; our view of what is possible, however, has changed. We are also convinced that the Congress will give full and serious consideration to a request by the Corporation for an appropriation of more than \$178.35 million. We will not, in other words, be subject to a credibility gap.

For these reasons, we urge the Board to adopt an increased figure for the 1978 budget request. A few words of further elaboration may be helpful.

At the time the four-year plan was developed, we recognized that unless substantially supplemented it would not represent an adequate level of service. We also recognized that the need for nationwide expansion of legal services was acute: nearly 20 million persons were without even minimum access to legal assistance, either because they lived in areas where no legal services programs existed or because the programs serving their communities were severely underfunded. Studies estimated that for every person served by legal services programs, there were six who had legal problems but no access to legal assistance.

Nonetheless, the decision was made to proceed cautiously and expand service at the level of two attorneys for each ten thousand poor persons over a four-year period. On the basis of circumstances as they then existed, that decision was sound. The Board of Directors had only recently assumed its duties, and was overseeing virtually all of the Corporation's operations. There was little permanent staff or organizational structure, and most key management positions were unfilled. The Corporation had not been able to conduct evaluations of the 260 programs for which it had assumed responsibility. Because there had been no expansion of legal services in more than a decade -- in fact, the capabilities of existing programs had declined during the past five years due to inflation and static budgets -- the programs could not predict their ability to recruit new personnel or manage substantially increased funding. Although a large number of quality proposals for expanding into previously unserved areas had been presented to the

Corporation, they had been developed on an ad hoc basis and long range plans for geographical expansion were preliminary at best. The Corporation had not completed its plans to provide training and technical support to new and existing programs, and the capability to do so did not exist.

Against this background, it seemed prudent to conclude that -- despite the urgent need for legal services among poor people; despite the imbalance in the distribution of legal services resources throughout the nation; and despite the severe underfunding of most legal services programs -- nationwide expansion at even the level of two attorneys for each ten thousand poor persons should not be attempted in less than four years. The premise for the Corporation's budget request for Fiscal Year 1977, therefore, and the draft request prepared for Fiscal Year 1978 was a four-year plan to provide minimum access to legal services for all poor people.

But developments of the past year have eliminated many of the justifications for phasing expansion of minimum access over a four-year period. The Corporation and its regional offices are now fully staffed. The Office of Program Support has assembled its training and technical support staff, has refined and tested training formats for both new and experienced legal services personnel, and has begun its training program. That Office is also initiating a major nationwide program to recruit legal services personnel.

The Office of Field Services has been organized and staffed to provide management review and assistance to Corporation-funded programs. Field evaluation and monitoring visits are conducted at least four times a year with the aid of an evaluation checklist, and a project reporting system is being developed to provide detailed information about each program. Each regional office now employs a management specialist to assist the programs,

and a manual has been developed that illustrates methods of dealing with personnel and managerial problems. The Comptroller's Office has developed a manual and initiated a program to assist programs with problems of financial management.

In short, the Corporation has established a structure and assembled a staff that will enable it to administer and monitor the use of substantially increased appropriations. This is in sharp contrast to the situation one year ago.

More important, the experience of the past year has demonstrated that expanding minimum access to legal services can be accomplished much faster than previously supposed. Initial field evaluations of all programs have been completed. They reveal that, with few exceptions, the existing programs are operating efficiently and on a sound professional basis. Many programs received substantial increases in Fiscal Year 1977, and have had no difficulty developing sound plans to use the additional money and recruiting qualified personnel.

The planning for use of expansion funds in areas not covered by existing legal services programs also exceeded original expectations. Building on guidelines issued by the Corporation for Fiscal Year 1977, community and bar groups have developed plans for providing legal services in their areas and states that go beyond even the four-year plan. In most areas of the country, there are now expansion plans that spell out in orderly steps the future location of legal services offices and the manner in which they are to be staffed and managed.

There are variations in the approaches taken. In some areas, state-wide corporations are being organized to expand the service areas of existing Corporation-funded programs and to open additional offices in areas not

previously served. Elsewhere, geographical expansion is being accomplished through regional programs, often using existing programs as a base. Some existing programs of proven effectiveness are simply expanding into areas that they should logically service.

As a result of all these activities, by the end of Fiscal Year 1977 there will exist the administrative structure necessary to provide minimum access to legal services for all poor people and well-conceived plans for accomplishing that objective. The only missing element will be the funds to carry out those plans.

Given these facts, adherence to the four-year timetable -- a schedule developed under different circumstances -- is no longer necessary, particularly in light of the urgent need. The Corporation should proceed as rapidly as possible to provide the equivalent of at least two lawyers for each ten thousand poor persons nationwide -- an effort that all recognize as the essential first step in fulfilling the Corporation's statutory mandate from Congress.

Three options for accelerating the four-year plan have been proposed. The first option is to attempt to achieve the goal of that plan by the end of Fiscal Year 1978. This would require an appropriation of \$264.6 million for that year. The second option is to compress the remaining three years of the four-year plan into two, by requesting \$216.8 million in Fiscal Year 1978 and \$274.5 million in Fiscal Year 1979. The third option is to retain the basic pace of the four-year plan, but accelerate it by requesting \$182.69 million (rather than \$178.35 million) in Fiscal Year 1978. Each of these options is analyzed below.

There can be no blinking the fact that acceleration of the four-year plan -- particularly the first option for doing so -- will require establishing a nationwide network of legal services offices before the results of the Delivery Systems Study are complete. That is not, however, a sufficient reason for maintaining a slower rate of expansion. The goal of the Delivery Systems Study has never been to determine the single best way of providing legal services in all circumstances. Its purpose is to identify delivery methods that are appropriate to individual communities. The Study is not likely, therefore, to dictate a major overhaul of all legal services programs; it is properly seen as a part of the Corporation's continuing efforts to improve the delivery of legal services to poor people.

The Corporation is committed to implementing improved methods of delivering legal services as they are developed. Grants to field programs are made on an annual basis and modifications of delivery systems can and will be put into effect without unreasonable delay. Service at the level of two lawyers per ten thousand poor persons is, moreover, a bare-minimum figure that falls far short of providing effective access to the legal system for all who are unable to pay. Many of the delivery methods now being studied will, if they prove successful, work in conjunction with or supplement staff attorney programs; those methods should not be considered the exclusive means of serving poor people.

In short, there is no inconsistency between the Corporation's study efforts and proposals to accelerate the plan to provide minimum access to legal assistance for all poor persons. On the contrary, it is difficult

to justify denying legal services to persons who need them -- a denial that may result in loss of a home or job, lack of medical care, or an inadequate diet -- on the ground that improved methods of delivery may be discovered at some future time.

Option I: Completing Expansion of Minimum
Access to Legal Services in Fiscal Year 1978

The first proposal for accelerating the four-year plan is designed to achieve the short-term objective -- providing the equivalent of at least two attorneys for each ten thousand poor persons nationwide -- in Fiscal Year 1978. An appropriation of \$264.6 million would be required in order to do so.

The structure for administering and monitoring an appropriation of that size -- both at the Corporation and in the field -- as well as plans for completing the expansion process will exist by the end of Fiscal Year 1977. The major logistical difficulty will be recruiting the attorneys and paralegals to fill the additional positions created. The following chart demonstrates the magnitude of the total effort that will be required:

<u>Additional Positions*</u>	<u>1977</u>	<u>1978</u>
Attorneys	562	3,270
Managers	135	545
Paralegals	189	1,090

*The programs had approximately 2,000 CSA-funded attorneys when the Corporation assumed responsibility for them in 1975; there will be approximately 3,000 attorneys supported by Corporation funds by the end of Fiscal Year 1977.

Focusing on the total number of attorneys and paralegals to be hired, however, is misleading. Of the 179 existing programs that currently have fewer than two attorneys for each ten thousand poor people within their service areas, 117 would be brought up to that level by the addition of five or fewer attorneys; only 13 need more than 20 additional attorneys to provide minimum access to all of the poor persons in their areas. Based on the experience of Fiscal Year 1977 -- in which programs have had no difficulty recruiting personnel to fill the positions created by expansion funds -- and because the Office of Program Support's training and recruiting programs will be fully established before the end of 1977, the Corporation staff believes that nationwide expansion of minimum access to legal services can be completed in Fiscal Year 1978 if the necessary funds are available.

A proposed allocation* of the \$264.6 million appropriation required for Option I, and explanatory comments on that allocation, follow:

	1977 (000)	1978 (000)
Delivery of Legal Assistance		
Expansion into previously unserved areas	14,580	82,580
Existing Programs	87,829	141,329
Native Americans	2,613	4,278
Migrants	1,210	2,045
Support Centers	4,316	5,816
National Client's Council	383	500
Reg. Heber Smith Fellows	4,400	6,033
Field Operations	1,329	2,309

*The projected allocations for this Option and Options II and III reflect the current best estimates of the Corporation staff. Those estimates are being refined, of course, and a submission to the Congress would include the latest and most accurate revisions.

	<u>1977</u>	<u>1978</u>
	(000)	(000)
Program Evaluation and Support		
Office of Program Support	2,495	8,206
Demonstration projects and evaluation	2,400	6,227
Research Institute on Legal Assistance	250	425
Program Development and Experimentation	250	400
Management and Administration	2,945	4,417
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	125,000	264,565

Delivery of Legal Assistance

1. Expansion of minimum access to legal services. Completing the goal of the four-year plan -- to provide the equivalent of at least two lawyers for each ten thousand poor persons nationwide -- will require \$115.6 million for expansion in Fiscal Year 1978. \$68 million of those funds will be used to provide minimum access to legal services for the 9,590,000 poor persons who live in areas not served by any legal services program; \$47.6 million will be used to provide minimum access for the 6,409,000 poor persons who live in areas that are nominally "covered" by legal services programs, but who have no access to those programs because the programs are underfunded.

The request for Fiscal Year 1978 also includes a five percent increase for all programs to offset inflated operating costs. This adjustment is necessary because the \$35,000 average annual cost of funding one attorney and supporting facilities -- from which the cost of the four-year plan was calculated -- is based on 1975-76 figures and admittedly too low.

2. Native Americans. Legal Services Corporation-funded programs presently serve only a fraction of the 289 federally-recognized Indian Reservations in the country, and are meeting less than 25 percent of the estimated demand for service. It has been estimated that \$1,665,000 is required to provide minimum access to legal services on the reservations currently without service, and an increase of that amount is provided in the allocation for Fiscal Year 1978. A recent study suggests, however, that the unique laws and procedures affecting Native Americans and the difficulty in reaching clients on reservations makes the average cost of delivery considerably higher for such programs. The Corporation is studying this issue, and may be required to increase substantially the funds available to reservation programs in order to provide even minimum access to legal assistance for Native Americans.

3. Migrants. Although the migrant streams have continued to flow out of the south, as far as New England, Michigan, Colorado and the Pacific Northwest, support levels for the legal services programs that serve them have remained static. In Fiscal Year 1977 new Corporation-funded migrant units will be established in wintering areas in Florida and West Texas, but more must be done to provide legal services along the migrant routes. These programs require specialists in legal techniques for obtaining speedy settlement of minimum wage, contract, and accident claims. Bilingual staff members are also essential, because a majority of the migratory farmworkers are of Spanish origin. The allocation set out above provides a 60 percent increase for migrant programs in Fiscal Year 1978. Some of these funds will be used to establish new migrant programs, but most of the additional service will be provided through special units attached to existing, general field projects.

4. Support centers. Support centers will be substantially affected by expansion of field programs and the special projects assisting Native Americans and migrants. Referred cases and requests for specialized personnel to assist with complicated litigation will certainly increase -- particularly from new programs -- and strain the present capabilities of the support centers. The allocation set out above, therefore, includes a one-third increase for support centers in Fiscal Year 1978.

5. National Clients' Council. The Corporation increased its grant to the National Clients' Council in Fiscal Year 1977 in response to increased requests by client members of program governing bodies for assistance in performing their function. This trend is expected to continue in Fiscal Year 1978, as programs are created in areas that have no previous experience with legal services. The allocation for that year includes a 30 percent increase for the National Clients' Council.

6. Reginald Heber Smith Fellows. The Reginald Heber Smith program is an important source of qualified new legal services attorneys, nearly half of whom are drawn from minority groups. As the number of attorney positions increases, this recruiting program must also be expanded. The request for Fiscal Year 1978 includes funds to increase the number of first-year fellows from 144 to 250. This allocation would not, of course, preclude improvements in the Reginald Heber Smith program or changes in its structure or operation should this be desirable in light of the study being conducted by the Office of Program Support.

7. Field operations. Increasing the number and size of legal services programs will require additional personnel in the Corporation's Regional Offices

to perform evaluations, monitor the programs, and provide management assistance. The allocation includes funds for two additional attorneys, an additional management specialist, and an additional secretary in each of the nine Regional Offices.

Program Evaluation and Support

1. Office of Program Support. This Option includes an allocation of \$8.206 million for the Office of Program Support in Fiscal Year 1978. A substantial increase in the size and number of legal services programs in Fiscal Year 1978 will create a larger demand for the training, technical assistance, recruiting, and clearinghouse support provided by the Corporation. Demand for the latter three types of services is expected to increase roughly in proportion to the increase in the number of legal services personnel, and the allocation reflects that fact. Because new legal services personnel are required to obtain several months' experience before participating in training events sponsored by the Corporation, however, the full effect of this option on the Corporation's training program will not be felt until Fiscal Year 1979.

The allocation also reflects economies of scale in the Corporation's training program. A substantial increase in the number of persons requiring training at one time will make it more efficient to conduct most sessions at a central location with a relatively stable faculty. The present method of conducting training at several locations with a faculty organized for each session will be used only to provide specialized training to small groups of experienced personnel.

2. Demonstration projects and evaluation. \$3,300,000 will be required to continue the first and second rounds of demonstration projects for the Delivery Systems Study, the same amount allocated under the request for \$178.35 million. The substantial increase in the size and number of general field projects, however, will require proportionate increases in the cost of the project reporting system and evaluations. The allocation includes \$1,322,000 for the former purpose, and \$1,605,000 for the latter.

3. Research Institute for Legal Assistance; Program development and experimentation. The cost of these activities would not be affected by accelerating the four-year plan. \$425,000 is allocated for the Research Institute; \$400,000 is allocated for program development and experimentation.

Management and Administration.

The increased demands of grant administration will require five new positions in the Office of Field Services, and the addition of three accountants and four auditors in the Comptroller's Office. The general increase in the level of Corporation activity will require eight new positions in the Office of Administration, and one each in the Executive Office, the Office of the General Counsel, and the Office of Equal Opportunity. The Fiscal Year 1978 allocation of \$4,417,000 includes these additions to staff and increases in other administrative costs for the Corporation.

Option II: Completing the Remainder of the
Four-Year Plan in Two Years

A second option for accelerating the four-year plan is to compress the remaining three years of that plan into two. In other words, expansion at the level of two attorneys for each ten thousand poor would be completed in 1979 rather than 1980. This option would require an appropriation of \$216.8 million in Fiscal Year 1978, and \$274.5 million in Fiscal Year 1979.

The primary argument for adopting this approach rather than Option I is that it would reduce the pressure to recruit new personnel by phasing that effort over a two-year period. Under the allocation proposed below, there will be a relatively greater concentration of funds in existing programs in Fiscal Year 1978. Such programs have a better ability to absorb and train inexperienced lawyers and paralegals, and already have experienced personnel to assume managerial positions.

Under Option II, the appropriations for Fiscal Years 1978 and 1979 would be allocated roughly as follows:

	<u>1977</u> (000)	<u>1978</u> (000)	<u>1979</u> (000)
Delivery of Legal Assistance			
Expansion into previously unserved areas	14,580	54,580	84,580
Existing programs	87,829	125,174	144,199
Native Americans	2,613	3,278	4,278
Migrants	1,210	1,545	2,045
Support Centers	4,316	4,816	5,816
Nat. Clients Council	383	425	500
Reg. Heber Smith Fellows	4,400	6,033	7,610
Field Operations	1,329	1,932	2,598

	<u>1977</u>	<u>1978</u>	<u>1979</u>
Program Evaluation and Support			
Office of Program Support	2,495	7,955	10,541
Demonstration projects and evaluation	2,400	6,085	5,750
Research Institute on Legal Assistance	250	425	490
Program development and experimentation	250	400	1,000
Management and Administration	2,945	4,159	5,053
	<u>125,000</u>	<u>216,807</u>	<u>274,460</u>

Delivery of Legal Assistance.

1. Expansion into unserved areas. The \$40 million requested for this purpose in Fiscal Year 1978 would provide minimum access for an additional 5,714,000 poor persons. That sum will be divided as follows: \$34 million will be allocated for expanding service to previously unserved areas; the remaining \$6 million will be used to ensure that all programs begun in Fiscal Year 1977 have the capability to provide minimum access to all of the poor persons in their service areas. The \$30 million allocated for geographical expansion in Fiscal Year 1979, will complete national coverage of unserved areas at the minimum level of two attorneys per ten thousand poor.

2. Expansion of access to existing programs. The \$37.345 million requested for this purpose in Fiscal Year 1978 will provide minimum access to legal services for 4,986,000 poor persons of the 6,409,000 who live in areas "covered" by legal services programs but will be without access to those programs at the end of Fiscal Year 1977. That amount will be allocated so that all but thirteen existing programs will have the capability to provide minimum access to all poor persons within their service areas. Each of the

remaining thirteen programs will have more than 100,000 poor persons within its service area who do not have even minimum access to legal services, and therefore would need to hire at least twenty new attorneys to close the gap $\frac{100,000 - 10,000}{27}$. These programs will, therefore, be brought up to full capability over a two-year period, and the burden of recruiting will be reduced accordingly.

The allocation for existing programs in both Fiscal Year 1978 and Fiscal Year 1979 also includes a five percent increase for all programs to offset increased operating costs.

3. Native Americans. Under this allocation the amount required to meet the current need for reservation programs -- calculated according to the standard for non-specialized programs -- would be spread over a two-year period. \$665,000 is allocated for this purpose in Fiscal Year 1978; \$1 million will be needed in 1979.

4. Migrants. The effort to increase service along the migrant routes would also be spread over two years under this option. Migrant programs will receive a 25 percent increase in Fiscal Year 1978, and a 33 percent increase in 1979.

5. Support Centers. Although there will be an increased demand for assistance from support centers under this option, it is not likely to be as large in Fiscal Year 1978 because of the relatively greater concentration of expansion funds in existing programs. The allocation set out above, therefore, includes a 12 percent increase for support centers in Fiscal Year 1978, and a 25 percent increase in Fiscal Year 1979.

6. National Clients' Council. This allocation also reflects the fact that there will be a relatively larger demand for assistance by client board members in Fiscal Year 1979 because of the larger number of new programs to be started in that year. The allocation, therefore, includes a \$42,000 increase for the Clients' Council in Fiscal Year 1978, and a \$75,000 increase in 1979.

7. Reginald Heber Smith Fellowships. The number of qualified applicants for Reginald Heber Smith fellowships greatly exceeds the number of first-year positions available. It is not necessary to delay expansion of this important recruiting program over a two-year period. As with Option I, therefore, this allocation includes an increase sufficient to provide 250 first-year fellows in Fiscal Year 1978. The allocation for 1979 also provides 250 first-year fellowships, and reflects the cost of a proportionately increased number of second-year fellows.

8. Field operations. The number of additional Regional staff is the same under this option as in Option I, but the hiring of that staff will be phased over two years. The allocation for Fiscal Year 1978 includes funds for an additional attorney and an additional management specialist in each Regional Office. In 1979 each Regional Office will receive one additional attorney and an additional secretary.

Program Evaluation and Support.

1. Office of Program Support. The allocation includes \$7.955 million for the Office of Program Support in Fiscal Year 1978, and \$10.541 million in 1979. The total demand for training, technical assistance, clearing-house services, and recruiting would be roughly the same under this option as

with Option I, but would be spread over a two-year period. As with Option I, many of the additional attorneys and paralegals recruited in Fiscal Year 1978 will not receive training until 1979; much of the training for personnel added in 1979 will take place in 1980. The allocations reflect this delay.

2. Demonstration projects and evaluation. As with Option I, \$3,300,000 is allocated for the Delivery System Study in Fiscal Year 1978. \$3,000,000 is allocated for that activity in Fiscal Year 1979, as funds for the present demonstration projects are transferred to the Office of Field Services' general allocation.

\$1,265,000 will be required in Fiscal Year 1978 for operating the project reporting system and extending it to the increased number of field programs; \$1,050,000 is allocated for these purposes in Fiscal Year 1979. The lower cost in the second year reflects compression of the project reporting system to collect only essential management information, and reduction in the level of special data collection for the Delivery Systems Study.

\$1,520,000 is allocated for field evaluations and special studies of the increased number of programs in Fiscal Year 1978; \$1,700,000 will be needed for that purpose in Fiscal Year 1979.

3. Research Institute for Legal Assistance. \$425,000 -- the same amount as in Option I and the \$178.35 million budget request -- is allocated for the Research Institute on Legal Assistance in Fiscal Year 1978. The allocation for Fiscal Year 1979 includes an increase of 15 percent to reflect normal growth of the research program.

4. Program development and experimentation. \$400,000 is allocated for this purpose in Fiscal Year 1978, and \$1,000,000 in Fiscal Year 1979. The increase in the second year will support the Corporation's study efforts regarding delivery of legal assistance as the Congressionally-mandated Delivery System Study is completed.

Management and Administration.

Four positions will be added in the Office of Field Services to administer grants in Fiscal Year 1978, and one in Fiscal Year 1979. Two accountants and two auditors will be added to the Comptroller's Office in Fiscal Year 1978 and two accountants and one auditor in Fiscal Year 1979. General increases in the level of Corporation activity will require adding ten other headquarters positions in 1978. The allocations reflect these increases in personnel and other administrative costs for the Corporation.

Option III: Maintaining a Four-Year Plan
But Increasing its Pace

The third option that has been proposed is to maintain the concept of a four-year plan, but increase the request for Fiscal Year 1978 from \$178.35 million to \$182.69 million. The allocation of and justification for this appropriation are essentially the same as those included in the draft Budget Request for Fiscal Year 1978 approved by the Committee on Appropriations and Audit at its December meeting. The bulk of the additional funds -- \$2.2 million -- would be used to ensure that all but four* existing programs have the capability to provide minimum access to at least 70 percent of the poor persons within their service areas. The remainder would be used to increase the expansion funds available to programs serving Native Americans and migrants, increase the number of first-year Reginald Heber Smith fellows from 144 to 200, and provide slight increases for the National Clients' Council and support centers to compensate for increased demand for their services due to expansion.

The following table shows the adjustments to the 1978 Budget Request under Option III.

	<u>Present Allocation</u> (000)	<u>Option III</u> (000)	<u>Change</u> (000)
Delivery of Legal Assistance			
Expansion into unserved areas	41,432	41,580	+ 148
Existing programs	108,139	110,329	+2,190
Native Americans	2,913	3,278	+ 365

*Each of those four programs will have more than 125,000 eligible persons without minimum access to their services at the end of 1977, and would need to double in size to reach the 70 percent level. They will receive increases in Fiscal Year 1978 sufficient to close 50 percent of the gap, in their present capabilities.

	<u>Present Allocation</u> (000)	<u>Option III</u> (000)	<u>Change</u> (000)
Migrants	1,358	1,545	+187
Support Centers	4,316	4,816	+500
National Clients' Council	404	425	+ 21
Reg. Heber Smith Fellowships	4,400	5,338	+938
Field Operations	1,679	1,679	
Program Evaluation and Support			
Office of Program Support	3,764	3,764	
Demonstration projects and evaluation	5,800	5,800	
Research Institute on Legal Assistance	425	425	
Program development and experimentation	400	400	
Management and Administration	3,320	3,320	
	<u>178,350</u>	<u>182,699</u>	<u>+4,349</u>

The premise of the draft budget request for \$178.35 million is to reduce by 40 percent the number of poor persons who will be without minimum access to legal services at the end of Fiscal Year 1977. The Corporation plans to proceed simultaneously to provide service in previously unserved areas, and to increase the capabilities of existing programs that are severely underfunded. Although neutral in theory, application of this principle will have a discriminatory effect on the existing programs.

The discrimination results from the Corporation's policy of creating no new programs that are not capable of providing minimum access to at least 70 percent of the poor persons in their service areas. It was determined that

any lower level of funding would create pressures to take on unacceptably large caseloads and would risk spreading program resources too thin. Every new program, therefore, will receive funding of at least \$4.90 per poor person within its area of service.*

Many existing programs, however, are so poorly funded that even a 40 percent reduction in the number of persons who are eligible for but without minimum access to their services will leave them far short of the 70 percent standard established for new programs. There is no justification for such disparate treatment; if the quality of new programs is threatened by underfunding, the same is true of existing programs. Indeed, the case for increasing the capabilities of existing programs may be stronger, because many of them have struggled for years with heavy caseloads and resources that have continually declined due to inflation.

This, then, is the basic premise for Option III: the Corporation will adhere to its four-year plan but request funds for Fiscal Year 1978 that will enable it to reduce by approximately 40 percent the number of poor persons without minimum access to legal services at the end of 1977, and ensure that all but four Corporation-funded programs have the capability to provide minimum access to at least 70 percent of the poor persons eligible for their services. The proposed adjustments also will enable the Corporation to give

*As explained at page 9 of the draft Budget Request for Fiscal Year 1978, average funding of at least \$7 per person is required to provide the equivalent of two attorneys for each ten thousand poor persons. A capability to provide minimum access to 70 percent of the client population, therefore, requires per capita funding of at least \$4.90 ($\$7 \times .70$).

critically-needed increases to programs serving migrants and Native Americans, increases that would not be possible under a request for \$178.35 million.

<p>DIRECTOR David H. Marlin, Esq.</p> <p>STAFF ATTORNEYS Erica F. Wood Kathleen Mullan Daniel S. Seikaly Judith K. Munger Edwin Yourman</p> <p>PLANNER Harriette B. Fox</p>		<p>LRSE BRANCHES: James Bergman, Reg. Dir. 2 Park Square, Room 311 Boston, Massachusetts 02116 (617) 436-3407</p> <p>Esther G. Schiff, Esq. Financial Federal Building 407 Lincoln Road Miami Beach, Florida 33139 (305) 534-4721</p> <p>Georgia M. Springer, Esq. 402 South Granddoro Street Carboro, North Carolina 27511 (919) 967-1168</p>
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May 6, 1977

The Honorable Gaylord M. Nelson
Chairman, Subcommittee on Employment,
Poverty and Migratory Labor
Committee on Human Resources
United States Senate
Washington, D.C. 20510

Dear Senator Nelson:

We appreciate the opportunity you provided us on April 25 to testify on improvements to the Legal Services Corporation Act.

I'm anxious that our position not be misunderstood and fear that is the case. Senate Bill 1303 is far superior to House Bill 3719 with respect to serving the legal needs of Americans historically underserved by the Corporation. You and your staff deserve credit for that. We sought to strengthen your efforts, not to detract from them. Ditto for bringing client representation to the policy deliberations of the Corporation Board.

Our testimony proposed that underserved client groups be represented on the board of the Legal Services Corporation and on the governing boards of local legal services programs; that the provision mandating that local programs give special consideration to the needs of groups with particular problems of access to legal services be reworded to focus on the goal of achieving a level of service relatively proportional to the representation of the underserved group in the poor population; and that the bill authorize permanent funding on a priority basis for successful model projects funded developmentally by the Corporation or by federal agencies such as the Administration on Aging.

We continue to support these proposals and believe that an ideal bill would contain them all. However, we think that the provisions of the Senate Bill as drafted will be a great step forward.

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We, therefore, respectfully request that your subcommittee consider and adopt our proposals for amendment of the Senate Bill, but urge that, at a minimum, the access and model project provisions of the bill as drafted be retained.

Sincerely,

David H. Marlin

David H. Marlin
Director

DHM:hs

April 21, 1977

TO: Senate Human Resources Committee, Subcommittee on Employment, Poverty and Migratory Labor

FROM: Denison Ray on behalf of the Funding Criteria Committee, Project Advisory Group

RE: Legal Services Corporation Authorization--FY '78

The Project Advisory Group (PAG), comprised of the approximately 267 Legal Services Programs in the United States, strongly urges that Congress authorize not less than \$264,600,000 for the Legal Services Corporation for FY '78. As Chairperson of PAG's Funding Criteria Committee, I shall first summarize why it is so critical that \$264.6 million be authorized and then analyze the reasons in detail.

Put most simply, it will take that amount to enable each of the 29 million low-income persons in this country to at least live in an area served by a Legal Services Program. As a practical matter, the concept of equal justice for all cannot begin to become a reality until each citizen has access to a lawyer. Thus the \$264.6 million represents a threshold--it will create the chance for each person, no matter how poor, to be represented by counsel in resolving the many grave civil legal problems that can decimate a family's well being.

Despite all the rhetoric in our 200 year history concerning

equal justice, this nation has never, up until now, made equal justice possible. If only the Corporation's request of \$217 million is appropriated, hundreds of thousands of families (5,403,000 people) will still be denied that opportunity. For instance, for every \$70,000 less that is authorized, 10,000 low-income persons will be denied access to our legal system.

We realize that \$264.6 million represents a substantial increase in funding from FY '77. Nevertheless, it is fully justified not only to achieve minimum access but for other reasons:

1. When the national Legal Services Program was enacted into law in 1965 it raised such high expectations. Yet for 6 years, from FY '70 through FY '75, funding for the program languished between \$60 and \$70 million and the inevitable stagnation occurred. In FY '76 a modest increase occurred. It was only in '77 that some financial meat began being put on the bones. Had Legal Services experienced any steady growth over the years--had its funding even kept up with the rate of inflation--then the amount requested for '78 would be but another increment in a natural evolutionary process.

2. Every dime of the money can be effectively spent. Tom Ehrlich, President of the Legal Services Corporation, in his memo (copy of which is attached) of January 4, 1976, to his Board of Directors, in discussing the \$264.6 million level stated:

"[B]y the end of Fiscal Year 1977 there will exist the administrative structure necessary to provide minimum

access to legal services for all poor people and well-conceived plans for accomplishing that objective. The only missing element will be the funds to carry out these plans."

3. The \$264.6 million is hardly a panacea. It only means that there will be 1 Legal Services attorney for every 5,000 poor people. Obviously more lawyers and supporting staff will be necessary to adequately serve the legal needs of our client community--for instance, there is 1 private attorney for every approximately 430 non-poor people in the United States; salaries more comparable to those in government will be required to keep experienced staff; adequate funds for libraries and equipment and court costs are needed. But it is difficult to justify making even those essential improvements when 15,999,000 low-income persons live today in areas not served by any Legal Services program.

4. The LSC request for \$217 million is predicated on a per unit (i.e., per attorney) cost of \$35,000, a figure which the Corporation itself concedes, at p. 10 of its Budget Request, is unrealistically low. In fact, field projections show that the current per-attorney cost is at least \$39,376, or 12% higher than the LSC's figure. Thus to accomplish even the LSC's own goal for '78--and without regard to the need for more and better Legal Services--there should be an appropriation of \$241,000,000.

5. Lastly, it comes down to a value judgment. There is not enough money to meet all needs in our society. Therefore, something must give way. But we submit to you that access to our legal system

in order to resolve disputes in a just, peaceful and orderly way is one of those operating principles this nation should strive the hardest to attain.

Each year this august body, the Congress of the United States, sets about the task of enacting more laws with which to provide order and regulate conduct and implement the goals of our country. How can we do this yet continue to deny to 16 million people any access to that government of laws?

Detailed Analysis of the Need

In amplification of our position in support of an authorization for FY '78 of \$264.6 million for the Legal Services Corporation (LSC), set forth below is an analysis of the need for \$264.6 million.

A. What \$264.6 Million Does

We are submitting as Appendix A to our written testimony Mr. Ehrlich's memo of January 4, 1977, to the LSC Board of Directors in which he describes the basis for and general use of an appropriation of \$264.6 million; an option which the Board considered but rejected in favor of the 217. The purpose of the 264.6--to achieve minimum access--is a concept which PAG first proposed to the Corporation in September 1975. Therefore, it is obvious that we are in basic agreement with the LSC analysis as outlined in Mr. Ehrlich's memo.

As the Committee knows, "minimum access" is a term used to describe the provision of 2 attorneys (at an assumed cost of \$35,000 per attorney), or their equivalent, for each 10,000 poor

persons nationwide. In theory it will create a Legal Services program responsible for serving every area of the country, thereby enabling each poor person to have some place to go within his or her geographical area in order to seek legal assistance. It should be obvious, of course, that a mere 2 attorneys per 10,000 poor people* cannot in fact provide legal service for every low-income person who needs a lawyer, or even come close to doing so, but it does meet the fundamental and threshold proposition that no poor person should live without even access to a Legal Services program.

The LSC has assumed that a single attorney, or the equivalent, costs \$35,000 (an unrealistically low figure--see the discussion infra). To achieve 2 attorneys for 10,000 poor people will obviously require \$70,000 or \$7.00 per capita. For all of the nation's 15,999,000 low-income people who presently are without such minimum access, it will necessitate new funding for field services of \$115,600,000.

Of that sum, \$68 million would be used to open new programs or new offices to serve the 9,590,000 people who do not live in any area even nominally covered by a program now. The other \$47.6

*It should be pointed out that the "per attorney" concept, as a unit for funding, is not confined to a given attorney as such but includes the full scope of services available, including paralegals, supportive staff, necessary facilities, equipment and other services. These underlying resources then have been costed out on a "per attorney" basis to express the funding goal (see the LSC Budget Request, pp. 9-10). Whether future research and experience develop better concepts for expressing the unit of funding remains to be seen.

million would be used to bring up to the \$7.00 per capita minimum the funding levels of those existing programs which, by virtue of current funding below the \$7.00 level, have the effect of excluding 6,409,000 poor people from any access.

The Corporation's analysis of the 264.6 request, in the Ehrlich memo, allocated \$34,323,000 for non-field program expenditures. We have reviewed those allocations and do not believe any of them to be unreasonable. Therefore, we are prepared to support those figures.

B. Why \$264.6 Million Is Needed Now

The failure to adopt an authorization of \$264.6 million instead of the Corporation's proposed \$217 million will have these immediate consequences:

- (1) 3,980,000 poor people will still not even live within the geographical jurisdiction of any legal services program;
- (2) Another 1,423,000 poor people who are within the boundaries of 11 existing programs will have no access to those programs because the LSC has deemed that those programs-- which are the only existing projects presently having more than 100,000 uncovered poor people--cannot expand to include more than one-half of their unserved client community in FY '78;
- (3) The postponement of minimum access for all poor people will thereby postpone in turn the attainment of meaningful access wherein the majority of our clients can receive more

than merely nominal accessibility to the legal system; and
(4) The human beings, with their very human and very real
legal problems, who are represented by the foregoing
statistics of exclusion, will still have no way to resolve
those problems--and will suffer the painful results.

So that the members of this Subcommittee may understand, in
terms of their own constituencies, the underfunded status of the
legal services programs in their States, we attach hereto Table 1.
In addition, the attached Table 2 charts the exclusionary status
of the Corporation's proposed budget for '78.

We believe there is no good reason why the goal of minimum
access should not be achieved in the coming year. Illustrative of
the arbitrariness of the Corporation's request is its proposal to
bring all existing programs up to \$7.00 per capita poor person in
FY '78 except for the 2,937,882 poor people who live within the
geographical jurisdiction of 11 programs spreading from Puerto Rico
to California. Because each of those 11 programs presently has
more than 100,000 low-income people without minimum access, the LSC
wants to provide such access to only one-half of their uncovered
poor in '78 and to the remaining one-half in '79. Yet some of
these programs are among the biggest and best in the country and
certainly have the management structure to expand effectively. Why,
for example, should 266,000 poor people in Georgia or 74,000 in Los
Angeles have to wait until 1979 to gain access to our legal system?

No such restriction is being imposed on expansion into areas which have no operating program at all. See Table 3 attached.

We earlier cited the inequity between the number of poor people for each legal services attorney and the number of non-poor people for whom there is a private practitioner. On Feb. 22 we were informed by the Information Services Division of the American Bar Association that there are 425,000 practicing attorneys in the United States while LSC data shows about 3300 attorneys in legal services programs (not all funded with Corporation moneys). This means that there is:

- 1 private attorney for every 430 non-poor people
- 1 Legal Services attorney for every 8,787 poor people

To achieve true equity, Legal Services should add 64,000 lawyers which, at \$35,000 per attorney, would require \$2,243,500,000. In the face of that staggering discrepancy, the sum of \$264.6 million seems modest indeed.

C. The Present Unit Cost of Providing Legal Service

The cost of one Legal Services attorney, including salary, was estimated by the LSC in FY '76 and '77 as \$35,000 (see Budget Request for FY '78, pp. 9-10). We believe such cost at the present time to be too low by at least \$4,376 for the following reasons:

- (a) Average attorney salary exceeds the LSC figure of \$12,333 by at least \$500 based on PAG calculations though the LSC should have precise figures because

- of data supplied by the programs for grant renewal applications-- \$500
- (b) Attendance at continuing education conferences and seminars (e.g., PLI, NITA) not sponsored by the LSC itself is a regular part of the on-going training of staff but was totally omitted in the Budget Request tabulation-- 500
- (c) Litigation costs were grossly underestimated by the Corporation. One full-day's deposition would totally consume the projected \$386. A much more realistic, though still inadequate, amount is \$900-- 514
- (d) The LSC estimate of \$400 per attorney for a 6-lawyer office to maintain its library comes to only \$2400 annually, not enough to keep a decent library's subscriptions current, much less add new books. The figure should be doubled-- 400
- (e) The LSC assumed there would be one paralegal for every 3 staff attorneys at an average salary of \$10,500 per paralegal, or a unit cost of \$3500 per attorney. In fact there is one paralegal for every 2 attorneys, a unit cost of \$5,250 or \$1,750 more than appears in the Budget Request-- 1,750
- (f) Organizational dues for Bar Associations, State Bar fees and NLADA is at least \$100 higher than the LSC estimate-- 100

- (g) The Corporation's assumption that a 6-attorney office can be supervised and managed at a cost of \$2,333 per lawyer or \$13,998 total is much too low. The salaries of Project Director and Administrative Assistant will be anywhere from \$30,000 to \$50,000, depending on program size. Though the cost per attorney obviously is reduced the larger the staff, and even counting the Director as one of the attorneys (which would not be true in any large or even medium-sized program) and using the minimum figure above of \$30,000, still leaves a deficit in LSC computations of \$612 ($\$30,000 - 12,333 = 17,667 \div 6 = 2,945 - 2,333 = 612$)--

612
\$4,376

Thus it presently costs a Legal Services program at least \$39,376 for each lawyer it has in the field, even without badly needed increases. Therefore, without funds over and above \$217 million, the LSC goal for FY '78 cannot be attained.

D. The Risk of Stagnation

From FY '70 through FY '75 Legal Services was virtually moribund. Data given to us on Feb. 15 by the Corporation reveals that the field services base in '70 was about \$53.0 million. Today, for those client populations being served in 1970, the field services base is only about \$86.0 million, an increase of 62% during a time

when inflation alone increased by about 71%. Obviously the established Legal Services programs have gone backwards in their resources, and thus in their capability to provide service.

Worse, the so-called relatively better funded programs-- those who have only received cost-of-living increases in '76 and '77 because they were already getting close to or above \$7.00 per capita--are risking the loss of the wherewithal to provide quality representation. The funding for such programs has increased from 1970 by only about 16%. Inevitably they are losing experienced personnel and closing offices.

A case in point is Greater Boston Legal Services (formerly the Boston Legal Assistance Project). On January 1, 1971, it received \$1,001,678 from the then Office of Legal Services plus 10 Reginald Heber Smith fellows with a cash value of \$110,000. On January 1, 1977, its LSC grant for service within the City of Boston was \$1,162,447 with 2 "Reggies" costed at \$26,000. Thus total Legal Services funding had gone up from \$1,111,678 to \$1,188,440, a net increase of \$76,762. This funding increase comes to 6.9% or about 1% per year. In the face of spiraling costs, the program today can afford 9 fewer lawyers and 11 fewer secretaries (and the same number of paralegals) than in 1971, yet the starting salary for attorneys has moved up to only \$10,500 from \$10,000, which means the program still is not paying a competitive wage.

Legal Services programs face immediate loss of experienced

personnel, both legal and non-legal staffs, because salary levels are woefully low. PAG believes it critical that programs be able to pay salaries at least comparable to those paid by government organizations in the region where the individual program is located. What such salaries are is presently the subject of study (see the Budget Request for FY '77, p. 40).

Given the mobility of many people in this nation anyway, the fact that programs from different parts of the country often recruit at the same "national" law schools, and the fact that the U.S. Government is itself a competitor of ours for attorneys, paralegals and secretaries bent on public service, it may be appropriate to adopt GS salary levels. How that would convert into additional funds needed is unknown until we are able to identify the amount of experience of each staff attorney. But in view of the very low salaries paid to Legal Services attorneys, an appropriation below \$264 million will deny Legal Services the flexibility to both achieve minimum access and breathe renewed vitality into the resources of existing programs.

E. The Capacity Exists Now to Expand to \$264 Million

As already noted, the President of the LSC has acknowledged that "the Corporation staff believes that nationwide expansion of minimum access to legal services can be completed in Fiscal Year 1978 if the necessary funds are available." Ehrlich memo to LSC Board, 1/4/77 p. 9.

That judgment is sound, as witness the following facts with respect to development of the necessary staffs to complete minimum access in the coming year:

- (1) A priority is to expand through effective existing programs where possible. Such programs have already developed staff who are looking for movement into management;
- (2) The lack of growth in Legal Services until last year has created an abundance of experienced staff attorneys, either still in or recently gone from Legal Services, who would like the chance to move into middle management. Recruiting experience among expanding programs has demonstrated this fact;
- (3) In at least 40 of the 54 states and territories in Legal Services, large programs occupy most or all of the geographical area and can develop minimum access relatively easily, provided "the necessary funds are available"; and
- (4) It is our experience that scores of high caliber recent law school graduates are seeking to enter Legal Services and will provide ample replacement for those experienced attorneys who do go into middle management.

Given this capacity to respond, it would be tragic to require almost 5.5 million Americans to continue without access to the legal system.

The authorization we seek represents a significant increase in comparison to past funding of Legal Services. Whether it is politically susceptible of attainment we do not know. Ours is not a political determination but rather a considered judgment as to the resources necessary at this time to provide access to the legal system for most of the nearly 30 million Americans who live in poverty--this principle of a free society is within our reach if we but choose to grasp it.

TABLE 1
 Summary of Present and Needed Funding for Legal Services
 in the States Represented on the Senate Subcommittee on Employment, Poverty and Migratory Labor*

State	Number of poor people	FY '77 Funding	'77 Funding per capita poor person	Per capita needed to obtain 2 attorneys per 10,000 poor	Funds needed to obtain 2 attorneys per 10,000 poor	No. poor people w/o access after FY '77
CALIFORNIA	2,148,920	\$13,218,691	\$6.15	\$.85	\$1,826,582	260,940
MAINE	130,902	677,269	5.17	1.83	239,551	34,222
MICHIGAN	820,058	3,750,135	4.57	2.43	1,992,741	284,677
NEW YORK	1,971,560	10,685,220	5.42	1.58	3,115,065	445,009
RHODE ISLAND	99,799	558,830	5.60	1.40	139,719	19,960
UTAH	118,490	401,965	3.39	3.61	427,748	61,107
WISCONSIN	421,064	1,257,201	2.99	4.01	1,688,466	241,209

* Based on data obtained from the Legal Services Corporation, January, 1977

TABLE 2

SUMMARY OF FY '78 LSC BUDGET REQUEST FOR
EXISTING AND NEW BASIC FIELD PROGRAMS

	Increase requested	Poor persons without access, pre-'78	% of poor without access, pre-'78	No. poor who will gain access in '78 ^a	% of column 2 who will gain access in '78	No. poor without access, after '78	% of poor without access, after '78
New areas	\$40,000,000	9,590,000	81.74%	5,610,000	58%	3,980,000	33.93%
Existing legal services programs	\$37,345,000	6,409,000	37.14%	4,986,000	78%	1,423,000 ^b	8.25%
Totals	\$77,345,000	15,999,000		10,596,000		5,403,000	

NOTES:

a - Exclusive of Indian, migrant and support center programs because of the difficulty in calculating minimum access figures for breakdown of their proposed funding in FY '78. See LSC Budget Request p. C-6.

b - When \$50.0 m. and \$37.345 m. are divided by \$7.00, the number of new persons with access comes to 5,714,286 in new areas and 5,335,000 in existing legal services programs. We assure the discrepancy with the budget request is because part of the money will go to legal services programs already at \$7.00 for their entire client populations.

c - This entire 1.4 million people reside in areas served by 11 legal services programs, each of which has more than 100,000 without minimum access. The LSC has made a policy decision to pick up such people in '79. The 11: Appalachee, Ky.; Brooklyn, Chicago, Georgia, Houston, Los Angeles, North Mississippi, Philadelphia, Puerto Rico Island-wide, San Juan, Texas Rural.

TABLE 3

THE 11 LEGAL SERVICES PROGRAMS WILL HELP THEM
100,000 POOR PERSONS WITHOUT EFFECTIVE ACCESS WHO
ARE TO RECEIVE ONLY 50% OF THE FUNDS NECESSARY IN
FY78 TO OBTAIN MINIMUM ACCESS FOR ALL POOR PERSONS

Program	No. Poor Now Without Access	Funds Planned to Go 50% of Way to \$7.00 Per Capita	No. Poor Still Without Access After FY78	Funds Needed to Go to \$7.00 Per Capita Right Now
Appalachia, Ky.	180,566	\$ 692,981	93,263	\$1,305,966
Brooklyn	177,322	\$ 620,627	88,661	\$1,241,294
Chicago	163,968	\$ 573,888	81,984	\$1,147,776
Georgia	533,894	\$1,868,629	286,957	\$3,737,256
Houston	105,554	\$ 372,039	53,277	\$ 745,876
Los Angeles	148,689	\$ 526,411	74,345	\$1,040,823
North Mississippi	199,425	\$ 697,987	99,713	\$1,395,974
Philadelphia	120,798	\$ 422,793	60,399	\$ 845,586
Puerto Rico	1,044,055	\$3,654,192	522,028	\$7,308,385
San Juan	125,751	\$ 440,128	62,876	\$ 880,257
Texas Rural	130,860	\$ 458,010	65,430	\$ 916,020

Senator NELSON. Our next two witnesses are Mary Lanier, member of the Board of the National Clients Council, and member of the board of the neighborhood legal services program, Washington, D.C.; and Bernard A. Veney, executive director, National Clients Council.

STATEMENT OF BERNARD A. VENEY, EXECUTIVE DIRECTOR, NATIONAL CLIENTS COUNCIL, INC.; AND MARY LANIER, MEMBER OF THE BOARD, NATIONAL CLIENTS COUNCIL, INC., MEMBER OF THE BOARD, NEIGHBORHOOD LEGAL SERVICES PROGRAM, WASHINGTON, D.C.

Mr. VENEY. Thank you, Senator. I have a prepared statement which I would like to submit for the record.

Senator NELSON. Your statement will be printed in full in the record. If you can summarize the main points, we would appreciate it.

Mr. VENEY. Thank you very much, Senator.

We attempt in the written testimony to address several issues. I will not now go into any of the issues in great detail.

One of the issues is accountability. Mrs. Lanier will talk to you about that.

The second issue is the level of funding. The third is the current restrictions on representation.

Before making any further comment, we would like to thank you Senator Nelson, the other members of this subcommittee and the members of the Senate for the efforts that you have made on behalf of the poor in maintaining legal services over the years.

We recognize that without your assistance, we would not be anywhere near the place that we are. While we may seem unappreciative in our continued insistence on more, more, more, that is not, in fact, the case.

We deeply feel that legal services has proven itself to be one of the most valuable resources in the poverty community, and because it is so valuable, we keep coming back asking that you in fact do those things that need, in our opinion, to be done.

Mrs. Lanier.

Mrs. LANIER. Senator Nelson, I would like to express my appreciation at being able to testify here this morning on behalf of the client community.

I am a member of the board of the National Clients Council and also a member of the board of the Neighborhood Legal Services here in Washington. I am a client, and I am poor, and I feel the needs of poor people. I have experienced these needs.

I am here to ask you to amend the Legal Services Act, to insure representation of clients on the Corporation's Board. At a local level for the poor in each State, we all have problems, and we all have problems different from others. Some are more serious than others.

Here in the District of Columbia where I live, I know the problems in housing, consumer problems, landlord-tenant, and so forth.

My feeling is, we have legal services lawyers to represent us because we are not in the position to pay for a lawyer to serve us. We feel that

legal services lawyers are capable of giving us the services that we need to maintain our needs. Together with the lawyers, clients are bringing the concerns of the community and the needs of the community and both groups are sitting down and working them out together. We need the lawyers very much and we need their view of all the different problems that are happening here in the city.

We face problems of landlord-tenant for housing, and inadequate need. Poor people in this city alone have had to put up with things that they did not want to because they were not in a position of having representation and went to legal services lawyers; and they are able to go get help and get the problems ironed out. Without this, we would have no way out.

I also would like to speak to the part of having client representation on the national Board.

I have attended many Legal Services Corporation Board meetings, and I find it is very difficult to have to accept some of the decisions that are made by the Board. The Board members are planning the lives and making decisions which affect the poor. Yet some of the Board members really do not have a feeling for the needs of the poor; I mean, this is the way I feel when they go into closed sessions and come out with some of the decisions that they have come out with.

My feeling is, if clients, who know the real needs, were sitting on the Board, they could give a different viewpoint on whatever has come up.

I feel, in order for the Board to really function to serve the client community, as it should serve, my feeling is that three client representatives—minority, woman—should be on the Board. They can come up with decisions that really are relevant and really support the needs of people more so than those who are trying to do it alone now.

I strongly urge you to give this consideration. I feel I know the needs because I have been there and I know what it is to be poor and I know that some of the decisions that have been made would be better. I feel actions would be different or passed differently than they are if there were client representation on the Corporation's Board.

Thank you.

Senator NELSON. Thank you very much for your testimony.

It is my feeling that the pending legislation addresses the various points about which you express concern. It proposes that there be three client representatives on the Board, and it changes the law which now permits executive sessions of the Board. It brings Board meetings under the law applicable to executive agencies, so forth and so on, the so-called Sunshine Act. Except for matters involving personnel, Board meetings will have to be open, if this legislation is adopted, which I think it will be.

Thank you very much.

Mr. VENEY. Senator, just to continue for a few moments, I would ask that you consider with great gravity the testimony of Mr. Ray, preceding ours, as to the level of Corporation funding.

Mrs. Lanier talks about the housing problems in Washington, and we can talk about similar problems across the country but we cannot speak very clearly about those millions of people who have never

had access to legal services 13 long years after this program has been started.

We recognize the fact that fiscal responsibility is a pressing matter for the Congress but so are the unmet needs of millions of poor people across the country.

There was reference made to the unique structure of the local governing bodies of legal services programs. Each of those programs is, as you know, an independent corporation run by governing boards consisting of both clients and attorneys. This unique combination of clients and attorneys makes the programs accountable both to the legal profession, and knowledgeable of, and accountable to, client communities. It is this dual accountability, Senator, that we think could rid the Congress of many of the problems it seems to have had with legal services in the past.

It is required by the Corporation's regulations that each program, through a process involving the client community, set priorities for the allocation of resources in that particular program.

Having done this, the program then begins a period of implementation and evaluation on what was established as the goals and priorities. Unfortunately, language in the bill pending before this committee would mandate certain special considerations be given, taking away the discretion of the local community and placing that in the hands either of the Congress, who certainly in its wisdom does not think it can mandate priorities for local areas; or put that task into the hands of some other vague process that I really cannot determine.

We ask that you trust the combination of clients and attorneys, who sit on local governing bodies, to be responsive, and responsible people who will recognize the needs of the local community—the entire local community—be they elderly or be they anyone who cannot afford private counsel.

Senator NELSON. On the matter of local priorities, I realize language can be interpreted by different people in different ways. I think it is organizational language; it does not preempt local governing boards, but it does say that the National Board may, at its discretion, promulgate national goals.

Mr. VENEY. That is most helpful, a most helpful clarification, Senator.

Senator NELSON. That is my interpretation. That is what I think it does under the law.

There was concern by those who advocate the language that in fact certain groups were not being given consideration. I don't know what was the basis of that fear: one of the witnesses today said that the related statistics were 8 years old.

But I am assuming that the intent was to call attention to what might appear to be a special problem overlooked. I don't know that such is the case, in that, once you have looked at the situation, you still draw up your priorities and decide how your resources are to be used.

The only possible need that I perceived was in testimony presented by the National Council of Senior Citizens suggesting an outreach program.

I suppose that it is possible, with such limited resources, that elderly citizens are not aware that there may be a resource available to them; that in the absence of an outreach program, they may be overlooked under some circumstances. I assume that that is what such language is about.

Mr. VENEY. Thank you very much, Senator. I would hope that if the language in the bill remains, that the intentions that you have expressed would become the intentions of the Congress.

Senator NELSON. I am sure there is no intention by the committee to propose that there be a national priority that is mandated by the Congress as such.

Mr. VENEY. I think, too, Senator, that the trust that you have just exhibited in local control and the need to have the local community be the arbiter of where the resources are allocated, would go to the restrictions that continue to be contained in the Legal Services Corporation Act in the bill pending before the committee. And I shall not go into any lengthy discourse about organizing. You certainly have covered that area today and heard from witnesses who are far more capable than I of responding to the questions and problems.

I would say, however, that it is necessary that poor people have the expertise that sometimes only an attorney can bring, and we ask only that the attorney be allowed to assist; we do not look forward to attorneys leading client organizations—we are perfectly capable of leading our own organizations—but we do need the technical assistance, the resource help and the skill that attorneys can and often do bring.

In the area of legislative advocacy, I would suggest to you, Senator, that the current bill and the act as it is now written absolutely preclude something that we choose to call preventive legislative advocacy. If there is no damage, you probably cannot have a client. I am not an attorney, so I can't really address that.

But my logic tells me that in order to have a client you must have had something happen, there must be something real that has occurred.

Legislation often addresses the problem of preventing things from occurring. And under the current language there could be no preventive advocacy taken by legal services program, because there is no eligible client.

The other question I would raise is the section of the pending bill regarding comment. Senator, I hope you do not take it wrong when I say facetiously that poor people do not read, and even if they did read could not understand, the Federal Register. There is just no way that, without the assistance of an attorney, we are going to be able to make comment on the myriad of regulations that come out of the Federal agencies.

We don't think that these comments should be made on any and every subject. We do think, however, that where the proposed regulation or legislation would in fact impact upon priorities established by that local community, we certainly think that, without having to seek a client, the program should have the right to comment.

The solicitation language has already been commented upon. I don't know how the line gets drawn between solicitation and educa-

tion—and we are aware of the fact that the Code of Professional Responsibility requires that attorneys be in the business of educating; and, certainly, the low-income community needs education as to their legal rights.

I guess I am particularly concerned with the fact that the bill pending before you does not contain any removal of the restrictions on abortion and desegregation. Why those should remain I guess is understandable, but I would say to you that the language of S. 1305, introduced in the 92d Congress, might become the battle flag for this committee at this moment in time.

And that language raises the issue of legal services attorneys free to do for their client all of those things which in fact are done by private attorneys. I have recognized the problems that may exist, but I also would just hope that you are over the threat of Presidential veto, that the 2 years of operation of the Legal Services Corporation have changed the minds of some—and I would remind the Senator that the back-up center legislation which was so hotly contested in the House in 1973 passed the House last year.

Senator, again we wish to thank you, the staff, members of the committee, for all the work that you have done, and ask that you continue to be our knights in shining armor, that you continue to be our proponents and our advocates, and help us fight the very good fight. We need legal services desperately.

Thank you.

Senator NELSON. Thank you very much. As to the Federal Register, I don't think anybody should be embarrassed by not being able to understand the Federal Register. I've called up some agencies on occasion when I couldn't understand the Federal Register, and they couldn't explain to me what they wrote either.

Thank you very much for your very helpful testimony.

At this point I order printed all statements of those who could not attend and other pertinent material submitted for the record.

[The prepared statement of Mr. Veney and material referred to follows:]

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NATIONAL CLIENTS COUNCIL, INC.

"around the conference table"

STATEMENT OF

BERNARD A. VENNEY

on behalf of the

NATIONAL CLIENTS COUNCIL

before the

SUBCOMMITTEE ON EMPLOYMENT POVERTY

AND MIGRATORY LABOR

of the

HUMAN RESOURCES COMMITTEE

of the

UNITED STATES SENATE

Mr. Chairman, members of the Committee.

The National Clients Council very much appreciates your invitation to testify on the Legal Services Corporation Act and the changes needed in this enabling legislation. We think that our testimony has particular relevance since we represent the low income persons who are the consumers of legal services.

As always, when we testify before the Congress, we are faced with a dilemma of considerable proportions. We appreciate the efforts which you have made to insure that low income people have equal access to civil justice. We know that strong resistance had to be overcome in order to establish an independent corporation. We presume that there are still those in the Congress who question the efficacy of government funding of these efforts on behalf of the poor. Thus, we are prone to exercise caution in our comments for fear that we shall arouse our enemies or alienate our friends.

Yet, the National Clients Council's Board of Directors and I feel a responsibility to our membership. The Congress, all too seldom, has the opportunity to hear from low income people. Thus, we feel compelled to speak with candor and directness about the changes which need to be made in PL 93-355.

There are three basic issues which we would like to address in this testimony. They are accountability, the level of the appropriation and the present restrictions on representation.

Accountability

The more than three hundred independent grantees of the Legal Services Corporation could, for some purposes, be considered the world's largest law firm. It is the law firm charged with the responsibility to represent more than twenty-nine million low income people in this country. As is true for any firm, these grantees must be accountable to those they serve even though the poor do not directly pay for the services received.

The issue of accountability is being addressed at the local level. With some minor exceptions, the Corporation's regulation on the governing bodies of local programs is being implemented. We might point out that in some areas there is less than full blown enthusiasm about now being forced to comply with a structure which some avoided all the years they were under OEO supervision. The Corporation, through its regulation, requires that at least 60% of the governing body be attorneys admitted to practice in the area covered by the project. This has insured that local programs have, at the policy making level, persons who are thoroughly familiar with the practice of law in the local community; individuals who are aware of the requirements of the Code of Professional Responsibility; and who are capable of setting policies which, while not interfering in the work of the individual attorney nor reflecting upon his/her professional judgement, will insure that the program goes about its business in a manner consistent with the highest quality of lawyering. Further, the Corporation's regulation requires that at least one-third of the governing body be composed of eligible clients or representatives chosen by the client community. The presence of these low income policy makers insures that the program, on an on-going basis, has direct information on the needs of the community as well as a mechanism for self-evaluation. The combined client/attorney makeup of the local governing body therefore insures accountability to both the client and the legal communities.

The same arrangement is needed at the national level and this is the moment in history to accomplish that end. There is no need to tell the members of this committee about the present composition of the Corporation's board. Many of you voted in July, 1975 not to consider further nominees for that body unless cognizance was taken of the fact that the directors are all male and all attorneys. In passing the current Act, the Congress provided for the possibility of non-attorney membership by requiring that only a majority of the body had to be attorneys. The client community is most anxious for you to now more directly state your intentions with regard to the proper composition of the Corporation's governing body.

We would ask that you amend Section 1004 (a) of the Act to provide that three eligible clients be named to the governing body of the Corporation and that you also amend Section 1007 (c) to give the weight of the Congress to the existing Corporation regulation.

Funding

The Legal Services Corporation is currently funded at the level of \$125,000,000. The

National Clients Council is asking this Congress to take the almost unprecedented step of more than doubling the size of the program. We seek an authorization and an appropriation for FY 78 of \$265,000,000.

We do not make this request without full knowledge of the difficulty it raises in the minds of the members of the Senate. You must view fiscal responsibility as one of your most important functions. However, we think that such an appropriation is both responsible and warranted. We fear that the mere size of the requested increase may cause some of you not to look behind the numbers to see the people in need who are the reasons for such a bold request.

The current appropriation of the Legal Services Corporation leaves more than ten million poor persons without access to legal services thirteen years after the program was first implemented. As with any new program, there had to be an initial period to determine if what was good in theory was sound in practice. The experiment should now be considered over. Legal services, funded by the government, is an established, workable and acceptable entity. It is time to move to full implementation and the amount required to allow even minimum access is the \$265,000,000 which we recommend to you.

Others will provide you with the statistical documentation. We can only plead that you think of those millions of persons whose personal crises have a legal remedy but which are not being addressed by the private bar. These crises certainly can not be resolved by nonexistent legal services programs. These crises can not be expected to simply go away. The options of the poor are few. When faced with a major crisis the poor have found legal services to be one of the few entities available to assist in identifying alternative courses of action and providing the assistance needed. More than ten million poor people are dependent upon you to make this resource available to them for the first time.

Restrictions on Representation

The National Clients Council would like to see the 95th Congress require the Legal Services Corporation to,

[E]stablish such procedures and take such other measures as may be

necessary to assure that attorneys employed by the corporation and attorneys paid in whole or in part from funds provided by the corporation carry out the same duties to their clients and enjoy the same protection from interference as if such an attorney was hired directly by the client.

The critical line in our judgement is "... as if such an attorney was hired directly by the client." This is not National Clients Council's language. These are your words as contained in S. 1305 introduced in the 92nd Congress. That bill was cosponsored by you Senator Nelson, by Senators Cranston, Kennedy and others who continue to serve in this body. The bill was introduced by our current Vice-President.

It is also interesting to note that in that same bill you required the Corporation to provide "... maximum utilization of the expertise and facilities of organizations presently specializing in the delivery of legal services to the client community." We strongly endorse continuation of that principle and support yet another one from S. 1305 on which we commented earlier. That is,

[T]he applicant will give assurances that the program will be supervised by a policymaking board on which the members of the legal profession constitute a majority and members of the client community constitute at least one-third of the members of such board.

It is not difficult to understand why S.1305 did not become law. The political climate in 1971 certainly did not support a measure which provided for the unrestricted access of low income people to counsel. Nor is it difficult to understand why the 93rd Congress saw the introduction of S. 2686. That bill was replete with restrictions on the activities of legal services personnel and the forms of representation that they could provide. You gentlemen know better that I the compromises which had to arrived at in order to save legal services from total destruction. You sat through the debates. You understood well that many who opposed legal services had the ear of a President who, for reasons not at all connected with poor people, needed to keep their good will.

The client community recognizes that more than two-thirds of the current members of the Senate were serving during the 93rd Congress. We believe that some who opposed legal services then, still do so now. However, we are acutely aware of the fact that the

political environment has undergone a distinct change

There no longer exist the constant threat of a Presidential veto. In fact, the current Administration has shown its support for legal services in its increased budget request for the program at a time when it was holding the line on other social programs. Further, the current Administration has demonstrated a commitment to changes in the justice system in this country. It has set out to insure that competent representation is provided to every citizen and that, in both the criminal and civil areas, there is full access to the system.

The American Bar Association, the National Bar Association and state and local bars across the country have demonstrated their support for the concept of government funded legal services. A prime example of this is to be found in North Carolina. There, the state bar association established a Special Committee on Indigent Legal Services Delivery Systems. This body conducted a two year study of the needs of low income persons for representation. They found that pro-bono efforts were not meeting more than a small fraction of the total need. Further, after examining the full range of alternatives, this committee recommended, and the North Carolina Bar Association accepted, findings that the most appropriate means to provide representation in civil matters for low income persons was a staff program funded by the Legal Services Corporation.

The last two years have seen little controversy over the current method of delivering legal services. I think that your contact with constituents reflects very little negative reaction to local legal services programs. This is certainly a far cry from the situation in 1973.

The 94th Congress did not take any extensive action with regard to the Legal Services Corporation. However, it is important, we believe, to remember that the House of Representatives passed, by a vote of 256 to 143, HR 10799 which amended the Legal Services Corporation Act to allow the Corporation to once again conduct research, training and technical assistance activities itself or through grants and contracts. As you will remember, in 1973 this was a most controversial point.

Yes, we think that it is not an exaggeration to conclude that the climate has truly changed.

The National Clients Council thinks that the Corporation's efforts have been highly successful and that local programs are doing an increasingly good job. You may

therefore ask why we seek changes in what has proven to be an acceptable model. The answer is found in the citation from S. 1305. The poor of this country are still not being afforded representation on the same basis as those who are able to pay. While this continues we can not hold that the full purposes of the Legal Services Corporation have been achieved.

The client community therefore ask that you consider removing the restrictions on the matters for which we receive representation and the forms of representation which may be undertaken . Specifically we ask:

- That Section 1007 (a) (2) subparagraph (iv) be amended to delete that portion which would make a prior refusal to accept an employment situation a disqualifying factor. and that subparagraph (v) be repealed.
- That Section 1007 (a) (5) be repealed.
- That Section 1007 (b) (1) be amended to allow legal services attorneys to represent persons charged in state court with criminal offenses arising from a conflict with traditional rights to hunt, fish and/or gather the fruits of the land.
- That Section 1007 (b) (4) be repealed.
- That Section 1007 (b) (5) be repealed.
- That Section 1007 (b) (6) be repealed.
- That Section 1007 (b) (7) be repealed..
- That Section 1007 (b) (8) be repealed.
- That Section 1007 (b) (9) be repealed.

Section 1007 (a) (2) (iv) and (v)

Section 1007(a)(2)(iv) is an unneeded and unwarranted requirement which may preclude an

an otherwise eligible person from receiving legal assistance. It is our belief that in far too many instances poor people have been subject to arbitrary findings of failure to accept employment. The current statute requires that where such a finding exist, no matter how long ago it took place or how questionable the circumstances under which such a finding was made, the local program declare an individual ineligible.

The Legal Services Corporation has established, as required by the Act, maximum financial standards. The governing boards of local programs establish, within these guidelines, such income limitations and such other criteria as may be appropriate for that area. The local governing bodies are acutely aware of the limitations imposed by the level of funding and the availability of personnel. They can and will safeguard against abuse of the program by the "voluntarily poor".

Similarly, subparagraph (v) should be repealed. The client community certainly wishes to insure that the legal services program continue to serve only those persons and those kinds of cases which are most pressing in their local community. However, this Section of the Act imposes a vague standard which has caused difficulty in many communities as they attempt to develop priorities. For example, it may be that one of the major problems of a particular community may be the failure of the local housing agency to properly maintain its property. The residents therein may not infact be the persons in that community "least able to afford legal assistance" but for this category these are the persons unable to pay for legal assistance and who may be in dire need of representation. The current language sets one group of poor people against another due to a lack of funds.

The Corporation's regulations, Part 1620, require that each recipient organization set priorities for the allocation of its resources and that the client community be involved in this process. This amply insures that the program continue to devote its attention to the true needs of low income persons.

Section 1007 (a) (5)

The current Act permits legislative representation of eligible clients. However, Section 1007(a)(5) both in its language and in its breadth drastically infringes upon the needs of low income people. In part, this section requires that all legislative representation be conducted by "an attorney as an attorney." This language precludes the use of paralegal

personnel who are fully capable of providing many forms of representation. All of the legal services programs are limited in their resources and must maximize the capacities of all of their personnel. Paralegals, under the supervision of an attorney, can and do provide appropriate representation.

Further, as currently written, this Section requires that prior to undertaking legislative actions, there be an eligible client. We at the National Clients Council believe that this is too restrictive and bars poor people from using a most valuable skill. A skill usually possessed only by members of the legal profession.

We do not want to see individual staff personnel lobbying on issues they find attractive. There are already far too many outside of the legal services community who feel that they know what is best for poor people and who act with no accountability to, or control by, the poor.

However, we do feel that local program boards should have the capacity to determine that an appropriate means of implementing a priority is through legislative advocacy. This would allow correction of existing situations and provide programs with the ability to pursue legislation in order to prevent a future damage to the poverty community.

Here again, we feel that there should be reliance on the combined client/attorney local governing body and its grasp of the local situation.

Section 1007 (b) (1)

The change which we seek in Section 1007 (b) (1) may seem minor to the casual observer. However, when one examines the problems of Native Americans, Hawaiians and Alaskans, one soon recognizes that private counsel is seldom disposed to represent them in matters which impact upon old treaty rights and/or traditional modes of subsistence. Most often, private attorneys are impacted by peer pressure or are not sufficiently knowledgeable in such matters to provide representation. It is true that such attorneys could prepare themselves to provide representation but it is not remunerative for them to do so since the cost of such cases, which often requires testimony by expert witnesses, detracts from the desirability of undertaking representation. Even where this is not the case, there is little trust in the Native American communities for the traditional bar. Legal services programs have established a relationship with these communities and beyond that, even when the attorney is not a member of the tribe or culture, the program which employs him/her is under the control of peers of the person requiring representation. The same can not be said for private firms in most of the areas under consideration.

Therefore, it is highly desirable that when a Native American is charged with a violation of what may one day be construed to be a basic constitutional right peculiar to them as a class, and where that violation is being tried in a state court, we believe that legal services attorneys should be permitted to represent the individual if he/she is otherwise eligible. Again, the resources which could be devoted to such representation should be a matter of local determination but the possibility for inclusion should be allowed to exist.

It should be noted that while client communities on the whole have serious questions about the representation being provided in many jurisdiction in criminal matters there is a consensus that the Legal Services Corporation should not be the vehicle to correct this problem.

Section 1007 (b) (4)

The representation of juveniles is, in many communities, a matter of the highest priority. The Act currently provides for representation with parental consent and in other special circumstances. We see no reason why this restrictive language should be a part of the Act. Local governing bodies should be free to determine that this is a priority area for that community and attorneys should be free to undertake representation of eligible persons. The Act, as written, applies middle class values to the conditions under which many poor children live. Often, there has been no official guardianship established where the parents are absent. In such a situation, a juvenile who wished to question suspension from school or who seeks representation in other matters might well have to be denied the assistance of the program.

We suspect that this section was written against a backdrop of adolescent rebellion common in the late sixties by middle class children. This has never been true in the poverty community to any meaningful degree and is not general true today in the society as a whole. Clearly, this section restricts the activities of programs from providing needed services while it protects against almost nothing of real concern to low income people.

Section 1007 (b) (6)

This section of the Act contains the best example of the kind of "chilling effect" upon the client/attorney relationship. There is no desire on the part of the client community to have legal services attorneys be the focal point of organizing efforts. The leadership

of poor people's organization rightly belongs in the hands of the poor. Yet, because of the limited experience which many poor people have in organizing, expertise is needed to properly develop self-help groups and it is often imperative that the attorney be free to participate. The key word is participate. This participation, while it may be short or long term, is most critical at the early developmental stages. Experience has shown that once an organization has been properly started poor people have the capability of carrying on the on-going functioning but legal counsel during the startup period is often crucial.

The language of this section has caused programs to avoid the development of buying clubs, credit unions, and even in some areas rent strikes and other legitimate gathering together of poor people to accomplish legal redress and/or improvement in their lives.

It is our belief that this section should be repealed or seriously modified to protect against abuses, whatever they may be seen to be, while providing positive encouragement for attorneys to carry out the provisions of the Code of Professional Responsibility.

Section (b) (7)

The issue of school desegregation is still one which incites much passion in this country. We would be naive to believe that an attempt to repeal this section would not face opposition. However, we think that it is a matter of importance to a significant portion of the client community. Therefore we feel that legal services programs, consistent with the priorities established by their governing bodies should be able to undertake representation in desegregation matters.

In listening to Congressional discussions of this issue, desegregation all too often seems to be linked with busing. This is simply not true. Communities seek representation for matters relating to school desegregation which do not depend on moving children from one neighborhood to another.

Section 1007 (b) (8) This is another area where emotional reaction can be expected. A great many members of the National Clients Council have strong personal reservations about abortions. We do know that it is the poor Section 1007 (b) (8) who most often must accept denial of services while those who can afford to pay are free to seek these same services elsewhere. Therefore, as long as there is the Constitutional right to abortions, we hold that the Legal Services Corporation Act is not the place for the Congress to deal with the issue. To do so establishes the poor as a group who can not vindicate rights given to others in this society.

We think that the issues we have raised in this testimony are important ones. We know that you will give them your full consideration. We can only hope that you act on behalf of the low income community.

Thank you.

American Farm Bureau Federation



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April 22, 1977

Honorable Gaylord Nelson
United States Senate
Washington, DC 20510

Dear Senator Nelson:

We appreciate your letter of April 18 in which you invite us to testify on the Legal Services Corporation authorizing legislation at the hearing on April 26.

Unfortunately, we have scheduled here in the city a three day National Affairs Conference of a number of our State Farm Bureau leaders from across the nation; and it will not be possible for us to appear and testify in person. However, we have prepared a somewhat detailed statement which we will deliver to your Subcommittee to be a part of the hearing record.

We hope that your subcommittee will give increased oversight to this particular program since it is an independent agency and is responsible solely to the Congress. There have been too many instances in the past where well-intentioned programs to help disadvantaged people have gotten out of control and have gone astray. We would hope the Legal Services program would not be allowed to follow this pattern.

Sincerely,

John C. Datt

John C. Datt, Director
Washington Office



★FARM BUREAU★

"the nation's largest general farm organization"

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
TO THE SUBCOMMITTEE ON EMPLOYMENT, POVERTY AND MIGRATORY LABOR
SENATE COMMITTEE ON HUMAN RESOURCES
RE: LEGAL SERVICES CORPORATION

April 26, 1977

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
 TO THE SUBCOMMITTEE ON EMPLOYMENT, POVERTY AND MIGRATORY LABOR
 SENATE COMMITTEE ON HUMAN RESOURCES
 RE: LEGAL SERVICES CORPORATION

April 26, 1977

We appreciate the opportunity to present the views of the Farm Bureau with regard to the Legal Services Corporation.

For the record, Farm Bureau is the largest general farm organization in the United States with a membership of more than 2.6 million families in 49 states and Puerto Rico. It is a voluntary non-governmental organization, representing farmers who produce virtually every agricultural commodity that is produced on a commercial basis in this country.

At the recent annual meeting of the American Farm Bureau Federation, the voting delegates of the member State Farm Bureaus adopted the following policy relative to the Legal Services Corporation:

"We believe that it was the intent of Congress that the new Legal Services Corporation would be set up and administered in such a manner as to offer a reasonable experiment in providing legal services to the poor.

Developments since the creation of the new Corporation cause considerable concern. We believe the makeup of the Board of Directors leans too heavily on the side of those who would use the Corporation for the purpose of broad legal reform as well as political and social action.

We oppose legislation to amend the Act to restore contracts with the so-called 'backup centers,' since these groups have been largely responsible for the social and political activity of this program in the past.

The directors, leaders, and staff of the Corporation should be aware that the new program is being closely watched by Farm Bureau and other segments of the public. We will not hesitate to recommend repeal of the Act if the new program is allowed to degenerate into the same kind of social and political engineering that characterized its predecessor program."

The agricultural community does not question the principle that every citizen, regardless of his economic situation, should have full access to the courts and competent legal service and representation. How best to assure such service and representation is the question.

From the beginning, we have been skeptical about the creation of an independent public corporation as the best means of delivering legal services to the poor. Therefore, we were pleased that Public Law 93-355 directed the new Corporation to undertake an in-depth study to determine whether there might be better ways of providing legal services to the poor than to create a new bureaucracy in the form of the Corporation. While it would have been preferable to have such a study made by a less biased entity, we hope that it will reveal better ways of providing the needed services through a utilization of the private bar and existing public agencies.

As members of this Committee know, the history of the legal services program under the Office of Economic Opportunity was one of widespread controversy, misappropriation of public funds, and ineffectiveness in addressing the legal problems of individual poor people. The involvement of the program in efforts to achieve social reform or change, in the advocacy of political and social causes, in broad areas of law reform through class action suits, and in other areas of social engineering are still fresh in our minds. We are coming to believe that some of these same elements of political controversy are to be found in the operations of the Corporation.

Based on our own observations and on information appearing in the press, we are convinced:

- (1) The Corporation has found and is using ways of getting around some of the restraints written into P.L. 93-355. Such proscribed activities include advice on alternatives to litigation, class action suits involving persons not within the definition of "poor", testifying before regulatory agencies on behalf of "consumers", suits against government agencies, and liberal interpretations that make these restrictions nearly meaningless.
- (2) The Corporation has been far too generous and liberal in its definition of "poor" and "poverty" in establishing eligibility for the services of the program, and, unless this eligibility rule is changed, the Corporation will need to request an annual appropriation of \$875 million within a few years to meet its statutory obligation.
- (3) The Corporation is thwarting the will of Congress in continuing to finance 13 of the original 17 backup law centers. During 1975 this Committee gave consideration to H.R. 7005, the purpose of which was to restore the backup centers to their former standing prior to the passage of the Act in 1974. A representative of the American Farm Bureau Federation appeared before you on October 31, 1975, to oppose the passage of this legislation. Congress did not pass it, but it now develops that the Corporation has found ways to continue to finance 13 of these agencies without Congressional approval.

We are attaching to this statement two articles that appeared in Barron's, which tend to support our views.

Amendments Recommended by the Corporation

According to the Legal Services Corporation News, March-April 1977 edition, the Corporation has proposed a number of amendments to the Act to "clarify practices and remove restrictions in the Act imposed earlier." The House subcommittee is reported to have accepted several of these liberalizing amendments, including (1) exceptions to prohibitions on entering criminal proceedings; (2) a provision stating that compliance with the Act and regulations shall be "conclusively presumed" in any proceeding in which an individual is represented by an employee of a recipient; (3) elimination of the restrictions on personal political activities of staff attorneys; (4) elimination of prohibitions on representation in school desegregation and selective services areas; (5) allowing the expenditure of up to 10 percent of the Corporation's appropriated funds for grants or contracts for research, training, technical assistance, and clearing-house activities; (6) elimination of the restrictions on the use of private funds; (7) modification of the prohibition on abortion cases; (8) elimination of restrictions on juvenile representation; (9) "clarification" of the restrictions on organizing activities; (10) "clarification" of the circumstances in which legislative representation may be allowed; and (11) a modification on determination of eligibility to eliminate the current provision making prior determination of a potential client's refusal to work an immediate disqualifying factor.

These proposed changes in the Act disturb us greatly. In the long process of passing the Act, the Congress agreed upon certain restrictions and prohibitions on the authority and operations of the Corporation to insure against abuses that had developed in the CEC program. It is now clear to us, based on the changes that have been recommended by the Corporation, that there is every intention of removing and modifying as many of these restrictions and prohibitions as possible. We are confident that if the extensive changes proposed by the Corporation are agreed to the legal services program will revert to its old ways and will become increasingly controversial. We urge this Committee to reject these proposed changes in the Act.

Corporation's Annual Report

We hope that every member of this Committee and every member of Congress will read and study the annual report of the Corporation for Fiscal Year 1976--both for what it contains and what it omits.

The report points to the "facts" that the federal government classifies some 29 million people as having incomes below the poverty line and that the Corporation is frustrated in being able to provide services to less than 15 percent of them, leaving 15.7 million without effective access to legal assistance. The Corporation now employs some 3,300 attorneys and a thousand paralegals.

Recently the Congressional Budget Office reported some fresh analyses of the federal definition of poverty. Using the same standard as the Bureau of the Census, CBO concluded that only about nine million people are actually below the poverty line, when all of the income-transfer programs

available to the poor are taken into consideration. These programs include Medicaid, Medicare, food stamps, housing subsidies, and other "in kind" benefits worth about \$40 billion a year.

We suggest that the Corporation, this Committee, and the Congress as a whole give the CEO study close scrutiny and that the Corporation go back to its drawing boards in devising its rules of eligibility. The American public wants to be generous to those truly in need, but it does not want to be bilked by the poverty community and the growing bureaucracy that feeds upon it.

Migrant Farmworkers

The Corporation's annual report states that it is financing some 258 legal services programs in 338 offices; and that ten of them, with a combined budget of \$867,000, specialize in serving migrant workers. In addition, many of the other agencies in several states such as California, New Jersey, Michigan, and Massachusetts are providing services to migrants. One of the backup centers -- Migrant Legal Action Program, Washington, D.C. -- is funded at \$407,000. We estimate that more than \$2 million is being spent each year to provide legal services to migrant farmworkers.

We do not deny that many migrant farmworkers have need for publicly funded legal services. However, it is time that the Corporation, this Committee, and the Congress take a look at the facts regarding migrant farmworkers.

According to the most reliable information available, a report entitled "The Hired Farm Working Force of 1975" (Agricultural Economic Report No. 356, published by the Economic Research Service, U.S. Department of Agriculture), there were some 2.6 million persons 14 years of age and over who did hired farmwork during 1975. Some 60 percent of these workers were under 25 years of age; 54 percent, mostly students, were not in the farm labor force most of the year; 18 percent did nonfarm work as their principal occupation; 45 percent worked on farms less than 25 days a year; 23 percent worked between 25 and 149 days; 9 percent worked between 150 and 249 days; 79 percent lived in off-farm places; and 41 percent had nonfarm jobs at some time during the year.

The USDA report indicates that only 188,000, or about seven percent of the total hired farm working force, were migrant farmworkers.

About a year ago, we wrote a letter to the Migrant Legal Action Program, which publishes "Earthbound." Volume 5, No. 3, of that publication included an article headed "The Migrant in America." An editor's note stated the article was adopted from testimony presented by Suanne Pierce, Florida Rural Legal Services, and Katie Gruenback, attorney, Migrant Legal Action Program to the House Agriculture Committee on March 30, 1976.

The testimony states: "There are an estimated one million migrants in the United States..."

The purpose of our letter was to inquire as to the source of that statistic. We have not had the courtesy of a reply.

We cannot find in the report any figures on how many migrant farmworkers were provided legal services by the Corporation during 1975 nor any figures on the total number of clients served.

Activities of Migrant Services Programs

We believe a good portion of the funds being expended supposedly to help these migrant workers and their families with needed legal services is being wasted or misappropriated. We have received reports from several states that personnel employed by agencies funded by the Corporation are openly engaging in activities to support the organization of labor unions among such workers. These workers have every right to organize themselves into unions if they so desire, but we believe the expenditure of public funds for such purposes is improper.

New Jersey is a case in point. Some 30 years ago, growers in New Jersey set up and financed a program to recruit seasonal farmworkers from Puerto Rico under terms negotiated with the Commonwealth of Puerto Rico. This was a pioneer program and to this day it is recognized as one of the best farm labor recruitment programs in the country, with the workers protected by a negotiated contract that includes good wages and generous benefits. The program is carried on by the Glassboro Service Association, a member of Garden State Service Cooperative Association, which has operated in several Northeast states.

For several years, these grower associations and their individual members suffered harassment by the legal services program as operated by the Office of Economic Opportunity in New Jersey. Finally, a judge in Atlantic City issued an order that henceforth the legal service agencies were to seek settlement of claims or issues through negotiation and administrative procedures before bringing such cases to court. Since that time, very little difficulty has been experienced with the New Jersey legal services agencies. However, Puerto Rico Legal Services (Migrant Division), Hato Rey, has filed numerous cases in Puerto Rico against the associations and against individual growers, mostly involving small wage claims and other alleged contract violations. To date, the courts have heard 66 cases, with no rulings in favor of the workers. While claims have been found to have no merit, the cost of these harassment suits to the associations and to the growers has become an enormous economic burden. We suspect that this is the real purpose of these lawsuits, since the associations are construed to be a hindrance to unionization efforts on the island. In an effort to reduce the need for litigation to handle complaints or claims by the workers, the associations two years ago agreed to include in the negotiated contract a grievance procedure. Repeated efforts to get Puerto Rico Legal Services to utilize this procedure before filing lawsuits have been to no avail.

We are attaching to this statement two articles on the situation in New Jersey which appeared recently in Northeast Agriculture.

During the passage of the legislation that created the Corporation we favored a provision that would have required the Corporation to pay the legal and court costs where defendants win court cases. We now feel more strongly than ever that the Act should be amended to provide for such payments. We ask this Committee to give consideration to such an amendment.

State Advisory Councils

P.L. 93-355 provides for the appointment of an advisory council in each state by the Governor. Where a Governor fails to appoint such a council within a specified period, the Corporation itself is empowered to make appointments. The annual report of the Corporation devotes a total of 13 lines of type to the advisory councils, stating that "councils are now in place in almost all states..."

Efforts by Farm Bureau members in several states to find out the names of those appointed to the councils or where to get in contact with the councils have been fruitless. We suggest that the Corporation publish a directory of state councils and make public addresses and telephone numbers where they can be contacted. We do not believe this feature of the Act has been taken seriously by the Corporation or by several of the Governors. The councils could serve as a means of broadening the base of the program and providing a means for the public to discuss the activities of the program in the various states. To date, we see no evidence that the councils are serving any purpose.

Summary

The Corporation has recommended that its authorized funding be extended for three years and has requested a Fiscal Year 1978 budget of \$217.1 million, compared to the current budget of \$125 million.

We consider the budget request of \$217.1 million to be excessive. We oppose any extension of funding authorization beyond Fiscal Year 1978. It is obvious that serious weaknesses and deficiencies have appeared in this program. We believe it would be unwise to give it more than a one-year funding extension, particularly when the two-year study of alternative methods of delivering legal services to the poor has not been completed and reported to the Congress.

In the meantime, the Congress should give much greater oversight attention to this program, since it is outside the purview of the executive branch and receives no administrative review except by this Committee, your counterpart in the House, and the Congress as a whole.

We ask that these comments be made a part of the record of the public hearings.

STATEMENT BEFORE THE SENATE COMMITTEE
ON HUMAN RESOURCES, SUBCOMMITTEE ON
EMPLOYMENT, POVERTY AND MIGRATORY
LABOR, ON THE LEGAL SERVICES CORPORATION
REAUTHORIZATION BILL

California Rural Legal Assistance, Inc., on behalf of itself and numerous other established programs, urges this Subcommittee to set the authorization to the Legal Services Corporation at levels sufficiently high to enable the LSC to meet long-standing financial needs of all existing programs in the country.

The Legal Services Corporation Act emphasizes the "need to provide high quality legal assistance," to support "adequate legal counsel," to free legal services of political pressures in order "to preserve its strength", and to assure that legal services maintain "the high standards of the legal profession." 42 U.S.C. §2996(a)(2), (5) and (6). Congress mandated the Corporation to fund programs in a manner which shall "insure the maintenance of the highest quality of service and professional standards. . . ." 42 U.S.C. §2996(f)(a)(1).

Program quality, however, repeatedly has been wounded by budget freezes over the past six years. All programs in the nation have suffered cutbacks in client services, offices, staff and salaries resulting from stagnating budgets during the inflationary spiral since 1970. Virtually every program in the country needs at least an additional 10% to 20% funding in order to recapture these past losses and maintain effective representation of eligible clients.

The Corporation presently plans no general increase to existing programs from its tentative Fiscal 1978 budget of \$217 million, other than a nominal cost of living increase for the current year. Field programs would receive additional monies during the next fiscal year in one of three ways: (1) an across-the-board cost of living increase of 5.5%; (2) money to entirely new programs in areas not previously served ("expansion"); and (3) money to certain existing programs based upon a funding formula of providing up to \$7.00 funding for each poor person estimated to reside within a program's service area ("equalization"). While all of these needs are urgent, the Corporation's planned expenditures do not fully account for other program needs which are equally serious.

One example will illustrate: Two legal services programs, Program A and Program B, are identically staffed with four staff attorneys and support personnel. Each program has funding at \$210,000. Program A is located in an area where 50,000 poor persons are believed to reside; Program B is located in an area where 30,000 poor persons are believed to reside. Each program serves approximately 2,000 clients yearly, consistent with maximum caseload control ceilings (500 cases per year per attorney) recommended by the National Legal Aid and Defender Association. Each program has resources limiting it to service of only a fraction of all eligible

persons within the area*.

Program A receives an additional \$140,000 under the Corporation formula, which it may and should apply to recapture lost service, staff and salaries during the post 1970 freeze. Program B, however, receives nothing under the formula.

Legal services budgets were low in 1969; since then they have risen only 16% while inflation has skyrocketed. The Federal Commission on Executive, Legislative and Judicial Salaries, recently noted how the Consumer Price Index for urban wage earners and clerical employees rose over 70% since 1969 and the general schedule Federal Civil Service Pay increased on the average by over 65%.

The 70% cost of living increase measured against a 16% budgetary increase between 1969 and 1977 actually has cut CRLA back to 68 cents on each 1969 dollar. A cutback this severe will substantially affect the quality of CRLA advocacy. Quality is measured in the kinds of lawsuits it brings, in the way those lawsuits are prosecuted, and in its ability to conduct effective legislation and administrative advocacy on behalf of

* The American Bar Foundation and the Bureau of Social Science Research have indicated that nearly 23% of all persons below the poverty threshold have at least one legal problem a year. "The Legal Services Program: Resource Distribution and the Low Income Population", Bureau of Social Science Research, Inc., Washington, D.C., 1975, p. 21.

eligible clients.

The correlation between a program's budget and quality advocacy is most apparent where low budgets mean low attorney salaries which in turn mean high attorney turnover. Legal services pay scales were low in 1969. CRLA's starting salary at that time was only 70% of that offered by many private firms. In the intervening eight years the cost of living has increased 70%, civil service pay 65%, while the CRLA pay scale has stayed the same at the bottom of the scale and declined slightly at the top end. The two increases the Corporation has allowed existing programs have fallen short of covering even the increases in non-attorney personnel expenditures. By way of example, during the period 1969 to 1977 (excluding the Stockton office, and all backup and special litigation units which were not part of CRLA for the full time period) space costs have increased 87.3%. Consumable supplies have increased 174.6%. Equipment leased and purchased has increased 160.6%. The increase in the cost of living understates the true increase in the cost of doing business. Programs like CRLA have had to cut out and delay filling existing staff attorney slots just to make ends meet.

The result has been predictable. Turnover has soared to the point where it has reached 36, 29 and 54% per year. By contrast, turnover from 1967 to 1970 averaged only 22%, which is still an unhealthy reflection of the fact that legal services

salaries have never been comparable to other public sector or private pay scales. Most recently CRLA has been losing experienced personnel to other legal services programs who have been able to upgrade their pay scales through equalization or other funds.* The zeal which a young attorney brings to a legal services program is important but is no substitute for the expertise, judgment and insights which attorneys gain only with years of apprenticeship. When that point is reached for a legal services attorney, however, he or she usually is forced by financial necessity to turn to other areas of public law.

CRLA's need to retain experienced attorneys is probably greater than that of the average legal services program. For one, CRLA encompasses 10 regional offices in rural areas of the State with each office slotted for four attorneys and two paralegals. At least one if not two experienced attorneys must be present in each regional office to assure adequate supervision of that office staff. Urban programs, by contrast, have larger professional staffs and can safely increase the ratio of supervising attorneys to other professionals. All

* CRLA wishes to continue its tradition of quality advocacy, having argued 13 cases before the California Supreme Court in the past six years and having won all 13. The cases include Carmona v. California Division of Industrial Safety, 12 C.3d 303 (1975) (prohibiting use of "short-handled hoe" in California agriculture); Gordon v. Justice Court, 12 C.3d 323 (1974) (invalidating lay judge system in state's rural justice courts); Vasquez v. Superior Court, C.3d 800 (1971) (landmark class action and holder in due course rulings); and Castro v. State, 2 C.3d 223 (1970) (invalidating English literacy requirement for voting).

of the regional offices of CRLA are located in relatively remote agricultural areas of the San Joaquin Valley, the Imperial Valley and the Salinas Valley. The hardships which attend living in such isolated areas compound the difficulties of retaining experienced attorneys in them.

Because of the preponderance of farm labor households in CRLA's service population, quality legal representation also demands recruitment and retention of staff attorneys bilingual in Spanish and English. Minority recruitment among legal services programs traditionally has fared badly in the face of higher salaries from both the private and public sectors. In 1973, CRLA embarked on an affirmative action attorney hiring program which called for a total staff containing 50% Spanish speaking attorneys and 50% women attorneys. Despite intensive recruitment efforts in implementing the plan, retention of experienced minority or women attorneys, like others, has proved extremely difficult. At present the number of minority and women attorneys in the program is below 25% in each category.

The advent of the Brown Administration in California in 1975 served further to drain CRLA of experienced staff. Five former CRLA staff members have served in a director capacity of state agencies in the Brown Administration. They in turn look to the ranks of CRLA for meeting their own personnel needs. Twenty five former CRLA attorneys have been employed in the Brown Administration. Four other former

CRLA attorneys are now state court judges. Such statistics demonstrate the existence of a large number of experienced attorneys dedicated to public service drawn to state employment by salaries 50% higher than what CRLA can offer.

The Corporation has recognized the connection between pay scales and turnover, and the need for stability, by requiring all programs to conduct comparability studies for all classes of employment. The Corporation tells programs that "Recipients should review wages annually to insure that they remain as competitive as possible with other agencies and organizations." 41 Fed.Reg. 50043. The Corporation, however, will not provide programs with the additional money necessary to achieve salary comparability.

Without more money, achieving salary comparability would force CRLA to close two of its ten regional offices and terminate numerous central office personnel. Thus, the Corporation would close down offices of established programs in order to open offices among new and inexperienced programs. This result is far from efficient. We urge this Committee to authorize amounts sufficient to enable the Corporation to address the needs set forth herein.

Respectfully submitted,

COMPARISON OF FEDERAL ATTORNEY SALARIES,
1968 CRLA ATTORNEY SALARIES, AND 1977
CRLA ATTORNEY SALARIES ADJUSTED FOR INFLATION

LEVEL	1977 Federal Attorney Salary Levels *	CRLA Attorney Salaries, 1968 to Present	1977 CRLA Attorney Salaries Adjusted for Inflation [#]
Before Bar Admission	14,000	10,500	6,090
On Admission to Bar	16,255	11,000	6,380
6 months	16,255	12,000	6,960
1 year after admission	18,423	12,500	7,250
1 year, 6 months	18,423	13,500	7,830
2 years	18,423	15,000	8,700
3 years	21,970	16,500	9,570
4 years	21,970	18,000	10,440
5 years	25,962	19,000	11,020
6 years	25,962	20,000	11,600
8 years	30,450	20,000	11,600

* Perfect congruence does not occur among all federal attorney salary levels and all CRLA salary levels. Where information is not available, the federal levels are estimated at the lowest probable point. E.g., federal step increases for even-numbered years are shown at a lower level for the preceeding year.

[#] The national Consumer Price Index for March of 1968 is 102.8 which, divided by the national Consumer Price Index for March of 1977, produces a factor of .58. This factor is multiplied by each 1968 CRLA attorney salary level, resulting in a 1977 salary figure expressed in terms of 1968 dollars.

BUDGET ANALYSIS

'Austere' Family
Needs \$10,000

WASHINGTON (AP)—An urban family of four requires \$16,238 a year for a "moderate" standard of living and, for the first time, needs more than \$10,000 to maintain an "austere" living standard, the Department of Labor said Tuesday.

The same family living at a level allowing some luxuries needs \$23,759 a year, the department said in its annual analysis of hypothetical family budgets.

The costs were calculated for the fall of 1978. Compared to a year earlier, the income requirements rose 4.7% to \$241 for the austere budget, to \$10,041; 6% to \$736 for the moderate budget, and 6.6% to \$1,259 for the higher budget in the previous year.

By comparison, the size of such budgets a year earlier rose between 7% and 8.2%, and the year before that such annual costs increased between 12.4% and 14.2%. Last year's smaller increase reflected the slowing of inflation.

The consumer price index, measuring the impact of inflation on consumers, increased at a rate of 4.8% in 1976, 7.2% in 1975 and 12.2% in 1974.

The Department of Labor's annual living for a hypothetical urban family consisting of a 38-year-old husband employed full time; his wife, who does not work outside the home; a 13-year-old son; and an 8-year-old daughter.

The couple are assumed to have been married about 15 years and to be "settled in the community."

The budgets are not based on how families actually spend their money but reflect assumptions about the manner of living.

The impact of rising prices of components in family budgets vary between the three groups, reflecting different living styles.

For example, food prices, which rose 1.7% for the low budget, account for a larger proportion of the total budget at that level. By comparison, food costs for the moderate and high budgets rose only 0.8% last year.

Rising housing costs had a bigger impact on the moderate and higher budgets in 1976, increasing 8.8% and 8.7%, respectively. That includes both rental housing and home ownership. Homeowner costs alone rose by 10.3%.

In the lower budget, total housing costs, which include only rental housing, increased by 5.8%.

The increased cost of medical care was among the fastest rising items in all three budgets last year, climbing 9.5% in the low and moderate budgets and 9.6% in the higher budget.

In line with last year's report, family budgets were lowest in some cities in the South, and costs were 8.6% to 19.6% higher in metropolitan areas than in nonmetropolitan areas.

For low budgets, annual costs ranged from \$8,887 in Austin, Tex., to \$11,104 in Boston and \$16,492 in Anchorage, Alaska. The high-budget totals ranged from \$20,628 in Austin to \$29,667 in the metropolitan area of New York City and northeast New Jersey.

According to the Department of Labor's analysis, the hypothetical low-budget families live in rental housing, use public transportation or drive used cars and do most of their own cooking and washing.

At the moderate level, families are assumed to have purchased their own homes six years ago, drive a late-model car, buy more meat at the market and dine out occasionally. The higher budget family buys a new car every four years and can afford more household goods and services.



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April 27, 1977

Senator Gaylord A. Nelson
221 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Dear Senator Nelson:

This letter is to convey to you the positions of the National Resource Center regarding the reauthorization of the Legal Services Corporation, and desirable changes in its authorizing statute.

The National Resource Center, a non-profit organization, is devoted to furthering client interests in the development of new systems for delivering legal services, such as group and prepaid legal service plans. Established by a coalition of national consumer groups, unions, public-interested lawyers, educators and others, the Center acts as a national clearinghouse of information on legal service delivery; publishes a journal, New Directions in Legal Services; and engages in educational efforts in an attempt to improve the access of American citizens to needed legal services.

While we work principally with the so-called middle income population, we are intensely aware of the commonality of goals, methods and interests which group and prepaid programs share with programs for the poor. The Legal Services Corporation's enabling legislation acknowledged our mutual interests by mandating a study of alternative delivery systems, including group and prepaid legal plans. Many prepaid plans operate a staffed office just as legal services for the poor do; we have the same interests in office management for delivery of quality legal services.

Accordingly, we have had a deep interest in the reauthorization of the Legal Services Corporation, and in the level of its appropriations. We believe that the Corporation can do a better and more thorough job if "its hands are untied," giving it more flexibility to get the job done.

Therefore we support a number of changes in the Corporation's authorizing statute.

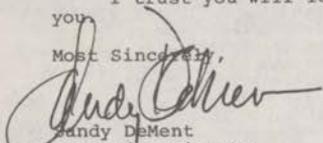
Principal among these is the repeal of the so-called "Green Amendment." We endorse the elimination of restrictions imposed on the Corporation's ability to conduct research, training and technical assistance and clearinghouse services by grant or contract. We believe the Corporation is well-equipped to determine how best to carry out its obligations.

In addition to repeal of the Green Amendment, we would urge the following changes:

- We support the principle of client representation both on the Legal Services Corporation board (which presently consists entirely of lawyers) and on local boards.
- We support amendments to Section 1007(a) (5) (A), which would preserve the ability of paralegals to appear before administrative forums, where permitted.
- We support amendments to Sections 1007(a) (5) B and C, which would expand the ability of recipient organizations to provide attorneys to represent clients before federal, state, or local agencies or legislatures under certain enumerated circumstances.
- We support amendments to Section 1066(d) which would prevent court appointment of legal services attorneys except on a non-discriminatory basis with other practicing attorneys.
- Finally, we endorse the elimination of restrictions on the handling of certain types of legal matters. We believe these kinds of restrictions are inconsistent with the goal of achieving equal justice under law; we further believe they constitute very bad precedent for the independence of the legal profession and the integrity of a government-supported legal services program.

I trust you will let us know if there is any way we can assist you.

Most Sincerely,


Sandy DeMent
Executive Director

Senator NELSON. That concludes the hearings. The record will remain open for one week for any statements for the record.
[The subcommittee adjourned at 11:07 a.m.]